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July 24, 2015

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State Water Resources Control Board
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Via email: commentletters@waterboards.ca.gov

Subject: Comment Letter – Proposal to Develop a Storm Water Program Workplan and Implementation Strategy

Please accept these comments on the proposed workplan.

1. Possible addition to Guiding Principles: Focus regulatory efforts toward major water quality threats

In 2009, the Little Hoover Commission recommended that the Water Boards focus their efforts on the major threats to water quality:¹

California’s current system for ensuring water quality does not rank the biggest threats to water quality and systematically match its finite resources to address the most serious of them using the tools of scientific and economic analysis. In this report, the Commission recommends the state board make better use of data to identify the biggest threats to water quality. The Commission recommends making greater use of science in determining the cause and remedies to water contamination as well as economic analysis to inform which options offer the greatest improvement within the available resources.

For example, the State Water Board’s *Surface Water Ambient Monitoring Program* (SWAMP) has shown that pesticides are almost exclusively the cause of toxicity in California waters ([Toxicity in California Waters](#)). However, the stormwater program is currently driven to a significant extent by Clean Water Act 303(d) listings that do not necessarily direct the program toward the greatest threats to water quality. Many waters are listed for toxic metals common at relatively high concentrations in stormwater—lead, copper, zinc—although it is very unlikely based on the SWAMP report that these metals are causing the toxicity problems implied by their 303(d) frequent listings. In fact, most copper 303(d) listings would probably be removed if EPA updated the California Toxics Rule based on EPA’s 2007 revised water quality criteria for copper.² To address toxicity, the stormwater program should

¹ *Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards* ([Report #195](#), January 2009)

² Aquatic Life Criteria – Copper 2007 Update ([here](#))

clearly focus on pesticides as identified in the SWAMP report as the main source of toxicity in California waterways.

Another example is the water contact recreation beneficial use (REC-1). Nearly all waters in the state are identified in the water quality plans as REC-1. The associated objectives are frequently exceeded at the point of discharge of urban stormwater. However, rather than directing control efforts at all locations where exceedances have been monitored, the corrective measures should focus on the more serious threats to human health – exceedances on public beaches.

The Clean Water Act provides adequate flexibility with respect to water quality standards to allow the stormwater program to focus on real threats to water quality and to place a lower priority on water quality concerns where actual threats are not present. Consequently, it would be helpful to include a guiding principle encouraging the program to assess major threats to water quality and to focus on these areas of real risk.

2. General comment: Need to address the goal of compliance with water quality

The proposed Initiative and suggested projects in Appendix A do not appear to provide MS4s in California with a viable pathway to compliance with water quality standards (WQS)³. As a result, MS4s will have difficulty developing compliance efforts such as Watershed Management Programs (WMP) when the final goal—compliance with WQS—is not technically or financially achievable. Diverting effort and financial resources to the unattainable goal of compliance with WQS inevitably decreases the financial resources that can be directed to capture and use which should be the main goal of stormwater programs in addition to attainment of MEP pollutant control.

Although proposed Project 5 is intended to assess alternative compliance approaches, it is predicated on the assumption that the Los Angeles MS4 permit (as modified by [Order 2015-0075](#)) will result in compliance with WQS. Project 5 will examine the potential for applying the Los Angeles approach elsewhere in the state. However, the LA approach appears to only ensure compliance during the planning and implementation phases of approved programs. Once implementation is complete, the discharges may be evaluated, as requested by EPA,⁴ based on both receiving water and discharge pollutant concentrations.

The permit should specify that a mix of receiving water and representative end-of-pipe monitoring locations must be selected to ensure that the monitoring data collected will be sufficient to determine compliance with effluent limitations based on WLAs and to determine whether individual copermitees have caused or contributed to observed in-stream noncompliance.

With the exception of 100% capture and diversion of stormwater, technology does not appear to be available which would provide compliance with standards as compliance is normally defined in the

³ This issue is also referred to as compliance with Receiving Water Limitations. The RWLs often contain the requirement to comply with WQS although this is not true for all permits.

⁴ EPA January 11, 2013 [comment letter](#) on the Draft San Diego Regional MS4 permit

NPDES program. After implementation of control programs, compliance with WQS by urban runoff will likely be determined by end-of-pipe monitoring as requested by EPA and referenced in Court cases and NGO petitions. Exceedances are frequent for commonly measured pollutants such as the metals and bacteria. Major exceedances are also likely for dioxins which are typically contained in stormwater runoff at levels several orders of magnitude above WQS.⁵ Resolving this dilemma will help MS4s a viable design goal for their programs.

Thank you for the opportunity to provide comments.

Sincerely,

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⁵ *Survey of Storm Water Runoff for Dioxins in the San Francisco Bay Area*, February 1997 ([San Francisco Regional Water Board](#)). Also see SCVURPPP [Dioxins webpage](#) and [Introduction to Dioxins for Bay Area Stormwater Management Agencies](#), BASMAA 2004.