



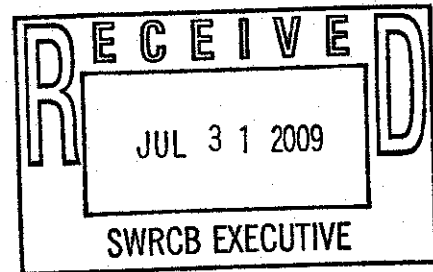
California Stormwater Quality Association™

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

July 31, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on Draft Order, File No. A-1780



Dear Ms. Townsend:

On behalf of the California Stormwater Quality Association (CASQA)¹, I am writing to provide comments on the draft State Water Resources Control Board Order ("Draft Order") in the *Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District, SWRCB/OCC File A-1780* ("Petition"). Although the deadline for submitting comments on the full Draft Order has passed, CASQA respectfully requests that our comments be entered into the record and provided to the Board members prior to the August 4th meeting. We make this request because of the precedential nature of the Draft Order and its major impacts on stormwater program regulation statewide.

The issues discussed in the Petition are of critical importance to CASQA because of the precedent setting implications to Municipal Separate Storm Sewer Systems (MS4s) for complying with TMDLs. TMDLs, particularly bacteria TMDLs, are proving to be complex and require evolving and expensive technologies to address the pollutants. This coupled with the fact that the pollutants are generated from a number of sources, most of them beyond the control of the municipalities make bacteria TMDLs challenging. In addition, the requirements to implement TMDLs, including developing compliance and monitoring plans, conducting monitoring, and BMP design and installation, are becoming the single most expensive element of stormwater management program. These TMDL implementation costs have the potential to exceed all other management costs for most MS4s.

The Draft Order covers a number of issues that are relevant to our membership and, ultimately, may have significant cost implications to them. Given the precedential nature of the Draft Order, CASQA believes the State Board would be well served at this time not to act on this Draft Order and instead allow more time for MS4s statewide to analyze the implications of the Order and provide further input to the State Board in shaping an appropriate order. Our initial and limited

¹ CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to over 26 million people in California and includes most every Phase I and many Phase II municipal programs in the State. CASQA was formed in 1989 to recommend approaches for stormwater quality management to the State Water Resources Control Board.

review identified a number of issues that warrant additional discussion. These issues are identified below:

- The Draft Order clearly lays out an argument that non-stormwater discharges are not considered stormwater even when conveyed in a stormwater system. Thus, according to the order, they are not subject to the MEP standard and also not subject to the iterative process to effect compliance with water quality standards. Instead, the Draft Order could be interpreted as requiring non-stormwater to follow reasonable potential procedures and be subject to the resulting water quality based effluent limits (WQBEL). This interpretation is evident in the March 13, 2009 Draft WDR issued by the San Diego Regional Board for southern Orange County. Although the Draft Order goes to great length to note that the receiving water limitations and prohibitions are not numeric limits for non-stormwater, the Orange County Draft WDR eliminates any doubt regarding this application and establishes numeric limits for non-stormwater. Our membership has significant concerns with such an interpretation and resulting permit requirements.
- As noted above, the Draft Order attempts to establish that non-stormwater discharges are not subject to either the MEP standard or the iterative process for addressing water quality standards and are regulated the same as non-MS4 discharges. We would submit that the "effectively prohibit" provision of the Clean Water Act (see §1342 (p)(3)(B)(ii)) is a technology-based standard and with the clarifying regulations [40 CFR 122.26(d)(2)(iv)(B)(1)] identify the non-stormwater sources which are allowed in MS4s. In addition, the State Board has recognized the necessity of allowing non-stormwater in MS4s in its Small MS4 permit which identifies "authorized non-stormwater discharges" (see General Permit § D.2.c). These discharges must be addressed "only where they are identified as significant contributors of pollutants to the Small MS4." By allowing the non-stormwater discharges into the MS4, the Board recognized that other discharge options are not generally available. By necessity, discharges *into* MS4s must subsequently be discharged *by* the MS4.

Municipalities are already held responsible for effectively prohibiting non-stormwater discharges into our systems; we are also reducing pollutants in our discharges from our system to the maximum extent practicable. In both cases we use the iterative process to focus our resources and address the more critical water quality issues. The Draft Order appears to eliminate this critical flexibility.

- CASQA also notes that the State Board has broad discretion (see 40 CFR §122.44(d)(1)(vii)) in establishing effluent limits to support approved TMDLs. Effluent limits may take the form of numeric limits or narrative BMPs. Given that non-stormwater discharges are, in a real world sense, more of a non-point discharge (i.e. dispersed, multiple points of discharge, uncontrollable) than point source discharges, the State Board would be well-served to incorporate flexibility through the iterative process. Municipalities should not be potentially subject to civil penalty or citizen suits while working to address a non-point issue.

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- Finally, the State Board should reconsider the joint liability provision found in the permit amendment. It is fundamentally unfair to hold one city responsible for discharges from other jurisdictions over which it has no control. In addition, this provision is inconsistent with both the Porter-Cologne Water Quality Act and the Clean Water Act, which apply liability only to a discharger's own discharges, not those of others.

In summary, CASQA is very concerned with the consequences of the Draft Order as described in preliminary form above. Managing stormwater is a difficult and challenging task. This has been acknowledged by USEPA and has resulted in the current iterative process to attain water quality standards. The stormwater regulations provide the State and Regional Board with considerable discretion in implementing the requirements. This Draft Order appears to reflect a very narrow and unhelpful interpretation of the regulations. From the incorporation of TMDLs into the County's permit to the unique interpretation that non-stormwater discharges are not subject to the MEP/iterative process, this Draft Order will place MS4s in a vulnerable position of non-compliance with limited resources to address the non-compliance. CASQA urges that the State Board not adopt the Draft Order to allow an opportunity for MS4s statewide to engage with your Board in developing a broader and constructive approach to non-stormwater discharges. Thank you again for the opportunity to comment. If you have any questions about our comments, please contact me or our Executive Director, Geoff Brosseau.

Very truly yours,



Chris Crompton, Chair
California Stormwater Quality Association