

August 14, 2013

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**Subject: SWRCB/OCC FILE A-2236(a) THROUGH (kk)**

**COMMENTS IN RESPONSE TO QUESTIONS POSED BY THE STATE WATER RESOURCES CONTROL BOARD CONCERNING RECEIVING WATER LIMITATIONS AS ADDRESSED IN ORDER NO. R4-2012-0175 - WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, INCLUDING THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH**

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The Alameda Countywide Clean Water Program (ACCWP)<sup>1</sup> appreciates the opportunity to provide comments on the subject request by the State Water Resources Control Board (State Board) in its July 8 and July 15, 2013 announcements with respect to 1) whether the watershed management program/enhanced watershed management program (WMP/EWMP) alternative contained in the Los Angeles MS4 Permit is an appropriate approach to revising the receiving waters limitations (RWLs) in MS4 permits, and 2)

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<sup>1</sup> The Alameda Countywide Clean Water Program is composed of 17 cities and county entities in Alameda County including the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City, Alameda County (for the unincorporated area), Alameda County Flood Control and Water Conservation District and Zone 7 of the Alameda County Flood Control and Water Conservation District. These entities each have jurisdiction over and/or maintenance responsibility for their respective municipal separate storm drain systems and/or watercourses in Alameda County.

what revisions to the WMP/EWMP alternative would make the approach a viable alternative for RWLs in MS4 permits. The ACCWP has asked me to file these comments on their behalf.

On November 20, 2012, the State Board held a workshop to take public comment on an issue paper discussing alternatives to addressing RWLs in MS4 NPDES permits. The ACCWP participated in that workshop and supported written comments filed by the Bay Area Stormwater Management Agencies Association (BASMAA) as presented by former State Board counsel, Elizabeth Miller Jennings.<sup>2</sup> These comments and testimony demonstrated that the State Board RWL precedent decisions had become outdated and presented an alternative approach that would reserve enforcement of the RWLs per se to the State and Regional Boards. The necessity of an alternative approach and modification of the RWL direction from the State Board has become even more apparent and urgent due to the August 8 decision of the 9<sup>th</sup> Circuit Court of Appeals issued on remand in *NRDC v. Los Angeles County, et.al.* Therefore, we renew and support that BASMAA request that the State Board adopt language implementing the state law-based enforcement approach to RWLs that Ms.Jennings suggested last November.

Second, based on its experience with the Municipal Regional Stormwater Permit in effect in the San Francisco Bay Area (MRP), the ACCWP endorses the comments Dr. Thomas Mumley of the California Regional Water Quality Control Board, San Francisco Bay Region, offered to the State Board on the RWLs issue last year at the November workshop. Dr. Mumley essentially suggested a prioritized water quality-based permit requirements approach as an alternative to RWLs or their direct application to MS4 permittees per se.<sup>3</sup> Because it allows for prioritization and would allow the San Francisco Bay Region and its members to build on the approach embodied in the MRP, BASMAA believes that the approach Dr. Mumley recommended would be a preferable alternative to the WMP/EWMP contained in the Los Angeles MS4 Permit.

Third, the ACCWP has also reviewed and is generally supportive of comments and suggested RWL-related language being submitted to the State Board by the California Stormwater Quality Association (CASQA).<sup>4</sup> CASQA's approach and suggested language essentially calls on the State Board to recognize needed changes in, and alternatives to, the WMP and EWMP approaches contained in the Los Angeles MS4 Permit. CASQA suggests that properly structured "strategic compliance programs" (whether build from the ground up or incrementally adapted from existing water quality priority-driven MS4 programs under the MRP) can serve as useful and pragmatic

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<sup>2</sup> A copy of the BASMAA comments are attached..

<sup>3</sup> A copy of Dr. Mumley's comments are also attached.

<sup>4</sup> Due to the nature of TMDL pollutants and typical wet season conditions in the San Francisco Bay Area, the ACCWP believes that the final sentence of subsection E.5.d.v in CASQA's proposed RWLs language (its Attachment A) needs to be extended to include the following additional language: "or otherwise controlled to the satisfaction of the regional water board."

alternatives to the highly problematic potential of direct third party enforcement of RWLs.

Fourth, the ACCWP is fully supportive of comments being submitted in this matter by BASMAA. The ACCWP is a BASMAA member. The BASMAA comments emphasize the importance of having revised State Board guidance on the RWL issues that would work for the varied municipal stormwater programs and MS4 permits in the San Francisco Bay Area.

Finally, the ACCWP requests that the State Board *not* impose the particular WMP/EWMP approach contained in the LA MS4 Permit on MS4s in the Bay Area and instead leave Region 2 free to adopt an MRP with prioritized water quality-driven alternative permit requirements that are designed to achieve compliance with RWLs as an alternative to requiring direct compliance with RWLs per se. A “one-size fits all” approach simply makes no sense given the diversity of the state and the evolution and varying status of the MS4 programs within it. Directing the Region 2 Board to revise its approach to the MRP, based on whatever emerges relative to the Los Angeles MS4 Permit, could present an unproductive and significant drain on resources with little benefit as compared to the approaches BASMAA, Dr. Mumley, and CASQA have suggested.

The ACCWP thanks the State Board for its consideration of these comments and urges the State Board to take action on the RWLs issues as soon as possible.

Sincerely,

Gary J. Grimm

Enclosures

cc     **(via email)**  
        Petitioners  
        Los Angeles Water Board list  
        State Water Board cc list