



California Stormwater Quality Association™

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

October 15, 2007

Dr. Xavier Swamikannu
Chief - Storm Water Permitting
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013

Subject: 2nd Draft MS4 NPDES Permit for the Ventura Countywide Stormwater Program

Dear. Dr. Swamikannu:

Thank you for this opportunity to comment on the August 28, 2007 draft of the Ventura MS4 Permit (2nd Draft Ventura Permit). Thank you as well for meeting with CASQA representatives to discuss CASQA's approach to providing a comprehensive strategy for managing stormwater quality and how it relates to the Ventura municipal stormwater permit. Please accept these comments regarding the 2nd Draft Ventura Permit submitted by the California Stormwater Quality Association (CASQA) on behalf of its members. CASQA is composed of public entities and individuals including cities, counties, special districts, industries, and consulting firms throughout California. Our membership represents the vast majority of the Phase 1 MS4s regulated in California. CASQA was formed in 1989 to recommend approaches for stormwater quality management to the California State Water Resources Control Board (State Water Board). CASQA continues to assist the State Water Board with the development and implementation of stormwater regulations.

Although CASQA typically refrains from commenting on individual municipal permit issues, the 2nd Draft Ventura Permit proposes the development and use of municipal action levels (MALs). This is the first time MALs have been proposed in California, and they have important implications for MS4 programs statewide. CASQA is commenting on behalf of its membership, which is likely to be impacted should an MAL precedent be set in the Ventura MS4 Permit. Therefore, our comments focus on the proposed MALs and their use as a numeric compliance metric for the technology-based standard of maximum extent practicable (MEP). We concur with the concept of Action Levels as suggested by State's Blue-Ribbon Panel and the Regional Water Board's need to improve the accountability of NPDES permittees' and to better ensure that water quality will be improved in a reasonable time frame. However, we strongly disagree with the MAL approach as revised from that proposed in the 1st draft permit (December 27, 2006) and suggest an alternative approach for your consideration.

Developing and Implementing MALs

The MALs in the 2nd Draft Ventura Permit appear to be similar to the Action Levels in the Water Board's 8-member expert Blue-Ribbon Panel Report, however, in reality the MALs in the 2nd Draft Ventura Permit are in conflict with the Blue-Ribbon Panel Report Findings on two major principles regarding the purpose and use of Action Levels: the current infeasibility of numeric effluent limitations for municipal stormwater, and the definition of MEP.

Numeric effluent limitations are infeasible – Below is a side-by-side comparison of language from the Blue-Ribbon Panel Report and the 2nd Draft Ventura Permit [underline added].

Water Boards Blue-Ribbon Panel Report

"It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges..."

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"Discharges of storm water from the MS4 to waters of the U.S. shall not exceed the Municipal Action Levels (MALs) for the pollutants listed..."

To determine whether numeric effluent limitations were appropriate for stormwater discharges the State Water Board convened a panel of experts in September 2005 (Blue-Ribbon Panel) to address the following question: "Is it technically feasible to establish numeric effluent limitations or some other quantifiable limit for inclusion in storm water permits?" The Blue-Ribbon Panel's Report, issued in June 2006, unequivocally states the position that numeric limits for municipal stormwater discharges are not feasible at this time (Blue-Ribbon Panel Report, pg. 8). And yet, the MALs proposed in the 2nd Draft Ventura Permit are defined as not-to-exceed limits on the discharge of pollutants in stormwater discharges (i.e., numeric effluent limits) – in direct conflict with the Water Board's expert Blue-Ribbon Panel Report.

Municipal Action Levels (MALs) ≠ Maximum Extent Practicable (MEP) – Below is a side-by-side comparison of language from the Blue-Ribbon Panel Report and the 2nd Draft Ventura Permit [underline added].

Water Boards Blue-Ribbon Panel Report

*"For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit is basically not possible. However, the approach of setting an "upset" value, which is clearly above the normal observed variability, may be an interim approach which would allow "bad actor" catchments to receive additional attention. For the purposes of this document, we are calling this "upset" value an **Action Level** because the water quality discharge from such locations are enough of a concern that most all could agree that some action should be taken ..."*

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"A running average of twenty percent or greater of exceedances of any MAL will create a presumption that the Permittee(s) have not complied with the Maximum Extent Practicable (MEP) provision in Part 4 A.2., and have failed to implement adequate storm water control measures and BMPs to comply with the MEP standard."

Maximum extent practicable is one of the standards of performance for municipal stormwater quality programs. As such, MEP defines conforming performance. When the Water Board's Blue-Ribbon Panel proffered the concept of Action Levels, they did not do so to define MEP. In their report they define Action Level as an "upset value...clearly above the normal observed variability...enough of a concern that most all could agree that some action should be taken..." In other words, an Action Level defines an aberrant condition. And yet, the MALs proposed in the 2nd Draft Ventura Permit are equated with MEP – counter to the Water Board's expert Blue-Ribbon Panel Report Findings.

At the September 20, 2007 Regional Water Board workshop in Ventura on the permit, there was a brief discussion about the standing of the Water Board's BRP Panel Report. The State commissioned the Blue-Ribbon Panel Report as an independent assessment of the feasibility of numeric effluent limitations. "State Water Board directed staff to convene a panel of storm water experts to examine the feasibility of developing numeric limits for storm water permits"¹. Considerable time, expense, and attention were expended on it by the eight expert Panel members, state regulators, permit holders, and stakeholders. Significant discussions and decisions regarding the question put to the Panel were set aside for over a year and a half pending the Report's release. The Panel's recommendations are contained in a "Statement of Findings" and the report is signed by each of the eight experts. Therefore, CASQA members expect the Blue-Ribbon Panel Report to have a very significant standing in regards to stormwater policy in the State of California.

On the question of the degree to which a local Regional Water Board should follow statewide guidance and policy, the Water Board's have collectively established a clear policy statement²:

At their October 2006 meeting the Water Boards Water Quality Coordinating Committee (WQCC) adopted the following:

- *On questions of law and overarching policy the State Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action.*
- *Water Boards are committed to developing procedures and policies to minimize inappropriate inconsistency.*

Clearly, the purpose and use of the MALs as proposed in the 2nd Draft Ventura Permit are in direct conflict with this policy statement as the MALs are inappropriately inconsistent with the Findings of the Water Board's expert Blue-Ribbon Panel.

Although CASQA is raising serious concerns about the MALs as proposed, we are a professional association "dedicated to the advancement of stormwater quality management, science and regulation" and we believe MALs can be developed that are consistent with the Blue-Ribbon Panel Report Findings.

¹Blue-Ribbon Panel Report , June 19, 2006

² Water Boards Strategic Planning Stakeholder Summit workbook, March 12-13, 2007

CASQA recommends that the Regional Water Board adopt an approach, consistent with the expert Blue-Ribbon Panel Report, where the Action Levels are:

- 1) derived as defined by the Blue-Ribbon Panel, including using the most preferred and relevant datasets – local datasets;
- 2) set at a level to define “bad actors” / atypical or significant nonconforming performance; and
- 3) used to trigger aggressive efforts by the permittees to investigate the cause of atypical or significant nonconforming performance and implement appropriate corrective actions.

Quantifiable Approach to Municipal Stormwater Program Implementation and Permit Compliance Determination

One of the primary reasons the Regional Water Board has proposed MALs to determine whether the MEP standard has been achieved is because they would “clearly express[es] the standard for expected outcomes.”³ CASQA understands this concern and has been working diligently with municipal stormwater program managers, the State, and environmental interests to address this issue. These efforts have resulted most recently in the publication of a CASQA White Paper, “Quantifiable Approach to Municipal Stormwater Program Implementation and Permit Compliance Determination.” In the White Paper, CASQA has combined the Action Level concept as recommended by the State Water Board’s Blue-Ribbon Panel, with CASQA’s Effectiveness Assessment method⁴, and existing regulatory options for NPDES permitting and TMDL implementation into a comprehensive strategy for managing stormwater quality.

Through these efforts CASQA has introduced two significant enhancements to compliance determination: 1) triggers and 2) measures of achievement. For the triggers, CASQA has developed written expressions and numeric values suitable for refinement and pilot testing. For the measures of achievement, five of the six outcome levels in CASQA’s Effectiveness Assessment method are measures of achievement. These enhancements will take compliance determination from a subjective and difficult process to a more objective and transparent task, while also making compliance determination relevant and meaningful for water quality protection. CASQA believes the proposed quantitative approach advances the science of stormwater quality management. As a result, the approach will provide better regulatory accountability for stormwater programs and facilitate water quality protection in a cost-effective manner. CASQA’s approach also provides the “clarity and certainty in compliance expectation”⁵ sought by the Regional Water Board and is in unison with the Findings of the Water Board’s Blue-Ribbon Panel.

In closing, we concur with the Regional Water Board in that MALs can and should be part of an approach to regulating municipalities. We are working to better clarify how MALs may be incorporated into permits. However, our fundamental difference with the approach presented in

³ Regional Water Board Workshop Item Number 5: Item Summary, Public Workshop to Receive Comments on the Second draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit, August 28, 2007, NPDES Permit No. CAS004002, p. 2

⁴ CASQA Municipal Stormwater Program Effectiveness Assessment Guidance, May 2007

⁵ op. cit., Regional Water Board Workshop Item Number 5: Item Summary, p. 9

the 2nd Draft Ventura Permit is in using the values as numeric effluent limitations, which have recently been confirmed as infeasible and as definitions of compliance end points (i.e., MEP) – as opposed to instigating increased action in addressing pollutants of concern. We would welcome the opportunity to meet with you to discuss how such quantifiable measurements may be included in a municipal permit to provide better accountability and to protect and improve water quality.

We thank you again for the opportunity to submit these comments and to provide our thoughts in developing a more proactive and constructive stormwater quality management program. If you have questions regarding our proposal or comments please contact me or our Executive Director, Geoff Brosseau.

Yours truly,

A handwritten signature in black ink, appearing to read "Bill O. Busath". The signature is fluid and cursive, written in a professional style.

Bill Busath, Chair
California Stormwater Quality Association

Attachment – CASQA White Paper – Quantifiable Approach to Municipal Stormwater Program
Implementation and Permit Compliance Determination