

**Ramifications of the Ninth Circuit Court Ruling on Urban Stormwater Runoff
Compliance with Water Quality Standards- -
Need for Site Specific Studies to Develop Appropriate Water Quality Standards**

G. Fred Lee, PhD, DEE
October 29, 1999

Members of the Stormwater Quality Task Force Executive Committee

Presented herein are comments on Ninth Circuit Court ruling regarding compliance with water quality standards in NPDES-permitted stormwater runoff.

Development of a Position Paper

The California State Stormwater Quality Task Force should develop a position paper on a recommended approach for compliance with water quality standards. A key component of this position paper should be the development of a study program that will define at representative locations, the real, significant water quality impacts associated with urban area and highway stormwater runoff-associated constituents that are present at concentrations above water quality standards at the point of discharge. A position paper that does not address this issue will be considered deficient and will likely have little impact on changing the current BMP ratcheting-down process to ultimately meet water quality standards.

As discussed in my recent Stormwater Runoff Water Quality Science/Engineering Newsletter, Volume 2-2, the Ninth Circuit Court ruling does not change the BMP ratcheting-down process. Under current regulatory requirements, NPDES-permitted urban stormwater runoff will ultimately have to meet water quality standards in the runoff waters. The Ninth Circuit Court ruling likely delays for a period of several years when environmental groups can take this matter to the courts and be effective in causing the US EPA to require compliance with water quality standards in NPDES stormwater permits. Under the current Clean Water Act, the US EPA does not have the authority to waive compliance with water quality standards; however, the Agency has discretionary authority to define when this compliance must be achieved. I have discussed this issue with both US EPA Washington DC and Region IX senior staff and they are in agreement with this assessment.

Appended to these comments are excerpts from the US EPA's brief on the Defenders of Wildlife and the Sierra Club Petition for review of US EPA's permitting of several Arizona cities' stormwater runoff. This brief discusses US EPA Region IX's position with respect to meeting water quality standards in NPDES-permitted urban stormwater runoff. As discussed, US EPA Region IX's position is that they do not have sufficient information at this time to properly formulate appropriate water quality standards for NPDES-permitted stormwater runoff.

It concluded that any attempt to develop a Task Force policy that does not ultimately require compliance with water quality standards will be unsuccessful. Further, such an attempt could readily backfire on the Task Force by causing environmental groups to become aggressive in working to prevent the State Board from adopting such a policy. The issue that must be addressed as part of a credible policy is the development of appropriate standards that will protect beneficial uses without

significant, unnecessary expenditures of public funds for constituent control in urban area and highway stormwater runoff.

One of the issues that has to be carefully addressed is what is meant by “compliance with water quality standards.” The basic problem that exists is complying with worst-case-based water quality standards, i.e., the US EPA (1987) national “Goldbook” or soon to be promulgated California Toxics Rule (CTR) criteria and the standards that are based on them. There is considerable flexibility in US EPA regulations in developing appropriate water quality standards based on definition of real impacts to beneficial uses.

It is extremely important to understand that it has been US EPA policy since the early 1980s that the approach for the protection of designated beneficial uses of waters in this country is achieving numeric water quality standards in ambient waters. This policy worked reasonably well so long as there was no attempt to control the subtle impacts of potentially toxic constituents, such as heavy metals and some trace organics. The 1987 revisions of the Clean Water Act made it clear that the control of these subtle impacts is required. This requirement means that water quality criteria/standards need to be adjusted for site-specific conditions and studies need to be done to determine the magnitude of the adjustment. I have repeatedly emphasized in my writings the importance of cities working with the state in conducting watershed-based, consensus-developed studies that define, under representative conditions, the water quality significance–beneficial use impairment of an exceedance of a worst-case-based standard for copper, zinc, cadmium, lead, and/or phthalates, etc. This is the issue that is of concern to the public who must ultimately pay for controlling the constituents in urban area and highway stormwater runoff.

Appended to these comments is a copy of AB 982, Ducheny. *Water quality: total maximum daily loads*. This bill establishes a requirement for the State Water Resources Control Board to report on the State Board’s and Regional Boards’ current surface water quality monitoring programs. As an individual who has worked in many parts of the US on water quality issues at various locations in the US, it is amazing to me that, in general, the State does not have a statewide comprehensive water quality monitoring program. California is light years behind many other states in this regard. AB 982 provides the potential of developing such a program. It will be important for the Task Force to work with the State and Regional Boards to develop monitoring programs that define the real water quality use impairments associated with urban area and highway stormwater runoff.

These monitoring programs must not be more of the “end of the pipe,” “edge of the pavement” monitoring which focuses on determining chemical and pathogen-indicator organism concentrations. Instead, these programs should focus on defining chemical impacts on the beneficial uses of the waterbody. As I have mentioned, the Evaluation Monitoring program that we have developed in Orange County specifically addresses these issues. The Task Force should become highly proactive in promoting these approaches. As part of doing so, the necessary information can be developed which will define the real, significant water quality impacts associated with constituents in urban area and highway stormwater runoff. Further, these studies/monitoring programs will define how to adjust the worst-case-based water quality standards to protect designated beneficial uses of

receiving waters without significant unnecessary expenditures for stormwater runoff-associated constituent control.

The statement has been made by that some regulatory staff do not understand differences between urban stormwater and sanitary sewage. I have repeatedly pointed out, based on having worked on stormwater impacts and domestic wastewater impacts over the past 40 years, that there are significant differences. However, the documentation for this is minimal, and for that matter today's domestic wastewater discharges are also over-regulated with respect to heavy metals and certain organics having to comply with worst- case-based water quality criteria/standards at the edge of the mixing zone for the wastewater discharges.

As discussed in previous correspondence, appropriate water quality standards have, built into them, economic considerations. Until the urban and highway stormwater management agencies do the studies that convincingly demonstrate that there will be violations of appropriate water quality standards-beneficial uses caused by urban area and highway stormwater runoff associated constituents, it will not be possible to gain relief through the economic justification.

The key issue that needs to be addressed as part of revising the Clean Water Act is to get Congress to cause the US EPA to switch from controlling chemical concentrations to controlling chemical impacts for constituents that are of concern because of potential subtle impacts, such as chronic toxicity to aquatic life due to heavy metals present in urban area and highway stormwater runoff. The chemical concentration approach for regulating the impacts of chemicals evolved because it was bureaucratically simple to administer and because there was a lack of information on real impacts except under worst-case conditions, i.e., those that were used to develop the criteria.

Comments on Defenders of Wildlife and The Sierra Club Petition for Review of US EPA's Permitting of Several Arizona Cities' Stormwater Runoff

Presented below are comments and materials extracted from the US EPA brief filed in opposition to the Defenders of Wildlife and The Sierra Club's (Defenders) petition to cause the US EPA to include compliance with numeric water quality standards in NPDES permits for five Arizona municipalities. This brief was prepared by attorneys representing US EPA Region IX and Office of the General Counsel, US EPA, Washington, DC.

One of the key issues addressed by the US EPA in review of this matter is whether the Clean Water Act requires NPDES permits for municipal stormwater discharges to contain effluent limitations as necessary to meet water quality standards. A corollary issue is whether the Clean Water Act allows NPDES permits for municipal stormwater discharges to contain effluent limitations consisting of best management practices (BMPs). Another issue is whether Defenders or others are precluded from challenging the adequacy of BMPs included in municipal stormwater discharges for Arizona municipalities. The US EPA, in its brief (p 3) stated:

"EPA has tried for over 20 years to address regulatory issues associated with municipal storm water runoff. The difficulty of devising an appropriate regulatory approach is compounded

in the arid west, where storm events are relatively infrequent but severe, and storm water discharges often flow into water courses that have little or no flow except during storm events.”

The US EPA (p 3) further stated:

“Congress recognized these regulatory difficulties when enacting requirements for addressing discharges of storm water. Congress gave EPA significant flexibility in establishing the required controls for reducing the discharge of pollutants from storm water. In the case of NPDES permits for municipal storm water discharges challenged by Defenders, EPA required implementation of best management practices to reduce pollutants in municipal storm water discharges. These best management practices include structural controls, such as retention basins and infiltration ponds, as well as non-structural measures, such as programs to minimize illicit discharges and construction site runoff into the storm sewer systems.”

The US EPA also stated (p 3-4):

“EPA determined that the data it possessed regarding the biological and chemical impacts of the storm water discharges on the receiving waters was inadequate as a basis upon which to establish rational numeric limits on the quantity of pollutants that may be present in such discharges without adversely affecting water quality. Therefore, EPA also established monitoring requirements in the NPDES permits to acquire the information necessary to determine if additional or modified permit limitations are required during the term of the permits or in future permits.”

As it stands now, the water quality monitoring that is being done of NPDES-permitted urban stormwater runoff is compliance-type monitoring that only defines that there is a potential for a beneficial use impairment in the receiving waters for the runoff. This type of monitoring is strongly contrary to the public’s interest, since it readily misleads regulatory agencies, environmental groups, and others who are not familiar with aquatic chemistry, aquatic toxicology, and water quality, into believing that the exceedance of a worst-case-based water quality standard represents a beneficial use impairment. Representative studies of the real impacts of urban stormwater runoff-associated constituents will, based on my experience, show that, in general, the water quality standards that are applied to stormwater runoff can be significantly raised and still be protective of the beneficial uses of the receiving waters.

As discussed in our Evaluating Monitoring approach, if it is found through site-specific studies that there are real, significant problems associated with stormwater runoff constituents that exceed water quality standards or that are not regulated (do not have standards), then the control program is not to try to treat the stormwater, which will never be affordable, but instead to control the constituents at the source. Even retrofitting conventional BMPs such as the detention basins mentioned in the US EPA brief, will not achieve standards and will cost the public \$1 to \$3 per person per day for the population served, for BMP development and operation over a 20-year period.

In the brief (p 5-6) , the US EPA outlined several key components of the Clean Water Act where it stated:

“Second, the Clean Water Act directs the states, with federal approval and oversight, to establish water quality-based standards to assure protection of the quality for state waters. 33 U.S.C. § 1313(a), (b), and (c)(1). The state standards designate uses for waters (e.g. public water supplies, propagation of fish and wildlife) and establish water quality criteria to protect such uses. 33 U.S.C. § 1313(c)(2)(A). If necessary to meet applicable water quality standards, NPDES permits must contain water quality-based effluent limitations more stringent than limitations that would be required to comply with the applicable technology-based standards. 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.1(f); see Arkansas v. Oklahoma, 503 U.S. 91, 104-05 (1992).”

This approach is a fundamental tenet of the Clean Water Act that has been in effect since 1972. It is highly unlikely that it will be possible to redefine standards to mean MEP involving detention basins, grassy swales, etc., since such BMPs cannot treat urban area and highway stormwater runoff to eliminate violations of water quality standards in the receiving waters at the point of discharge. Further, since mixing zones are not allowed for urban area and highway stormwater runoff in California, this requirement translates to a stormwater runoff effluent limitation numerically equal to the water quality standard applicable to the waterbody.

The US EPA in their brief (p 6-7), under the discussion of regulation of stormwater discharges stated:

“In 1987, Congress amended the Clean Water Act to address municipal and industrial stormwater discharges. 33 U.S.C. § 1342(p). In the 1987 amendments, Congress directed EPA to establish regulations setting forth the permit application requirements for stormwater discharges from municipal separate storm sewer systems serving populations over 100,000. Id. § 1342(p)(4).

Congress also provided direction regarding the nature of permit requirements for discharges from municipal separate storm sewers. Id. § 1342(p)(3)(B). The permits must also include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Id. § 1342(P)(3)(B)(ii). The permits must also require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

Id. 1342(p)(3)(B)(iii).”

The US EPA in the brief (p 8) stated:

“The Part 2 application also includes an estimate of the reductions in pollutants from discharges from municipal separate storm sewer systems expected as a result of the storm water management program. Id. § 122.26(d)(2)(v). In addition, the applicant submits a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the program. Id. § 122.26(d)(2)(vi).”

To my knowledge, this part of the regulation has not been complied with. If it had, the municipal stormwater dischargers would already have the cost information that is needed to achieve water quality standards in the stormwater runoff.

The US EPA stated (p 20-21):

“Section 402(a)(1), which authorizes the issuance of NPDES permits, requires that all NPDES permits comply with the applicable provisions of Section 301 of the Act. 33 U.S.C. § 1342(a)(1). Section 301's requirements include the incorporation into permits of any more stringent limitations necessary to meet water quality standards. Id. § 1311(b)(1)(C).

Congressional enactment of Section 402(p)(3), however, created an ambiguity as to the applicability of water quality standards in the development of municipal storm water discharge permits. Congress, in Section 402(p)(3)(A), expressly referenced the requirements of Sections 402 and 301 with respect to industrial stormwater permits. 33 U.S.C. § 1342(p)(3)(A). Congress did not expressly reference Section 301 or the need to incorporate more stringent limitations when necessary to meet water quality standards in the provision governing municipal separate storm sewer system permits. Id. § 1342(p)(3)(B). Instead, Congress stated that municipal separate storm sewer system permits must contain such ‘other provisions as the Administrator or the State determines appropriate for the control of pollutants.’ 33 U.S.C. § 1342 (p)(3)(B)(iii).”

The US EPA in the brief (pp 26-29) discussed why BMPs are appropriate in regulating urban stormwater runoff, where it stated:

“The unique circumstances presented in regulating storm water discharges from municipal separate storm sewer systems support the use of best management practices as effluent limitations. Congress, in enacting the storm water discharge provisions of the Clean Water Act, recognized these circumstances. The State of Arizona, in establishing its water quality standards, also did so, as did EPA in approving the Arizona standards. EPA, in its applicable regulations and guidance, recognized the difficulties in establishing numeric effluent limitations and the appropriateness of best management practices.

Municipal storm water discharges are significantly different from discharges from industrial and sewage treatment sources traditionally regulated by NPDES permits. Municipal storm water discharges contain pollutants that are picked up off the ground by storm water runoff or that are discharged directly into the storm drain system by illicit connection or illegal dumping. 55 Fed. Reg. 47,990-92 (1990). Storm water discharges are intermittent and unpredictable, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent varies according to local land use activities. Id. At 48,038; 53 Fed. Reg. 49,416, 49,443 (1988). Also complicating the regulation of municipal storm water discharges is the fact that storm drain systems are usually designed with an extremely high number of discharge points, or outfalls, within a given municipality in order to reduce potential flooding. 55 Fed. Reg. At 48,038. Finally, the water quality impacts of such discharges are likely to be highly variable, and therefore unpredictable, for any particular water body at any given time. See Id.

In view of these circumstances, Congress specified a new standard for NPDES permits issued for municipal storm water discharges. Congress required permits for discharges from municipal separate storm sewer systems to reduce the discharge of pollutants to the ‘maximum extent practicable.’ 33 U.S.C. § 1342(p)(3)(B). This new ‘maximum extent practicable’ standard expressly includes management practices and control techniques. Id. The Congressional standard also contemplated that the municipal permits would contain such other provisions as the EPA or the State determines appropriate for the control of such pollutants. Id.

The State of Arizona, in promulgating its water quality standards, similarly recognized the unique circumstances associated with municipal storm water discharges. The Arizona water quality standards contain numeric and narrative criteria to protect the designated uses of Arizona's waterways. S.E.R. 397-429. However, with respect to storm water discharges, the Arizona standards require the implementation of all 'reasonable and cost-effective best management practices to control the discharge of pollutants in storm water.' Arizona Admin. Code, Title 18, Chapter 11, Article 1, Section R 18-11-121(C), S.E.R. 426. The standards also provide that a schedule to bring a discharge of storm water into compliance with the water quality-based permit requirements may be established in an NPDES permit. Id.

EPA's regulations and guidance also reflect recognition of the unique factors associated with regulating storm water discharges. EPA's implementing regulations require municipal storm water dischargers to develop storm water management programs to control pollutants in their discharges of storm water. 40 C.F.R. § 122.26(d)(2)(iv). With respect to meeting water quality standards, EPA issued guidance in 1996 that recommended that initial NPDES permits for municipal storm water discharge may appropriately rely on the development and implementation of best management practices to control storm water discharges and meet water quality standards until sufficient information concerning the effects of storm water and the quantifiable efficacy of the best management practices becomes available. E.R. 152, 155."

The US EPA brief (p 32) states, with regard to the impacts of urban stormwater runoff:

"In light of this uncertainty, EPA is still in the process of determining the most appropriate methods for establishing water quality-based effluent limitations for municipal storm water discharges. E.R. 201. In this area of factual and technical complexity, EPA was not arbitrary and capricious in determining that establishment of numeric effluent limitations was infeasible. See Alpine Land & Reservoir Co., 887 F.2d at 213."

The above-quoted sections define a framework for appropriate regulation of urban stormwater runoff water quality impacts, where for a while conventional BMPs such as detention basins will be allowed. However, it is my assessment that, because of the high cost of retrofitting such BMPs and the fact that they will not achieve the ultimate goal of preventing violations of water quality standards in the runoff waters, municipalities will not begin to implement detention basins on a retrofit basis as part of achieving MEP. Clearly, detention basins are not practicable as BMPs for developed urban areas because of their high cost and ineffectiveness. Unfortunately the professional organization BMP manuals such as the recently ASCE/WEF BMP manual fails to discuss these issues.

This situation leads to the conclusion that it is extremely important for the regulated community, the regulatory agencies, and others to use the time allowed in deferral of achieving water quality standards in stormwater runoff to work together to define the real, significant water quality use impairments associated with urban area and highway stormwater runoff. Once the real water quality problems have been defined, the BMP for the control of the constituents that are real pollutants, i.e., those that impair beneficial uses, should focus on controlling the pollutants at the source, rather than attempting to treat stormwater runoff to achieve water quality standards. The estimated national cost

of meeting worst-case-based water quality standards in urban stormwater runoff is on the order of \$500 billion construction and hundreds of millions of dollars per year in operation costs. These high costs provides a strong economic incentive to do the studies needed to define how best to regulate urban area and highway stormwater runoff-associated constituents.

California Legislative Requirements for Improved Water Quality Monitoring, TMDL Development, and Nonpoint Source Pollution Control

Recently I participated in a “TMDL Retreat” organized by the Southern California Coalition for Pollution Prevention devoted to “Water Quality, Urban Development and Social Equity.” At this retreat I made an invited presentation devoted to “Establishing Appropriate TMDL Goals.” A copy of the slides that I used for my discussion are presented below. The primary message of this presentation was that there is need for studies to adjust worst-case-based water quality criteria/standards for site-specific conditions to appropriately regulate urban area and highway stormwater runoff that are subject to TMDL requirements.

The retreat was attended by about 35 invitees, including two State Water Resources Control Board members (Mary Jane Forster and Arthur Baggett) and former Board member Darlene Ruiz; two members of the California Legislature (Assemblymembers Denise Ducheny and Alan Lowenthal); Regional Board Executive Officers from Regions 4, 8, and 9; C. Kuhlman, Associate Director, US EPA Region IX; and senior-level representatives of several companies, including Southern California Edison, Sempra Energy, Northrop Grumman, GTE, Simpson Timber, Solar Turbines, Irvine Company, ARCO, Chevron, and Lockheed Martin. Also participating were representatives of several cities’ and/or counties’ stormwater management agencies, including Long Beach, Ventura, and Los Angeles Counties; the San Diego Baykeeper; several attorneys representing law firms that are active in the water quality field; and a representative of the Western Growers’ Association. Further, Bob Wayland, Director, US EPA TMDL program, Washington, DC, and several other US EPA Washington DC headquarters senior staff participated via conference call. The group spent over a day discussing problems with the current approach in developing TMDLs.

My suggestion on the need to adjust water quality standards for site-specific conditions as part of developing TMDL goals and urban stormwater runoff discharge limits was, in my opinion, well-received by the group. I pointed out that contrary to common statement, the problem is not with the approach used to develop the water quality criteria; the problem is with how the states implement the criteria into water standards. There is growing recognition that appropriate water quality standards need to be developed on a site-specific basis to avoid the over-regulation that is now beginning to occur associated with managing urban area and highway, as well as rural area, stormwater runoff. I will be discussing some of these issues in future Stormwater Runoff Water Quality Science/Engineering Newsletters.

Establishing Appropriate TMDL Goals

G. Fred Lee, PhD, PE, DEE
G. Fred Lee & Associates
El Macero, CA
gfredlee@aol.com

Presentation to TMDL Retreat
“Water Quality, Urban Development and Social Equity”
Organized by
Southern California Coalition for Pollution Prevention
Rancho Santa Fe, CA October 18-19, 1999

Significant Problems in Developing TMDL Goals

Typically, the TMDL Goal Is the Water Quality Standard for the Constituent of Concern

Current Water Quality Standards and TMDLs Focus on Chemical Concentrations Rather Than on Chemical Impacts - Water Quality - Beneficial Uses

US EPA National Worst-Case-Based Water Quality Criteria Were Never Intended to Be Mechanically Implemented into Water Quality Standards

Over-Regulates Most Regulated Constituents, i.e., Those With Water Quality Standards

As Being Implemented, Worst-Case Water Quality Criteria Can Cause Large-Scale, Unnecessary Expenditures of Public and Private Funds beyond Those Needed to Achieve Desired Water Quality

Must Develop Appropriate Water Quality Standards That Serve as Technically Valid, Cost-Effective TMDL Goals

Adjust Worst-Case-Based National Water Quality Standards for Site-Specific Conditions

Initial Approach: Use US EPA Guidance to Adjust Standards for Site-Specific Conditions

Must Incorporate Aquatic Chemistry and Toxicology into Development of TMDL Goal

Need to Incorporate at Least Mid-1990s-Level Science and Engineering into TMDL Development and Implementation

Inadequate Time Allowed

Time Table for Development and Implementation of TMDL and Waste Load Allocation and Load Allocation too Short to Develop Technically Valid, Cost-Effective TMDLs

Need Financial Resources to:

- Assess Water Quality Significance of Violation of Water Quality Standards to Beneficial Uses of Waterbody, and
- Determine Sources of Constituents Responsible for Real, Significant Use-Impairments of Concern to the Public

Examples of TMDL Problem Areas

Bioaccumulation of Excessive Mercury

Sacramento River and Its Watershed; SR/SJR Delta; San Francisco Bay

Aquatic Life Toxicity - OP Pesticides (Diazinon and Chlorpyrifos)

Orange County, CA; Sacramento River; Stockton; San Francisco Bay Area; San Diego

Depressed Dissolved Oxygen - Nutrients (N & P)

Orange County, CA; Upper Newport Bay; San Joaquin River Deep Water Channel

Contact Recreation/Beach Closure - Pathogens and Coliforms

Upper Newport Bay; Orange County, CA

Potential Aquatic Life Toxicity - Heavy Metals

Upper Newport Bay and Tributaries

During this retreat, AB 982 Ducheny. *Water quality: total maximum daily loads* and SB 227 Alpert. *Water quality nonpoint source pollution* bills were discussed. These bills were both signed by the Governor in late September 1999. Since the implementation of these bills will become important to appropriately regulating urban area and highway stormwater runoff, I have scanned them both and have appended them to these comments. It is recommended that the Task Force become involved in working with the State Water Resources Control Board in developing the advisory group to the State Board on TMDL development and developing a surface water quality monitoring program for the State. Further, the Task Force should watch closely and become active where appropriate in the State Water Resources Control Board's implementation of SB 227, covering the development and implementation of a nonpoint source pollution control program in the State. These are issues that can be discussed at future Task Force Executive Committee meetings.

Assembly Bill No. 982

CHAPTER 495

An act to add Sections 13191 and 13192 to the Water Code, relating to water.

[Approved by Governor September 27, 1999 Filed
with Secretary of State September 27, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 982, Ducheny. *Water quality: total maximum daily loads.*

Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority over water quality. Under the federal Clean Water Act, each state is required to identify those waters for which prescribed effluent limitations are not stringent enough to implement applicable water quality standards and to establish, with regard to those waters, total maximum daily loads, subject to the approval of the United States Environmental Protection Agency, for certain pollutants at a level necessary to implement those water quality standards.

This bill would require the state board to convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of a specified provision of the federal Clean Water Act and applicable federal regulations. The bill also would require the state board to report, on or before November 30, 2000, and annually thereafter until November 20, 2002, to the Legislature on the structure and effectiveness of its water quality program as it relates to that provision of the federal Clean Water Act. The bill, in addition, would require the state board, on or before November 30, 2000, to

assess and report to the Legislature on the state boards and the regional boards current surface water quality monitoring programs, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 13191 is added to the Water Code, to read:

13191. (a) The state board shall convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)), and applicable federal regulations and monitoring and assessment programs. The advisory group or groups shall be comprised of persons concerned with the requirements of Section 303(d) of the Clean Water Act. The state board shall provide public notice on its website of any meetings of the advisory group or groups and, upon the request of any party shall mail notice of the time and location of any meeting of the group or groups. The board shall also ensure that the advisory group or groups meet in a manner that facilitates the effective participation of the public and the stakeholder participants.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before November 30, 2000, and annually thereafter until November 30, 2002, the state board shall report to the Legislature on the structure and effectiveness of its water quality program as it relates to Section 303(d) of the Clean Water Act. The report may include the information required to be submitted by the board to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999. In formulating its report, the state board shall consider any recommendations of the advisory group or groups.

SEC. 2. Section 13192 is added to the Water Code, to read:

13192. (a) Notwithstanding Section 7550.5 of the Government Code, the state board, on or before November 30, 2000, shall assess and report to the Legislature on the State Water Resources Control Boards and regional water control boards current surface water quality monitoring programs for the purpose of designing proposal for a comprehensive surface water quality monitoring program for the state. The report shall include a proposal for the program, including steps and costs associated with developing the full program, cost of implementation of the program after development, and appropriate funding mechanisms, including any fee structure. The board may include in the report information required to be submitted to the United States Environmental Protection Agency pursuant to Section 305(b) of the Clean Water Act, information required to be submitted pursuant to paragraph (1) of subdivision.

(c) of Section 13181, and any information required to be submitted to the Legislature pursuant to the Supplemental Report of the Budget Act of 1999.

(b) In considering and designing the proposal, the state board shall address factors that include, but need not be limited to, all of the following:

(1) Physical, chemical, biological, and other parameters about which the program shall collect and evaluate data and other information and the reasonable means to ensure that the data is accurate in determining ambient water quality.

(2) The use of models and other forms of information not directly measuring water quality.

(3) Reasonable quality assurance and quality control protocols sufficient to allow sound management while allowing and encouraging, where appropriate, data collection by entities including citizens and other stakeholders, such as dischargers.

(4) A strategy to expeditiously develop information about waters concerning which the state presently possesses little or no information.

(5) A strategy for assuring that data collected as part of monitoring programs, and any associated quality assurance elements associated with the data collection, be made readily available to the public.

(6) A strategy for assessing and characterizing discharges from nonpoint sources of pollution and natural background sources.

(7) A strategy to prioritize and allocate resources in order to effectively meet water quality monitoring goals.

(c) Nothing in this section affects the authority of the regional water quality control boards.

0

Senate Bill No. 227

CHAPTER 560

An act to add Chapter 5.4 (commencing with Section 13369) to Division 7 of the Water Code, relating to water.

[Approved by Governor September 28, 1999 Filed
with Secretary of State September 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 227, Alpert. Water quality: nonpoint source pollution.

The Porter-Cologne Water Quality Act governs the coordination and control of water quality in the state, and includes provisions relating to nonpoint source pollution. The California Coastal Act of 1976 imposes certain restrictions on development in the coastal zone of the state. The California Coastal Commission, pursuant to the coastal act, has specified duties with regard to the federally approved California Coastal Management Program.

This bill would require the State Water Resources Control Board, on or before February 1, 2001, and in consultation with the regional boards, the California Coastal Commission, and other appropriate state agencies and advisory groups, as necessary, to prepare a detailed program for the purposes of implementing the state's nonpoint source management plan, as specified. The bill would require the state board, on or before August 1 of each year, and in consultation with the commission and other appropriate agencies, to submit to the Legislature and make available to the public, copies of prescribed state and regional board reports that contain information related to nonpoint source pollution and that the state or regional boards were required to prepare in the previous fiscal year and a summary of the information set forth in those reports, as specified.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.4 (commencing with Section 13369) is added to Division 7 of the Water Code, to read:

Chapter 5.4. NONPOINT POLLUTION CONTROL PROGRAM

13369. (a) (1) On or before February 1, 2001, the state board, in consultation with the regional boards, the California Coastal Commission, and other appropriate state agencies and advisory groups, as necessary, shall prepare a detailed program for the purpose of implementing the state's nonpoint source management plan. The board shall address all applicable provisions of the Clean Water Act, including Section 319 (33 U.S.C. Sec. 1329), as well as Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. sec. 1455b), and this division in the preparation of this detailed implementation program.

(2) (A) The program shall include all of the following components:

(i) Nonregulatory implementation of best management practices.

(ii) Regulatory-based incentives for best management practices.

(iii) The adoption and enforcement of waste discharge requirements that will require the implementation of best management practices.

(B) In connection with its duties under this subdivision to prepare and implement the state's nonpoint source management plan, the state board shall develop, on or before February 1, 2001, guidance to be used by the state board and the regional boards for the purpose of describing the process by which the state board and the regional boards will enforce the state's nonpoint source management plan, pursuant to this division.

(C) The adoption of the guidance developed pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notwithstanding Section 7550.5 of the Government Code, and in consultation with the California Coastal Commission and other appropriate agencies, as necessary, the state board, on or before August 1 of each year, shall submit to the Legislature, and make available to the public, both of the following:

(1) Copies of all state and regional board reports that contain information related to nonpoint source pollution and that the state or regional boards were required to prepare in the previous fiscal year pursuant to Sections 303, 305(b), and 319 of the Clean Water Act (33 U.S.C. Secs. 1313, 1315(b), and 1329), Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), related regulations, and this division.

(2) A summary of information related to nonpoint source pollution that is set forth in the reports described pursuant to paragraph (1) including, but not limited to, summaries of both of the following:

(A) Information that is related to nonpoint source pollution and that is required to be included in reports prepared pursuant to Section 305(b) of the Clean Water Act (33 U.S.C. 1315(b)).

(B) Information that is required to be in reports prepared pursuant to Section 319(h)(11) of the Clean Water Act (33 U.S.C. Sec. 1329(h)(11)).

O