May 29, 2008

Ms. Tracy Escogue, Executive Director
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comments for the Ventura County NPDES MS4 Draft Permit (NPDES Permit No. CAS004002)

Dear Ms. Escogue:

Charles Abbott Associates Inc., (CAA) strives to assist our clients in meeting the goals of the third draft of the Ventura County NPDES MS4 Permit. CAA is committed to providing our municipal clients with assistance in fulfilling regional water quality objectives. It is with this in mind that we submit the following comments regarding the current version of the draft Ventura County NPDES MS4 (Permit). We have identified eight (8) areas that we believe require further clarification and discussion before adoption by the Los Angeles Regional Water Quality Control Board ("Regional Board" or "Board"). We appreciate this opportunity to submit comments and thank Regional Board staff for their recent efforts to clarify some of our initial concerns. CAA believes that with minor clarification and revision, the new Permit will enhance local and State Water Quality objectives. CAA therefore submits the following comments and suggested alternatives for the Board's consideration; we have identified those areas of general and specific concerns in the following sections.

I. Specific Comments & Suggestions

The following comments are specific issues that CAA believes it is critical to resolve prior to further proceedings.

A. Monitoring Major Outfalls

Parts 2 and 3 of the draft Permit discuss monitoring programs and requirements related to "major outfalls." Currently, the draft Permit indicates that all major outfalls, as defined by 40 C.F.R.

§122.26 (b) (5) and (6), shall require monitoring at all times. CAA believes that such monitoring of all major outfalls is logistically and practically impossible, both financially and physically. As the Board is well aware, roughly 80% of the geographic land area in Ventura County is currently undeveloped. As written, in addition to the Municipal Separate Storm Sewer System (MS4) conveyances greater than 36" in diameter, all areas that drain 50 acres or more would be required to be monitored throughout the six-year Permit term. We believe this provision significantly overprotects the watershed to the detriment of physical and financial resources. Such an effort to monitor all such storm water conveyance is well beyond that which is needed or necessary. An alternative to such an extensive and potentially unnecessary monitoring program could be to develop a ranking or risk based approach or procedure for selecting high, medium and low risk discharge locations. Ranking based on risk could easily be developed using existing land use analysis. Alternatively, the Board could consider a single or multi-year monitoring program of areas to assess the actual pollutant loading. Where results from these identified discharges show no water quality exceedances, monitoring periods could be extended for longer and longer periods until a trigger event occurs, such as an exceedance of receiving water quality limits. Either method would allow the Permittees to would comply with anti-degradation mandates while maximizing costs for application to truly impaired water bodies.

B. Municipal Action Levels

Part 2.1 and 2.3 of the draft Permit provides that, "[c]ontinued exceedances after Year 3 of the operative MAL(s) shall create a presumption that the permittee(s) have not complied with the MEP provision in subpart 4.A.2, and have failed to implement adequate storm water control measures and BMPs to comply with the MEP criteria." Additionally, sub-part 2.3 provides that, "[t]he absence of MAL exceedances does not give rise to a presumption that the permittee is complying with the MEP criteria." CAA is gravely concerned that inclusion of the "presumption" in both compliance and non-compliance is unnecessary, restrictive and perilous. For MS4's that have not complied with the Permit, the Board should easily be able to find instances of non-compliance; the presumptive clause is therefore unnecessary. Additionally, the presumptive clause in sub-part 2.3 seems unnecessary and contrary to generally accepted legal principals. If a Jurisdiction is in full compliance with receiving water limitations, it is in

compliance; if not, it is subject to the enforcement capabilities of the Regional Board. Presumptions are simply unnecessary.

C. Receiving Water Limitations

The "Receiving Water Limitations" section found in Part 3.3(a) states that, "[u]pon an exceedance(s) of water quality water quality objectives which may be inferred from the results of the receiving water monitoring programs… all Permittee(s) upstream of the point of discharge shall notify the Regional Water Board, within 30 days of any such inference of exceedance…" In discussions with other Permittees it has been questioned whether the date upon which the "inference of exceedance" occurs is: 1) the date the Permittee becomes aware of an actual exceedance, e.g., the date a sample result is reviewed; or 2) whether it is another date. The significance can be important due to the 30 day limit in which the Permittee must provide the Regional Board with notice. Can the Board clarify whether: 1) the date upon which the inference occurs is either: 1) the date the sampling result is received; or 2) the date the sample was collected.[1] CAA recommends and believes, based on the plain reading of the terms, that the prior is true; that the 30 day reporting begins once the Permittee becomes aware of the inference of an exceedance via a sampling or test result.

D. Redevelopment Project Area Master Plan (RPAMP)

The "RPAMP," as identified in Part 5.E.IV.4 (page 60) defines certain procedures that a Jurisdiction can pursue for identified redevelopment projects. The procedures for approval of a RPAMP are, in our view, extensive. CAA is greatly concerned that for small related projects, such as intercity Brownfield projects, the procedures are unduly restrictive. CAA believes that the Board should provide some mechanism or less restrictive procedures for small categorical projects. For example, in lieu of the review and approval by a "technical panel of the Local Government, Commission or an equivalent state or regional planning agency…," and then the review and approval by the Regional Board, a provision could be inserted simply adding, for

[1] The question leaves open the potential for Permittees to inadvertently miss reporting deadlines, and in doing so not comply with provisions of the Permit. It is not uncommon for some sample data/parameters to be received several weeks after sample collection. Thus, routine sample processes are often out of the Permittees' control. Contra, some sample results, such as pH, DO, and other parameters are relatively immediately available and exceedances can be reported forthwith.

example, that, "where the Jurisdiction believes this process is too restrictive for the scope and size of the particular redevelopment project, the Jurisdiction can apply directly to the Regional Board's Executive Officer for exemption or direct approval."

E. Pre-Developed Conditions

Part 7, "Definitions," of the draft Permit defines, "Pre-Developed Condition" as:

> "Native vegetation and soils that existed at a site prior to first development. The pre-developed condition may be assumed to be an area with the typical vegetation, soil and storm water runoff characteristics of open space areas in coastal Southern California unless reasonable historic information is provided that the area was atypical."

This definition leaves open the potential for great error in determining what constitutes the "…typical vegetation, soil and storm water runoff characteristics of open space areas in coastal Southern California…"; therefore potentially causing significant and differing defining baselines for developers, Permittees, and regulatory agencies. This definition, a significant element in the Development Planning program, **must** be clarified to ensure clear compliance parameters. For example one entity could easily define "pre-development" as that of the mid-1700's, while other could define it based on the definition of "Development" found in this Part of the draft Permit, Part 7.[2] Hence, the start point could reasonably be interpreted as that time before "development" as defined as before "…any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and any other non-residential projects, including public agency projects; or mass grading for future construction.

F. Development Construction BMPs

Specified sets of Development Construction BMPs are listed in the draft Permit as Tables 6, 7, and 8. These tables list specific stormwater BMPs for construction sites per CASQA and Caltrans guidelines. Although these Development Construction Program (DCP) measures include the operative term "an effective combination of the following BMPs…" it is

[2] "Development - means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and any other non-residential projects, including public agency projects; or mass grading for future construction." Page 93 of 115. draft Ventura Permit Dated April 29, 2008.

recommended that the Board consider including additional Permit terms allowing Permittees and developers to utilize new or alternative treatment BMPs where it can be shown or proven that other BMPs would equally perform treatment. A provision following F., 4., could be added to the effect, "where the Developer or Jurisdiction can show equal or greater protection through alternative treatment BMPs, and following review by Regional Board staff, the Jurisdiction can allow such alternative or experimental treatment BMPs." Further, this provision could include a provision stating that if the alternative treatment does not perform to expected treatment levels or if an exceedance occurs then the Developer must install, at their own expense, the recommended set of treatment BMPs. Such provisions would encourage developers and their engineers to examine new and developing treatment technologies – ones that may in fact work better than those listed.

G. Other

Part 5., G., 1., of the draft Permit, discusses a Storm Water Pollution Control Plan (SWPCP) for Public Agency construction sites whose development disturbs less than one acre. Additionally, the reference in this sub-part indentifies Table 5 as the appropriate table. First, should this sub-part reference the construction BMPs as found in Table 6 or is Table 5 correct? Secondly, Part 5.F.(a) provides that each project 1 acre or greater must comply with all requirements as found in "F.1 to F. 5." Sub-part F.4 covers projects 5 acres or greater. It is unclear whether all projects greater than 1 acre also require those measures found in F.4. If so, it is unclear why there is a distinction between the 1 and 5 acre distinctions. Lastly, does the text in this sub-part, "F.1 - F.5" intentionally include itself or did the text intend to reflect only F.1 – F.4.?

II. General Comments & Suggestions

A. TMDL Chart Clarification

The charts listing limitations for pollutants throughout the TMDL section are not clearly formatted making them hard to understand. Will the Board reformat these charts and allow time for Permittees to review and comment, if necessary, prior to Permit adoption?

B. Costs of Compliance

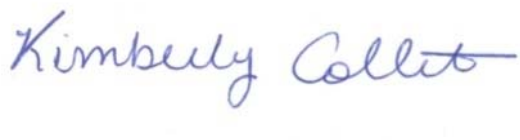
The section titled "FINDINGS," sub-part E, number 7, paragraph 5 and 6 reference that Jurisdictions can, "…levy service charges, fees, or assessments sufficient to pay for compliance with this Order." Additionally, the paragraphs continue that the "[l]ocal agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership." Although these statements are partially true, that is Jurisdictions can charge fees for inspections and direct services such as plan reviews, unless a 2/3 voter approval is obtained Jurisdictions can not levy assessments for general storm water programs. The statements should be revised to reflect, more accurately, these abilities of local agencies and Jurisdictions. In part, the statement did in one instance reflect such language. The statement that the local agency can "defray costs of a program without raising taxes…" is true to the extent that local agencies can charge the actual costs related to plan and inspection reviews, inspection costs, and similar direct and identifiable services.

III. Conclusions & Recommendations

In conclusion, CAA reiterates it's appreciation to the Board and it's staff in allowing further comment and suggestion on this the third draft of the Ventura County NPDES MS4 Permit. We believe that with minor clarification and revision, the Board will achieve its objective in improving the state's water quality. We know the municipal entities involved equally share this goal. We therefore suggest and propose that the Board and Staff consider delaying further proceedings on the Permit until these and other prior comments have been fully addressed and considered.

If you have questions, comments, or require additional information regarding these comments, please contact at the above contacts or alternatively at kimberlycolbert@caaprofessionals.com.

Yours truly,



Kimberly Colbert, Director

Environmental Services Division
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