

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-09-2022-0048
)	
The City of Montebello)	
)	ADMINISTRATIVE ORDER ON
)	CONSENT
Respondent.)	
)	<i>Proceeding under Section 309(a) of the Clean</i>
)	<i>Water Act, 33 U.S.C. § 1319(a)</i>
)	
)	

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent City of Montebello (Respondent).
2. EPA and Respondent recognize that this AOC was negotiated in good faith.
3. EPA and Respondent recognize that Respondent’s participation in this AOC does not constitute an admission of liability by Respondent. Respondent neither admits nor denies the Findings of Fact and Determinations of Law set forth below, except to the extent that those allegations provide the EPA with a jurisdictional basis to enforce this AOC.

II. STATUTORY AUTHORITY

4. Clean Water Act section 309(a) (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.
5. The following Findings of Fact and Determinations of Law are made and this Administrative Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 9, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 9.

III. STATUTORY AND REGULATORY FRAMEWORK

6. CWA section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA section 402, 33 U.S.C. § 1342.

7. CWA section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. Pursuant to CWA section 402(b), California is authorized to implement the NPDES program for waters within its jurisdiction pursuant to 33 U.S.C. 1342(a) and NPDES permits are issued by the State Water Resources Control Board or one of nine Regional Water Quality Control Boards. Cal. Water Code §13377.

8. CWA section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges from municipal separate storm sewer systems (MS4s).

9. An MS4 is defined as “a conveyance or a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a State, city, town, borough...or other public body....” 40 C.F.R. 122.26(b)(8).

10. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. §1362(12).

11. A “point source” is defined as ‘any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch channel...from which pollutants are or may be discharged.’ 33 U.S.C. § 1362(14).

12. A “pollutant” is defined as dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. CWA section 502(6).

13. Discharges from Respondent’s MS4 are regulated by the Los Angeles County MS4 Permit.

14. The current MS4 Permit, Order R4-2021-0105 went into effect on September 11, 2021 (hereinafter 2021 Permit). The 2021 Permit modifies R4-2012-0175 (as amended by State Water Board Order WQ 2015- 2012) (hereinafter 2012 Permit) which was in effect from 2013 until the 2021 Permit took effect.

IV. FINDINGS OF FACT AND DETERMINATIONS OF LAW

15. Respondent, City of Montebello (Respondent, or City), is a municipality as defined by CWA section 502(4), 33 U.S.C. § 1362(4), and thus a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

16. At all times relevant to this action, Respondent owned and/or operated an MS4, including its storm drains and catch basins, pursuant to the definition in 40 C.F.R. § 122.26(b)(8).

17. The City's storm drain outlet pipes are part of the City's MS4 and are "point sources" within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

18. Stormwater discharges from the City's MS4 include trash. The State Water Resources Control Board (SWRCB) adopted the Trash Amendments or Trash Policy (also known as amendments to the Water Quality Control Plan for the Ocean Waters of California and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California). The SWRCB defines trash as "all improperly discarded solid material from any production, manufacturing, or processing operation including, but not limited to, products, product packaging, or containers constructed of plastic, steel, aluminum, glass, paper or other synthetic or natural materials. This definition includes smaller trash, such as preproduction plastics and other materials. Therefore, the stormwater discharges contain "pollutants," as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

19. The City's MS4 discharges into the Rio Hondo River, a tributary to the Los Angeles River, which flows to the Pacific Ocean. The Rio Hondo River, the Los Angeles River, and the Pacific Ocean are "Waters of the United States" within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7) and implementing regulations.

20. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

21. Respondent was subject to the terms and conditions of the 2012 LA MS4 permit until the effective date of the 2021 permit and is now subject to the 2021 Permit.

22. The 2012 MS4 Permit required Permittees "to comply with the TMDL provisions in Part IV.E and Attachments L through R, which are consistent with the assumptions and requirements of the TMDL waste load allocations assigned to discharges from the Los Angeles County MS4." (See Part II.K.1)

23. Waste load allocations (WLAs) for trash are expressed as progressively decreasing allowable amounts of trash discharges from a Permittee's jurisdictional area within the drainage area to the impaired water body. The Trash TMDLs require each Permittee to make annual reductions of its discharge of trash over a set period, until the numeric target of zero trash discharged from the MS4 is achieved. The Trash TMDLs specify a specific formula for calculating and allocating annual reductions in trash discharges from each jurisdictional area within a watershed. The formula results in specified annual amounts of trash that may be discharged from each jurisdiction into the receiving waters. (See Part II.K.1)

24. The provisions of Part VI.E implement and are consistent with assumptions and requirements of all WLAs established in TMDLs for which some or all of the Permittees in this Order are responsible.

25. Part VI.E.5 of the 2012 LA MS4 requires Permittees that are assigned a Waste Load Allocation (WLA) in a trash total maximum daily load (TMDL) to comply with interim and final water quality-based effluent limitations for trash.

26. The Permittees subject to each TMDL are identified in Attachment K. Attachment K Table K-5 identifies Montebello as being part of the Lost Angeles River Watershed Trash TMDL.

27. The Respondent is subject to effluent limitation requirements for the Los Angeles River trash TMDL contained in Attachment O of the 2012 LA MS4 Permit which requires 0% of trash discharged by 2016.

28. Part III.A of the 2021 LA MS4 Permit states that non-stormwater discharges are prohibited. "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-stormwater discharges through the MS4 to receiving waters."

29. Part III.B of the 2021 Permit states that "the discharge of trash to surface waters of the State or the deposition of trash where it may be discharged into surface waters of the State is prohibited. Each Permittee shall comply with the appropriate Trash WQBELs as specified in Part IV.B.3 of this order."

30. A Permittee is in compliance with interim WQBELS and receiving water limitations associated with a TMDL if the Permittee is implementing the requirements, including compliance schedules, outlined in part IV.B and Attachments K through S of this order applicable to the water body-pollutant combination(s) addressed by that TMDL. (See Part X.B.a.i)

31. Part IV.B.3.a states that the interim and final WQBELs for the Los Angeles River Watershed Trash TMDL is in Attachment Q.

32. Attachment Q states that Permittees shall comply with the water-quality based effluent limitation of zero trash discharged to the Los Angeles River and its tributaries as of the effective date of the Order and every water year thereafter.

33. The Los Angeles County Regional Board Issued a Notice of Violation (NOV) in April of 2019 for noncompliance with the TMDL for failing to comply with the reporting requirements and/or effluent limitations of the LA MS4 trash TMDL under the 2012 Permit. Most notably, the City was not able to provide any justification that it met the final effluent limit of 100% reduction in discharged trash.

34. The Regional Board asked the City to submit by May 19, 2019, a technical report describing how and when the City will return to compliance with the final effluent limitation of a 100% reduction in trash discharged to the Los Angeles River.

35. The City responded that they would take a number of steps to achieve compliance by initiating capital improvement projects to install full capture trash excluders. The City set forth the following schedule: conducting a scoping study by July 30, 2019, completing a bid package for catch basin retrofit by August 15, 2019, awarding a contract for the retrofit by September 25, 2019, and having retrofit construction completed by June 30, 2020.

36. From August 25 through October 29, 2020, inspectors from EPA, its contractor PG Environmental, and the Los Angeles Regional Water Quality Control Board (Inspection Team) conducted an offsite compliance monitoring audit of the City's compliance with the 2012 Permit.

37. The compliance monitoring audit consisted of three parts: (a) a file review of annual reports, trash TMDL compliance reports, and enforcement documentation provided by the Regional Board; (b) video conference calls with the City's Public Works Director and consultant to discuss basic MS4 program components as well as specific trash reduction and system maintenance efforts; and (c) Regional Board staff conducted a site visit to assess the condition of the storm drains and associated trash capture devices visible from the public rights of way.

38. The inspection report was provided to the City on January 25, 2021, and is attached hereto as Exhibit 1.

39. As described in more detail in Exhibit 1, the Inspection Team observed the following:

a. The City had not complied with the September 30, 2016 final water quality-based effluent limitations for trash set forth in the 2012 Permit, specifically VI.E.5. The City's full capture (trash reduction) status was reported as 94 percent. The Trash TMDL permit provisions required the City to achieve zero trash (e.g., 100% trash capture) discharge by September 30, 2016;

b. The City had not completed all tasks listed in the Summary of Completion Dates included as part of its response to the April 2019 NOV issued by the Regional Board to address noncompliance with the Trash TMDL described above in Paragraph 23;

c. Three catch basins in the City were not equipped with full trash capture systems, two of these three catch basins were not readily identifiable or included on the City's catch basin inventory, and it was not clear that the City had plans to install trash capture systems for these catch basins; and

d. There was the potential for wash water from catch basin power washing activities to discharge to the MS4. The Nationwide Operations Manager stated that during power washing operations, the vacuum truck continuously applies suction to the bottom of the catch basin to collect wash water. He added that the catch basin's drainpipe is not blocked during power washing activities. The Inspection Team noted multiple catch basins with vertical drainpipes in the floor of the catch basin (e.g., CB Nos. 147 and 163; refer to Appendix B of Exhibit 1, Pages 5 and 7, respectively). Vertical floor drains may not allow for complete capture of wash water by a vacuum truck during power washing activities.

40. By discharging stormwater and failing to comply with the Permit, Respondent has violated and continues to violate sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

V. ORDER FOR COMPLIANCE ON CONSENT

Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED TO:

41. Within thirty (30) days of the effective date of this AOC, Respondent shall submit to EPA a complete inventory of all remaining catch basins that need full capture devices including:

- a. All remaining catch basins that need retrofit to install full trash capture devices;
- b. All remaining catch basins that either have partial trash capture devices or no trash capture devices; and
- c. Submit to EPA for approval a schedule to complete the installation of full trash capture devices on all catch basins identified in a. and b. above. The schedule shall require installation on or before October 1, 2022.

42. Upon approval of the schedule, install full trash capture devices on all catch basins as set forth in the schedule.

43. In the event the Respondent is unable to meet the October 1, 2022, deadline, they shall provide to EPA a corrective action plan that details why they cannot meet the deadline by September 1, 2022. The corrective action plan should also include a timeline for compliance not to exceed 6 months from approval of that corrective action plan.

VI. EPA REVIEW AND APPROVAL AUTHORITY

44. After review of any deliverable required to be submitted to EPA for approval to be made under this AOC:

- a. EPA shall, unless otherwise specified:
 - 1. Approve the submission in whole or in part;
 - 2. Approve the submission upon specified conditions;
 - 3. Disapprove the submission, in whole or in part, directing that the Respondent modify the submission; or
 - 4. Any combination of 1., 2., or 3., above.
- b. Following receipt of EPA's approval or approval upon conditions, pursuant to Paragraph 44(a), above, Respondent shall take all approved actions in accordance with any conditions imposed by EPA within the approved schedule or time frame established by EPA, or as otherwise set forth in this AOC.
- c. Following receipt of EPA's notice of disapproval pursuant to Paragraph 44(a), above, Defendant shall within twenty (20) days, or such other period specified by EPA, correct the deficiencies in such submission and resubmit the submission for approval. Notwithstanding the receipt of the notice of disapproval pursuant to Paragraph 44(a), above, Respondent shall proceed, at the direction of EPA, to take any action required by any approved portion of the submission, within the scheduled approved time frame established by EPA, as long as such action is not precluded or rendered impracticable by the non-approved portion.

d. All requirements, deadlines and schedules set forth in the submissions approved by EPA shall be enforceable under this AOC. In the event EPA modifies or approves modification of a submission required under this AOC, the modified submission shall be enforceable under this AOC.

VII. FINAL REPORT

45. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Part IV (Order for Compliance on Consent) of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes a description and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.

VIII. TERMINATION OF THE AOC

46. If the EPA determines that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

47. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, EPA may also require Respondent to implement the modified requirement(s) and submit a modified Final Report.

IX. ACCESS TO SITE AND DATA

48. This Consent Order shall in no way limit or affect EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement. Respondent shall use its best efforts to arrange for access by EPA or its authorized representatives for determining compliance with this Consent Order until termination of this Consent Order. For purposes of this Consent Order, EPA's authorized representatives shall include all EPA employees and contractors, and such other persons as EPA may designate.

X. SUBMISSIONS AND RECORD RETENTION

49. Respondent shall submit all written communications, including progress reports, electronically. Respondent shall submit all required reports and plans to the EPA in an electronic format that allows them to be searchable by keywords. Respondent shall send all submittals to the following e-mail address. Submissions will be deemed made on the date they are sent electronically.

Lawrence Torres

Torres.Lawrence@epa.gov

Water Section II, Enforcement and Compliance Assurance Division

United States Environmental Protection Agency, Region 9

75 Hawthorne Street, San Francisco, CA 94105

50. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

51. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

XI. MODIFICATION

52. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

XII. GENERAL PROVISIONS

53. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors, and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

54. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its MS4 at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Part IV. Respondent shall condition the transfer of control, operation, or any other interest in any portion of its MS4 and any contract related to the performance of the work described in Part IV upon successful execution of this AOC.

55. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent’s obligations under the CWA, or any other applicable federal or state laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

56. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

57. This AOC shall in no way limit or affect the EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

58. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

59. Respondent consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this section 309(a) AOC. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

60. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this AOC. In determining the amount of any penalty, the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

61. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for noncompliance with this AOC.

62. In accordance with CWA § 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the State of California upon execution.

63. The undersigned signatory for Respondent certifies that they are authorized to execute this AOC and legally bind the Respondent.

XIII. EFFECTIVE DATE

64. This AOC shall become effective on the date it is signed by the EPA.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT



James Enriquez, Director
City of Montebello

4/22/2022

Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

_____/s/_____
Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Date