



HOW TO COMPLY WITH AND FUND STORMWATER REQUIREMENTS

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League of California Cities: Annual Conference & Expo

September 14, 2017



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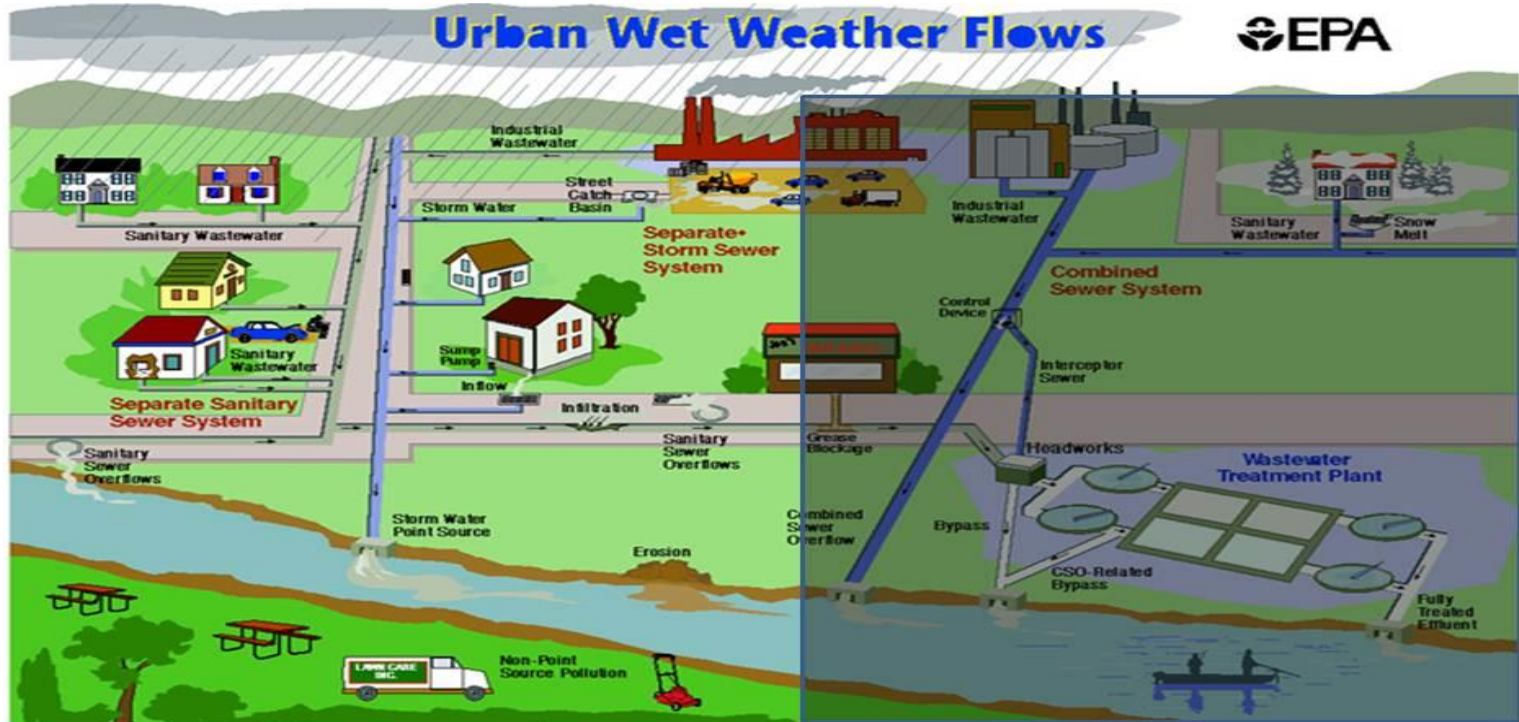
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Storm Drains



Municipal Separate Storm Sewer System (MS4)

An MS4 is a separate sewer system, meaning there is both a storm sewer system as well as a sanitary sewer system.



LA River



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MS4 Outfall



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Permit Requirements

- Total maximum daily loads (TMDL)
 - Maximum pollutant load the waterbody can handle before being impaired
- Receiving water limitations (RWLs)
 - Water quality standards in the waterbody the MS4 discharges into...aka waters of the State and waters of the U.S.
 - Bacteria 200 MPN/100 mL (LA Harbor Main Ship Channel)
- Water quality based effluent limits (WQBELs)
 - Limits in the end of pipe discharge or in the MS4 itself
 - Nitrogen 829 lb-N/yr (Claremont) – farm fields and pastures, fertilizer, septic tanks, feedlots, combustion emissions
 - Copper 18 ug/L daily (San Gabriel River) – car brake pads



Receiving Water Limitations

- Discharges from the MS4s must not cause or contribute to the violation of the following receiving water limitations by the end of the compliance schedule under Specific Provision 3.c.(1):

Constituent	Receiving Water Limitation
Nitrate (as N)	10 mg/L
Total Nitrogen	1 mg/L
Total Phosphorus	0.1 mg/L



Stormwater Action Levels

Parameter	Units	Action Level
Turbidity	NTU	126
Nitrate & Nitrite (Total)	mg/L	2.6
Phosphorus (Total P)	mg/L	1.46
Cadmium (Total Cd)*	µg/L	3.0
Copper (Total Cu)*	µg/L	127
Lead (Total Pb)*	µg/L	250
Zinc (Total Zn)*	µg/L	976



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Permit Requirements

- Low impact development (LID)
 - Retain (infiltrate, harvest and use, or evapotranspire) or biotreat the runoff volume from the 85th percentile, 24-hour storm event (“design capture volume”) on-site to the Maximum Extent Practicable (MEP)
 - 85% of all 24-hour storms annually
- Hydromodification
 - Alterations in flow and sediment due to land use alterations; prevent erosion and control velocity



Low Impact Development



Dry Wells



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Green Streets



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Hydromodification



Permit Requirements

- Monitoring
- Inspection of construction, commercial and industrial sites
- Studies
- Educational outreach
- Street sweeping
- Non-structural BMPs



What are the costs to correct this?



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Multi-Use Basin



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LA County Stormwater Budget & Projections

CATEGORY	FISCAL YEAR 2015-16
Program Budget	\$19,133,000
Capital Projects	\$ 3,900,000
Total	\$23,033,000

CATEGORY	FISCAL YEAR 2016-17	FISCAL YEAR 2017-18	FISCAL YEAR 2018-19	FISCAL YEAR 2019-20	FISCAL YEAR 2020-21
Program Cost*	\$32,174,000	\$38,000,000	\$38,500,000	\$38,500,000	\$38,500,000
Capital Projects	\$12,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
Total	\$44,174,000	\$53,000,000	\$53,500,000	\$53,500,000	\$53,500,000

* Includes coordination and oversight, planning and reporting, project design, operation and maintenance of new water quality infrastructure, water quality monitoring, and implementation of programmatic controls such as public education and enhanced street sweeping.



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Are Numeric Limits Required?

- ***Defenders of Wildlife v. Browner***, 191 F.3d 1159 (9th Cir. 1999)
 - CWA doesn't require MS4s to meet numeric limits. States can impose more stringent water quality standards
- ***Divers Env. Conservation Org v. State Water Board***, 145 Cal. App. 4th 246 (2006)
 - Federal law has preference for BMPs; numeric limits at discretion of state agency
- ***Maryland Dep't of the Env v. Anacostia Riverkeeper***
 - CWA doesn't require numeric limits



Strict Compliance with Numeric Limits

- ***NRDC v. County of Los Angeles***, 673 F.3d 880 (9th Cir. 2011)
 - RWLs in permit are strictly enforceable; permit is interpreted as a contract
 - *Los Angeles County Flood Control District v. NRDC* (2013) – flow of water from improved portion of channel to unimproved portion is not a discharge
- **State Board Order WQ 2015-075**
 - BMP process (iterative process) isn't working; numeric limits should be adopted in permits, BUT regional boards should allow alternative compliance options



Strategies for Compliance

- Storm water management plan
- Watershed management plans (aka alternative compliance)
- TMDLs
 - Time schedule orders (TSO)
 - Compliance Schedules
 - Variances
 - Basin plan amendments



Alternative Compliance

- Deemed to be in compliance with numeric limits if diligently and rigorously implementing **watershed management plan that provides reasonable assurance** that plan will attain state water quality standards



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Watershed Management Plan Challenges

- **NRDC appeals** 9 LA WMPs/EWMPs to State Board
- ***NRDC v. State Water Board*** (2017)
 - Superior court rejects NRDC challenge
 - MS4s not required to meet numeric limits
 - No anti-backsliding or anti-degradation violations
- ***Gardena/Duarte v. State Water Board***
 - Challenges LA permit on APA, Water Code, and CWA grounds
- **San Diego Permit**
 - OC permittees challenge alternative compliance
 - San Diego Coastkeeper challenge same
- **Bay Area Permit**
 - Baykeeper challenges alternative compliance



Strategies for Funding

- Storm water fees/taxes
 - SB 231 (Hertzberg)
- Flood control district funds
- Road funds
- Park funds
- Drainage fees
- Other



“Unfunded” “State” “Mandates”

- ***Dep’t of Finance v. Commission on State Mandates*** (LA RPI) (Nov 16)
 - What is a “state” mandate?
 - MS4 permit requirements are state mandates if not expressly stated in federal law; agency has “true choice” to require or not
 - Regional board defines what is needed to protect water quality; Commission determines who pays the costs
 - Regional board receives deference if it can show that requirement is the only means to attain MEP
 - Trash receptacles, inspections
 - Case remanded to determine if “unfunded”



“Unfunded” + “Mandate”

- LA case to determine if inspection requirements can be funded
- ***Dep’t of Finance v. Commission on State Mandates*** (San Diego County RPI) (3rd District)
 - State
 - Tax or fee must be voted on and fail under Prop 218 before “unfunded.” Govt’ Code 17556(d) – not unfunded because local agency has authority to levy charges, fees or assessments. The right or the power to levy fees.
 - Permittees proposed street sweeping and other items in their ROWD. Voluntarily proposed activities are not mandates
 - County
 - Ability to “propose” is different than “impose.” *Howard Jarvis Taxpayers v City of Salinas* (2002) held that stormwater fees must be voted on.
 - State still chose to impose requirements not specified in federal law.
- ***Paradise Irrigation District v. Commission on State Mandates*** (3rd Dist)
 - Commission - Water utility has the ability to raise rates
 - District – ability to propose, not impose



Test Claims & Current Events

- 11 test claims
 - TMDLs, outreach, LID, hydromod
 - Billions of dollars in claims
 - December on OC test claims
- LA and San Diego ROWDs due this year
- Santa Ana permit reissuance on hold
- EPA questions State NPDES viability
- New presidential administration



Would you surf the LA River?

Questions?

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