



# COUNTY OF SAN MATEO

Public Workshop (11/20/12)  
Receiving Water Limitations Language  
Deadline: 11/13/12 by 12 noon

BOARD OF SUPERVISORS  
DAVE PINE  
CAROLE GROOM  
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ROSE JACOBS GIBSON  
ADRIENNE J. TISSIER

## Department of Public Works and Parks

JAMES C. PORTER  
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November 9, 2012

By email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Tom Howard, Executive Director  
c/o Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th floor  
Sacramento, CA 95814



**Re: State Board Workshop on Receiving Water Limitations Language**

Dear Mr. Howard:

The County of San Mateo very much appreciates the State Water Resources Control Board (Board) holding a workshop on November 20, 2012 concerning receiving water limitations language for municipal stormwater permits issued in California. We have reviewed the Issues Paper and Agenda developed by your staff in preparation for this workshop and compliment their thorough and thoughtful efforts. We now offer these comments for the Board and staff's further consideration.

As the result of the *NRDC vs. County of Los Angeles* decision by the Ninth Circuit Court of Appeal and statements appearing in the fact sheets of several proposed MS4 permits since it was issued, we are very concerned about permit provisions related to contributions of municipal stormwater discharges to an exceedance of water quality standards. Unless the Board directs changes in the precedent language to be used for them, we could face third party lawsuits due to such provisions regardless of the circumstances, magnitude, or duration of the event, its impact on human health or the environment, or their implementation of other program/BMP-specific requirements. We do not believe that the Board in its prior precedent decisions intended municipalities to face potential third party lawsuits due to these permit provisions where the municipalities have implemented the so-called "iterative process" in good faith.

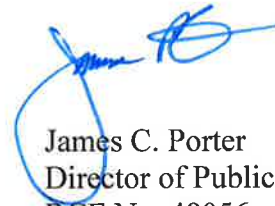
While the issue of improving the iterative process language to make it function better is an important one to be considered at the workshop, preserving the intent behind its establishment - to avoid the potential diversion of resources from water quality improvement to third party litigation - is even more important to us. In this regard, if provisions which turn on the mere contribution of a stormwater discharge to an exceedance of water quality standards are to remain

in California's MS4 permits, the Board should at least make clear that the enforcement of these broad provisions is to be a matter of the State and Regional Board's discretion under the Water Code and reserved for unusual circumstances that warrant its exercise. We did not see this presented as an Alternative in the Issues Paper but believe the Board should consider it along with them.

Finally, we believe that progress toward improvement of water quality will benefit substantially from municipalities working collaboratively with Regional Board staff in implementing the iterative process in those cases where exceedances of water quality standards occur; where they do not, Board enforcement may be an appropriate alternative depending on the circumstances. We therefore endorse that approach suggested by the Bay Area Stormwater Management Agencies Association ("BASMAA") and urge the Board to amend prior precedent MS4 language consistent with BASMAA's recommendations.

We appreciate your consideration of our comments. Please contact Julie Casagrande (650) 599-1457, if you have any questions.

Very truly yours,



James C. Porter  
Director of Public Works and Parks  
RCE No. 48056

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cc: Brian Wong, Deputy County Counsel  
Dean Peterson, Director, Environmental Health  
Jim Eggemeyer, Community Services Director, Planning and Building Department  
Ann Stillman, Deputy Director, Engineering and Resource Protection  
Joe LoCoco, P.E., Deputy Director, Road Services Division  
Gary Lockman, Superintendent, Parks Division  
Julie Casagrande, Watershed Protection Specialist, Utilities-Flood Control-Watershed Protection  
Matt Fabry, Coordinator, San Mateo Countywide Water Pollution Prevention Program