

CITY OF GARDENA MS4 LITIGATION STATUS UPDATE

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TECS Environmental

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SOUTH BAY CITIES
COUNCIL OF GOVERNMENTS

Litigation Update

- Gardena's legal counsel met with Orange County judge last month
 - Case is assigned to a judge who handles complex litigation (Gail Andler)
 - Judge suggested that Gardena and others engage the State's Attorney General Office in settlement negotiations, possibly with the aid of a retired judge as a mediator
 - This is a positive development (settling out of court reduces litigation costs)

Litigation Update

- Gardena's legal counsel is scheduled to meet with the Judge Andler again on August 10
- Will ask for a permanent and preliminary injunction to prevent the Regional Board from enforcing provisions of the MS4 Permit that are under challenge

Litigation Update

- Gardena chose not to participate in the costly Dominguez Channel Enhanced Watershed Management Program
- Instead it has opted for the Stormwater Management Program/iterative process compliance approach (standard compliance requirement for all MS4s in the State)
- In the event of an exceedance of a numeric pollution limit (TMDL), the SWMP, which consists of six core pollution reduction programs, must be revised to address the cause of the exceedance in an effort to prevent future exceedances
- As long as this process is followed, there can be no violation or enforcement action

Litigation Update

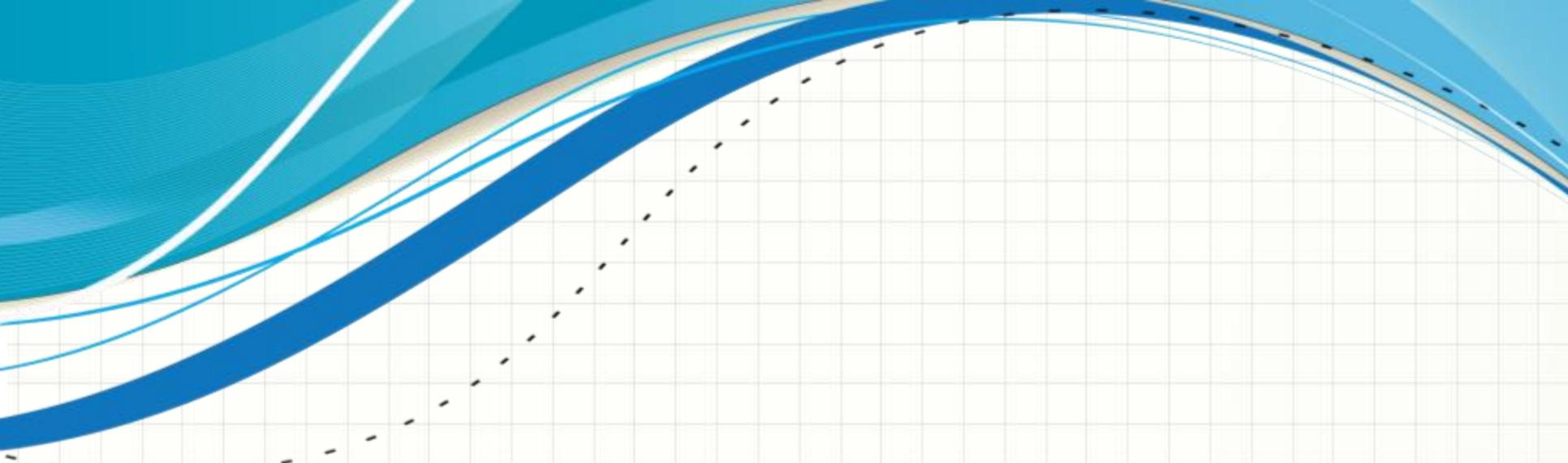
- Regional Board staff has indicated that a municipal permittee that implements this approach is subject to enforcement action if it does not meet a numeric pollution limit (known as a TMDL) – Gardena's law suit argues that the Regional Board cannot deny this compliance approach (required by state and federal law)
- Should the Regional Board pursue enforcement action, Gardena would ask the court for injunctive relief to stop it
- Regional Board legal counsel is aware of this and is not likely to take any enforcement action against the City

Litigation Update

- If your City intervenes with Gardena and wants to withdraw from the EWMP to avoid further payments, it would be covered under an injunction -- should that become necessary
- If you are interested you will need Council approval by the end of August (unless the judge extends the deadline date)
- If for some reason your council cannot meet in time, your City Attorney can authorize the City to participate and then ratify the action at a later date
- Cost depends on the number of participants, but the estimated cost per City is between \$15 to \$25k (Gardena has already spent \$70k and will not include this amount in the share of cost)
- Cities of Glendora and Rosemead have already joined and other cities are expected to do so as well

Litigation Update

- If you are interested, please contact:
 - City Manager Mitch Lansdell (310) 217-9503
or
 - John Harris, Gardena legal counsel at (213) 687-6748



QUESTIONS?