

Construction Industry Coalition on Water Quality

October 15, 2007

Submitted Via Email to: seconddraftVCMS4@waterboards.ca.gov

Dr. Xavier Swamikannu
320 W. Fourth Street, Suite 200
Los Angeles, California 90013

Re: Comments from the Construction Industry Coalition on Water Quality Concerning the Draft NPDES Permit No. CAS004002 – Ventura MS4.

Dear Dr. Swamikannu:

On behalf of the more than 3,300 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we would like to thank the Los Angeles Regional Water Quality Control Board (Regional Board) for this opportunity to express our concerns about the Second Draft (2nd Draft) Order.

CICWQ is comprised of the four major construction and building industry trade associations in Southern California. These are the Associated General Contractors of California (AGC), Building Industry Association of Southern California (BIA/SC), the Engineering Contractors Association (ECA), and the Southern California Contractors Association (SCCA). The underlying membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders throughout the region and the state, who provide the necessary infrastructure and support for the region's business and residential needs. The 2nd Draft Order's proposed permit conditions would, if adopted, affect the above-referenced organizations' members, thousands of construction businesses, and tens of thousands of employees working to meet the demand for modern infrastructure and housing in Ventura County. CICWQ supports scientifically-based, cost-effective efforts to improve water quality, and its comments enclosed herein were developed accordingly.

As you know, we have had frequent dialogue with you and your staff for the past year since the 1st Draft Order was released in December 2006. In that time we have reiterated our position to you regarding the contents of the 2nd Draft Order, Section F, Development Construction Program (page 61 of 115), and have offered what we and others believe are proactive, progressive, and practical solutions to prevent and limit the amount of sediment that is discharged from active construction sites. Despite this pro-active approach and "raising the bar" of construction site best management practices (BMPs), the 2nd Draft Order continues to require a "wet season" grading prohibition on certain sites and locations within Ventura County.

A "wet season" grading prohibition is an unnecessary requirement for CICWQ and its member companies to accept considering the alternative, enhanced BMP approach we have advocated to you and the economic impact this prohibition will place on our member companies by idling entire construction fleets and manpower for more than six months. In addition, it is a requirement that is technology-forcing in that in order to meet the numeric effluent limitations it places on those projects seeking a "Grading Prohibition Variance" to construct during the wet season, advanced sediment treatment systems must be used. As you well know, these systems are the only construction BMP practice shown to consistently achieve an effluent quality meeting the 50 NTU and 100 mg L⁻¹ TSS concentration standards you propose.

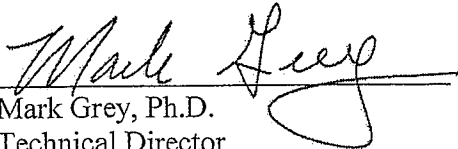
Overlying this requirement to meet a numeric effluent limit is the technological challenge of operating such systems, their well-known toxicity problems, and the complete lack of regard for the nature of the receiving water that a project would discharge into and its sediment characteristics (i.e. natural background concentrations and loads of sediment). For the sake of brevity, we cite by reference and encourage you to review the comments of the BIA of Southern California concerning grading restrictions, the inherent problems of using advanced sediment treatment as pointed out by the Blue Ribbon Panel, and the Regional Board's consistent disregard for the nature of receiving waters in establishing storm water permit conditions.

We have submitted to you, in writing and during oral presentations, an enhanced BMP implementation approach that specifies the selection of a minimum suite of BMPs that a site operator would implement to ensure that discharges will be controlled and minimized, and we draw your attention again to the increase in site inspection requirements for both the site operator and the local enforcement agent. Specifically, we cite pages 81 to 88 from the redline comment package we submitted to you and staff on July 21, 2007. In this submittal, we provided to the Regional Board a comprehensive approach for protecting high risk construction sites that pose a ~~greater threat to water quality than do most sites and offers a clear alternative to the content of the 1st and 2nd Draft Orders.~~ In addition, the approach we are suggesting is consistent with the State Water Resources Control Board's (State Board) direction in using a risk-based approach to determining the types and combinations of BMPs that must be used at California construction sites, and it is consistent in its application of enhanced, rain event readiness procedures (including pre-during- and post-inspection measures and mandatory reporting) that all site operators must use.

We are disappointed that you and your staff did not incorporate any of the information we submitted in July 2007 in our redline comment package and chose instead to continue to require a grading prohibition or use advanced sediment treatment systems to achieve an arbitrary effluent limitation that bears no relationship to the nature of the receiving water. The approach you are advocating is inconsistent with the State Board's approach in revising the General Construction Permit and is yet again an example of inconsistency in regulatory approach between the Regional and the State Board. We urge you to eliminate the "wet season" grading prohibition and instead adopt a risk-based approach to determining construction site BMPs that is consistent with the direction of the State Board and that reflects the elements of an enhanced construction site BMP implementation approach.

If you have any questions, please feel free to contact me at (909) 396-9993 or mgrey@biasc.org.

Respectfully,

A handwritten signature in cursive script that reads "Mark Grey". The signature is written in black ink and is positioned above a horizontal line.

Mark Grey, Ph.D.
Technical Director
Construction Industry Coalition on Water Quality