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Robert Perciasepe
Assistant Administrator
Office of Water
US EPA
401 M Street
Washington, D.C. 20460

Dear Robert:

I wish to follow up on our discussions at the US EPA Multi-Regional Criteria and Standards meeting that was held in St. Louis, Missouri last August, 1997, to bring to your attention additional information on the problems we discussed with the current regulatory requirements of using US EPA water quality criteria and state standards based on these criteria, as the ultimate goal for adequate management of urban stormwater runoff water quality impacts. The basic issue that has caused great confusion and concern is the apparent reversal of the position by the US EPA Region 9 with respect to violating water quality standards representing a violation of a NPDES stormwater permit. The current situation of a stormwater discharger having to prove that it has adequately developed BMPs for stormwater runoff to avoid violations of receiving water limitations is an invitation for environmental groups and others to have a permanent funding source for their activities through lawsuits against public agencies and the associated settlements that result. We are already seeing this situation beginning to occur across the country. As I have discussed in previous writings on this topic, those familiar with how US EPA water quality criteria and state standards are developed and implemented know that they are not intended to be used and are not applicable to situations such as urban and highway stormwater runoff in which the constituents are present in non-toxic, non-available forms and the duration of exposure that an aquatic organism can receive to the toxic available forms in the runoff waters is shorter than the critical exposure needed to be harmful to the organism.

In the US EPA's 1996 ANPRM mention was made that the state of Maine's temporary variance approach from achieving water quality standards associated with wet weather flow conditions was a possible option for addressing the problems associated with trying to use US EPA water quality criteria as goals for regulating urban area and highway stormwater runoff. At the St. Louis meeting you may recall that I asked you if this was still a viable option. At that time you indicated that you thought it was. Based on this I have recently taken the time to develop the attached write-up governing the development of a temporary waiver from having to achieve water quality standards under wet weather flow conditions. It is patterned after the State of Maine's approach, except that it addresses urban area and highway stormwater runoff while Maine addressed CSOs. While with CSOs there is no question about the fact that there is adverse impacts on the beneficial uses of receiving waters with urban area and highway stormwater runoff, the adverse

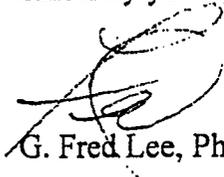
impacts are subtle if they occur at all. If they occur they are not due to the common regulated constituents such as the heavy metals. They may be due to the unregulated constituents such as organophosphate and other pesticides which are not being addressed with the current US EPA stormwater regulatory approach.

I am proposing to the State of California Stormwater Task Force that they consider sponsoring the temporary waiver approach along the lines that I have suggested in the attached write-up where a waiver from having to meet water quality standards in the receiving waters for the runoff during wet weather events is granted, provided that an adequate study is done to show that the exceedance of the standards is an "administrative" exceedance associated with the overly protective nature of the US EPA water quality criteria when applied to urban area and highway stormwater runoff. Basically, my proposed temporary waiver approach protects the designated beneficial uses, but eliminates the unnecessary expenditures associated with developing structural BMPs to control administrative exceedances of water quality standards.

Until such time as the Clean Water Act is re-authorized and the reauthorization properly sets forth the requirements for urban area and highway stormwater runoff meeting water quality standards, it will be necessary to develop a mechanism to protect the public's interest from the rash of litigation on urban stormwater discharges failing to meet water quality standards. I appreciate that the environmental groups who rely on stormwater-associated litigation as a means of gaining support, will vigorously oppose this approach. I understand that they have forced the US EPA to back down from including wet weather criteria issues in the ANPRM. It is time, however, for the public to take a firm stand on this issue to ensure that funds spent for urban area and highway stormwater runoff are used to control real water quality problems rather than address administrative exceedances of overly protective criteria/standards. I would appreciate any comments or suggestions you may have on this issue.

Thanks for your assistance with this matter.

Sincerely yours,



G. Fred Lee, PhD, PE, DEE

Copy to: Tudor Davies
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Enclosure