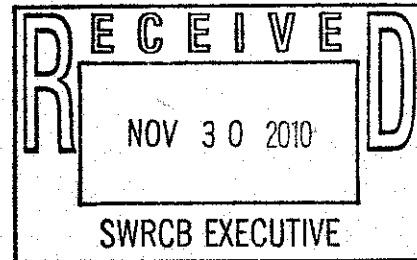




November 30, 2010

Charles Hoppin, Chair and Board Members  
State Water Resources Control Board  
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c/o Jeanine Townsend, Clerk of the Board



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**VIA ELECTRONIC MAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

**Re: State Water Resources Control Board Draft Guidance for Assessing the Effectiveness of Municipal Storm Water Programs and Permits**

Dear Mr. Hoppin:

San Diego Coastkeeper respectfully submits the following comments on the State Water Board's Draft Guidance for Assessing the Effectiveness of Municipal Storm Water Programs and Permits ("Draft Guidance"). San Diego Coastkeeper ("Coastkeeper") protects the San Diego region's inland and coastal waters for the communities and wildlife that depend on them by blending education, community empowerment, and advocacy. We have been working for over fifteen years to promote appropriate and effective stormwater management policy for our region. We therefore recognize the importance and need for a clear framework for evaluating the effectiveness of municipal storm water programs and permits.

We support and incorporate herein by reference, the comments of Linda Sheehan of the California Coastkeeper Alliance.

In order to craft more effective storm water permits, AB 739 tasked the State Water Board with the development of an assessment framework that promotes "the use of quantifiable measures for evaluating the effectiveness of municipal storm water management programs." While we believe that the Draft Guidance provides a reasonable baseline of information, it lacks the specificity needed to provide Regional Boards' staff the tools to write truly effective permits.

**Current permits lack measurable goals and linkages between programs and outcomes.**

The Draft Guidance correctly identifies a core flaw of the current approach to storm water permit writing: there is a large—but unproven—assumption that permits based on implementing best management practices will result in improved water quality. But "making the connection between program implementation and water quality improvement has been a challenge for regulators and permittees. Water Board staff often evaluate program implementation activities, which do not always result in measureable water quality outcomes." Draft Guidance at 3.

**IMPACT**

We know that this approach to storm water permit writing in the San Diego Region has been less than successful. Coastkeeper conducted a recent audit of several jurisdictions covered by the San Diego County Storm Water permit. The purpose of the audit was to examine the jurisdiction's claims that increased nursery inspections in 2008-09 would lead to better Best Management Practice implementation and, ultimately, improved water quality. The audit revealed that the jurisdictions each took a separate and inconsistent approach to enforcement and follow-up after nursery inspections. Additionally, on-the-ground visits of nurseries in the audited jurisdictions revealed that failures to implement Best Management Practices at the nurseries were rampant. Coastkeeper's 2010 audit revealed that the jurisdictions' approach to increasing inspections did not lead to proper Best Management Practice implementation and therefore was not an optimum approach to improving water quality.

Similarly, a 2002 audit of municipal stormwater programs by Tetra Tech (on behalf of US EPA Region 9), found shortcomings in measuring the success of urban runoff management programs. The audit recommended the City of Carlsbad "establish additional measurable goals for each program element" in order to "ensure continued support for the Program and to provide a means to measure its effectiveness." See Tetra Tech Report, *available at* <http://www.epa.gov/region9/water/npdes/pdf/ms4/020724-san-diego-ms4-report.pdf>.

**The Draft Guidance provides a reasonable baseline framework.**

The Draft Guidance sought to establish "standardized concepts and terminology" and to present "a general framework for conducting assessments." Draft Guidance at 5. We agree that the State Board has created a document that will provide a common language for all Regional Boards to use in creating storm water permits. This will help create consistency across the State and increase the ease by which we can compare storm water permits from different regions.

**Too little direction is given on how to implement the framework.**

The Draft Guidance describes generally six "levels of assessment" for storm water programs and notes that these levels can be broadly separated into those that assess permit compliance, those that target behavior, and those that measure changes in water quality. The Draft Guidance correctly notes that for too long, permits have focused on assessing permit compliance and has paid scant attention to whether permits were leading to cleaner or healthier ecosystems. While we agree with the Draft Guidance that permits have been overly focused on compliance checklists and too little focused on actual water quality, we do not believe that this document provides enough detail to guide permit writers away from checklist-oriented permits and toward permits focused on water quality improvements. If the goal is to assist permit writers, the Draft Guidance does not provide sufficient information on how to translate the information in the Draft Guidance into permit requirements.

*The Draft Guidance Does Not Prioritize the Assessment Levels.*

While the Draft Guidance outlines six levels of permit compliance assessment (plus one level of Integrated Assessment), it fails to provide enough information to assist permit writers in prioritizing these levels. The Draft Guidance indicates that the Integrated Assessment is a critical step but provides too few details on how to accomplish it. Draft Guidance at 10. In fact, the Draft Guidance states that "it is unlikely that Integrated Assessment methods and principles are sufficiently evolved to allow their incorporation into effectiveness assessments at this time." Draft Guidance at 10. Table 4 is arguably the most important component of the Draft Guidance, but with so few details on how to translate the concepts outlined into permit requirements, it undermines the usefulness of the document overall.

*The Draft Guidance Actually Promotes Checklist Use.*

The Draft Guidance compounds this weakness by further encouraging the use of checklists (Appendix D Draft Guidance) for assessing the effectiveness of program elements. By continuing to encourage permit writers to rely on checklists for ensuring the effectiveness of a permit, the Draft Guidance will fail to change or improve storm water permits. Indeed, the Draft Guidance notes that "Water Board staff often evaluate program implementation activities, which do not always result in measureable water quality outcomes." Draft Guidance at 3. It is unclear how the checklist in Appendix D will help move Regional Board staff away from permit formats that overly emphasize "checking the box" at the cost of assessing water quality improvements.

Ultimately, by reiterating the tired approach of relying on checklists, the Draft Guidance document will not help move permits away from siloed requirements whose implementation have little linkage to improved water quality.

*The Draft Guidance Should Provide More Details at Each Assessment Level.*

Every level of assessment must have an outcome that is measurable in terms of its potential and actual impact on receiving waters and loading reduction. Even the more challenging to quantify levels like behavior can be assessed in a quantifiable manner. For example, the City of San Diego recently conducted a study to quantify the potential load reduction in indicator bacteria loadings resulting from a change in education and outreach amenities at dog walking parks. The study quantified the change in potential loading pre- and post-implementation of their outreach. By tying their education and outreach activities to a process for quantifying its impacts, the City of San Diego now has a clearer understanding of how this education/outreach activity works to reduce loadings and is also better positioned to effectively implement TMDL activities.

**The Draft Guidance should emphasize quantifiable outcomes for each assessment level.**

While the Draft Guidance document "promotes the use of quantifiable measures for evaluating the effectiveness of municipal storm water programs," it does not provide any information on how to do so in permits. See Guidance Document at 32.

*The Draft Guidance Should Demonstrate How Municipalities Can Maximize Water Quality Improvements with Efficient Time and Money Expenditures.*

Municipalities need guidance on how to prioritize permit requirements. Permits should provide sufficient clarity to allow permittees to maximize the time they spend on activities that result in the greatest gain in water quality improvements/protection for the dollars spent. This is particularly important given the increasingly constrained budgets of municipal stormwater departments. Little is achieved by having municipal staff spend valuable staff resources on onerous reporting requirements with no measurable linkage to clean water.

*The Draft Guidance Should Encourage Numeric Limits and Benchmarks.*

Ultimately, the surest course to providing the clarity necessary to achieve measurable outcomes in permits is through the establishment of numeric limits or benchmarks. Numeric limits or benchmarks are consistent with the intent of AB 739 and with the stated goals of the Draft Guidance and will allow municipalities to focus their management and enforcement efforts. The current approach of reliance on the implementation of best management practices requires municipalities to spend significant and valuable staff resources on field inspections with dubious water quality outcomes. With the clarity afforded by unambiguous quantifiable limits, municipalities will be in a better position to strategically plan their storm water programs and target those activities that achieve results.

The implementation of numeric limits or benchmarks is also supported by the US EPA. In a recently issued memorandum, US EPA has revised its previous position that "numeric limitations will only be used in rare instances" in NPDES-regulated discharges. See Memorandum from James Hanlon, Office of Water (Nov. 12, 2010). US EPA further states that its expectations regarding this have changed as the permit programs have matured. US EPA now recommends that permitting authorities use numeric effluent limits where feasible "as these types of effluent limitation create objective and accountable means for controlling storm water discharges." *Id.* at 3. Even where permits require the standards to be met through the implementation of Best Management Practices (BMPs), US EPA still emphasizes that permits should "contain objective and measurable elements (e.g. schedule for BMP installation, or level of BMP performance)" and that these elements should be included as enforceable provisions. *Id.* We believe that the Draft Guidance would be vastly improved if it incorporated the recommendations provided by the US EPA in its revised TMDL memorandum.

Charles Hoppin, State Water Quality Control Board  
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November 30, 2010  
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Thank you for the opportunity to comment on this important document. We look forward to working with you and your staff to improve the utility of the Draft Guidance.

Sincerely,

Jennifer Kovacs

A handwritten signature in black ink, appearing to read "J. Kovacs", written in a cursive style.

Staff Scientist  
San Diego Coastkeeper