

**Water Resources Management**  
**63 Ivy Drive**  
**Orinda, CA 94563-4228**

July 28, 2006

Ms. Song Her, Clerk of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Subject: Comments on Storm Water Panel's Recommendation

Dear Ms. Song Her,

I am making independent comments on the panels report and do not represent any special interest or organization. I am a resident of Orinda and have been involved in the Bay Area's water quality issues since 1960 and in the development of storm water programs since 1986. I was a founding member of BASMAA and the APWA Storm Water Quality Task Force – now CASQA and was on the advisory committee to EPA on development of the Phase II rule. I have the distinct honor of working on a municipal storm water program that received EPA's National Excellence Award, Regional Board cease and desist order and subject of a citizen's lawsuit all within a 12 month period. My career has been as a regulator, a regulated discharger and operator of a water supply agency and consultant to industry and developers. It has spanned both compliance with the Safe Drinking and Clean Water Acts.

While it is very important to address the questions posed to the panel and consider the panel's response to those question I believe there is a much more important issue that must be addressed if we are going to have viable and effective storm water programs in California. The SWRCB needs to develop a clear and concise regulatory program including an enforcement element to implement the *Water Quality Standards* for discharges of storm water from MS4s. Once that is addressed many of the panel's recommendations will be moot and Numeric Effluent Limits will become apparent.

The report from the panel was fairly predictable based on the questions posed and the technical background of the panel members. It is very disturbing that it has taken almost 15 years to get to this point after the issue was initially raised in the early storm water NPDES permits. The public should not have to wait another 15 years to address the issue of compliance with *Water Quality Standards*. The public's support of the storm water programs will be strained and wane unless there are clearer policies and implementation programs showing that beneficial water uses are being protected.

Federal law, EPA policies and regulations, court decision, SWRCB decisions and NPDES permits have compliance with *Water Quality Standards* as the cornerstone for regulation of storm water runoff. These laws, policies and decisions envisioned that MS4s would achieve compliance with *Water Quality Standards* by the end of the third permit term – 15 years. I am concerned that we cannot say today that *Water Quality Standards* have been achieved and I doubt we can even report on whether there has been any improvement in water quality over the past 15 years.

We have an unwritten policy in the Bay Area when it comes to compliance with *Water Quality Standards* of Don't Look, Don't Ask and Don't Tell. The iterative process established by the SWRCB for achieving compliance with *Water Quality Standards* is simply not being implemented in the Bay Area even though the municipal storm water programs have been underway for as long as 20 years. I have estimated that \$600 million to \$1.1 billion has been spent by Bay Area municipalities on storm water programs during the past 15 years. A critical assessment needs to be made of what improvements in water quality have resulted from this expenditure and whether these programs need new or different emphasis. An expenditure of just 1% of what has been spent in the Bay Area over the past 16 years would have provided many answers to the questions on application of *Water Quality Standards* or Numeric Effluent Limits.

There are several specific actions that the SWRCB should consider as it looks further at the implementation of storm water programs in California:

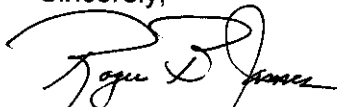
- Implementation of *Water Quality Standards* - Assemble a panel of experts including aquatic toxicologists, biologists and chemists, hydrologists and modelers of hydraulic mixing processes. Ask them to recommend the spatial and temporal application of the Basin Plan and CTR *Water Quality Standards* **that are protective of beneficial water uses** for various categories or types of pollutants in storm water runoff. If a consensus cannot be developed for a particular category or specific type of pollutant by this panel then they should be requested to outline the process or research needed for application of the *Water Quality Standards* for that specific pollutant. This research should then be adequately funded and undertaken.
- Action Levels – The recommendations by this new panel should then become the Action Levels for implementation of the iterative application of *Water Quality Standards* that triggers additional control measures and BMPs as a result of water quality compliance monitoring programs. I believe that any other Action Level not directly tied to *Water Quality Standards* would constitute “backsliding” from the State Board’s decision on application of *Water Quality Standards*.
- State BMPs - Resist the development of “State” BMPs that if implemented as designed and maintained would constitute compliance with numeric effluent limits or *Water Quality Standards*. Innovative new technologies capable of meeting *Water Quality Standards* must be developed and will be developed once a compliance with *Water Quality Standards* is required. In addition “State” BMPs would be contrary to Section 13360 of the Water Code. The development of “State” BMPs would put the State in assuming the responsibility for meeting *Water Quality Standards* and would effectively transfer the requirement for compliance from the discharger to the State.
- Waste and Unreasonable Use of Water – Support local water agencies water conservation programs and protect the State’s limited water resources by requiring the use of reclaimed water for irrigation of BMPs like swales and bioretention systems to prevent the waste and unreasonable use of increasingly scarce water supplies. Create incentives for urban water supply agencies to include storm water runoff as part of the overall water supply.

The recent Fourth Appellate District Court decision on the Los Angeles Trash TMDL should be a wakeup call for the municipal storm water programs and regulators. This decision is a framework for a court to ask a series of questions regarding MS4s compliance with *Water Quality Standards* including:

- *Do Water Quality Standards* in Basin Plans and the CTR apply to storm water runoff from MS4s - **YES**
- Have the *Water Quality Standards* been incorporated in the MS4s NPDES permits - **YES**
- Do storm water discharges meet *Water Quality Standards* - **UNKNOWN BUT PROBABLY NOT NOT**
- Are there time schedules for compliance with *Water Quality Standards* and have the schedules been exceeded. - **NO TIME SCHEDULES**

I believe that a court when faced with these questions and answers may be forced to require strict compliance with current *Water Quality Standards* while spatial and temporal variations from these standards during certain wet weather conditions would be protective of beneficial water uses. Let's not place the courts in a position of making this decision.

Sincerely,



Roger B. James  
Senior Consultant