



July 24, 2015

Ms. Felicia Marcus, Chair
c/o: Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Via Email: commentletters@waterboards.ca.gov

RE: Comments on Storm Water Strategic Initiative Proposal to Develop a Storm Water Program Workplan and Implementation Strategy

Dear Ms. Marcus:

California Building Industry Association (CBIA), Construction Industry Coalition on Water Quality (CICWQ), and Building Industry Legal Defense Foundation (BILD) are submitting comments concerning the Storm Water Strategic Initiative Proposal to Develop a Storm Water Program Workplan and Implementation Strategy (SWSI). We appreciate this opportunity, and provide below constructive suggestions for Workplan improvement.

The California Building Industry Association (CBIA) is a statewide trade association representing over 3,200 member companies including homebuilders, trade contractors, architects, engineers, designers, suppliers and industry professionals in the homebuilding, multi-family and mixed-use development markets.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

BILD is the legal advocate for the building and construction industry in California. BILD is a non-profit mutual benefit corporation with its own Board of Directors and is a wholly-controlled affiliate of the Building Industry Association of Southern California. The purposes of BILD are to initiate or support litigation or agency action designed to improve the business climate for the building industry; to monitor legal developments and legislation critical to the building industry; and to educate the industry, public officials, and the public of legal and policy issues critical to sustaining the building industry.

In preparing this comment letter, our building and construction industry coalition draws upon many years of our members' experience complying with NPDES permits for the discharge of stormwater runoff, and navigating the complex regulatory process and structure that exists within the State of California.

General Comments on Storm Water Strategic Initiative

Overall, we are supportive of the priorities and projects contained in the SWSI Proposal and Appendix A. In particular, we applaud the State Water Board for establishing four appropriate Guiding Principles, and identifying important issues within these areas where additional prioritization and work focus are needed. We are supportive of efforts that will augment groundwater supplies through increased capture of stormwater runoff as part of water quality compliance with municipal and general stormwater discharge permits (Projects 1-3, for example). Eliminating regulatory barriers, fostering and encouraging multi-agency collaboration, and providing incentives to private land owners to capture and use more rainfall runoff are all important actions that must be taken. And we are especially supportive of those efforts that are watershed based and coordinated, and regional or sub-regional in scale, where multi-benefit environmental outcomes can be realized and measured quantitatively. Finally, we are supportive and believe the State Water Board should strengthen its efforts to support municipal separate storm sewer system permit alternative compliance pathways to meeting water quality standards through the use and allowance of coordinated, watershed based approaches to managing stormwater runoff; Project 5 appears to address this need.

An omission, however, in the SWSI priorities identified in the documents released by the State Water Board is the absence of any specific effort statewide to update Basin Planning documents to reflect the current state of the environment and water body water quality characteristics within California. Such an effort could be identified and developed within the framework of Guiding Principle #3: “The Water Boards Implement Efficient and Effective Regulatory Programs; Storm water policy and permits should be periodically updated to reflect the continually improving understanding and management of storm water.” Additionally, we would urge the State Water Board to develop a comprehensive policy or guidance for regulating storm water discharges, to clarify how watershed-based implementation will proceed, how municipalities will be able to address challenges posed by the lack of stable and consistent funding sources, and to clarify the data needed (in terms of both quantity and quality) to support the future development of the State’s storm water program.

As we are sure you must be aware, most of the Basin Plans in effect for California are outdated and lack appropriate data upon which receiving water quality standards are based. We urge the State Water Board to make updating all basin plans a high priority and to allocate appropriate staff time and resources to update them accordingly. Such an effort is needed, as many different stormwater programs, including municipal and general NPDES permits and TMDLs, are profoundly affected by the lack of a comprehensive knowledge of receiving water conditions, a lack of knowledge of storm water quality and variability, and an incomplete understanding of the effectiveness of BMPs and other control measures.

Specific Comments on Storm Water Strategic Initiative

A specific concern we have with the SWSI is the identification and inclusion of Project 18, Issue 33: “Sector-specific Technology-based Numeric Effluent Limitations for Industrial and Construction Storm Water Permits.” While we appreciate that this effort is designated as a “Medium” priority in the Workplan Proposal, and a “Low” priority in the Appendix A Project List document, we cannot support its inclusion as any type of “priority” for the State Water Board to direct effort and resources toward addressing. As noted in the Blue Ribbon Panel Report (2006) and other studies, and as the State Water Board recently acknowledged when it developed the most recent Industrial General Permit (IGP), existing storm water data collected over the past two decades are insufficient to support the development of numeric effluent limitations (including both water quality-based and technology-based limitations).

In addition, putting any effort into developing TBELs for inclusion in the construction general permit or within municipal permits is unnecessary given recent regulatory and legal proceedings concerning the development of effluent limits or effluent limit guidelines for the construction sector. And, such an effort is unnecessary given the much higher priority and emphasis of other projects listed in the SWSI Workplan and Strategy that seek to increase stormwater runoff capture and retention to improve of water quality and augment water supplies. This wide disparity in potential benefit from pursuing such projects and their relationship to achieving measurable water quality benefit should immediately disqualify consideration of Project 18, Issue 33 at this time, and for the foreseeable future.

As the State Water Board is well aware, technology-based numeric effluent limits for construction dischargers were invalidated by California Superior Court in 2012 because insufficient evidence was found that supported their inclusion in the CGP at the time of adoption in 2009. Moreover and more recently, the US EPA in February 2014 published revisions to the Construction and Development Effluent Guidelines; Final Rule, and as part of several revisions to the Final Rule withdrew the numeric turbidity effluent limitation of 280 NTU and associated monitoring requirements. The US EPA in its Fact Sheet on the Final Rule stated that the effluent limitation and monitoring requirements were removed from the Final Rule because of “problems with the data used to develop these limitations.” Trying to correct the serious data collection and analysis challenges that are required to establish any type of TBEL for the construction sector is unwarranted and unnecessary.

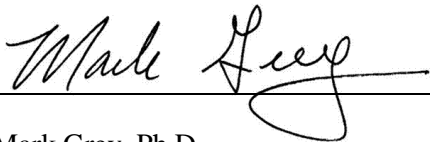
If you have any questions or want to discuss the content of our comment letter, please feel free to contact me via email at rlyon@cbia.org, or via phone at (916) 443-7933 x 303.



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