



CITY OF BRISBANE

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

November 9, 2012

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



(sent via email to: commentletters@waterboards.ca.gov)

RE: State Board Workshop on Receiving Water Limitations Language

Dear Mr. Howard:

The City of Brisbane appreciates the State Water Resources Control Board holding a workshop on November 20, 2012 concerning receiving water limitations language for California municipal stormwater permits. We have reviewed the Issues Paper and Agenda developed by your staff in preparation for this workshop, and complement their thorough and thoughtful efforts. We offer these comments on three concerns for the Board's and staff's further consideration.

Permit provisions could expose compliant municipalities to third-party lawsuits.

As a result of the *NRDC vs. County of Los Angeles* decision by the Ninth Circuit, and ensuing statements appearing in the fact sheets of several proposed MS4 permits, we are very concerned with permit provisions regarding contributions of municipal stormwater discharges to an exceedance of water quality standards. Unless the State Board directs changes in the precedent language to be used for the provisions, we believe there is a very real possibility that MS4s could face third-party lawsuits 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 State Board's prior precedent decisions intended to expose municipalities to third-party lawsuits where the municipalities have implemented the "iterative process" in good faith.

Prevent diversion of WQ funds by specifying enforcement authority.

While the issue of improving the iterative process language so that it functions as effectively as possible is an important one to be considered at the workshop, preventing the unintended diversion of resources from water quality improvement to third party litigation is equally 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

November 8, 2012
Tom Howard - SWRCB
RWL Comments
Page 1 of 2
08-26-01



permits, the State Board should clarify 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 State Board should consider it during the workshop.

Work collaboratively with municipalities.

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. The citizens served by municipal staff use the same receiving water bodies and expect the same water quality of receiving waters as do all other stakeholders. If given the opportunity, I am confident that professional staff working together cooperatively will be able to solve the majority of challenges they are presented. If a municipality is not willing to accept their accountability and work with the Board, then the discretionary enforcement authority discussed above remains as an available alternative for obtaining compliance.

Please call me at (415) 508-2131 if there are any questions regarding this matter.

Very truly yours,



Randy L. Breault, P.E.
Director of Public Works/City Engineer