



## California Stormwater Quality Association®

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(6/16/15) Board Meeting  
Comments to A-2236(a)-(kk)  
Deadline: 6/2/15 by 12:00 noon

June 2, 2015

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board



Subject: Comments to A-2236(a)-(kk); In Re Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit (Order R4-2012-0175)

Dear Ms. Townsend:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) revisions to the Proposed Order *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (Revised Draft Order). In its Revised Draft Order, the State Water Board continues its review of the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) November 2012 adoption of the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within Los Angeles County (hereinafter referred to as the "Los Angeles MS4 Order"), and responds to comments submitted on the State Water Board's November 2014 Proposed Order.

CASQA is a nonprofit corporation with approximately 1,200 members throughout California, including hundreds of local public agencies. About 300 CASQA members hold MS4 permits issued under state and federal law (referred to as National Pollutant Discharge Elimination System or NPDES permits and waste discharge requirements). Accordingly, on behalf of its membership, CASQA continues to be very interested in the Revised Draft Order since it provides guidance on the structure and implementation of receiving water language provisions in California permits.

In summary, CASQA continues to generally support the Revised Draft Order, and generally supports the State Water Board's revisions contained in the Revised Draft Order. CASQA's comments provided herein identify the key revisions that CASQA specifically finds helpful. Further, CASQA emphasizes that the State Water Board's general recognition of alternative compliance pathways as expressed in the Revised Draft Order is just the first step towards addressing the difficulty that municipal agencies face in trying to comply with receiving water limitations. CASQA, its members, the State Water Board, regional water quality control boards ("regional boards"), and other stakeholders must continue to work together and seek reasonable solutions that protect water quality and balance municipal funding constraints moving forward.

## **I. CASQA's Specific Comments on Certain Revisions**

CASQA appreciates that the State Water Board received significant comments from many diverse interests, and that the Revised Draft Order provides thoughtful responses to its consideration of such comments. There are certain revisions that CASQA particularly finds helpful, and these revisions are identified here. There are also a few revisions that CASQA believes may be improved with additional modification, and those are identified here as well.

- Footnote 82, page 27 - CASQA appreciates the clarification with respect to what constitutes baseline under State Water Board Resolution No. 68-16.
- Footnote 88, page 29 and revisions to Fact Sheet language, pages 32-33 - CASQA supports the State Water Board's proposed revisions that recognize the discharge of some stormwater is to the maximum benefit to the people of the state, and conversely that capturing all stormwater would be detrimental to the people considering the economic cost. Specifically, on page 33, CASQA supports the new language recognizing that the capture of all stormwater from all storm events "would be an enormous opportunity cost that would preclude MS4 permittees from spending substantial funds on other important social needs." We appreciate the recognition that the costs of capturing and treating stormwater must be considered in the context of the other needs MS4 permittees are responsible for funding, and that treating all stormwater under all conditions may not be feasible or to the maximum benefit of the people of the state.
- Footnote 110, page 40 - CASQA recognizes that Final TMDL deadlines adopted into Basin Plans can only be revised by a Basin Plan amendment. However, and as stated in footnote 110, it is often difficult and infeasible for municipal stormwater dischargers to meet final TMDL deadlines. To that end, CASQA supports the inclusion of this footnote in the Revised Draft Order. However, CASQA requests that the State Water Board go one step further and indicate that in such situations, regional water boards should look to amend Basin Plans to extend timelines rather than solely relying on the issuance of time schedule orders. Time schedule orders provide only modest protection to municipal stormwater dischargers in these situations; thus, it is more appropriate to amend the Basin Plan to extend such timelines.
- Watershed Management Program Resubmittal Process, page 44 - CASQA supports the revision to remove the "six-year" requirement for an updated reasonable assurance analysis, and replace this timeframe for a date specific. CASQA further supports the discretion provided to the Los Angeles Water Board's Executive Officer to waive this requirement under certain circumstances.
- Pages 49 - 51 - Although CASQA continues to be concerned with the Revised Draft Order's ultimate rejection of allowing final compliance to be achieved through implementation of the stormwater retention standard contained in the Los Angeles MS4 Order, CASQA finds the proposed revisions appropriate in that they defer to the Los Angeles Water Board's Executive Officer for determining what additional actions may be

appropriate. Further, and as discussed further below in section II, CASQA supports the following new statement: “We additionally recognize that municipal storm water management is an area of continued development and with continued research and data evaluation, water quality standards may evolve and become more nuanced or sophisticated over time.” Considering the challenges that municipal stormwater agencies face in balancing limited resources and the need to comply with stringent water quality standards, we believe that this issue cannot be understated and that we must all continue to evaluate the reasonableness of strictly applying water quality standards to municipal stormwater.

- Footnote 141, page 55 - CASQA supports the need to develop an alternative compliance option for small MS4s permitted under the State Water Board’s General Order, and is committed to working with the State Water Board to help develop such an option.
- Pages 62-63 - CASQA appreciates removal of reference to the 2010 USEPA Memorandum, and replacement of such references to the more recent 2014 USEPA Memorandum.
- Compliance Determination for Commingled Discharges, page 76 - With respect to the proposed revision to 2.b.iv.(3), CASQA notes that the additional language appears to actually undermine the intent of this provision, and adds an additional burden for a permittee to demonstrate that its discharge did not cause or contribute to an exceedance of a receiving water limit. Specifically, under option 3, a permittee would now need to demonstrate that the cause of exceedance was from an alternative source **and that the pollutant was not in the permittee’s discharge**. Rather than requiring a demonstration that the pollutant was not in the discharge all together, CASQA requests the following wording to reflect that the appropriate demonstration should be “*and that the pollutant was not discharged from the Permittee’s MS4 at a level that would cause or contribute to an exceedance in the receiving water.*”

## II. Steps Moving Forward

As stated, CASQA appreciates the progress made with respect to the State Water Board and the public’s understanding of how difficult it is for municipal stormwater to not cause or contribute to violations of receiving water limitations, everywhere, at all times. The Revised Draft Order appears to recognize this difficulty, and accordingly, seeks to provide regional water boards discretion on how to permit MS4s. To that end, CASQA supports the Revised Draft Order. However, CASQA would be remiss if it did not also point out that this is just one step forward, and that municipalities will continue to struggle to comply with receiving water limitations, and other water quality standard based limitations, in MS4 permits.

Furthermore, it should be recognized that the development of watershed management plans and enhanced watershed management plans (WMP/EWMPs), as articulated in the Los Angeles MS4 Order, is an expensive endeavor. Implementation of such plans will be even more costly. While such approaches are appropriate as they allow municipalities to solve water quality issues in a holistic manner, strict compliance with receiving water limitations (i.e., water quality standards)

will continue to be a challenge for municipalities. Accordingly, CASQA encourages the State Water Board, regional water boards, MS4s, and other interested stakeholders to continue discussions with respect to how water quality standards should be applied to municipal stormwater. As aptly stated in the Revised Draft Order, “municipal storm water management is an area of continued development and with continued research and data evaluation, water quality standards may evolve and become more nuanced or sophisticated over time.” CASQA is committed to working with the State Water Board with respect to this need for ongoing data evaluation, and towards modifying water quality standards as appropriate as applied to municipal stormwater.

### **III. Conclusion**

CASQA respectfully requests that the State Water Board adopt the Revised Draft Order with the suggested changes contained herein. However, thoughtful discussion and analysis with respect to municipal stormwater and compliance with water quality standards must not stop here. We must continue to evaluate data and other information, as it is available to determine what are reasonable expectations for municipal stormwater, and its compliance with water quality standards. CASQA looks forward to working with the State Water Board and others on this fundamental issue.

If you have questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Gerhardt Hubner, Chair  
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee