



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Cal/EPA Secretary

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Arnold Schwarzenegger
Governor

October 19, 2009

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

Dear Ms. Higashi:

RE: CSM-03-TC-04, 03-TC-20, 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges: Comments on Proposed Parameters and Guidelines"

The Los Angeles Regional Water Quality Control Board (Regional Board) has reviewed the Proposed Parameters and Guidelines, and makes the following observations:

1) The Claimants overstate the scope of the trash receptacle requirement

The requirement contained in Order 01-182 that the Commission determined constituted an unfunded mandate is as follows:

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

The purpose of this provision is to effectively control litter from transit stops, which are known to be high trash generation areas, through the simple placement of trash cans, in order to prevent litter from being washed into the storm drains and, ultimately, into rivers, lakes, bays and beaches in the region. The claimants may fairly and adequately comply with the mandates of the order through the placement of any type of receptacle capable of containing the garbage that waiting passengers might throw into the gutter. Likewise, given the water quality context, the obligation to maintain the receptacles is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage.

The order does not, as the claimants suggest, require any construction or installation. Nor can the order fairly be viewed as requiring the expenditure of \$20,000 to identify the location of transit stops that are well known by transit authorities and published on transit authority maps for the benefit of their riders. The order is directed to water quality; it only compels Permittees to provide a place for transit riders to put garbage instead of the gutter.

The Commission has already determined that this water quality permit provision, intended to compel claimants to do what every reasonable Californian already believes to be their own responsibility (to wit, throwing garbage in a garbage can), is a state obligation for which

California Environmental Protection Agency



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subvention is required. While the claimants may elect to undertake additional design and construction to enhance the placement of trash receptacles at transit stops, they may only request reimbursement from the State for the basic requirements of the permit provision.

2) The trash receptacle requirement does not apply to the Claimants subject to Trash TMDLs

The permit provisions that the Commission found to require subvention contain an express exception – they do not apply to any Permittee that is implementing programs in conformance with Trash TMDLs.

“Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule....”

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

(Order No. 01-182, as amended September 14, 2006 by Order R4-2006-0074 and August 9, 2007 by Order R4-2007-0042, Part 4.F.5.b.)

Both the Los Angeles River and Ballona Creek Trash TMDLs were effective on August 28, 2002. Claimants Carson, Commerce, Downey, Monterey Park, Signal Hill, Vernon, and the County of Los Angeles are subject to the Los Angeles River Trash TMDL. Claimant Beverly Hills is subject to the Ballona Creek Trash TMDL. The order required Permittees to have placed trash receptacles at transit stops that have shelters not later than August 1, 2002, and to the extent the claimants demonstrate that they actually did so, the Commission’s determination would warrant subvention for those. However, the order did not require receptacles at the other transit stops until February 3, 2003, after the effective date of the TMDLs. Those TMDLs allow a variety of flexible means for Permittees to comply, and while they may choose trash receptacles as part of their compliance efforts, none of the Permittees subject to those TMDLs are required to do so. As of August 28, 2002, those claimants would not have a valid subvention claim under the Commission’s decision, since the requirement to place receptacles no longer applied to them. In like regard, the permit requirement to maintain any previously placed receptacles also ceased as of that date for Permittees subject to the Trash TMDLs. As such, no subvention may be granted for either placement or maintenance of receptacles by claimants subject to the Trash TMDLs after that date.

In conclusion, the Los Angeles Regional Board maintains its position that the trash receptacle requirements in the permit are a component of the federally mandated program that requires the states to ensure that municipalities control storm water pollution to the maximum extent practicable. The Regional Board disagrees with the Commission’s determination that particular program requirements that have been determined to be practicable are not federal mandates

merely because Congress chose to direct the states to determine what is practicable for their municipalities rather than codifying a nation-wide list of "practicable" activities. The mandate to perform storm water pollution controls to the maximum extent practicable remains a federal mandate of the municipalities, pursuant to 33 U.S.C. § 1342(p). Nevertheless, in view of the Commission's determination to the contrary, the Regional Board urges the Commission to consider the express language of the order, and the purpose of the order, which is fundamentally directed to storm water pollution control through the simple placement and maintenance of garbage cans. The Regional Board also urges the Commission to consider the inequity of forcing the taxpayers throughout the State to pay for elaborate trash receptacles at transit stops for cities in the Los Angeles Region that require state water quality regulations in order to responsibly dispose of trash generated within their jurisdictions.

Should you have any questions, you may direct them to me at (213) 576-6605, or to Renee Purdy, Chief, Regional Programs Section at (213) 576-6783.

Respectfully submitted,



Chief Deputy Executive Officer
for

Tracy J. Egoscue
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