



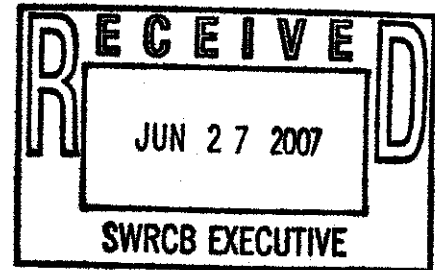
California Stormwater Quality Association™

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

6/28/07 Workshop
WQ Enforcement
Deadline: 6/14/07 Noon

June 26, 2007

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



Subject: Water Quality Enforcement Workshop

Dear Ms. Her and Members of the Board:

On behalf of the California Stormwater Quality Association (CASQA), thank you for the opportunity to provide comments on policy direction for water quality enforcement. CASQA understands that the primary goal of the June 28, 2007 workshop is to gather input in preparation for the revision and reissuance of the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy, and that the State Water Board is seeking input from the public and stakeholders on the Water Boards' approach to enforcement. CASQA appreciates the opportunity to provide early comments in an informal setting.

CASQA is composed of stormwater quality management organizations and individuals, including both Phase I and II cities and counties, special districts, industries, and consulting firms throughout the state, and was formed in 1989 to recommend approaches to the State Water Board for stormwater quality management in California. In this capacity, we have assisted and continue to assist the State with the development and implementation of stormwater permitting processes.

To ease review of our comments, we have organized them according to questions 2-6 (with **emphasis added**) posed in the Public Workshop Notice regarding issues identified by the State Water Board to focus comments and discussions on water quality enforcement.

2. What **factors** should the Water Boards consider in ranking their **enforcement priorities**?
What particular water quality issues should the Water Boards make a priority for enforcement?

CASQA recommends the Water Boards prioritize their efforts on the regulatory programs that are characterized by low levels of compliance and are resulting in little corrective action. CASQA is concerned that there is a general lack of compliance review being conducted by Water Boards, which creates a disincentive for compliance and effectively penalizes compliant and proactive permittees. Additionally, Water Boards should prioritize their efforts on referrals received from local agencies. Responding promptly to these referrals communicates the vital role of enforcement in maintaining credible regulatory programs at both state and local levels and builds cooperative and synergistic relationships that can offset resource constraints.

3. How can and should the Water Boards **measure the effectiveness** of their **water quality enforcement programs** in such areas as compliance rates, environmental quality indicators, etc.

To assess the effectiveness of the State's enforcement programs, CASQA recommends the Water Boards focus on permittees' compliance with permit provisions. Additionally, CASQA commends to the Water Boards its Municipal Stormwater Program Effectiveness Assessment Guidance, which was developed for MS4 compliance programs that administer and enforce many local regulatory programs related to the protection and management of surface water quality. The conception of effectiveness assessment in this guidance document is directly applicable to the Water Boards' water quality enforcement programs. Candidate programmatic indicators include:

- *how quickly enforcement actions take place once a violation is identified,*
- *how expediently the violation was corrected,*
- *the lack of subsequent violations,*
- *declining number of and severity of pollution incidents, and*
- *the lack of counter lawsuits against the enforcement agency.*

CASQA strongly recommends the Water Boards generally not use environmental quality indicators for assessing the effectiveness of the State's enforcement programs related to stormwater. Stormwater quality professionals generally concur that it is very difficult and therefore rare to establish a cause-and-effect relationship between an action taken on land to reduce pollutants carried in stormwater and the quality of the receiving waters. This presumed cause-and-effect relationship is difficult to establish because of several factors, including:

- *Highly variable water quality conditions of stormwater and of natural systems*
- *Degrees of separation phenomenon (temporal and spatial) between actions and effects*
- *Complicating effects of receiving waters integrating inputs from all transport mechanisms and from direct sources*

Additionally, the legal standards for demonstrating that a formal enforcement action is warranted are high – much higher than can generally be established using environmental quality indicators for the reasons described above.

4. What **information on enforcement** should the Water Boards make available to the public through their websites?

CASQA recommends the Water Boards develop and disseminate an annual report on their enforcement activities. Individual compliance and enforcement order documents are published on a weekly basis to the Water Boards' website but there does not appear to be a readily available comprehensive report with summary information and comparative statistics and analyses region-by-region. Key indicators of effectiveness could be used in these comparative statistics and analyses and the use of the same indicators region-by-region would have the added benefit of promoting statewide consistency.

5. How can the Water Boards **more effectively use existing water quality enforcement tools?**

CASQA recommends the Water Boards analyze their use of existing tools and look for opportunities for optimization. The analysis should include answering questions such as:

- *Stormwater permit non-filers – Should penalties for non-filers be more severe?*
- *Response timelines – Should Water Boards have to meet response deadlines?*
- *Follow-through – How complete is the Water Boards' follow-through? How many Notices of Violation actually result in correcting the problem?*

CASQA also recommends the Water Boards coordinate as much as possible with local agencies, who often have more direct and detailed information, when considering enforcement actions at industrial and construction sites.

5. (cont') Are there specific **additional enforcement tools, methodologies, or protocols** you would recommend?

CASQA recommends the Water Boards consider using CASQA's Progressive Approach – in particular its effectiveness assessment methods and its action levels (as defined by the State's expert Blue-Ribbon Panel) as new compliance determination and enforcement methodologies and tools. These new methods and tools are specifically designed to yield a clearer and more accurate assessment of the effectiveness of a municipal stormwater program and the basic concepts can be used for the same purpose for any regulatory environmental program. CASQA's methods and tools move the state of assessing environmental program effectiveness from level of effort to level of achievement measures, which can then be more directly tied to water quality. And consistent with the State's expert Blue-Ribbon Panel findings, CASQA's action levels are designed and set at levels that may be used to identify and focus attention on atypical performance.

6. What are the most significant inconsistencies, if any, between the Water Boards in their enforcement activities? What suggestions do you have to address any **inappropriate inconsistencies?**

The apparent lack of a readily available comprehensive annual report on the Water Boards' enforcement program makes it hard to identify inconsistencies. So, as we recommended in response to question 4, CASQA recommends such reports be generated and provided to the public. CASQA also recommends the Water Boards develop an Enforcement Consistency Guidance document to accompany the Policy that would identify how one selects the type of enforcement action and what criteria should be used. Local agencies have such documents and they are very helpful in avoiding inappropriate inconsistencies. The Water Boards should also provide staff with training on the Policy and guidance.

In closing, thank you for your consideration of our comments. Please feel free to contact me at 916-808-1434 if you have any questions regarding these comments, alternately you may contact Geoff Brosseau, Executive Director at 650-365-8620.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Busath". The signature is fluid and cursive, with the first name "Bill" and last name "Busath" clearly distinguishable.

Bill Busath, CASQA Chair

cc: Dorothy Rice, Executive Director – State Water Board
Bruce Fujimoto – State Water Board
CASQA Executive Program Committee
CASQA Board of Directors