



Environmental Compliance Management Services

September 1, 2006

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

Subject: Stormwater Blue Ribbon Panel Report Comment Letter

Dear Chair Doduc and Board Members:

On behalf of Environmental Compliance Management Services (ECMS) and its clients, thank you for the opportunity to provide comments on the recommendations of the Stormwater Blue Ribbon Panel (BRP) Report entitled *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities, June 19, 2006* (Panel Report). The following comments are intended to address the question whether or not the State Water Resources Control Board (State Water Board) should implement the Panel Report recommendations, and if so, how.

The question posed to the Blue Ribbon Panel was “*Is it technically feasible to establish numeric effluent limitations, or some other objective criteria, for inclusion in storm water permits? How would such limitations or criteria be established, and what information and data would be required?*” The simple and straightforward response to the question is “Yes”, when the question is properly conditioned. Currently stormwater discharges, independent of the source of discharge (municipal, construction or industrial), that discharge *directly* into receiving waters are obligated to meet that receiving water’s water quality objectives.

There is no substantive debate that stormwater that discharges directly into receiving waters should not be obligated to meet water quality objectives for the receiving waters. What is in debate, and what the BRP Report did not effectively address, was the question of whether it is appropriate to obligate compliance to a set of Numeric Effluent Limits (NELs) that do not take into consideration the variability inherent in storm events, or conditions outside the control or influence of the discharger which impact stormwater quality. Moreover, the BRP Report did not effectively address whether it is technically feasible to establish NELs for stormwater that discharges *indirectly* to receiving waters, and if so, how will the NELs, applied at the point of discharge (for indirect discharges) be used to assess receiving water quality impacts, in a scientifically-based and legally defensible manner.

Current application of NELs to stormwater discharges suggests that the question of NEL feasibility for stormwater discharges is not dependant on the source of the discharge, but rather the proximity of the point of discharge from the regulated activity to the ultimate receiving water. However, the BRP Report appears to associate the feasibility of NELs for stormwater discharges to the source or type of discharge and the perceived level of control or influence the discharger has over the discharge.

The BRP Report emphatically asserts that NELs for municipal stormwater discharges are not feasible, based on the limited control that municipalities have over the discharge, even though most municipal stormwater discharges are directly to receiving waters. On the other hand, the BRP Report suggests that NELs are feasible for stormwater discharges from construction and industrial activities since operators of these activities typically have greater control over the discharge, even though the majority of construction and industrial stormwater discharges are indirect discharges to receiving waters.

The inconsistency between the basis of the BRP's recommendations and the current application of NELs to stormwater discharges demonstrates the unique complexity and diversity of stormwater quality management. In order for this Board to move the State's stormwater management programs forward it must be conceded that the traditional "Command and Control" approach to water quality enforcement typically applied to point source discharges is not adoptable to the unique nature of stormwater quality management.

The initial step in improving urban water quality in California must be the establishment of a statewide Stormwater Policy that clearly describes the State's stormwater quality goals and objectives; provides direction to state and regional staff, local regulators and regulated communities on how to achieve those goals and objectives; and provides for consistency in stormwater enforcement and compliance assessment.

While the BRP Report did not adequately address the questions posed, the report did reaffirm several points the regulated communities have made over the last several years, and that must be addressed in the Statewide Stormwater Policy, including:

- The current Industrial stormwater database is inadequate to establish numeric limits. The State Water Board needs to re-examine and collect new data before establishing numeric limits;
- The need for a technically sound and pragmatically enforceable BMP selection, design, and permit process; and
- The need to consider the economic impact of the stormwater program, including BMP selection, installation/implementation and monitoring.

The BRP Report's recommendations were limited to treatment control BMPs. The State Stormwater Policy must acknowledge Source Control Pollution Prevention BMPs as the critical element of an effective stormwater quality management program and mandate and enforce adoption of low impact development strategies at the local municipal level.

The BRP Report failed to acknowledge the progress made to date with the BMP iterative process. The effectiveness of the BMP iterative approach can be demonstrated from a rudimentary review of the State Board's Annual Report Stormwater Data Database (AR Database), released in January 2005. The 2005 AR Database demonstrates that Region 8¹ industrial stormwater discharges reported a 38% reduction in Total Suspended Solids and a 78% reduction in Total Oil and Grease since the 1997-1998 monitoring year. While the State's AR Database clearing shows that the BMP iterative process has been successful in reducing pollutants in stormwater discharges, it also shows that yearly pollutant concentration averages typically were above USEPA Multi-Sector Benchmark levels.

¹ 72% of the data in the database was reported from Regions 4 and 8

The issue is not is the BMP iterative process working, but how to better facilitate improvements in stormwater quality more effectively through the BMP iterative process. This can be accomplished by the State Water Board adopting the California Stormwater Quality Association's *Progressive Approach* into the Statewide Stormwater Policy and incorporating Stage 2 of the *Progressive Approach* into the upcoming round of stormwater permit renewals.

The *Progressive Approach* provides the framework by which improvements in stormwater quality can be accelerated through the application of action levels and enforcement of accountability on the part of the discharger in demonstrating the effectiveness of the discharger's stormwater BMPs. CASQA's *Progressive Approach* provides the mechanism to most effectively implement the BRP's recommendations and the structure to initiate the data collection requirements necessary to facilitate stormwater quality improvement objectives.

At the July 21, 2006 Sacramento BRP Workshop, the Board members raised the question regarding funding of any new stormwater program mandates. Funding for development and implementation of the Statewide Stormwater Policy currently exists through the stormwater permit fee program.

The NPDES Stormwater fee program traditionally generates several millions of dollars of surplus funds each year. A portion of the 2003-2004 surplus was returned to the dischargers in the form of a fee rebate. The 2004-2005 surplus was used to pay for overruns in other water quality programs. The State Water Board must mandate that all NPDES Stormwater fees be used to fund the State's stormwater program, including stormwater monitoring. Moreover, the 18.7% fee surcharge for ambient water quality monitoring programs should be targeted for stormwater-related monitoring efforts.

In closing, I would like to respond to a comment that was made by a Board Member at the 7/21/06 Workshop. The statement was made that it was understood that industrial stormwater dischargers desired enforceable numeric effluent limits. What most stormwater dischargers desire are permit conditions which are attainable in a cost-efficient manner, and a scientifically-based, legally defensible process by which compliance can be demonstrated and which takes into consideration the variability of storm events and the degree of control and influence the discharger has over the stormwater discharge.

Thank you for this opportunity to submit our comments.

A handwritten signature in black ink that reads "Maureen Daggett". The signature is written in a cursive, flowing style.

Maureen Daggett, CPESC, CPSWQ, REA, CHMM
ECM Services