AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

www.apwa.net

2345 Grand Blvd, Suite 700
Kansas City, MO 64108-2625
816-472-6100 800-848-APWA
fax 816-472-1610

1275 K Street NW, Suite 750
Washington, DC 20005-4083
202-408-9541
fax 202-408-9542

February 5, 2014

Mr. Jared Blumenfeld
Regional Administrator
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Blumenfeld:

I write to you today on behalf of the members of the American Public Works Association (APWA) requesting EPA deny the *Petition for a Determination that Stormwater Discharges for Commercial, Industrial and the Institutional Sites Contribute to Water Quality Standards Violations and Require Clean Water Act (CWA) Permits* (hereinafter RDA Petition) submitted by American Rivers, the Conservation Law Foundation and the Natural Resources Defense Council on July 10, 2013. We recognize there is no process for formal comment as part of the Residual Designation Authority regulations[1] but we feel quite strongly that the RDA Petition should be denied because of the detrimental impact such a designation would have on current collaborative, watershed based approaches occurring in the region.

The RDA provision states that EPA, or a delegated state, can require permits for any stormwater discharge that is determined to "contribute to a violation of a water quality standard or is a *significant contributor* of pollutants to waters of the United States." (40 C.F.R. §126.26(a)(9)(i)(D) emphasis added). If accepted, RDA would require privately owned industrial, commercial and institutional sites throughout the region to limit their impervious surfaces and reduce stormwater runoff to meet specific permit requirements. If accepted, RDA would apply to both new and existing properties. The RDA Petition does not address who will be responsible for implementation, enforcement and funding if the Petition is accepted.

Because public works professionals will be directly impacted by the outcome of the RDA Petition process we offer the following comments. APWA is an organization dedicated to providing sustainable public works infrastructure and services to millions of people in rural and urban communities, both large and small. Working in the public interest, APWA members plan, design, build, operate and maintain transportation, water supply, and wastewater treatment systems, stormwater utilities, flood protection

[1] As a matter of fact APWA joined with the National Association of Clean Water Agencies and National Association of Flood, Stormwater Management Agencies requesting a formal avenue for stakeholder input as part of the RDA Petition review process in November 2013.

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Ed Gottko, PWLF
Westfield, NJ

EXECUTIVE DIRECTOR
Peter B. King

facilities , waste, and refuse disposal systems, public buildings and grounds essential to the economy and the quality of life nationwide.

First, and most importantly, acceptance of the RDA Petition will jeopardize the stability and formation of local stormwater utilities. Stormwater utilities are critical to helping to fund the costs of local stormwater programs including regulatory compliance, planning, maintenance, capital improvements and repair or replacement of infrastructure. If a determination that CWA permits are required for stormwater discharges from commercial, industrial and institutional sites, the owners of these sites will likely argue that because they are separately permitted that they do not need to participate in the local stormwater utility. Local stormwater utilities and municipalities are best suited to deal with this pollution collaboratively when they have the funding to do so rather than individual sites working on an individual basis.

Second, acceptance of the RDA Petition will likely result in an additional layer of regulation that public works departments will need to implement, enforce and fund at a time when local budgets continued to be constrained. Municipalities and public works departments are already responsible for implementing, enforcing and funding multiple layers of CWA regulations which will become more complicated to administer, inefficient to implement and add additional unnecessary costs with minimal water quality benefit. Moreover, this approach would contradict and hinder the agency's efforts at integrated planning and permitting. A decision that individual CWA permits are needed for stormwater pollution from large sites would create confusion and muddle the community agency's integration message.

Third, municipalities and public works departments in the region already have regulatory controls and best management practices in place to regulate the discharges addressed in the RDA Petition. Any development likely to be a non-*de minimis* contributor to stormwater runoff will likely be covered by existing stormwater programs. Petitioners fail to provide evidence that individual discrete elements of impervious cover that are small enough in size to be unregulated by existing stormwater programs, contribute more than *de minimis* amounts of pollutants to any waterbody. Absent such evidence, these sites do not warrant special regulatory attention under the CWA. The pollutant sources addressed in the RDA Petition do not represent more than de *minimis* impacts on local water quality and the cost of regulating such sources does not outweigh the potential benefits. Regulations under this regulatory regime are likely to result in costly improvements.

Fourth, the entities that own and/or occupy the sites addressed in the RDA Petition are constantly changing thereby making it very difficult for stormwater managers to police sites on an individual basis. These properties are constantly being redeveloped and most communities in the region address the redevelopment of these sites under their current stormwater programs. Again, any development likely to be more than a *de minimis* contributor to stormwater runoff will already be regulated and determination under the RDA process is unnecessary.

Fifth, acceptance of the RDA Petition will directly impede progress toward a watershed approach to improving water quality in the region. In order to address the current water quality challenges addressed in the RDA Petition states and municipalities must take an integrated, collaborative watershed based

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Ed Gottko, PWLF
Westfield, NJ

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approach to addressing water quality problems. A determination that RDA process requires CWA permits for stormwater discharges will do just the opposite. A watershed approach is the most effective framework to address today's water quality challenges and any programs that have the potential to jeopardize this approach should be carefully considered and evaluated with input from all potentially affected stakeholders.

Finally, the municipalities and public works departments that will likely be responsible for implementing new regulatory requirements as a result of the RDA Petition process are not currently part of the petition review process. At this point, the agency is only hearing from the Petitioners who may not fully understand the potential impacts of a RDA determination on local water quality protection efforts. As stated previously, we understand that the RDA Petition process regulations do not provide for formal comment but we believe that a well informed and reasoned decision cannot be made without the input of our members because we will likely be involved in any future approaches to addressing regional water quality problems.

Thank you for taking the perspective public works into consideration. We urge you to call Julia Anastasio, Director of Sustainability at 202-218-6750 or janastasio@apwa.net if we can be of assistance on this matter.

Sincerely,

Peter B. King
Executive Director

Cc:

Nancy Stoner

PRESIDENT
Ed Gottko, P.W.E
Westfield, NJ

EXECUTIVE DIRECTOR
Peter B. King