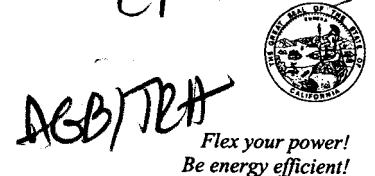


DEPARTMENT OF TRANSPORTATION
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December 2, 2004

Celeste Cantú
Executive Director
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-0100

Subject: Prohibition of Waste Discharges into Areas of Special Biological Significance

Dear Ms. Cantú:

The California Department of Transportation (Department) has received the State Water Resource Control Board's (State Board) letter of October 18, 2004 regarding discharges into Areas of Special Biological Significance (ASBS) from the Department's right-of-way. Your letter states the Department shall cease storm water discharges to ASBS or, alternatively, apply for an exception to the California Ocean Plan (Ocean Plan). The exception request, including supporting documentation, is due February 1, 2005. The Department is reviewing the letter and evaluating its implications for our transportation infrastructure. The Department is proposing to submit, by February 1, an action plan to address our storm water discharges to ASBS. In order to complete this action plan, we will need to resolve expeditiously several technical and policy issues with your staff. An initial list of these issues is enclosed with this letter.

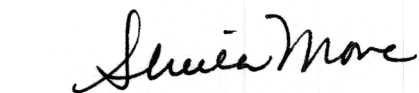
The Department's underlying concern is that the options proposed in your October 18 letter will result in a major expenditure of public funds, and are unlikely to result in significant water quality improvements, if any. Although the Department is proceeding to develop its action plan, we also are requesting some information on the reasons why the State Board is not pursuing a proposed amendment to the Ocean Plan. In January 2004, the State Board held a public scoping meeting regarding four potential Ocean Plan amendments. One of these amendments would reclassify ASBS to "State Water Quality Protection Areas (SWQPA)" and establish implementation provisions for discharges into the SWQPAs. The Department submitted comments supportive of this amendment. The suggested implementation provisions would allow discharges into SWQPA with special conditions. This proposed amendment to the Ocean Plan seemed like a common sense approach for addressing the discharges on a statewide basis. The Department understands that the recently enacted SB 512 redefines ASBS as a subset of SWQPA and specifies that the Ocean Plan governs the ASBS. The changes introduced by SB 512 do not appear to prevent the State Board from proceeding to amend the Ocean Plan as originally intended. Consequently, the Department would like to understand the rationale for not pursuing the earlier goal of amending the Ocean Plan.

The Department has reviewed the exception requirements included in your letter. The application process is very complex, and the required monitoring and assessment information is extensive and onerous. The data required includes collecting quantitative intertidal and subtidal marine data, as well as chemical, bacteria, and toxicity information on the discharges. In addition, the exception application requires documentation that the discharge will not compromise beneficial uses. It is not clear to us how to document the "not compromise" status of the discharges. Mobilizing a sampling program, collecting the data, and completing the required analysis by February are clearly not feasible.

Another and more important concern about the exception process is that a general exception for all storm water discharges seems to go against the intent of the prohibition as currently interpreted by the State Board. If the intent of the Ocean Plan is to ban all discharges to ASBS, including storm water, then it seems very unlikely that it would be acceptable for these discharges (from the Department and coastal communities) to continue with an exception. It is presumed the exception provision is for special situations, not for allowing the largest category of ongoing discharges (i.e., storm water) to continue – even with enhanced controls. Allowing these discharges via an exception appears to negate the clear intent of the Ocean Plan; consequently, we request explanation of the legal nexus for the exception process proposed in your letter.

In summary, based on the concerns identified above, the Department views the exception option as a difficult process with very limited potential for success for the numerous coastal storm water discharges. Your October 18 letter presented the exception option as a viable alternative, but the Department needs to explore that option with the State Board before we can deem the option "viable." We have enclosed a more detailed list of issues related to your letter, and we request a meeting with you to address these issues. If you have any questions, please contact me at (916) 653-7136.

Sincerely,



GARY R. WINTERS
Chief
Division of Environmental Analysis

Enclosure

c: ✓ Arthur G. Baggett Jr., Chair, SWRCB
Executive Officers – Regional Water Quality Control Boards 1 - 9
Stan Martinson – Chief, Division of Water Quality, SWRCB