

MEMORANDUM

- SUBJECT: Request for Final Designation of Stormwater Discharges from Certain Commercial, Industrial, and Institutional Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County
- FROM: Tomás Torres **/s/ 2024.10.31** Director, Water Division
- THRU:Suzanne Andrews /s/ 2024.11.01Regional Counsel, Office of Regional Counsel
- TO: Martha Guzman, Regional Administrator

This memorandum recommends Regional Administrator approval and signature of the attached determination and supporting memorandum entitled "Basis for Final Designation of Certain Currently Unpermitted Stormwater Discharges from Privately Owned Commercial, Industrial, and Institutional (CII) Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County" for National Pollutant Discharge Elimination System (NPDES) permitting.

Pursuant to section 402(p)(2)(E) and (6) of the Clean Water Act (CWA), and 40 C.F.R. § 122.26(a)(1)(v) and 122.26(a)(9)(i)(D), the EPA Regional Administrator may designate stormwater discharges as requiring NPDES permit coverage where the Regional Administrator determines that "the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."¹

For the reasons outlined below, the record demonstrates that stormwater discharges from the CII sources described below contribute to violations of water quality standards (WQS). The Final Designation will require permit coverage for discharges from approximately 600 facilities and will significantly reduce discharges of pollutants of concern, including metals.

¹ This authority is commonly known as "residual designation" authority. Because the statute uses the term "violation" at CWA section 402(p)(2)(E), this memorandum uses that term and EPA understands it to mean an exceedance of water quality standards as evidenced, for example, in an impairment listing.

Basis for Final Designation of Certain Currently Unpermitted Stormwater Discharges from Privately Owned Commercial, Industrial, and Institutional (CII) Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County

<u>Overview</u>

On September 17, 2015, American Rivers, the Natural Resources Defense Council (NRDC), and the Los Angeles Waterkeeper (Petitioners) petitioned the Regional Administrator of EPA Region 9 to make "a determination that currently unpermitted stormwater discharges from privately owned commercial, industrial, and institutional (CII) sites are contributing to violations of water quality standards" in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed, and therefore require NPDES permits pursuant to section 402(p) of the CWA (hereinafter, Petitions).² The Petitions are incorporated by reference.

On October 17, 2016, the Regional Administrator responded to the Petitions declining to designate the CII sites, concluding "that effective programs are already in place to address the water quality impairments in the watershed." EPA Region 9 Response to Petitions dated October 17, 2016 (2016 Response). The Petitioners challenged the Region's decision, and the U.S. District Court for the Central District of California found EPA's denial inconsistent with the CWA and remanded the decision to the Region for further action consistent with the Court's order. *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018).

Pursuant to the U.S. District Court's instruction, EPA reconsidered the 2015 Petitions and now is making a Final Designation for NPDES permitting of stormwater discharges in the above watersheds³ from the following:

- Any privately owned and unpermitted CII parcel⁴ with five or more acres of impervious surface,⁵
- Any unpermitted portion of a privately owned facility for which the total facility acreage is five or more acres and the facility is subject to NPDES permitting under 40 C.F.R. § 122.26(b)(14), including facilities that have submitted a no exposure certification (NEC)⁶ under California's

³ The watersheds are shown in Appendix 3.

² Natural Resources Defense Council, American Rivers, and Los Angeles Waterkeeper. Petitions for a Determination That Stormwater Discharges from Commercial, Industrial and Institutional Sites Contribute to Water Quality Standards Violations in the Alamitos Bay/Los Cerritos Channel Watershed, Dominguez Channel and the Los Angeles/Long Beach Inner Harbor (Los Angeles County, California) and Require Clean Water Act Permits, September 17, 2015, at page 2.

⁴ Designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office of 1000 through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400. See Appendix 4 for additional information concerning land use codes.

⁵ Impervious surface means surfaces that are impermeable to infiltration of precipitation (here, rainfall) into underlying soils/groundwater and includes rooftops, parking lots, sidewalks, and driveways.

⁶ As authorized at 40 C.F.R. § 122.26(g); see Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) Appendix 2 for more information concerning no exposure certifications.

Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, (NPDES permit No. CAS000001, known as Industrial Stormwater General Permit)⁷, and

 Any privately owned facility for which the total facility acreage is five or more acres and is subject to NPDES permitting under 40 C.F.R. § 122.26(b)(14) and the facility has submitted a notice of non-applicability (NONA)⁸ under the Industrial Stormwater General Permit due to containment of all stormwater associated with industrial activity. Only the portion (if any) of such facilities not covered by the NONA would be designated.

Statutory and Regulatory Background

In 1987, Congress amended section 402 of the CWA and established a phased approach to regulating discharges "composed entirely of stormwater," requiring some, but not all, point source discharges of stormwater to be regulated. Water Quality Act § 405, codified as CWA § 402(p). In the first phase, Congress required NPDES permits for discharges from municipal separate storm sewer systems (MS4s) serving a population greater than 100,000, and stormwater discharges associated with industrial activity. CWA § 402(p)(1), (2), 33 U.S.C. § 1342(p)(1), (2). In 1990, EPA promulgated permit application regulations for these discharges pursuant to § 402(p)(4), 33 U.S.C. § 1342(p)(4). 55 Fed. Reg. 47990 (Nov. 16, 1990) (Phase I rule). Additionally, the CWA authorizes EPA to designate for regulation by NPDES permits any stormwater discharge determined by EPA or an authorized state to contribute to a violation of water quality standards or to be a significant contributor of pollutants to waters of the United States.⁹ CWA § 402(p)(2)(E), 33 U.S.C. § 1342(p)(2)(E).¹⁰ The Phase I rule also included a provision allowing any person to petition EPA to require an NPDES permit for a stormwater discharge that contributes to a violation of a WQS or is a significant contributor of pollutants to waters of the United States. 40 C.F.R. § 122.26(f)(2).

In the second phase, Congress required EPA to conduct studies, report the results to Congress and then issue regulations designating additional stormwater discharges to be regulated "to protect water quality." CWA § 402(p)(5), (6), 33 U.S.C. § 1342(p)(5), (6). Stormwater discharges designated for regulation under § 402(p)(6) were not necessarily required to be regulated through NPDES permits.¹¹ Rather, Congress required that EPA "establish a comprehensive program to regulate such designated sources." *Id.* In 1995, EPA completed these studies and submitted a report to Congress describing additional stormwater discharges under consideration for regulation. Based on this report, EPA then

⁷ EPA is designating stormwater discharges from the unpermitted portions of facilities that are subject to 40 C.F.R. § 122.26(b)(14), including NEC and NONA, with five or more total acres given the high degree of imperviousness at such facilities.

⁸ See Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) at section XX.C for more information concerning requirements for facilities claiming that they do not discharge stormwater associated with industrial activity and the NONA process.

⁹ Relevant to this Final Designation, the State of California has been authorized by EPA to administer the NPDES permit program, including the issuance of NPDES stormwater permits, except on Indian Country lands.

¹⁰ EPA codified this case-by-case authority to designate stormwater discharges for NPDES permits at 40 C.F.R. § 122.26(a)(1)(v). 54 Fed. Reg. 255 (Jan. 4, 1989). *See also* 55 Fed. Reg. 47990, 47993 (Nov. 16, 1990).

¹¹ In *Environmental Defense Center v. EPA*, 344 F.3d 832, 840 (9th Cir. 2003), the Ninth Circuit interpreted § 402(p)(6) and held that "EPA preserved authority to regulate other harmful stormwater discharges in the future." The Ninth Circuit also explained that permitting is a viable form of regulation, stating: "The fact that 'permitting' is not included on a statutory list of elements that the program 'may' include is not determinative, because the list is manifestly nonexclusive." *Id*. At 844.

promulgated regulations in 1999 (Phase II rule) designating two additional categories of stormwater discharges for regulation, certain small MS4s¹² and small construction sites (1-5 acres) and requiring NPDES permit coverage for these discharges. 64 Fed. Reg. 68722 (Dec. 8, 1999).

The Phase II rule included regulatory authority for designating additional stormwater discharges for NPDES permit coverage (residual designation authority or RDA) to allow designation of a discharge or category of discharges within a geographic area if determined to contribute to a violation of a WQS or to significantly contribute pollutants to waters of the United States. 64 Fed. Reg. at 68781; 40 C.F.R. § 122.26(a)(9)(i)(D).¹³ These residual designation provisions are based on the authority of both §§ 402(p)(2)(E) and 402(p)(6), recognizing the permitting authority's potential need to regulate individual unregulated stormwater discharges on a case-by-case basis, as well as the potential need to regulate stormwater discharges on a geographic categorical basis to address local concerns or to make progress in complying with water quality standards. *See* 64 Fed. Reg. at 68781. The Ninth Circuit upheld this interpretation in *Environmental Defense Center v. EPA*, 344 F.3d 832, 876 ("EPA reasonably interpreted § 402(p)(6) as authorizing regional designation of sources and regional source categories, based on water quality standards including TMDLs."). Any discharge or category of discharges designated under the RDA regulation is subject to NPDES permitting. 40 C.F.R. § 122.26(a)(9)(ii), (iii).

History of the Petitions

1. Summary of the Petitions

The Petitions, state that: (1) portions of the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel, its tributaries, and the Los Angeles/Long Beach Inner Harbor Watershed are impaired by copper, zinc, and other pollutants, (2) stormwater discharges from CII sites contain these pollutants, contributing to water quality impairments in the watersheds, and (3) existing programs are not adequately addressing the contributions from CII sites to impairments in the watersheds.

In support, the Petitioners cite EPA guidance and reports in which EPA has concluded that urban stormwater discharges are sources of pollutants. Petitioners also point to various reports and studies, including the National Stormwater Quality Database, to illustrate typical pollutant loads in stormwater from different land uses, including CII sites. Finally, the Petitioners cite to Total Maximum Daily Loads (TMDLs) established by EPA and the State of California to describe the specific sources of pollutants leading to impairments in the watersheds. Specifically, each Petition states at page 2:

¹² Regulated small MS4s are primarily separate storm sewer systems within urban areas with a population of at least 50,000 as defined by the Census Bureau based on the latest decennial census. 40 C.F.R. §122.32(a). This term also includes other publicly owned separate storm sewer systems similar to MS4s (e.g., military bases, large hospital or prison complexes, highways) and small MS4s outside urban areas with a population of at least 50,000 based on criteria developed by the State; at minimum, municipal entities outside urban areas with a population of at least 50,000 with a population greater than 10,000 should be considered for permitting. 40 C.F.R. §§ 122.26(b)(16); 40 C.F.R. § 123.35(b).

¹³ The Phase II rule also allows for designating stormwater discharges for NPDES permit coverage if stormwater controls are needed for such discharges based on wasteload allocations in a TMDL. 40 C.F.R. § 122.26(a)(9)(i)(C). This basis for designating stormwater discharges was not raised in the Petitions, nor is EPA relying on it in this final designation.

For the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition:

- CII sites occupy 36.6% of the land area that flows into Dominguez Channel and the Los Angeles/Long Beach Inner Harbor.
- 71.1 % of this CII area is located within a half-mile of a receiving water.
- Modeled results indicate that, out of all urban stormwater sources, CII sites contribute at least 88% of zinc loadings and 84% of copper loadings in the watershed.
- CII sites likely cover 25.6% of the watershed with impervious surface.

For the Alamitos Bay/Los Cerritos Channel Watershed:

- CII sites occupy 30.6% of the land area that flows into Alamitos Bay/Los Cerritos watershed.
- 93% of this CII area is located within a half-mile of a receiving water.
- Modeled results indicate that, out of all urban stormwater sources, CII sites contribute at least 30% of zinc loadings, 18% of copper loadings, and 26% of nitrogen loadings in the watershed.
- CII sites likely cover 21.4% of the watershed with impervious surface.

2. EPA's 2016 Petition Denial, Court Challenge, and Decision

EPA identified several factors to consider in exercising its individual and categorical residual designation authority in the preamble to its final 1990 Phase I Stormwater Rule. Under section 402(p)(2)(E), EPA described as relevant factors the available water quality and sampling data as well as "the location of the discharge with respect to waters of the United States; the size of the discharge, the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors." 55 Fed. Reg. 47990, 47993 (Nov. 16, 1990). As noted in early guidance with respect to designations under CWA § 402(p)(2)(E), State reports generated under CWA section 305(b) can be critical sources of information for making designation determinations.¹⁴

In the preamble to the Phase II rule, EPA discussed designation of additional categories of stormwater sources for regulation under the NPDES permit program based on three factors. 64 Fed. Reg. 68722, 68780 (December 8, 1999). EPA considered: 1) the likelihood for exposure of pollutants to precipitation at sources included in that category, 2) whether sufficient data were available on which to determine potentially adverse water quality impacts for the category of sources, and 3) whether such sources were adequately addressed by other environmental programs.¹⁵ EPA considered these three factors in its 2016 denial of the Petitions.

In the 2016 Response, EPA found factors (1) and (2) were met and concluded that factor (3) was satisfied and described existing programs, such as existing municipal separate storm sewer system

¹⁴ Designation of Stormwater Discharges for Immediate Permitting, August 8, 1990, available at https://www3.epa.gov/npdes/pubs/owm0220.pdf at 12.

¹⁵ In a letter dated September 16, 2003, from EPA Assistant Administrator for Water to the Vermont Agency of Natural Resources (Mehan Letter), EPA elaborated on these factors. EPA stated that while it has not defined a threshold level of pollutant contribution that would trigger a finding that a source is contributing to a violation of a WQS or is a significant contributor of pollutants to waters of the U.S., "it would be reasonable to require permits for discharges that contribute more than de minimis amounts of pollutants identified as the cause of impairment to a water body." Mehan Letter at 2.

(MS4) NPDES permits, that addressed the pollutants of concern in the watersheds at issue.¹⁶ The Petitioners challenged the Region's decision, and the U.S. District Court for the Central District of California found that it was improper for the Region to rely on the third factor because the relevant CWA text is unambiguous and does not allow for this consideration.¹⁷ The District Court observed that the CWA provides EPA with only two options when EPA has determined that discharges are contributing to water quality impairments – engage in NPDES permitting of the discharges or prohibit the discharges.¹⁸ In light of *Pruitt*, EPA is not using the third factor in reconsideration of these Petitions.

In sum, the factors used by EPA in reconsideration of the Petitions are:

- 1. Likelihood of exposure of pollutants to precipitation at sites in the CII categories identified in the Petitions; and
- 2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites, including:
 - a. Data with respect to determining causes of impairment in receiving water quality, and
 - b. Data available from establishment of TMDLs.

EPA reconsidered the Petitions and the data submitted with the Petitions based on these factors. EPA also reviewed additional reports and data to aid in its evaluation of the Petitions.¹⁹ While not a factor in the Final Designation, EPA also consulted both the California State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board, since California is authorized to implement the NPDES program.

Analysis of the Petitions

1. Likelihood of exposure of pollutants to precipitation at sites in the categories identified in the Petitions.

As described by the Petitioners²⁰ and supported by various studies, impervious surfaces are sources of pollutants. Impervious surfaces include rooftops, walkways, patios, driveways, and storage areas that prevent the land's natural ability to infiltrate stormwater. Pollutants from wear of automotive parts (e.g., tires and brake pads), spills and leaks of automotive fluids (e.g., motor oil and coolant), and airborne materials (e.g., atmospheric deposition and wind-transported pollutants) are deposited on impervious surfaces.²¹ Because of the limited or nonexistent infiltration capacity of these surfaces,

¹⁶ See Enclosure to Petitioners Explaining Final Determination Dominguez Channel and Los Cerritos Channel (2016 Response).

¹⁷ Los Angeles Waterkeeper v. Pruitt, 320 F. Supp.3d 1115 (C.D. CA 2018).

¹⁸ On October 17, 2018, the court issued a clarification and minute order remanding the matter to the Region, stating "The EPA is directed to reconsider Plaintiffs' petitions using the correct standards as set forth in the Court's Order on summary judgment." No. 2:17-CV-03454-SVW-KS, 2018 WL 6071084 (C.D. Cal. Oct. 17, 2018).

¹⁹ See Administrative Record Index, Sections IX through XVI.

²⁰ Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition at 4; Alamitos Bay/Los Cerritos Channel Watershed Petition at 4.

²¹ Tiefenthaler, L., Schiff, K., and Bay, S. 2001. *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*. Southern California Coastal Water Research Project Technical Report No. 340. *See also*, EPA, 2007, *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*. EPA 841-F-07-006, Office of Water, Washington, D.C. *See*

pollutants can build up and are not easily degraded, leaving them available to be picked up and discharged in stormwater during precipitation events. In the preamble of the Phase I rule, EPA noted that "large parking facilities, due to their impervious nature[,] may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters[,]" and stated that while it was not requiring regulation at this time, such sources could be designated if they were contributing to a violation of a water quality standard. 55 Fed. Reg. 47990, 48010 (November 16, 1990).

In the 2016 Response, EPA demonstrated that CII sources have many impervious areas (such as automobile parking lots) where there is a substantial likelihood that pollutants, such as copper and zinc (e.g., from tire and brake pad wear) are deposited on those impervious areas and are exposed to precipitation. For this re-evaluation, the record continues to demonstrate that CII sites have significant amounts of impervious surfaces that are exposed to a variety of pollutants, including metals such as copper and zinc, that can discharge during rain events.

EPA also analyzed data regarding the acreage of impervious surfaces at CII sources. The California Office of Environmental Health Hazard Assessment (OEHHA) has issued a guide providing information concerning the degree of imperviousness of CII sources, as well as other land use categories in California.²² The guide notes that CII sources such as industrial sites, office parks, and retail areas typically have impervious surfaces ranging from 70%-90% of the total site. OEHAA Surface Coefficients Guide at 2. OEHAA estimates that institutional sources such as schools and hospitals to have 50% impervious cover. *Id.* Natural and agricultural lands, on the other hand, may only have 2%-4% impervious cover. *Id.* As noted in the Petitions and in relevant literature, the high level of imperviousness at CII sites leads to increases in the volume of stormwater discharged from the sites as well as increased pollutant loadings from the sites.²³

In sum, the record reveals that the CII sites at issue have significant amounts of impervious surfaces that contain pollutants, such as zinc and copper, which are exposed to precipitation.

2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairments from the targeted categories of sites.

Waterbodies in the Dominguez Channel watershed, including the Long Beach/Los Angeles Inner Harbor, are impaired for metals (such as zinc, copper, lead, cadmium, mercury, and chromium), indicator bacteria, toxic organics (such as benzo(a)pyrene, phenanthrene, and PCBs), legacy pesticides (such as DDT and dieldrin), toxicity, nutrients, and trash. Alamitos Bay/Los Cerritos Channel are impaired for metals (such as zinc, copper, and lead), ammonia, indicator bacteria, pH, chlordane,

also, Van Metre, P. C., & Mahler, B. J. (2003). *The contribution of particles washed from rooftops to contaminant loading to urban streams*. Chemosphere, 52, 1727–1741.

²² California Office of Environmental Health Hazard Assessment. 2008. Impervious Surface Coefficients, A Tool for Environmental Analysis and Management, July 2008.

²³ See National Research Council 2009. Urban Stormwater Management in the United States. Washington, DC: The National Academies Press. <u>https://doi.org/10.17226/12465</u> and Arnold, C. L., & Gibbons, C. J. Impervious Surface Coverage: The Emergence of a Key Environmental Indicator. Journal of the American Planning Association. 1996, 62(2), pp. 243-258. See also EPA Report No. EPA 841-B-09-001. 2009. Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act, December 2009.

toxicity, and trash.²⁴ This Final Designation considers zinc and copper because they are the two main constituents of concern in the Petitions and are also the subject of impairment listings and subsequent TMDLs.²⁵

In the 2016 Response, EPA described in detail the available data demonstrating that stormwater discharges from CII sites contribute to water quality impairments in the targeted receiving waters. The information EPA reviewed included data submitted with the Petitions, analyses found in the several relevant TMDL documents for waterbodies in the watersheds, and a special source analysis study conducted by Paradigm Environmental.²⁶ In particular, the 2016 Response noted documentation for the Dominguez Channel Toxics TMDL²⁷ that shows that a substantial reduction of both zinc and copper in stormwater discharges (over 70% in the upper freshwater portion of the watershed) would be needed to meet water quality standards. Documentation for the Los Cerritos Channel Metals TMDL also shows that a roughly 70% reduction for both zinc and copper in stormwater discharges would be needed to meet water quality standards in the Los Cerritos Channel Watershed.²⁸

The load reduction estimates for zinc and copper in the TMDL documentation noted above were for municipal runoff overall, in which CII sources contributed to the load in the broader category of municipal runoff. However, the Petitions included loading data²⁹ for various land use categories showing high pollutant loadings from sources such as commercial sites and somewhat lower loads for institutional sources. In 2015, to gather additional information on CII sources specifically, EPA funded a stormwater source analysis by Paradigm Environmental of the loadings of common pollutants (including zinc and copper) in stormwater discharges from CII sources in two Southern California watersheds, including the upper portion of the Dominguez Channel Watershed.³⁰ This study found that reductions in zinc and copper discharges in stormwater would be needed from all three CII categories for the receiving waters to attain water quality standards. Although the 2015 study only covered the upper portion of the Dominguez Channel Watershed, land use information indicates that land use in the larger Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed is similar to that

²⁴ See 2020/2022 California Integrated Report:

https://www.waterboards.ca.gov/water issues/programs/water quality asssessment/2020 2022 integrated report.html. On March 26, 2024, California submitted the 2024 California Integrated Report (supplemented by additional materials on August 27, 2024) to EPA for review and approval. Relevant to this designation, waterbodies in the Dominquez Channel and Los Angeles and Long Beach Harbor watershed and Alamitos Bay/Los Cerritos Channel watershed currently remain on California's list of impaired waters. That list has not yet been approved by EPA.

²⁵ Dominguez Channel and Great Los Angeles and Long Beach Waters Toxic Pollutants TMDL (March 23, 2012), Los Cerritos Channel TMDL for Metals (March 2010). California adopted the Dominguez Channel and Great Los Angeles and Long Beach Harbor Watershed Toxic Pollutants TMDL Reconsideration on January 7, 2024; however, California has not yet submitted the Toxic TMDL Reconsideration to EPA for approval. Relevant to this Designation, the Toxic TMDL Reconsideration does not change the underlying source assessments and wasteload allocations for municipal stormwater sources that were in the 2012 approved TMDL.

²⁶ Paradigm Environmental, Analytical Support for Stormwater Source Analysis, April 24, 2015.

²⁷ Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Loads (March 23, 2012).

²⁸ Los Cerritos Channel Total Maximum Daily Loads for Metals, March 2010.

²⁹ Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition at 21; Alamitos Bay/Los Cerritos Channel Watershed Petition at 22; see also Exhibit B included with each Petition.

³⁰ See FN 26.

used in the 2015 study, as well as the Alamitos Bay/Los Cerritos Channel Watershed.³¹ Because of the similarity of stormwater runoff from CII land uses, EPA reasonably chose to extend the results of the study to apply to the entire Dominguez Channel and Los Angeles/Long Beach Harbor Watershed and the Alamitos Bay/Los Cerritos Channel Watershed. These analyses, described immediately below, continue to demonstrate that discharges from CII sources are contributing to exceedances of water quality standards for metals in receiving waters within these watersheds.

In 2021, to further inform EPA's reconsideration of the Petitions, EPA and its contractor Paradigm Environmental conducted a second stormwater modeling study to gather updated information concerning pollutant loads in stormwater discharges from different types and sizes of CII sources in these two watersheds.³² This 2021 study used the Watershed Management Modeling System 2.0 model developed by the Los Angeles County Flood Control District, which uses the Los Angeles County Assessor's parcel database.³³ EPA used the Assessor's Property Use classification codes to identify the land use categories of all parcels within each watershed and to estimate the number of parcels that would fall within the scope of the Designation. The study considered the total land area of CII parcels as well as the estimated amount of impervious surface in a parcel; as noted above, a higher level of impervious surface generally leads to a higher pollutant load in stormwater discharges.

The 2021 study also focused on zinc and copper, since, as discussed previously, these are the two main constituents of concern in the Petitions and the subject of impairment listings and subsequent TMDLs. EPA evaluated the zinc load estimates in this 2021 study because zinc is a key "limiting pollutant," meaning that stormwater controls implemented to achieve zinc reductions will lead to reductions of other impairing pollutants via sediment or volume reductions. As shown in Watershed Management Programs developed by municipalities, focusing on zinc is consistent with pollution reduction efforts occurring in the two watersheds.³⁴ The 2021 study results are summarized in Appendix 1, Part A. As shown in Appendix 1, there are roughly 20,000 CII sources in the watersheds, contributing 11,600 kg/yr. of zinc loading. This designation focuses on the largest sources within this group (those with five or more acres of impervious surface) that contribute an estimated zinc load of 4,100 kg/yr. See Appendix 1, Part A.

EPA also evaluated the Petitions' request to designate stormwater discharges from any non-industrial portion of an industrial facility even if stormwater discharges from the industrial portion of that facility are already required to be permitted. NPDES regulations at 40 C.F.R. § 122.26(b)(14) only require permitting of stormwater discharges from certain industrial activities at an industrial facility and exclude non-industrial portions (e.g., employee parking lots and administrative buildings). In addition, for facilities with standard industrial classification (SIC) codes in the transportation sector (40 C.F.R. §

³¹ See Los Cerritos Channel RDA Petition Final, Appendix A Los Cerritos GIS Analysis and Dominguez Channel RDA Petition Final, Exhibit A Dominguez Channel GIS Analysis.

³² Paradigm Environmental. 2021. Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis, memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021.

³³ The database contains parcel information, so the loading data is based on parcels, not facilities.

³⁴ For example, the February 2016 Enhanced Watershed Management Program (EWMP) for the Dominguez Channel (p. 3-8) and the June 2021 revised EWMP for this watershed (p. 3-8) identified zinc and bacteria as the limiting pollutants in the watershed. As noted in the revised EWMP, control measures are first sized to meet the required zinc reductions and then additional capacity is added (if needed) for bacteria. Together, adequate controls for zinc and bacteria are expected to be sufficient for reducing all pollutants listed in the TMDL (e.g., copper, lead, PAHs, PCBs and legacy pesticides such as DDT).

122.26(b)(14)(viii)), only stormwater discharges from those portions of a facility that are involved in activities such as maintenance, fueling, cleaning, or deicing are required to be permitted as industrial stormwater. In California, an industrial facility otherwise subject to stormwater permitting may submit a no exposure certification (NEC) for a conditional exclusion from certain permit requirements if industrial activities are not exposed to stormwater. See Industrial Stormwater Permit at XVII. California also allows operators of industrial facilities otherwise subject to stormwater permitting requirements to file a notice of non-applicability (NONA) to certify that they have contained all stormwater associated with industrial activity on-site and as therefore do not need permit coverage. See Industrial Stormwater Permit at XX.C. As described below such facilities may have large areas of impervious surfaces exposed to pollutants and thus, the unpermitted portion of such facilities is also a source of pollutants.

Examples of industrial facilities subject to the stormwater program include light and heavy industry, warehouses, trucking, and scrap material handlers. While some facilities may have moved industrial activities under cover to eliminate exposure to stormwater or collect and retain stormwater discharges associated with industrial activity, these facilities also have large areas of impervious surfaces, such as parking lots or rooftops. Such industrial sites are approximately 80% to 90% impervious, ³⁵ consisting of industrial areas, parking lots, interior roadways, and roofed buildings, much of which is not currently subject to NPDES permitting. As discussed above, discharges from impervious areas contain pollutants of concern (pollutants impairing receiving waters) such as zinc and copper. As such, it is reasonable to conclude that stormwater discharges from the unpermitted impervious portions of such facilities contribute to exceedances of water quality standards. Given the high percentage of impervious surface area, EPA is reasonably including larger facilities – those with a total acreage of five or more acres – in the designation. Discharges from currently unpermitted areas contribute an estimated zinc load of approximately 3,500kg/yr. See Appendix 1, Part B.

In sum, after considering the additional data gathered for this re-evaluation, plus the original data EPA had at the time of its initial response to the Petitions, the record indicates that sufficient data are available to show that stormwater discharges from the CII sites at issue contribute to water quality standards violations, i.e., impairments, in waterbodies in the watersheds.

Public Comment

EPA, along with California, engaged in outreach with a wide variety of stakeholders, including three public workshops on December 6, 2021, December 17, 2021, and August 30, 2022.³⁶ EPA participated in meetings with the following entities: City of Los Angeles, LA County Flood Control District, Dominguez Channel Watershed Management Group, and the Los Cerritos Watershed Management Group, and the Pacific Marine Shipping Association. EPA also presented overviews of the Preliminary Designation at quarterly meetings of the California Stormwater Quality Association and met with CASQA subcommittees. EPA and California also met with Petitioners, the California Council for Environmental and Economic Balance, and the Los Angeles County Business Federation.

³⁵ See FN 22.

³⁶ Materials can be found here: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwaterquality-problems-epas-pacific

1. Preliminary Designation of July 26, 2022

On July 26, 2022, EPA issued a public notice of its Preliminary Designation of stormwater discharges and accepted public comment for 90 days regarding its Preliminary Designation of the following CII sites:

- Any privately owned and unpermitted CII parcel with five or more acres of impervious surface,³⁷
- Any unpermitted portion of a privately owned facility for which the total facility acreage is five or more acres, and the facility is either subject to NPDES permitting under 40 C.F.R. § 122.26(b)(14) or has submitted a no exposure certification (NEC) under California's Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, Order 2014-0057-DWQ (NPDES permit No. CAS000001) (Industrial Stormwater General Permit), and
- Any privately owned facility for which the total facility acreage is five or more acres, and the facility has submitted a notice of non-applicability (NONA) under the Industrial Stormwater General Permit due to containment of all stormwater associated with industrial activity. Only the portion (if any) of such facilities not covered by the NONA would be designated if that portion is five acres or greater.

2. Revised Preliminary Designation of November 2, 2023

After considering the comments submitted on the July 26, 2022 Preliminary Designation, EPA provided public notice of a Revised Preliminary Designation on November 2, 2023 (88 FR 75282). EPA accepted public comment for 60 days. The 2023 Revised Preliminary Designation included the following revisions and clarifications:

- 1. Inclusion of Appendix 4 providing the property use codes from the Los Angeles County Assessor's Office describing the sources subject to the Preliminary Designation.
- 2. Clarification and explanation that privately operated CII facilities (which may be located on publicly owned parcels) at the Ports of Long Beach and Los Angeles are subject to the designation. Privately operated CII facilities at airports are NOT included in the Preliminary Designation, however EPA is taking comment on whether to include such facilities.
- 3. Clarification that Pier 400 at the Port of Los Angeles is within the geographic area covered by the designation; added Appendix 3 -- map of the watersheds subject to the Preliminary Designation.
- 4. Modification of the Preliminary Designation with respect to industrial facilities that submitted notices of non-applicability (NONAs) under the State's industrial general permit such that

³⁷ EPA was proposing to designate all CII facilities with five or more acres total area at the Ports of Los Angeles and Long Beach, given the high degree of imperviousness at the Ports. For example, the Port of Long Beach is "3,200 acres of mostly paved surfaces constructed on top of fill material where the ocean has been converted to land." *Adapting LID to a Port Environment*, Stormwater Report, Water Environment Federation, October 17, 2015 at 1. See also Port of Long Beach and Port of Los Angeles, Water Resources Action Plan, Final Report August 2009, where the Port of Long Beach is described as "largely impervious and highly industrialized" at 21.

designation would be based on total facility acreage rather than acreage not covered by the industrial general permit.

To respond to comments submitted for both 2022 Preliminary Designation and 2023 Revised Preliminary Designation, EPA prepared a document entitled "Response to Written Comments on the Preliminary Designation and Revised Preliminary Designation of Certain Commercial, Industrial, and Institutional Stormwater Discharges in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County" (Response to Comments). The final Response to Comments document, including Attachments, is available on EPA's website.

Revisions to the Preliminary and Revised Preliminary Designations

EPA is not, at this time, including privately operated, publicly owned CII sources located at the Ports of Long Beach and Los Angeles or privately operated, publicly owned CII sources at municipal airports in both watersheds in this Designation.³⁸ EPA's phased approach is further described below. EPA may consider designating stormwater discharges from additional CII sources in the future.

Environmental Justice

While not a factor in analyzing a potential designation, EPA and California utilized <u>CalEnviroScreen</u> (similar to EPA's own Environmental Justice Screening and Mapping Tool or EJScreen) to identify communities with environmental justice concerns based on 21 indicators such as pollution levels, socioeconomic factors and community health in these watersheds.³⁹ According to CalEnviroScreen several of the communities in the watersheds addressed by the Petitions would be considered communities with environmental justice concerns; examples include communities such as Carson, Gardena, Hawthorne and the Wilmington area within the City of Los Angeles⁴⁰ where the overall pollution burden index determined by CalEnviroScreen is often within the highest percentile ranges (80 to 90 or 90 to 100) in comparison to the State overall. EPA expects that reducing the stormwater pollutant loadings will benefit overburdened communities.

³⁸ See also Response to Comments document, specifically Common Response 4.

³⁹ See Executive Orders 13985 (January 20, 2021), 14008 (January 27, 2021), 14096 (April 21, 2023).

⁴⁰ See outreach presentations from 2021 and 2022 posted on EPA's website: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific.

Final Designation

Given the above discussion and information in the record, there is a high likelihood of exposure of pollutants to stormwater at the designated CII sites and sufficient data to demonstrate that stormwater discharges from such sites contribute to existing water quality standards violations, in these watersheds. EPA finds the subject stormwater discharges contribute to violations of water quality standards and are appropriate for designation under CWA §§ 402(p)(2)(E) and (6) and 40 C.F.R. §§ 122.26(a)(1)(v) and 122.26(a)(9)(i)(D).

With this finding in mind, EPA is designating stormwater discharges in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County from the following:

- Any privately owned and unpermitted CII parcel⁴¹ with five or more acres of impervious surface,⁴²
- Any unpermitted portion of a privately owned facility for which the total facility acreage is five
 or more acres, and the facility is subject to NPDES permitting under 40 C.F.R. § 122.26(b)(14),
 including facilities that have submitted a no exposure certification (NEC)⁴³ under California's
 Statewide General Permit for Stormwater Discharges Associated with Industrial Activities
 (NPDES permit No. CAS000001, known as Industrial Stormwater General Permit)⁴⁴, and
- Any privately owned facility for which the total facility acreage is five or more acres and is subject to NPDES permitting under 40 C.F.R. § 122.26(b)(14) and the facility has submitted a notice of non-applicability (NONA)⁴⁵ under the Industrial Stormwater General Permit due to containment of all stormwater associated with industrial activity. Only the portion (if any) of such facilities not covered by the NONA is designated.

In recognition of the large number of CII sources, EPA is adopting a phased approach in responding to the Petitions. This designation is a manageable first step in addressing the stormwater pollutant contribution from CII sources that focuses initially on the largest stormwater sources of pollutant loading in the watersheds. *See Ctr. for Biological Diversity v. EPA*, 722 F.3d 405, 410 (D.C. Cir. 2013). EPA estimates the CII sources included in the Final Designation are responsible for approximately 22% (7,600 kg/yr) of the total zinc load (34,300 kg/yr) in these watersheds. See Appendix 1, Part C and D. EPA estimates that approximately 600 sites would be included in this Final Designation, which is also a

⁴¹ Designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. See Appendix 4 for additional information concerning land use codes.

⁴² Impervious surface means surfaces that are impermeable to infiltration of precipitation (here, rainfall) into underlying soils/groundwater and includes rooftops, parking lots, sidewalks, and driveways.

 ⁴³ As authorized at 40 C.F.R. § 122.26(g); see Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) Appendix 2 for more information concerning no exposure certifications.
 ⁴⁴ EPA is designating stormwater discharges from the unpermitted portions of facilities that are subject to 40 C.F.R. § 122.26(b)(14), including NEC facilities, with five or more total acres given the high degree of imperviousness at such facilities.

⁴⁵ See Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) at section XX.C for more information concerning requirements for facilities claiming that they do not discharge stormwater associated with industrial activity and the NONA process.

reasonable step towards addressing the contribution from CII sources to water quality violations (i.e., impairments). EPA may designate stormwater discharges from additional CII sites in the future.

Authorizing Signature

Based on the analysis set forth in this memorandum, it is my final determination that stormwater discharges from the CII sites described above in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County contribute to violations of water quality standards. I am therefore exercising my authority to issue a Final Designation of these stormwater discharges for NPDES permitting pursuant to CWA §§ 402(p)(2)(E) and (6) and 40 C.F.R. §§ 122.26(a)(1)(v) and 122.26(a)(9)(i)(D).

/s/ 2024.11.05 Martha Guzman, Regional Administrator **Appendix 1** – Estimated Zinc Loads Addressed from Designation of Certain CII Sites in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)

A. Zinc Loads from currently unpermitted CII parcels.

Additional information concerning these estimates can be found on page 9-10 of this memorandum.

| Parcel Size – Acres of Impervious Surface | Approximate # of Parcels | Zinc Load (kg/yr) |
|--|-----------------------------|-------------------|
| >10 | 124 | 2,300 |
| >5 | 430 | 4,100 |
| >1 | 3,070 | 8,600 |
| All parcels | 20,000 | 11,600 |

Final Designation: Stormwater discharges from unpermitted CII parcels with five or more acres of impervious surface.

B. Zinc Loads from unpermitted portions of facilities required to be regulated pursuant to 40 C.F.R. § 122.26(b)(14) with five or more acres total area, hereafter referred to as IGP facilities.

Additional information concerning these estimates can be found on page 10 of this memorandum.

| IGP Facility Category | Approximate | Zinc Load (kg/yr) |
|--|----------------------|-------------------|
| | Number of Facilities | |
| Unpermitted portions of IGP permitted facilities | 130 | 2,400 |
| No exposure certifications | 24 | 1,089 |
| Notices of non-applicability (containment of all | 1 | 12 |
| industrial stormwater) | | |
| Total IGP | ≈155 | ≈3,500 |

Final Designation: Stormwater discharges from each of the above categories of IGP facilities.

C. Total zinc load from sources addressed by Final Designation.

Combining the zinc loads from sections A and B above leads to the following estimate for the zinc load from sources addressed by the Final Designation. Total load is 7,600 kg/yr (4,100 kg/yr plus 3,500 kg/yr); total number of sources is approximately 600 (430 plus 155 and rounded).

D. Approximate zinc load reductions addressed by Final Designation.

Total zinc load discharged in the watersheds is 34,300 kg/yr. Load addressed by designation (7,600 kg/yr) as percentage of total load is 22%. Based in part on the 2021 Paradigm Environmental study, there is need for an estimated zinc load reduction of 80.9% for all sources in the Alamitos Bay/Los Cerritos Channel Watershed and 85.4% for sources in the Dominguez Channel and Los Angeles/Long Beach Inner and Outer Harbor Watershed, and therefore assuming other municipal runoff sources achieve zinc load reductions, then the designated CII sources across both watersheds would need to reduce zinc loading by approximately 6,500 kg/yr.

Appendix 2 – Municipalities in the Two Watersheds

A. Municipalities in the Alamitos Bay/Los Cerritos Channel Watershed

Bellflower Cerritos Downey Lakewood Long Beach Los Angeles (County of) Los Angeles County Flood Control District Paramount Signal Hill

B. Municipalities in the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed

Carson Compton El Segundo Gardena Hawthorne Inglewood Lawndale Lomita Long Beach Los Angeles (City of) Los Angeles (County of) Los Angeles County Flood Control District Manhattan Beach Palos Verdes Estates **Rancho Palos Verdes** Redondo Beach **Rolling Hills Rolling Hills Estates** Torrance

Appendix 3 - Outlines of the Two Watersheds Covered by the Final Designation: Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed, and Alamitos Bay/Los Cerritos Channel Watershed.



Figure 1. Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed.



Figure 2. Alamitos Bay/Los Cerritos Channel Watershed.

Appendix 4 – Los Angeles County Assessor Property Use Classification (i.e., Land Use) Codes Used in Selecting CII Sources Subject to the Final Designation

EPA is designating for NPDES permitting stormwater discharges from commercial, industrial, and institutional sites described in this Final Designation Memo with Los Angeles County Assessor Property Use Classification Codes: 1000 through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400. Example facilities included in the Property Use Classification Codes include but are not limited to: shopping centers, auto dealerships, hotels/motels, distribution centers, warehouses, office complexes, supermarkets, parking lots, racetracks, stadiums, greenhouses, refineries, manufacturers, power plants, scrap and waste material facilities, private schools, churches, hospitals, nursing homes, and cemeteries.