

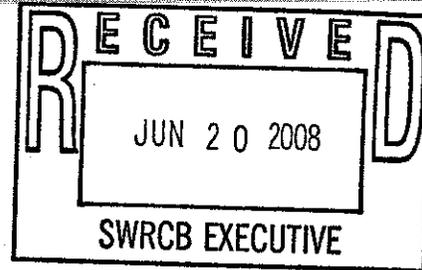


California Stormwater Quality Association[®]

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

June 20, 2008

Ms. Tam Doduc, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Subject: CASQA comments Water Boards proposed Strategic Plan Update: 2008-2012, Version Three (Draft Update)

Dear Ms. Doduc:

Thank you for this opportunity to comment on the May 30, 2008 proposed Strategic Plan Update: 2008-2012, Version Three¹ (Draft Update). Please accept these comments regarding the Draft Update submitted by the California Stormwater Quality Association (CASQA) on behalf of its members². CASQA participated in the March 2007 2-day Water Boards Strategic Plan Stakeholder Summit and has reviewed each of the previous three drafts of this document (October 23, 2007; November 30, 2007; January 25, 2008).

CASQA strongly supports the goal and intent of the Water Boards reviewing and updating their Strategic Plan, including the establishment of priorities and the identification of the actions that will be taken to implement those priorities. The Strategic Plan Update also highlights a series of strategies to enhance achievement of all of the Water Boards organizational responsibilities – the development of which is an exercise that CASQA also strongly supports.

Our one major concern with this version of the Draft Update regards the goal and objective of consistency, and in particular the following completely revised action (as compared to the immediately previous version of the Draft Update (January 2008))³, recommended to achieve consistency (pp. 36-37):

¹ State Water Board has developed four drafts (October 23, 2007; November 30, 2007; January 25, 2008; May 30, 2008)

² CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to over 26 million people in California and includes most every Phase I and many Phase II municipal programs in the State. CASQA was formed in 1989 to recommend approaches for stormwater quality management to the State Water Resources Control Board.

³ In the immediately previous version of the Draft Update (January 2008), the action identified to achieve the same objective of consistency was:

Evaluate the feasibility of developing a statewide stormwater permit for Phase I municipal separate storm sewer systems (MS4s) by July 2009 that addresses inconsistencies in the municipal stormwater permitting program. Phase I MS4s serve a population of 100,000 or more.

Action 6.2.1 Reissue the statewide storm water permit for Phase II municipal separate storm water systems (MS4s) by July 2009 that updates the baseline for consistency in the municipal storm water permitting program (the permit should provide a consistent approach for issues that have been raised regarding the Phase I MS4s, including hydromodification and the use of numeric benchmarks, action limits or effluent limitations). As appropriate, solutions developed in reissuing the Phase II permit should be used in Phase I permits around the state in subsequent years. Phase II MS4s serve a population of 100,000 or less that are located in an urbanized area.

As a statewide association, CASQA supports consistency and appropriate approaches for providing consistency. However, the approach suggested in the new recommended action is inappropriate. The basic approach seems to be to use each of the two phases of the stormwater program to revise the other phase – transferring Phase I “issues” into the Phase II program and transferring Phase II “solutions” into the Phase I program. In a word, this recommended approach is impracticable. Reviewing the two portions of the recommended action, we find the following:

Reissue the statewide storm water permit for Phase II municipal separate storm water systems (MS4s) by July 2009 that updates the baseline for consistency in the municipal storm water permitting program (the permit should provide a consistent approach for issues that have been raised regarding the Phase I MS4s, including hydromodification and the use of numeric benchmarks, action limits or effluent limitations).

It is not clear what “*the permit should provide a consistent approach for issues that have been raised regarding the Phase I MS4s, including hydromodification and the use of numeric benchmarks, action limits or effluent limitations*” means in terms of the requirements in the second generation Phase II General Permit. It is clear that there is a large disparity between the state’s mature Phase I MS4 programs, which are some of the most advanced in the country and the State of California’s still nascent Phase II MS4 program. To understand this disparity, one needs look no further than the level of stormwater management plan adoption between the Phase I and Phase II programs. Despite the State’s Phase II General Permit being 5 years old, a large number of Phase II communities’ stormwater management programs (SWMPs) have still not been approved by the Water Boards.

In general, the level of understanding, experience, and funding amongst Phase II communities is significantly less than that of Phase I communities. This is primarily due to the fact that Phase I communities have had significantly more time (up to 18 years versus 5 years maximum if a communities’ Phase II SWMP was approved in 2003) and resources to develop their stormwater management programs. Additionally, there is considerable research, discussion, and debate among stormwater quality managers and researchers across the state and the country on these significant issues. Approaches to addressing these issues are only in the development phase and much work remains to test, confirm, and settle on approaches that are sufficiently well founded to be made consistent requirements in a statewide permit.

Further, the Phase II Permit is a statewide permit addressing the entire range of hydrologic, climatic, and geographic diversity in California. Sustainable development concepts such as hydromodification and Low Impact Development (LID) management are unique to the region. Sustainable development approaches in coastal California communities will necessarily be

different than sustainable development approaches in mountain communities or desert communities. Developing a cookie cutter permitting approach that is equally applicable to all of California's geographic and climatic regions is not feasible by 2009. The Phase 1 programs have been working on developing tools to address hydromodification and LID for the better part of five years. There is still not enough information to develop the types of straightforward and simple tools necessary to manage hydromodification in small Phase II MS4 communities, much less in many of the larger, more sophisticated Phase I communities. CASQA is currently working on a LID guidance manual. However, even this guidance manual will be specific to semi-arid southern California.

Given those realities, recommending that the second generation Phase II General Permit be updated in 2009 to reflect Phase I approaches to issues as significant as "hydromodification and the use of numeric benchmarks, action limits or effluent limitations" is premature.

Regarding the other portion of the recommended action:

As appropriate, solutions developed in reissuing the Phase II permit should be used in Phase I permits around the state in subsequent years. Phase II MS4s serve a population of 100,000 or less that are located in an urbanized area.

We note that the official notice for the May 30, 2008 draft states that "This version was produced after receiving comments from the February 6, 2008 Strategic Plan Workshop and the original public comment period that ended on February 15, 2008." We are not aware of comments made recommending that the State of California revise its mature Phase I MS4 program based on the requirements and experience of the state's still nascent Phase II MS4 program. We recognize the "as appropriate" caveat to this recommended action but given: 1) the large disparity in level of understanding, experience, and funding between Phase I and Phase II programs, and 2) that as a result, it is from the Phase I programs that virtually any "solutions" will come over the next few years; this portion of the recommended action in the current Strategic Plan Update does not make sense from a policy or practical point of view.

As we stated earlier, CASQA supports efforts to improve statewide consistency and appropriate approaches for providing consistency. To address consistency head-on and in the most productive and effective way possible, CASQA strongly recommends the State of California develop a statewide stormwater policy. Starting a number of years ago and, as a matter of course in most of CASQA's recent communications, CASQA has repeatedly called for the development of such a statewide stormwater policy. This call has been based on our collective experience with the first 18 years of stormwater permit implementation. What has become increasingly obvious to our members over the last few years is that:

- Stormwater is a nonpoint source issue being addressed with a point source regulatory model. Most of the issues that we are facing can be traced to the application of the current regulatory model, which is based on 30+ years of experience with point sources (i.e., wastewater), with some accommodation for the non-point source nature of stormwater (e.g., maximum extent practicable (MEP) and best management practice (BMP) concepts).
- Currently, statewide stormwater 'policy' is being developed in an implicit, opaque fashion on a permit-by-permit, region-by-region basis instead of in an explicit, transparent way at

the statewide level. This approach tends to minimize public notification and participation by all affected parties and leads to contentious hearings, appeals, and misdirection of resources at the state and local level.

- The lack of a State Policy is leading to inconsistent approaches to permit compliance and program assessments; and
- Lack of a State Policy is creating inappropriate approaches in other water quality control programs (e.g., Ocean Plan / Areas of Special Biological Significance (ASBS)).

The advantages to be gained by developing a Statewide Stormwater Policy include:

- Providing consistency and a level playing field for stormwater program implementation and assessment, and permit compliance determination.
- Avoiding the current method of setting stormwater 'policy' in a less than transparent way through permits and at a level of abstraction (permit language) that is well below the appropriate level of abstraction for policy setting, both of which are highly questionable attributes of the current approach from a public policy perspective.
- Allowing for broader and consistent integration of other water quality related policies/programs (e.g. ASBS, Ocean Plan, 401 certification, Surface Water Ambient Monitoring Program, etc.)
- Optimizing resources; freeing up Regional Water Board staff for enforcement and program oversight, and not developing statewide stormwater policy incrementally through permit reissuance.
- Expediting permit reissuance; the current process is ineffective/inefficient and leads to contentious hearings and appeals.

We recognize very clearly that developing a Statewide Stormwater Policy will take significant time and resources but we believe it will be an investment that will yield tremendous dividends through a much more efficient and effective statewide stormwater quality management program. Therefore CASQA recommends Action 6.2.1. in the current Draft Update be replaced with:

Action 6.2.1 By July 2009, develop a scope, outline, phased development schedule, and budget for a Statewide Stormwater Policy, covering Construction, Industrial and Municipal stormwater – Phases I and II. Working with stakeholders and following the phased development schedule, develop and adopt portions of the Statewide Stormwater Policy. As portions of the Statewide Stormwater Policy become available and applicable, use the Statewide Stormwater Policy to guide and ensure appropriate consistency in all of California's stormwater quality permits.

CASQA's recommendation to develop a Statewide Stormwater Policy is supported by and completely consistent with the Water Boards' own Water Quality Coordinating Committee (p. 35 of the Draft Update):

The Water Quality Coordinating Committee (WQCC), a leadership body of the Water Boards, has discussed the consistency issue at some length. As part of that discussion, the WQCC made the following findings in the fall of 2006:...

(4th bullet) ...On questions of law and overarching policy, the State Water Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action...

In addition to our major concern and recommendation on how best to provide consistency, we take this opportunity to provide comments / information regarding other stormwater, urban runoff, or LID related items in the Draft Update (see attachment).

We thank you again for the opportunity to submit these comments and to provide other information related to the Water Boards Strategic Plan Update. If you have questions regarding our comments or recommendations please contact me or our Executive Director, Geoff Brosseau.

Very truly yours,



Chris Crompton, Chair
California Stormwater Quality Association

cc: Gary Wolff, Vice-Chair, State Water Board
Dorothy Rice, Executive Director, State Water Board
Jonathan Bishop, Chief Deputy Director, State Water Board
Caren Trgovcich, Director-Office of Research, Planning, and Performance, State Water Board
Bruce Fujimoto, Section Chief-Stormwater, State Water Board
Alexis Strauss, Director- Region IX Water Division, USEPA
James Hanlon, Director-Office of Wastewater Management, USEPA
Stuart Drown, Executive Director, Little Hoover Commission
CASQA Executive Program Committee
CASQA Board of Directors

Attachment

Below, CASQA provides comments / information regarding other stormwater, urban runoff, or LID related items in the Draft Update, grouped by the following key themes:

Best management practices

LID Center (pp. 14, 16) – CASQA has recommended a virtual center be developed, perhaps to complement the bricks-and-mortar facility on the Central Coast. The virtual center would be a high production value web portal dedicated to LID in California. We envision this portal to be a virtual one-stop-browse for everything LID in California, including calendar of LID training and other events, LID design information, access to information on high-value demonstration sites including virtual tours, reference and guidance materials, and resource links to tools and funding assistance.

CASQA has started an effort that is a step in the direction of a virtual center. CASQA's 2003 BMP Handbook on New Development and Redevelopment, which already includes a section on site and facility design for water quality protection (i.e., LID), is being updated later this year to include as much new information as we can afford on LID. To accomplish this, CASQA is moving the information delivery mechanism from primarily a paper-based one (i.e., handbook) to a virtual one (i.e., Internet/web portal). CASQA has started designing and building a web portal to create the collective knowledge base and then will use the web portal to provide relatively easy access to the information. However, the knowledge base and experience with LID is expected to expand rapidly over the next few years, so the cost to develop and more importantly to sustain a high production value web portal will be significant. So if a Virtual LID Center is to be realized, additional funding will be needed.

Impediments to LID (pp. 16, 23) – CASQA's members are the agencies that actually implement LID and know the impediments to its full implementation firsthand. Therefore, CASQA and its members have experience and information that should be utilized as the Water Boards try to address these impediments.

Treatment costs for stormwater and dry weather flows (pp. 24, 25) – Many of CASQA's members manage stormwater pump stations. Additionally, an effort is expected to be underway within the year in the San Francisco Bay Area to investigate the feasibility of and develop a policy for routing stormwater from pump stations to POTW collection/treatment systems, when appropriate and feasible.

Industrial

AB 258 (p. 14) – CASQA's members include agencies that run industrial inspection programs, including inspections of plastic product manufacturers. Therefore, some CASQA members have experience and information that may be utilized as the Water Boards implement AB 258.

Pilot enforcement program with DFG (p. 41) – Since "pilot" often results in expanding the pilot statewide at some point, is there a need/opportunity for CASQA to advise on the pilot?

Total maximum daily loads (TMDLs)

Integration, coordination with other efforts (p. 13) – When incorporating TMDLs into MS4 permits, not only do Regional Water Board staff in different divisions need to better coordinate amongst themselves but Regional Water Boards need to better coordinate with the State Water Board and USEPA.

Multi-pollutant approach (p. 15) – The effort to more “efficiently prepare, adopt, and implement TMDLs” needs to go well beyond just identifying and documenting by March 2009 pollutant groupings or TMDL groupings that can be developed and implemented on a watershed, regional, or statewide basis; at a minimum these groupings should be used to define the scope of all new TMDL efforts for which groupings are applicable.

Training

Training (p. 40) – CASQA’s Training Subcommittee is working closely with State Water Board staff regarding construction training. The Subcommittee’s Strategic Plan should address how regulators could be students of CASQA trainings.