



California Stormwater Quality Association®

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

December 26, 2017

Jeanine Townsend
State Water Resources Control Board



Subject: Proposed Regulation: Water Conservation / Prohibited Water Uses

Dear Ms. Townsend:

The California Stormwater Quality Association (CASQA) is writing to comment on the State Water Board's Proposed Regulation: Water Conservation / Prohibited Water Uses (Proposed Regulation). CASQA and our members' interests in the Proposed Regulation stem from two sources.

The first source is the non-stormwater discharge prohibition in the Clean Water Act (CWA). Under the CWA, one of the two basic charges for National Pollutant Discharge Elimination System (NPDES) permits for municipal separate storm sewer systems (MS4s) is that the permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers" (CWA §402(p)(3)(B)(ii)).¹ Accordingly, municipal NPDES stormwater permits issued by the State Water Board and the Regional Water Boards include the non-stormwater prohibition. The MS4 permits also include a requirement that municipal permittees possess adequate legal authority to prohibit illicit discharges and control the discharge of materials other than stormwater as well as industrial stormwater to the MS4.

Additionally, documents developed to help MS4 permittees implement stormwater management programs and to comply with the permits include guidance on how to implement the non-stormwater prohibition. To the extent other entities have the potential to discharge non-stormwater into the MS4s (e.g., industrial and commercial businesses), MS4 permittees apply the same prohibition to those entities through the permittees' legal authorities, outreach and training, inspection, and enforcement.

The second source of our interest is best management practices (BMPs) implementation. There are two aspects to this interest. First, vegetation is an important design feature of some treatment control BMPs (e.g., low impact development, green infrastructure). The stormwater treatment and pollutant reduction function of these BMPs depends on an appropriate amount and type vegetation. To establish and sustain the appropriate vegetation in these best management practices requires the use of water, even for native or drought-tolerant plant species. The second aspect of our interests from a BMP implementation perspective is the promotion of stormwater capture and use.

Depending on how the Proposed Regulation is written, some commercial uses of water and some uses of captured stormwater could be affected by the proposed prohibited water uses.

¹ The other basic charge under the CWA for MS4 permits is that the permits include controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) (CWA §402(p)(3)(B)(iii)).

In general, CASQA supports the Proposed Regulation. For some of the proposed prohibited water uses, that support is conditioned. Below are our specific comments by the proposed prohibited water use.

The Proposed Regulation prohibits specified water uses, including:

- The application of water to outdoor landscapes in a manner that causes runoff – CASQA supports prohibition of this water use. The prohibition is consistent with non-stormwater discharge provisions in MS4 permits.
- The use of a hose to wash an automobile except where the hose is equipped with a shut-off nozzle – CASQA supports prohibition of this water use. The prohibition is consistent with non-stormwater discharge provisions in MS4 permits.
- The application of potable water to hardscapes – CASQA conditionally supports prohibition of this water use. Commercial operators (i.e., mobile cleaners) use water to clean outdoor surfaces (e.g., sidewalks, plazas, building exteriors). The qualifier that it is the use of potable [emphasis added] water for such activities that is prohibited is important and consistent with how many mobile cleaners manage their water use by employing water recycling systems. The generic exception that pressure washing of public sidewalks “to address an immediate health and safety need” is not prohibited is also important to include in the Proposed Regulation.

CASQA recommends the prohibition include the “potable” qualifier and the generic “immediate health and safety need” exception.

CASQA notes that this prohibition of water use is stricter than the current best management practice used by some local governments². The difference stems from the proposed prohibition being driven by water conservation (quantity) while the current BMPs are driven by stormwater quality management. If this prohibition of water use is part of the adopted Water Conservation / Prohibited Water Uses regulation, some agencies will need to revise their BMPs, outreach materials, and training.

- The application of water to outdoor landscapes during and within 48-hours after measurable rainfall of at least one-tenth of one inch of rain – CASQA conditionally supports prohibition of this water use. The first condition would be the removal of the definition of measurable rainfall as being a pre-determined, specific amount of water. Given that rainfall can be highly varied and there can be long distances between gauges, local agencies should have the flexibility to make a local determination of what is measurable rainfall. The second condition would be an exception if the water was beneficially reused (e.g., irrigating a LID BMP or green infrastructure).

² The Surface Cleaner Training and Recognition Program (Bay Area Stormwater Management Agencies Association; 1996, 2003) allows water from cleaning sidewalks, plazas, and building exteriors to be discharged to the storm drain if: 1) dry cleanup methods have successfully removed fresh oil stains, debris, and trash; 2) cleaning is done without soap or other cleaning chemicals, and 3) the water has not removed any paint.

CASQA recommends the prohibition be revised to “The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall, unless the water is beneficially reused.”

- The irrigation of turf on public street medians and verges unless the turf serves a community or neighborhood function – CASQA conditionally supports prohibition of this water use. The condition would apply when a stormwater quality control measure (e.g., LID, green infrastructure) is part of the street median or verge. In that case, the “community or neighborhood function” exemption is necessary and needs to include the ability to establish and sustain vegetation that is part of a stormwater quality control measure. It is possible the proposed generic exception to the prohibition that the use of water “is necessary to comply with a term or condition in a permit issued by a state or federal agency” could be applied when a stormwater quality control measure is part of the street median or verge, but it is possible some measures would not be required by a permit so that exception would not apply.

CASQA recommends the prohibition include the “community or neighborhood function” exemption and that the exemption include the ability to establish and sustain vegetation that is part of a stormwater quality control measure.

CASQA also recommends when implementing this prohibition that cities and counties be given adequate time to properly budget for the design and construction to re-landscape medians and verges. Having the ability to conduct this work as part of a planned capital improvement project (CIP) or major maintenance makes a lot of financial sense unless grants are available to accelerate the process.

Thank you for the opportunity to provide comments on the Proposed Regulation. If you have any questions, please contact me directly at (650) 365-8620.

Sincerely,



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