

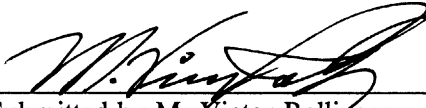



City of Carson

Report to Mayor and City Council

April 5, 2011
New Business Consent

SUBJECT: CONSIDERATION OF RESOLUTION NO. 11-017 IN SUPPORT OF A RESOLUTION ADOPTED BY THE LEAGUE OF CALIFORNIA CITIES, LOS ANGELES DIVISION, SUPPORTING THE REASONABLE, PRACTICABLE, AND ECONOMICALLY ACHIEVABLE STORMWATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT AND TOTAL MAXIMUM DAILY LOAD REQUIREMENTS, THROUGH THE USE OF PROGRESSIVE AND ADAPTIVE BEST MANAGEMENT PRACTICES


Submitted by M. Victor Rollinger
Development Services General Manager


Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

This item is on the agenda at the request of Councilmember Santarina.

Staff recommends that City Council adopt Resolution No. 11-017 (Exhibit No. 1) in support of the League of California Cities, Los Angeles Division, resolution approved and passed on February 16, 2011, supporting the reasonable, practicable, and economically achievable stormwater National Pollutant Discharge Elimination System (NPDES) permit and Total Maximum Daily Load (TMDL) requirements.

The League of California Cities resolution and the memo transmitting this resolution from the Executive Director to the cities of Los Angeles county are incorporated as Exhibit A of Resolution No. 11-017.

II. RECOMMENDATION

TAKE the following actions:

1. WAIVE further reading and ADOPT Resolution No. 11-017, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, IN SUPPORT OF A RESOLUTION ADOPTED BY THE LEAGUE OF CALIFORNIA CITIES, LOS ANGELES DIVISION, SUPPORTING THE REASONABLE, PRACTICABLE, AND ECONOMICALLY ACHIEVABLE STORMWATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT AND TOTAL MAXIMUM DAILY LOAD REQUIREMENTS, THROUGH THE USE OF PROGRESSIVE AND ADAPTIVE BEST MANAGEMENT PRACTICES."
2. DIRECT staff to forward a copy of the adopted resolution to appropriate county, state, and federal elected officials and to appropriate state and federal regulatory agencies.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Since the early 1990's, the city, along with 87 municipalities in Los Angeles county, has been required to comply with municipal NPDES permit requirements. The Los Angeles Regional Water Quality Control Board (Regional Board) is responsible for assuring municipal compliance with NPDES permit requirements. NPDES permits are primarily authorized under the federal Clean Water Act and, to some extent, under the Porter-Cologne Act, the state's water code.

The NPDES permit allows municipalities to discharge stormwater runoff generated from within their jurisdictions to waters of the United States (typically oceans, lakes, and rivers), also referred to as "receiving waters." The permit also allows the discharge of certain categories of non-stormwater, such as potable water, irrigation water, and residential car wash water. In addition, the NPDES permit requires compliance with several stormwater quality programs that specify the implementation of best management practices (BMP) to reduce runoff pollution from construction sites, completed development and redevelopment projects, and municipal operations and activities (e.g., vehicle and equipment maintenance, storm drain and sewer maintenance, and street maintenance). BMP generally prevent stormwater contact with pollutants or require treatment of stormwater if contact prevention is not possible. For the most part, compliance costs of the NPDES permit, to this point in time, have been relatively manageable.

On the other hand, a TMDL poses a serious "cost" challenge. A TMDL is a limit on the amount of a pollutant (e.g., bacteria, metals, nutrients, trash, and dozens of others) that may enter receiving waters in order to protect their beneficial use (such as recreation, wildlife habitat, and water supply). The cost of complying with TMDL is potentially staggering: in the several millions of dollars annually, depending on the total area of the municipality and watershed location (Los Angeles River, San Gabriel River, Dominguez Channel, Machado Lake, Legg Lake, etc.).

To date, several TMDL have been adopted by the Regional Board. In order for these TMDL to be binding on municipal permittees, they have to be placed into the NPDES permit. Once this happens, subject cities must comply with the TMDL's numeric limitation known as a "waste load allocation" (WLA). The problem is that the Regional Board, in the several TMDL that it has adopted thus far, plans to require cities to strictly comply with the WLA in the receiving water through the implementation of BMP – beyond what is called for in federal

regulations. However, if the WLA is not met, the non-conforming city will be subject to administrative enforcement from the Regional Board, and, more seriously, to third party law suits from non-governmental environmental organizations. A successful third party law suit against a city could result not only in costly fines and legal fees; but, it could also result in a settlement agreement requiring the city to agree to use general funds to pay for costly regional treatment facilities.

League Resolution

The Los Angeles Division League of California Cities has adopted a resolution declaring a policy on TMDL compliance which would not require strict compliance with numeric limitations. Instead, it calls for a TMDL regulatory approach that is in keeping with federal stormwater regulations. That approach allows compliance to be achieved through the implementation of BMP but without having to meet the TMDL's numeric WLA. As long as the BMP are being implemented, compliance will be achieved – even if the WLA is not met. The mechanism for accomplishing this is known as a water quality based effluent limitation (WQBEL). Actually, federal regulations require WQBEL to be used when TMDL are effectuated through NPDES permits. The Regional Board has ignored this requirement for reasons that are not clear. The Regional Board does not have to follow federal regulations here; it can rely on state law. However, if it does, it will be creating an unfunded mandate.

City's Resolution

In addition to supporting the League of California Cities adopted resolution, the proposed resolution also empowers the Mayor and City Manager to take actions necessary to promote reasonable compliance approaches to TMDL and NPDES permit requirements. This includes lobbying state and federal elected officials and, if necessary, taking administrative and legal action, including but not limited to filing unfunded mandate claims against the Regional Board. A copy of the resolution will be forwarded to the city's county, federal, and state elected officials and to appropriate state and federal regulatory agencies.

V. FISCAL IMPACT

No immediate fiscal impact is associated with the adoption of the resolution. However, if the Regional Board incorporates TMDL into the next municipal NPDES permit, the potential fiscal impact on the city is expected to be unmanageable. Should that become a reality, the city would have no choice but to challenge that requirement on unfunded mandate and other legal grounds.

VI. EXHIBITS

1. Resolution No. 11-017. (pgs. 5-10)

Prepared by: Patricia Elkins, Storm Water Quality Programs Manager
TO:Rev010511

Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

Action taken by City Council

Date_____ Action_____

RESOLUTION NO. 11-017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, IN SUPPORT OF A RESOLUTION ADOPTED BY THE LEAGUE OF CALIFORNIA CITIES, LOS ANGELES DIVISION, SUPPORTING THE REASONABLE, PRACTICABLE, AND ECONOMICALLY ACHIEVABLE STORMWATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT AND TOTAL MAXIMUM DAILY LOAD REQUIREMENTS, THROUGH THE USE OF PROGRESSIVE AND ADAPTIVE BEST MANAGEMENT PRACTICES

WHEREAS, on February 16, 2011, the League of California Cities, Los Angeles Division (hereinafter "League") adopted a resolution calling for the reasonable, practicable, and economically achievable Total Maximum Daily Load (TMDL) and municipal National Pollutant Discharge Elimination System (NPDES) permit requirements (see Exhibit A); and

WHEREAS, the League's resolution encourages the use of water quality based effluent limitations (WQBEL) in executing TMDL in NPDES permits issued to Los Angeles county municipal permittees in accordance with federal stormwater regulations; and

WHEREAS, the use of WQBEL would prevent requiring the city, as a municipal NPDES permittee, to strictly comply with numeric limitations associated with TMDL by allowing compliance to be achieved through the implementation of best management practices; and

WHEREAS, if the Regional Water Quality Control Board does not allow the use of WQBEL to comply with TMDL placed into NPDES permits, and relies instead on state law to compel compliance, it will create an unfunded mandate, which could impose onerous compliance costs on the state resulting from successful unfunded mandate claims raised by affected municipalities; and

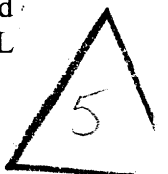
WHEREAS, the city, along with many municipalities in Los Angeles county, fully supports the League's resolution; and

WHEREAS, the resolution proposed herein also authorizes the city to take actions necessary to promote the use of WQBEL and/or other regulatory mechanisms to assure that compliance with TMDL or municipal NPDES permit requirements is achieved through the implementation of best management practices without having to meet a numeric limitation on the pollutant for which a TMDL was created to address.

NOW, THEREFORE, the City Council of the City of Carson, California, does hereby resolve and find as follows:

Section 1. The city is in full support of the resolution adopted by the League of California Cities, Los Angeles Division, calling for the reasonable, practicable, and economically achievable TMDL and stormwater NPDES permit and TMDL requirements; and

EXHIBIT NO. 01



Section 2. The Mayor and office of the City Attorney are hereby authorized to take the following actions:

- a. Forward the League's resolution, together with this resolution, to the appropriate Los Angeles county, state, and federal elected officials and to appropriate state and federal regulatory agencies, urging adoption of the position of the League of California Cities, Los Angeles Division; and
- b. Communicate in writing and meet with elected officials and regulatory agencies as appropriate to urge adoption of the position of the League of California Cities, Los Angeles Division; and
- c. Challenge, through authorized administrative claims or petitions, or litigate any such regulatory requirement that would impose upon the City of Carson unreasonable compliance with numeric limitations in TMDL, municipal NPDES permit, or other regulatory mechanisms.

PASSED, APPROVED and ADOPTED this 5th day of April, 2011.

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe

APPROVED AS TO FORM:

City Attorney





February 18, 2010

TO: Cities of Los Angeles County

FROM: Robb Korinke, Executive Director | Los Angeles Division, League of California Cities

RE: Recommendation to Support Reasonable and Economically Achievable Stormwater National Pollutant Discharge Elimination System (NPDES) Permit and Total Daily Maximum Load (TMDL) Requirements through the Use of Progressive and Adaptive Best Management Practices

On February 16, 2011 the membership of the Los Angeles Division, League of California Cities approved and passed a resolution related to regional, state and federal water quality requirements for municipalities. This resolution was reviewed and approved unanimously by the Division Legislative Committee (Jan 18, 2011) and Board of Directors (Jan 26, 2011). Specifically, the resolution directed the Division's support of the following:

- The California State League of Cities' statewide policy that TMDLs be reasonably achievable, environmentally sound, cost-effective and based on sound scientific findings
- The California State League of Cities' statewide policy that generally opposes strict compliance with numeric limits in municipal NPDES Permits because of the difficulties municipalities often face in meeting them, and the costs and potential enforcement impacts
- A recommendation that the Los Angeles Regional Board allow municipalities to comply with TMDLs through a reasonable, practical and economically achievable Best Management Practices.
- A recommendation that this Best Management Practice compliance approach be included in the upcoming municipal NPDES permits in Los Angeles County, in lieu of absolute compliance, by whatever means necessary, with numeric limits.

Moreover, the resolution authorized the Division President to send letters to all member cities in the Los Angeles County Area, encouraging them to adopt similar resolutions. Please contact me with any questions.

Best,

Robb Korinke
Executive Director, Los Angeles Division
robb@lacityies.org
562.912.3483

Exhibit A



**A RESOLUTION OF THE LEAGUE OF CITIES, LOS ANGELES
COUNTY DIVISION, SUPPORTING REASONABLE, PRACTICABLE
AND ECONOMICALLY ACHIEVEABLE STORMWATER NPDES PERMIT AND
TMDL REQUIREMENTS, THROUGH THE USE OF PROGRESSIVE
AND ADAPTIVE BEST MANAGEMENT PRACTICES**

Whereas, municipalities in Los Angeles County are proud of their environmental programs and invest significant resources in improving water quality by implementing both federal, state and local environmental programs, including the National Pollution Discharge Elimination System (NPDES) permits and the Total Daily Maximum Load (TMDL) program; and

Whereas, the United States Environmental Protection Agency (USEPA) is governed under a consent decree issued by a federal district court in 1999 which requires USEPA to adopt 96 TMDLs for water bodies in the Los Angeles region, under an accelerated time schedule; and

Whereas, the State of California, through the State Board and Regional Board, has been designated by the USEPA to enforce federal stormwater regulations, including the municipal NPDES permits and TMDLs, under the Clean Water Act; and

Whereas, TMDLs are the means by which water quality standards are applied to the municipalities and TMDLs are specifically designed to achieve beneficial uses of water bodies by limiting the amount of pollutants in runoff conveyed to them; and

Whereas, TMDLs are typically implemented and enforced against local governments through the Municipal NPDES permits and that the Clean Water Act allows for third-party litigation/citizen suits against local governments if they fail to comply with their NPDES permit requirements; and

Whereas, the USEPA and the Regional Board have adopted dozens of TMDLs since 2001 and additional TMDLs are pending adoption under the consent decree; and

Whereas, the Regional Board has already incorporated into the current NPDES permit a trash TMDL for the Los Angeles River and a bacteria TMDL for the Santa Monica Bay, and plans to include in the permit dozens of other TMDLs affecting Ballona Creek, Calleguas Creek, the Dominguez Channel, the Los Angeles River and the San Gabriel River, and Santa Clara River watersheds; and

Whereas, a study commissioned by the United States Environmental Protection Agency (USEPA) concluded that the stormwater management program (including TMDLs) in the United States is dysfunctional and in need of radical change;

Whereas the USEPA study concluded that the cost of complying with TMDLs would impose upon subject local governments tremendous costs that may not result in a significant improvement in water quality;



Whereas, a Government Accounting Office report commissioned by Congress found that compliance with existing TMDL regulations has been problematic and that limitations in USEPA's economic analysis of the NPDES and TMDL programs raises questions about their reasonableness (GAO/T-RCED-00-233); and

Whereas, the GAO also found that states have had difficulty in developing accurate water quality standards for the TMDL program due to a lack of financial resources and that, as a consequence, local governments risk directing limited resources to water bodies that have been incorrectly targeted for clean-up (GAO -03-88IT); and

Whereas, the State's non-partisan Little Hoover Commission found in its January of 2009 report that local governments, representing small, poor communities, as well as larger, richer urban areas, are struggling to pay for upgrades needed to protect the state's waters and that urban stormwater is a vexing problem with costly solutions, yet the State has not developed an adequate system for assessing and prioritizing the problems; and

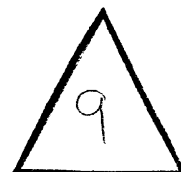
Whereas, the State Water Board commissioned a panel of experts to report on the feasibility of relying on numeric limits in municipal NPDES permits and the panel reported on June 19, 2006 that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges"; and

Whereas, the League of California Cities adopted statewide water policy guidelines in March of 2010 supporting the development of reasonably achievable, environmentally sound and cost-effective TMDLs based on monitoring and sound science, and opposes legislation that requires the use of numeric limits in NPDES permits, because of the difficulties in meeting numeric limits, problems with exceeding numeric limits and the costs and potential enforcement impacts of numeric limits; and

Whereas, federal regulations allow for flexibility and provide discretion to the states when imposing NPDES permit requirements and developing TMDL programs, and USEPA has adopted *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, which allows municipalities to employ best management practices (BMPs) as a reasonable, practicable and economically achievable method to improve water quality in lieu of incorporating numeric limits into NPDES permits; and

Whereas a recent USEPA memorandum reaffirmed the use of BMPs in addressing water quality based effluent limits (WQBELs) as a means of complying with TMDLs in NPDES stormwater permits;

Now therefore, the League of California Cities, Los Angeles Division does hereby resolve:



Section 1. That the President is authorized to communicate with USEPA, the State Board and the Regional Board:

1. That the Division supports the California League of Cities statewide policy that TMDLs be reasonably achievable, environmentally sound, cost-effective and based on monitoring and sound science.
2. That the Division supports the League of Cities statewide policy that generally opposes strict compliance with numeric limits in municipal NPDES Permits because of the difficulties in meeting them, problems with exceeding them, and the costs and potential enforcement impacts.
3. That the Division recommends that the Regional Board allow the municipalities to comply with TMDLs through reasonable, practical and economically achievable BMPs, in a progressive and adaptable manner.
4. That the Division recommends that this BMP compliance approach be included in the upcoming municipal NPDES permits in Los Angeles County, in lieu of absolute compliance with numeric limits by whatever means necessary to achieve such compliance.

Section 2. That the President is directed to send letters to all member cities encouraging them to adopt similar resolutions and communicate their position in support of best management practices, rather than strict compliance with numeric limits, as a means of implementing TMDLs in the Municipal NPDES permits to the USEPA, the State Board and the Regional Board.

