



## City of Sierra Madre Agenda Report

*John Buchanan, Mayor*  
*Josh Moran, Mayor Pro Tem*  
*MaryAnn MacGillivray, Council Member*  
*Joseph M. Mosca, Council Member*  
*Nancy Walsh, Council Member*

*Nancy Shollenberger, City Clerk*  
*George Enyedi, City Treasurer*

TO: Honorable Mayor Buchanan and Members of the City Council

FROM: Elaine I. Aguilar, City Manager *EI*

INITIATED BY: James Carlson, Management Analyst *JC*

DATE: May 10, 2011

**SUBJECT: DISCUSSION-ADOPTION OF RESOLUTION 11-33 SUPPORTING  
IMPLEMENTATION OF ACHIEVABLE STORMWATER QUALITY  
STANDARDS**

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### **SUMMARY**

Staff recommends approval of Resolution 11-33 supporting United States Environmental Protection Agency (USEPA) adoption of achievable stormwater standards and issuance of a comment letter to USEPA.

### **ANALYSIS**

#### **Background**

Since the early 1990s, the City of Sierra Madre, along with 87 municipalities in Los Angeles County has been required to comply with municipal National Pollutant Discharge Elimination System (NPDES) permit requirements. The Los Angeles Regional Water Quality Control Board (Regional Board) is responsible for assuring municipal compliance with NPDES permit requirements, and for updating the permit every five years. NPDES permits are authorized under the Federal Clean Water Act and the State's Porter-Cologne Act. The City of Sierra Madre discharges into Reach 2 of the Los Angeles River via the Rio Hondo tributary.

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, fire suppression related 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 (BMPs) to reduce runoff pollution from various activities in the City's jurisdiction. Historically, the use of these BMPs, along with timely investigation of discharges has been effective in maintaining the quality of

stormwater run-off in the City of Sierra Madre. The compliance costs of the NPDES permit, up until this point in time, have been just barely manageable.

The City is currently working under the 1996 NPDES permit. Although there have been many "updates" to this permit, the issuance of the next "new" permit is very overdue. The Regional Board has indicated that the "new" permit is expected to be released in December of 2012. Upon the release of this "new" permit, it is expected that a number of Total Maximum Daily Loads (TMDLs) will be incorporated (and thus enforceable). A TMDL is a limit on the amount of a pollutant (bacteria, metals, trash, sediment etc.) that may enter receiving waters in order to protect their beneficial use (such as recreation, wildlife habitat and water supply). The City shares responsibility for the LA River Trash, Metals, and Bacteria TMDLs, as well as a combination of toxics TMDL for Peck Park Lake. There is potential that the cost of complying with TMDLs with strict numerical measurements is potentially staggering with estimates for the City to be in the tens of millions of dollars over the next 20-25 years.

To date, several TMDLs have been adopted by the Regional Board. In order for these TMDLs to be binding on municipal permittees, they have to be placed into the "new" permit. Once this happens, subject cities must comply with the TMDL's numeric limitation known as a Waste Load Allocation (WLA). One of the primary concerns of the affected cities, including Sierra Madre, is that the Regional Board has indicated that the use of strict numerical standards will be in place to enforce TMDLs with this "new" permit. Strict numerical limits are generally measured at the "end of pipe" locations which could include the Long Beach Harbor, or other Los Angeles River locations in industrialized neighborhoods. An exceedance at these locations could put all cities upstream of the location in violation. The use of pass/fail strict numerical limits do not take a number of factors into consideration such as current studies to determine if the California Toxics Rule is appropriate for stormwater quality measurements, or factors that are out of humans' control, such as aerial deposition of pollutants from outside jurisdictions and pollutant contribution from wildlife or natural geological life cycles. This methodology is simply not considered "feasible" and arguments have been made that it is contradictory of the original intent of the Federal Clean Water act.

Should a city find itself with a Notice of Violation from the Regional Board, it will be subject to administrative penalties of \$35,000 a day and could easily become a target for third-party lawsuits from non-government organizations. A successful third party lawsuit against the City could not only result in costly fines and legal fees, but it could also result in a settlement agreement requiring the City to use General Fund dollars. With the current fiscal situation, a good number of the 88 cities under the current permit have indicated that they would fear having to declare bankruptcy due to stormwater violations.

### Resolution 11-33

The League of California Cities has adopted statewide water policy guidelines that support the development of reasonably achievable, environmentally sound and cost-effective TMDLs that are based on stormwater quality monitoring and sound science. The guidelines also oppose legislation that requires the use of WLA in NPDES permits because of the difficulties in meeting them and their potential enforcement and cost impact to cities.

The Los Angeles Division of the League of California Cities in February 2011 adopted a resolution urging 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 BMPs but without having to meet the TMDL's strict numeric limits. As long as the BMPs are being implemented, compliance will be achieved, even if WLA are not met. The mechanism for accomplishing this is known as a Water Quality Based Effluent Limitation (WQBEL). Federal regulations require these mechanisms to be used when TMDLs are effectuated through permits.

The Regional Board has ignored this requirement for reasons that are not clear. The Regional Board is not required to follow Federal regulations when it comes to WQBELs and instead it is allowed to rely on State Law. However, there is an argument that if the Water Boards decided to rely solely on State law, it will be creating another unfunded State mandate.

In March, the City of Sierra Madre received a request from the Los Angeles Division, League of California Cities Executive Director, Robb Korinke to adopt its own resolution in support of the League's resolution. The requested resolution is attached as **Attachment A: Resolution 11-33.**

### USEPA Comment letter

The City of Sierra Madre is a member of the Coalition for Practical Regulation (CPR) which monitors and takes action on stormwater quality issues in the Los Angeles area. Recently, staff was contacted and asked to consider providing a comment letter to the USEPA regarding a memo that was released in 2010 that provides language to the effect that strict numerical limits on TMDLs could now be considered in the creation of TMDL regulations. This memo reversed previous guidance from the EPA that indicated that these strict numerical limits be used only in "rare instances". Staff has reviewed the sample letter provided by the CPR leadership and has made adjustments to reflect the situation and concerns of Sierra Madre. The comment letter is attached as **Attachment B: USEPA Comment Letter.** This comment letter is due on May 12,

Discussion-adoption of Resolution 11-33 supporting implementation of achievable stormwater quality standards.

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2011, and is included with the CPR resolution consideration as it addresses essentially the same concerns.

#### **FINANCIAL REVIEW**

The adoption of the Resolution will provide no immediate fiscal impact. However, if the Regional Board incorporates the TMDLs into the next municipal NPDES permit, the potential fiscal impact on the City is expected to be unmanageable.

#### **PUBLIC NOTICE PROCESS**

This item has been noticed through the regular agenda notification process. Copies of this report are available at the City Hall public counter and the Sierra Madre Public Library.

#### **STAFF RECOMMENDATION**

Staff recommends approval of Resolution 11-33 supporting United States Environmental Protection Agency (USEPA) adoption of achievable stormwater standards and issuance of a comment letter to USEPA.

Attachments (2): A: Resolution 11-33  
B: USEPA Comment Letter

# ATTACHMENT A

## RESOLUTION NO. 11-33

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SIERRA MADRE, 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 Decision (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; and

WHEREAS, the League's resolution encourages the use of water quality based effluent limitation (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 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 the affected municipalities; and

WHEREAS, the City of Sierra Madre, along with many municipalities in Los Angeles County, fully supports the League's resolution; and

WHEREAS, the resolution proposed here 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 Sierra Madre, 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

**Section 2.** The City Manager is 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, petitions, or authorized litigation any such regulatory requirement that would impose on the City of Sierra Madre unreasonable compliance with numeric limitations in TMDL, municipal NPDES permit, or other regulatory mechanisms.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of May, 2011.

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Mayor – City of Sierra Madre

ATTEST:

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City Clerk – City of Sierra Madre

I, Nancy Shollenberger, City Clerk of the City of Sierra Madre, hereby certify that the foregoing resolution, being Resolution No. 11-33, was duly passed, approved and adopted by the City Council of the City of Sierra Madre at a regular meeting held on the 10th day of May 2011, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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CITY CLERK



# City of Sierra Madre

May 10, 2011

Kevin Weiss  
Water Permits Division  
U.S. Environmental Protection Agency  
Room 7334 EPA East  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

[Weiss.kevin@epa.gov](mailto:Weiss.kevin@epa.gov)

Subject: Comments on the November 12, 2010 EPA Memo "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Stormwater Sources and NPDES Permit Requirements Based on the WLAs'"

Dear Mr. Weiss:

The City of Sierra Madre is providing the following comments on U.S. EPA's recent TMDL guidance memorandum to Water Management Division Directors and copied to State regulators that "where feasible" NPDES permitting authorities "include numeric effluent limitations" in permits to regulate municipal storm water discharges. This direction contradicts and reverses the sentiment outlined in the 2002 TMDL Guidance document, stating that numeric limits should only be used in "rare instances," due to the several uncertainties inherent in controlling municipal runoff. We are requesting that EPA rescind the 2010 TMDL memo and rely on the 2002 TMDL memo, based on the following concerns.

We appreciate that the EPA is providing this opportunity for retroactive public comment on the 2010 TMDL memo; however we would have preferred the opportunity to raise concerns before the "guidance memo" was distributed. We also do not understand why EPA chose to limit the distribution the guidance memo to the Regional EPA offices and chose not to distribute the memo to the local government agencies most impacted by the regulation. At a time when the new MS4 permit is at its initial stage of development,

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we find that local regulators are already citing EPA's 2010 TMDL memo as the controlling document for municipal storm water. The City feels that there are valid concerns about the Regional Board using the 2010 TMDL memo in its new permit deliberations without fully considering the feasibility, costs or practicality of their actions.

We believe that EPA's release of the 2010 TMDL memo was premature and that EPA did not fully consider the many factors that make strict compliance with numeric limits impractical for municipal storm water discharges. EPA's stated justification for imposing numeric limits, that "better information on the effectiveness of storm water controls ... is now available" is not substantiated by an impartial review of the facts. Consider that the Los Angeles Regional Water Quality Control Board has adopted trash, metals, and bacteria TMDLs for the Los Angeles River. When incorporated into the new MS4 permit, (estimated for December 2012), these TMDLs could require strict compliance with numeric limits on a prescribed time schedule. The City of Sierra Madre has struggled to meet costs to keep up with the trash and metals TMDL requirements at this time. It has entered into cost sharing programs with other effected cities in the watershed. However, the inclusion of the Bacteria TMDL would entirely overwhelm the City's resources. Early estimates of the average costs of meeting the Bacteria TMDL would comprise nearly 50% of Sierra Madre's General Fund, and can be compared to the annual budget of our entire Police and Fire Departments. If the 2010 TMDL memo is maintained as the guiding principles in adopting the new permit by the Regional Board, the City of Sierra Madre, and many other cities in the watershed, would simply go bankrupt trying to meet the variety of TMDL related costs. This is not "feasible" in any sense of the word.

The cities raised concerns with the Regional Board that existing storm water controls could not be expected to feasibly meet numeric limits at the various public hearings on the TMDLs. Our concerns are routinely dismissed and the Board continues to argue that they are prohibited from dictating to cities how we should comply with the TMDL's numeric limits. EPA's 2010 guidance memo provides no direction on what factors would be used to determine feasibility by the Regional Board when they apply numeric limits to municipal discharges. EPA gives no guidance on how such factors should be ranked and prioritized. We request that EPA add TMDL guidance that *"programs and projects should be designed, evaluated and carried out based on best scientific information and analysis so as to maximize stormwater quality benefits and yet be economically efficient and cost effective."*

EPA states in the 2010 TMDL memo that imposing numeric limits will be a more "objective and accountable means for controlling storm water discharges." We don't agree that imposing numeric limits will be more objective, especially when you consider that the TMDLs in our region were rushed to meet consent decree deadlines and lack credible scientific rigor. Including numeric effluent limits based on these TMDLs in our permits will result in Cities expending millions (if not billions) of dollars in a potentially futile attempt to meet scientifically inappropriate water quality standards. The cities in the Los Angeles River Watershed, along with Los Angeles County and Caltrans, have self-funded a water effects ratio study which will examine the California Toxic Rule limits



for copper and a lead recalculation in the Los Angeles River and its tributaries. Unfortunately, this three-year study is being conducted after the adoption of the TMDL, when it should have been completed by the State or EPA prior to adoption of the TMDL. The cost of this scientific effort is \$2.3 million, which is no small sum considering all of the watershed's communities are facing budget deficits. The City of Sierra Madre has serious concerns over the applicability of the California Toxics Rule in stormwater quality objectives, and are concerned that multiple waters in our region require these TMDL studies, including the San Gabriel River and cities lack the resources to complete these studies. Furthermore, there has been no technology identified that would meet the Bacteria TMDL requirements, regardless of costs. There has also not been any consideration to non-human sourced pollutant contributions such as waterfowl and other natural sources.

We understand from discussions with our local environmental stakeholders that they are advocating that EPA and local regulators impose numeric effluent limits, since they believe that by imposing numeric limits cities will be forced to divert more resources to storm water programs or be required to impose new taxes and fees to raise revenue to make storm water a greater municipal priority. This is a misguided effort at accountability. There will eventually be a broader local government and public backlash to this approach. We believe that even with large expenditures of public funds, that the cities will not be in full compliance in the near term and that it may not be technically or economically feasible for any city to comply with numeric limits for metals and other pollutants unless we get help from EPA and the State to address the true sources of these pollutants. The more likely outcome of EPA's 2010 guidance memo will be to give a "green light" to additional water board enforcement activities and third-party litigation.

As you know, the State of California convened a panel of nationally recognized experts to study imposing numeric limits on stormwater in 1996 (see *"Stormwater Quality Panel Recommendations to the California State Water Resources Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities"* June 19, 2006). This panel conclude that **"It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers."** We are not aware of any substantial new information on either the performance or cost effectiveness of stormwater control devices that would indicate that numeric limits on stormwater discharges are now practical and achievable.

We strongly feel that the U.S. EPA needs to approach the U.S. Congress with a request for funding for an impartial review of the effectiveness of imposing numeric limits on municipal storm water, since EPA now believes that "better information" is available on effective stormwater controls, while numerous local governments nationwide question this statement. The cities would certainly help with this funding effort. We understand that Congress is focused on necessary reductions to the federal budget deficit, but the issue of the feasibility of imposing numeric limits on municipal storm water discharges needs to be elevated to the attention of Congress. In addition, if assisting the cities is a

priority issue with EPA, funding might be obtained within the Agency to complete this impartial review. This is yet another reason that EPA should suspend the 2010 TDML guidance memo, while additional research and revisions are underway.

Finally, we are generally supportive of the comments submitted by Mr. Richard Montevideo for the Cities of Downey and Signal Hill, on behalf of the Coalition for Practical Regulation and request that our letter be included in the official record.

Sincerely,

Elaine Aguilar  
City Manager  
City of Sierra Madre

cc: Mayor and Council  
Honorable David Dreier, Member of Congress