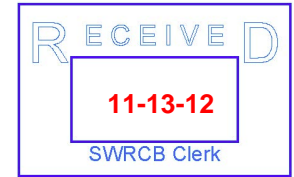




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 13 2012



Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Workshop Concerning Receiving Water Limitations Language for MS4 Permits

Dear Ms. Townsend:

EPA Region 9 appreciates the opportunity to provide comments about the State Board's notice of October 10, 2012 that it would be considering revisions to State Board policy concerning receiving water limitations (RWLs) language in MS4 permits in California. The current language used in all California MS4 permits originates from State Board Orders WQ 99-05 and WQ 2001-15. The October 10 notice included an issue paper which discussed five alternatives for revising State Board policy on this matter. For all the alternatives, we believe it is important to ensure clear, measurable, and enforceable requirements in permits for MS4 discharges, given the impacts these discharges are having on water quality in many parts of the state. We do not support weakening the receiving water limitations language.

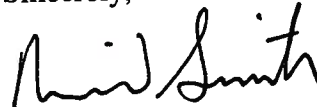
We support alternatives 1, 2 and 3, all of which retain the requirement to meet RWLs without a so-called "safe harbor" that would remove the requirement to meet RWLs while a discharger implements an iterative process of improving controls. Alternative 2 would include more detail on the iterative process, which we agree would be beneficial. The process details should include requirements for quantitative measures similar to the "Reasonable Assurance Analysis", and the interim milestones required in the Watershed Management Plans in the recently adopted Los Angeles County MS4 permit. The purpose of more specific process details would be to ensure that interim plans to implement stormwater control practices would be backed by technically robust analysis demonstrating that those practices will be sufficient to result in attainment of water quality standards (and, where applicable, TMDL requirements) in receiving waters. Alternative 3 provides that if a discharger is in compliance with TMDL provisions, they would be considered in compliance with RWLs for the pollutants covered by the TMDL. Presumably this is intended to only cover the pollutant/water body combinations covered by the TMDL. We would be supportive of such an approach if the TMDL implementation provisions are sufficiently detailed to be equivalent to numeric water quality based limitations and affected permits are required to incorporate frequent (e.g.,

annual) numeric interim limitations based on wasteload allocations (WLAs) to ensure that there is measurable progress towards achieving final WLAs. We believe both of these options, along with option 1, would be consistent with the EPA's regulatory requirements and policy guidance.

We are concerned that by removing the requirement to achieve water quality standards in alternatives 4 and 5, California MS4 permits would be significantly less protective and enforceable. We are also concerned alternatives 4 and 5 would not adequately ensure that appropriate actions would be required to address the numerous California waters impaired by urban runoff. We understand that in support of alternatives that would remove requirements to meet water quality standards in receiving waters, concerns have been raised about the effectiveness of implementing the current RWL policy in existing MS4 permits in California. However, we do not believe the appropriate response to these concerns is to remove the RWL requirement. It would be more appropriate to retain the existing policy, perhaps with some clarifications to make interim implementation more robust as provided in alternatives 2 and 3. Moreover, we note that, where appropriate, the State and Regional Boards can establish compliance schedules in permits and/or time schedules in enforcement orders to provide additional time to implement needed stormwater water controls.

We appreciate the opportunity to provide our views on this matter. If you have any questions regarding these comments, please refer your staff to Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith". The signature is written in a cursive, flowing style.

David Smith, Manager
NPDES Permits Office (WTR-5)