

Comment Letters Received from Non-Permittees

- City of Anaheim
- City of Belmont
- City of Brisbane
- City of Corona
- City of Dana Point
- City of Irvine
- City of Murrieta
- National Assoc. of Flood and SW Mgmt. Agencies (NAFSMA)
- City of Orange County
- Port of Stockton
- Sacramento Stormwater Quality Partnership
- San Mateo County
- City of Santa Rosa
- Ventura Countywide Stormwater Quality Management Program



City of Anaheim
DEPARTMENT OF PUBLIC WORKS

July 23, 2012

Mr. Ivar Ridgeway, Senior Environmental Scientist
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

BY ELECTRONIC MAIL ONLY to LAMS42012@waterboards.ca.gov

Subject: Comment Letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Anaheim appreciates the opportunity to comment on the Draft Phase II Small MS4 General Permit (Permit). While not directly affected by the Permit, the City of Anaheim is concerned about a provision in the Permit that potentially affects future MS4 Permits within the State. Provision V.A. of the Permit is contradictory to the previously understood interpretation of policy and, if left in its current form, will create a situation where Permittees will be unable to comply due to multiple constituents in urban runoff that may exceed receiving water quality standards.

Due to the recent Ninth Circuit Court of Appeals ruling in *NRDC v. County of Los Angeles*, Provision V.A. requires that discharges to receiving waters meet water quality standards to not be in violation of the Permit. With the difficulties present in managing all sources of runoff pollution, including aerial deposition or runoff from Caltrans rights-of-way, Federal property, etc., it is unrealistic to expect any Phase I or II entity to immediately be in compliance at the time of Permit adoption. A more reasonable alternative would be to allow the use of an iterative process to address water quality standard exceedances, as has been the case under previous Permits.

The City of Anaheim feels that the comprehensive efforts of the California Stormwater Quality Association (CASQA) in the creation of alternative language for Provision V.A. of the Permit takes into account the concerns of Permittees with regard to their liability for discharges to receiving waters, while still preserving water quality and the iterative process that Permittees have been utilizing since the Permit's inception (See Attachment 1). We appreciate your consideration of this comment letter and look forward to the continuing efforts to utilize sound science and prudent public policy in the protection of the environment.

Sincerely,

Mark Vukojevic
City Engineer

Attachment 1 – CASQA Model Receiving Water Limitations Language

c: Ed Fernandez, Development Services Manager
Keith Linker, NPDES Coordinator



California Stormwater Quality Association

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
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 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

July 16, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013



Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Belmont appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City of Belmont will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The City of Belmont believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

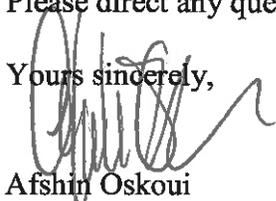
Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Belmont recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the State establishing permit provisions, such as Provision D, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City of Belmont requests revision of Provision D to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to the City of Belmont.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Afshin Oskoui', written over the typed name.

Afshin Oskoui
City of Belmont, Director of Public Works

Attachment 1 – CASQA Model Receiving Water Limitations Language



California Stormwater Quality Association

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

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3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
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 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

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 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
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5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

July 16, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

(Sent electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Brisbane appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The City believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.



If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Brisbane recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to me at the address provided hereon.

Yours sincerely,



Randy L. Breault, P.E.
Director of Public Works/City Engineer

Attachment 1 – CASQA Model Receiving Water Limitations Language



California Stormwater Quality Association

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
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CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

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PUBLIC WORKS DEPARTMENT

(951) 739-4823
(951) 279-3627 (FAX)
Kip.Field@ci.corona.ca.us

400 SOUTH VICENTIA AVENUE, P.O. BOX 940, CORONA, CALIFORNIA 92879-0940
CITY HALL - ON LINE ALL THE TIME (<http://www.discovercorona.com>)

July 23, 2012

Mr. Ivar Ridgeway
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Corona appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City of Corona will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The City of Corona believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

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specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Corona recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City of Corona requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Michele Hindersinn at 951-736-2248.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Kip D. Field".

Kip D. Field
Public Works Director

Attachment 1 – CASQA Model Receiving Water Limitations Language



California Stormwater Quality Association

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

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Yours Truly,

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California Stormwater Quality Association

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Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

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 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
electronically to LAMS42012@waterboards.ca.gov

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Dana Point appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City of Dana Point will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft MS4 Permit.

The City of Dana Point believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

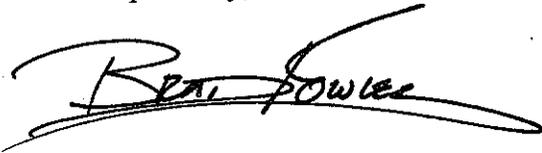
Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Dana Point recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. **For these reasons, the City of Dana Point requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1).** We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

If you should have any questions regarding the above comments, please contact Lisa Zawaski at 949-248-3584 or lzawaski@danapoint.org.

Respectfully,

A handwritten signature in black ink that reads "Brad Fowler". The signature is stylized with a large, sweeping underline that extends to the right.

Brad Fowler, P.E.
Director of Public Works & Engineering Services
City of Dana Point

Attachment 1 – CASQA Model Receiving Water Limitations Language

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

**Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers
within the Los Angeles County Flood Control District**

Dear Mr. Ridgeway:

The City of Irvine appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The City of Irvine believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

Mr. Ivar Ridgeway
July 23, 2012

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Irvine recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City requests revision of Provision V.A. The City believes the language proposed by the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1) is a step in the right direction in attempting to develop a deemed compliance approach consistent with the iterative process, but further believes that any such MEP BMP deemed compliance approach must equally extend to WLAs from TMDLs to be incorporated into any such Permit, and also believe that CASQA's language should be expanded to make clear that good faith compliance with the iterative/adaptive management process is, in fact, compliance with all applicable receiving water limits and WQBELs or other numeric effluent limits, including "action levels." Such an MEP BMP deemed compliance approach will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Amanda Carr, Water Quality Administrator at 949-724-6315.

Sincerely,



Eric Tolles, S.E.
Director of Community Development

Attachment 1: CASQA Model Receiving Water Limitations Language

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



CITY OF MURRIETA

July 22, 2012

<email to LAMS42012@waterboards.ca.gov>

Mr. Ivar Ridgeway
Los Angeles RWQCB
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

RE: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Murrieta appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the City of Murrieta will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The City of Murrieta believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can

only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The City of Murrieta recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the City of Murrieta requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to myself.

Yours sincerely,

CITY OF MURRIETA

A handwritten signature in black ink, appearing to read "Patrick Thomas", written over a circular stamp or seal.

PATRICK THOMAS, P.E.
CITY ENGINEER

Attachment 1 – CASQA Model Receiving Water Limitations Language



National Association of Flood & Stormwater Management Agencies

1333 H Street, NW
10th Floor West Tower
Washington, DC 20005
202-289-8625 www.nafsma.org

July 20, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
LAMS42012@waterboards.ca.gov

Subject: Comment Letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The National Association of Flood and Stormwater Management Agencies (NAFSMA) appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While NAFSMA will not be subject to this Permit, a key provision may be precedential for future permit renewals outside of California, and consequently we are compelled to comment at this time.

In light of the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District on July 13, 2011, NAFSMA believes that Provision V.A of the Draft MS4 Permit will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. MS4 dischargers certainly recognize the importance of attaining water quality standards. At the same time, however, no one reasonably expects MS4 dischargers to immediately realize this goal at the moment of permit adoption, which is counter to the Maximum Extent Practicable principal on which the stormwater permits are based.

NAFSMA recognizes the need to continue to make measurable progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from provisions such as Provision V.A, which result in the potential of immediate non-compliance for Permittees. For these reasons, NAFSMA requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of legal liability and lawsuits.

Please direct any questions regarding this letter to me at sgilson@nafsma.org or 202-289-8625.

Yours sincerely,

Susan Gilson, Executive Director

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
LAMS42012@waterboards.ca.gov

Subject: Comment letter - Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The County of Orange appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). While the County of Orange will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

The County of Orange believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can

Mr. Ivar Ridgeway

Page 2

only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The County of Orange recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, the County of Orange requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Richard Boon at (714)955-0670.

Very truly yours

A handwritten signature in black ink, appearing to read "Chris Crompton" with a stylized flourish at the end.

Chris Crompton, Manager
Environmental Resources

Attachment 1 - CASQA Model Receiving Water Limitations Language

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

PORT OF STOCKTON

Phone: (209) 946-0246



Fax: (209) 465-7244

July 23, 2012

Via Email to LAMS42012@waterboards.ca.gov

Members of the Regional Water Quality Control Board for the
Los Angeles Region,
and Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los
Angeles County Flood Control District

Dear Regional Board Members and Mr. Ridgeway:

The Port of Stockton (Port) provides the following comments on the Draft Los Angeles MS4 Permit (Draft MS4 Permit). Although not located in the Los Angeles Region, the Port worked closely with its Regional Water Quality Control Board for the Central Valley to address the issue of Receiving Water Limitations that became a statewide concern due to the court cases and citizen suits brought over the 2001 Los Angeles County MS4 permit. The Port had a sincere desire to avoid extended litigation over the meaning of its permit, and wanted to work on improving local water quality instead of fighting citizen suits over compliance. For these reasons, the Port has a unique perspective on the issues facing the Regional Water Board as it adopts a new Draft MS4 Permit.

The currently proposed Provision V.A of the Draft MS4 Permit ignores precedential case law and the long history of established State Water Board policies that would allow permittees to comply with standards over time through the implementation of increasingly more complex and effective Best Management Practices (BMPs) if exceedances of pollutants were seen in the receiving waters. Without an express recognition of the difficulties of stormwater regulation and control, and a corresponding regulatory program that takes into account these difficulties, a permit will be adopted that dooms regulated entities to failure and may force them into a consistent state of non-compliance.

The Port believes that an iterative management approach represents the soundest basis for compliance. Thus, a new paradigm is needed to address the July 13, 2011 holding by the

Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles*, which determined that the defendants had caused or contributed to an exceedance of a water quality standard and, therefore, violated the Receiving Water Limitations, irrespective of their implementation of the iterative process. Other municipal entities, including the cities of Malibu under the 2001 Los Angeles MS4 Permit, and Stockton and the County of San Joaquin under the Central Valley's, notwithstanding their implementation of a good faith iterative process per the terms of their respective permits, have been challenged in expensive litigation under the Clean Water Act by third-party plaintiffs on the basis of the Receiving Water Limitations language. Scarce municipal dollars would be better spent on on-the-ground watershed improvement projects than on paying hundreds of thousands of dollars in plaintiff's attorneys fees in these cases.

If a strict interpretation of Provision V.A. is maintained, as was seen in the *NRDC v. LA County* case, all stormwater discharges will likely need to meet water quality standards at the point of discharge to avoid being in violation of the permit. The State Water Board's own blue ribbon panel has recognized the difficulty of meeting standards end of pipe and, therefore, did not recommend the adoption of numeric effluent limitations. However, a strict interpretation of Provision V.A. is really no different than a numeric effluent limit and suffers from the same logistical and feasibility challenges. While local governments recognize the importance of attaining water quality standards, these standards were never intended to apply directly to stormwater. (*See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999)(The Court held that the provisions of CWA Section 402(p)(B)(3) for municipal storm water permits replaced the requirements under CWA Section 301(b)(1)(C)(otherwise requiring WQBELs)); *see also In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association*, SWRCB Order No. WQ 2001-15, 2001 WL 1651932, at *2 (Nov. 15, 2001).) Instead, Congress adopted a standard that municipal stormwater dischargers “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or State determines appropriate for the control of such pollutants.” (33 U.S.C. §1342(p)(3)(B)(i)-(iii)(emphasis added).)

Where receiving waters are not meeting water quality standards, the appropriate action is to adopt a Total Maximum Daily Load (TMDL), which specifically recognizes that current water quality standards are not being attained and will be addressed by regulation that supports implementation of an adaptive program over an extended period of time. Requiring immediate compliance with water quality standards for a non-continuous discharge from water draining hundreds, if not thousands, of acres of land is not required by any law and represents bad public policy that could force more public entities into bankruptcy.

No regulatory benefit accrues from a state or regional policy that establishes permit provisions, such as Provision V.A., which place Permittees in immediate non-compliance. For these reasons, the Port requests substantial revision of Provision V.A. to incorporate either the language proposed by California Stormwater Quality Association (CASQA), or set forth in the attachment to this letter that tracks the Port's current permit (Order No. R5-2011-0005), which was adopted last year without adverse

comment or objection by U.S. EPA. We strongly support this type of permit language because it better enables regulated entities to focus and prioritize their limited financial resources on programs to address the most critical local water quality issues, thereby achieving positive environmental outcomes. Importantly, clarifying language changes will also help avoid unnecessary legal liability and contentious and expensive lawsuits like the ones that have plagued the Los Angeles Region for the last 11 years since the last MS4 Permit was adopted in 2001.

Please direct any questions regarding this letter to Jeff Wingfield at 209- 946-0246.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wingfield". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeff Wingfield
Environmental Manager
Port of Stockton

Attachment 1 – Alternate Receiving Water Limitations Language

Receiving Water Limitations

1. Receiving water limitations are site-specific interpretations of water quality standards from applicable water quality control plans. As such, they are required to be addressed as part of the permit. However, a receiving water condition not in conformance with the limitation is not necessarily a violation of this Order. The Regional Water Board may require an investigation to determine cause and culpability prior to asserting a violation has occurred.

2. The discharge shall not cause or contribute to an exceedance of any applicable water quality standards.

3. The Permittee shall comply with Discharge Prohibition[s] and Receiving Water Limitations C.1 and C.2 through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this Order, including any modifications. The SWMP shall be designed to achieve compliance with the above mentioned Discharge Prohibition[s] and Receiving Water Limitations C.1 and C.2. If exceedance(s) of WQS persist notwithstanding implementation of the SWMP and other requirements of this Order, the Permittee shall assure compliance with Discharge Prohibition[s] and Receiving Water Limitations C.1 and C.2 by complying with the following procedure:

a. The Permittee shall prepare Notification of Water Quality Exceedances (“NWQE”) pursuant to notification requirements set forth in the Monitoring and Reporting Program of this Order.

b. The Permittee shall submit a Report of Water Quality Exceedance (“RWQE”) annually to the Executive Officer for reporting discharges that cause or contribute to an exceedance of applicable water quality standards. The RWQE shall describe BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants in the Permittee’s discharge that are demonstrated to be causing or contributing to the exceedance of WQSS. The RWQE shall be incorporated in the Annual Report. The report shall include proposed revisions to the SWMP and an implementation schedule containing milestones and performance standards for new or improved BMPs, if applicable. The RWQE shall also include a monitoring program and the rationale for new or improved BMPs, including a discussion of expected pollutant reductions and how implementation of additional BMPs will prevent future exceedance of WQSS. The Central Valley Water Board may require modifications to the RWQE.

c. Within **30 days** following approval of the RWQE by the Executive Officer, the Permittee shall revise the SWMP and monitoring program to

incorporate the approved modified BMPs that have been and will be implemented, implementation schedule, and any additional monitoring required.

d. The Permittee shall implement the revised SWMP and monitoring program in accordance with the approved schedule after Central Valley Water Board approval of the revised SWMP.

If the Permittee has complied with the procedures set forth above and is implementing the revised SWMP, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Executive Officer to develop additional BMPs.¹⁶

[16 State Water Resource Control Board Order WQ 99-05, *SWRCB/OCC File A-1041*]

4. If the Permittee is found to have discharges notwithstanding the prohibitions in Provision A, or discharges causing or contributing to an exceedance of an applicable benchmark value, water quality objective, waste/wasteload allocation, or receiving water limitation in Provision B, the Port will not be determined to be in violation of this Order unless it fails to comply with the requirement to report such discharge (Provision C.3.a.), and revise its BMPs to include additional and more effective BMPs, and to implement the same (Provision C.3.b-d). Further, the Port may demonstrate in its SWMP that the use of particular benchmark values are not appropriate (e.g., aluminum, electrical conductivity) due to local ambient conditions or other environmental studies (e.g., Water Effect Ratios).

Provisions

1. Compliance with Discharge Prohibitions and Receiving Water Limitations

As reflected in the findings, the effect of the Port's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires that, within its geographic jurisdiction, the Permittee shall design its storm water program to achieve compliance with water quality standards over time through compliance with the following, which reflects an iterative approach:

a. Comply with the requirements of this Order, the SWMP, any modifications to the SWMP, and directives of the Executive Officer concerning this Order;

b. Facilitate the implementation of the requirements of the SWMP applicable to such Permittee in an efficient and cost-effective manner;

c. Prepare an annual fiscal analysis identifying the expenditures for the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written

explanations where necessary, for the specific categories noted below:

- i. Program management (administrative costs)
- ii. SWMP Development
 - a) Construction Element
 - b) Commercial/Industrial Element
 - c) Municipal Operations and Facilities Element
 - Maintenance of Structural BMPs and Treatment Control BMPs
 - d) Illicit Discharge and Detection Elimination Element
 - e) Public Outreach Element
 - f) Performance and Effectiveness Evaluations
- iii. Planning and Land Development
- iv. Monitoring Program
- v. Water Quality Based Programs
- vi. Training
- vii. Other Services and Expenses

1269477.1

SACRAMENTO



STORMWATER
QUALITY
PARTNERSHIP

July 23, 2012 (Via E-mail to LAMS42012@waterboards.ca.gov)

Mr. Ivar Ridgeway
Los Angeles Regional Water Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Subject: Comment letter (Provision V.A.) – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

On behalf of the Sacramento Stormwater Quality Partnership (collectively, the seven permittees covered by Sacramento Areawide MS4 Permit CAS082597), we are submitting this letter to provide comments on the subject draft Los Angeles NPDES MS4 Permit (Draft MS4 Permit). While our Partnership will not be subject to this Permit, the provision related to receiving water limitations and the deviation away from the historically accepted iterative management process is likely precedential for our permit renewal process in 2013-14. Consequently, we feel compelled to voice our concern.

We strongly concur with CASQA that in light of the July 2011 decision by the Ninth Circuit Court of Appeals¹, the language in Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and regulated entities will not be able to comply. We respectfully request that you consider revision of Provision V.A to incorporate the Receiving Water Limitations language recommended by CASQA in February 2012². We support this language because it would enable regulated entities like ours to focus and prioritize our severely limited resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. It will also help ensure that continued good faith compliance is not the subject of significant legal liability and lawsuits.

Thank you for providing this opportunity to comment. Please direct questions regarding this letter to Dana Booth at (916) 874-4389 or Sherill Huun at (916) 808-1455.

Sincerely,

Handwritten signature of Dana W. Booth in blue ink.

Dana W. Booth, PG QSD
Program Manager - Stormwater Quality
Sacramento County
Department of Water Resources

Handwritten signature of Sherill Huun in purple ink.

Sherill Huun, P.E.
Stormwater Program Manager
City of Sacramento
Department of Utilities

¹ Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.A of the L.A. MS4 Permit, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles/Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process.

² See February 21, 2012 letter from CASQA to Mr. Charles Hoppin, Chair, State Water Board.

cc: Cesar Montes de Oca, City of Citrus Heights
Fernando Duenas, City of Elk Grove
Sarah Staley, City of Folsom
Trung Trinh, City of Galt
Britton Snipes, City of Rancho Cordova

C/CAG
CITY/COUNTY ASSOCIATION OF GOVERNMENTS
OF SAN MATEO COUNTY

*Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough •
Menlo Park • Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South
San Francisco • Woodside*

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

(Submitted electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Mr. Ridgeway:

The City/County Association of Governments of San Mateo County (C/CAG) appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). C/CAG's member agencies include the 20 cities and towns and the county. C/CAG also oversees the San Mateo Countywide Water Pollution Prevention Program, which coordinates compliance efforts among C/CAG's member agencies under the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Permit. While C/CAG will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

C/CAG believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

C/CAG recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, C/CAG requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Matthew Fabry, Program Coordinator for the Countywide Water Pollution Prevention Program at 650-599-1419 or via email at mfabry@smcgov.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Napier', with a period at the end.

Richard Napier, Executive Director
City/County Association of Governments of San Mateo County

Attachment 1 – CASQA Model Receiving Water Limitations Language



California Stormwater Quality Association®

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



July 23, 2012

Mr. Ivar Ridgeway
LA Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(or electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Dear Mr. Ridgeway:

The City of Santa Rosa respectfully submits the following comments regarding the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). Santa Rosa is a Phase I MS4 permitted community in the North Coast region that strives to maintain and improve water quality within our local creeks through achievable and cost-effective storm water managements. While the City of Santa Rosa will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft MS4 Permit.

The City of Santa Rosa is especially concerned about the possible precedential effects of Receiving Waters Limitations Provision V.A of the Draft MS4 Permit. We believe that Provision V.A is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. As the 2011 9th Circuit Court of Appeals decision has called into question the relevance of the iterative process as the basis for addressing water quality issues in wet weather runoff, the City of Santa Rosa believes that the proposed receiving water limitations provisions found in this Draft MS4 Permit – as well as the existing receiving water limitations in other MS4 permits, including our own – need to be modified to create a

basis of compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows an MS4 to operate in good faith with the iterative process without fear of unwarranted third party action.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. The City of Santa Rosa recognizes the importance of attaining water quality standards. At the same time, however, it is not reasonable to expect a Phase I MS4 entity to immediately realize this goal at the moment of permit adoption. Indeed, this is illustrated across the State by the hundreds of TMDLs that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

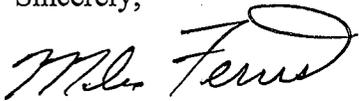
The City of Santa Rosa recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees.

For these reasons, the City of Santa Rosa resolutely supports the revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Rita Miller, Supervising Engineer of the Utilities Department – Storm Water & Creeks Section at (707)543-3879.

Thank you for your consideration of this important concern.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miles Ferris".

Miles Ferris
Director of Utilities

Attachment 1 – CASQA Model Receiving Water Limitations Language

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State of Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.

C/CAG
CITY/COUNTY ASSOCIATION OF GOVERNMENTS
OF SAN MATEO COUNTY

*Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough •
Menlo Park • Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South
San Francisco • Woodside*

July 23, 2012

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

(Submitted electronically to LAMS42012@waterboards.ca.gov)

Subject: Comment letter – Draft NPDES Permit for MS4 Dischargers within the Los Angeles County Flood Control District

Mr. Ridgeway:

The City/County Association of Governments of San Mateo County (C/CAG) appreciates the opportunity to provide comments on the subject Draft Los Angeles MS4 Permit (Draft MS4 Permit). C/CAG's member agencies include the 20 cities and towns and the county. C/CAG also oversees the San Mateo Countywide Water Pollution Prevention Program, which coordinates compliance efforts among C/CAG's member agencies under the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Permit. While C/CAG will not be subject to this Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase MS4 Permit.

C/CAG believes that Provision V.A of the Draft MS4 Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision V.4, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision V.A is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. Local government certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects a Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

C/CAG recognizes the need to continue to make significant progress toward attainment of water quality standards. However, we also believe that no regulatory benefit accrues from the Regional Board establishing permit provisions, such as Provision V.A, that result in the potential of immediate non-compliance for Permittees. For these reasons, C/CAG requests revision of Provision V.A to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language (see Attachment 1). We strongly support this language because it will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of significant legal liability and lawsuits.

Please direct any questions regarding this letter to Matthew Fabry, Program Coordinator for the Countywide Water Pollution Prevention Program at 650-599-1419 or via email at mfabry@smcgov.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Napier', with a period at the end.

Richard Napier, Executive Director
City/County Association of Governments of San Mateo County

Attachment 1 – CASQA Model Receiving Water Limitations Language



California Stormwater Quality Association®

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.



Ventura Countywide Stormwater Quality Management Program

Participating Agencies

July 23, 2012

Camarillo

Mr. Sam Unger
Executive Officer

(via email)

County of Ventura

Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 210
Los Angeles, CA 90013

Fillmore

Subject: COMMENTS ON THE TENTATIVE ORDER FOR THE GREATER LOS ANGELES COUNTY MS4 PERMIT

Moorpark

Dear Mr. Unger:

Ojai

The Ventura Countywide Stormwater Quality Management Program (Program), which includes the cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Ventura, Santa Paula, Simi Valley, and Thousand Oaks and the County of Ventura and the Ventura County Watershed Protection District, would like to take this opportunity to provide comments on the Tentative Order for the Greater Los Angeles County MS4 Permit (Draft Order). The precedent-setting nature of some of the provisions is of concern to our Program. These concerns are enumerated below.

Oxnard

Port Hueneme

NON-STORMWATER ACTION LEVELS

One of the goals of establishing non-stormwater action levels is to assist Permittees in identifying illicit connections and/or discharges at outfalls. Exceedances of action levels can help Permittees prioritize and focus resources on areas that are having a significant impact on water quality. Unfortunately, as currently drafted, the non-stormwater action levels do not accomplish this goal. The action levels established in the draft order Attachment G are derived from Basin Plan, California Toxic Rule (CTR), or California Ocean Plan (COP) water quality objectives. The non-stormwater action levels do not facilitate the consideration of actual impacts (e.g., excess algal growth), have no nexus to receiving water conditions, and do not address non-stormwater action level issues unrelated to illicit discharges (e.g., groundwater). The action levels and the associated monitoring specified in the Monitoring and Reporting Program would require Permittees to investigate and address issues on an outfall-by-outfall basis, even if the receiving water is in compliance with all water quality standards. This will not assist Permittees in prioritizing resources on outfalls that are clearly having an impact on water quality.

San Buenaventura

Santa Paula

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

In an effort to assess the impact of the non-stormwater action levels we have compiled a summary table comparing our dry weather monitoring results with the proposed action levels (see Attachment 1). A review of this table will show that in general the MS4s will be trying to identify bacteria sources for practically every outfall. As the Regional Board is well aware of, tracking and identifying bacteria sources is an expensive proposition and in many cases not conclusive. We believe that implementation of the proposed requirements would result in un-



necessary spending of Public Funds and limited or insignificant water quality improvement.

Requested Action:

Allow the Watershed Management Programs to guide the customization of the non-stormwater action levels based on the highest water quality priorities in each watershed. Levels should then be established which will provide more effective tracking tools for illicit discharges instead of assigning every outfall as a high priority outfall. If non-stormwater action levels are not established through the Watershed Management Programs, then Permittees should be required to use the default non-stormwater action levels and approach identified in the Draft Order and Attachment G.

STORMWATER ACTION LEVELS

Municipal Action Levels (MALs) established in Draft Order Attachment G, were “obtained by computing the upper 25th percentile for selected pollutants for Rain Zone 6.” Despite this information, the Draft Permit does not provide transparency of how MALs were calculated (e.g. time period, land uses, etc. included in the calculation) and how non-detects were treated. The Program was not able to exactly reproduce the tentative MALs based on the National Stormwater Quality database, although the 75th percentiles of all Rain Zone 6 data were similar in most cases (see Attachment 2). Furthermore the Draft Order MALs are lower compared to Orange County stormwater action levels, which introduce some inconsistency for no apparent reason between regions.

Requested Action:

Provide transparency behind the Municipal Action Levels calculations and consider using a consistent approach across the region (i.e., calculate based on the 90th percentile as done by the San Diego Regional Board in south Orange County permit).

RECEIVING WATER LIMITATION LANGUAGE

The Receiving Water Limitations Provision (Section V.A.) of the Draft Permit was not substantially modified from the language contained in the current Permit. This language is fairly standard throughout NPDES MS4 permits including the Ventura Permit. However, since the adoption of the Ventura Permit a court decision has seriously undermined the original intent of this language (i.e. to use the iterative process to address water quality standard exceedance to demonstrate compliance with the permit) and now the language places Permittees in an untenable position. Previously, MS4s have presumed that permit language like that expressed in Receiving Water Limitation V.A.3 in conjunction with Board Policy (WQ 99-05) established an iterative management approach and process as the fundamental, and technically appropriate, basis of compliance. The “iterative process language” now at issue in the Draft Order renders the iterative process obsolete as a compliance strategy. The Program, along with California Stormwater Quality Association (CASQA) and other NPDES MS4s believe that this status quo must be change due to the July 2011 Ninth Circuit Court of Appeals ruling (*Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.*) that a party whose discharge “causes or contributes” to an exceedance of a water quality standards is in violation of the permit, even if a party is implementing the iterative process in good faith. This ruling came about because the iterative process paragraph did not explicitly state that a party who was implementing the iterative process was not in violation of the permit. Moreover, in the wake of the Ninth Circuit Court of Appeals’ decision, if this language is not revised the precedent may be set for municipal permits that create unlimited liability for government entities across the State.

Due to the timing and statewide nature of the Draft Permit, it will likely set a precedent for future MS4 NPDES permits, making this language critical to affecting a change within the Receiving Water Limitations Provision. The Receiving Water Limitation language must be revised to allow MS4s to operate in good faith with the iterative process without fear of unwarranted third party action while still ensuring diligent progress in complying with water quality standards.

Requested Action:

Revise the language in the Receiving Water Limitation Provision as provided in Attachment 3.

TREATMENT CONTROL BMP BENCHMARKS

Our NPDES MS4 permit requires the project developer to determine the pollutant of concern(s) for the development project and use this pollutant as the basis for selecting a top performing best management practice (BMP). In the case of the Draft Order, there is no determination of the pollutant of concern for the development project. Instead, post-construction BMPs must meet all the benchmarks. Unfortunately, traditional post-construction BMPs are not capable of meeting all the benchmarks and thus the developer will not be able to select one top performing BMP.

Requested Action:

The Program requests that this provision be modified so that the selection of post-construction BMPs is consistent with the Ventura Permit and is based on the development site's pollutant of concern(s) and the corresponding top performing BMP(s) that can meet the Draft Order's Table 11 benchmarks.

PUBLIC AGENCY ACTIVITIES

There are several aspects of the Draft Order's Public Agency Activities Provision that present an increased level of effort in comparison with the current iteration of the permit. The Program does not believe that the resources needed to comply with these ramped up requirements are commensurate with the water quality benefit:

- **Retrofit Assessment:** This requirement as currently written would be onerous to implement. Although stormwater regulations (40 CFR 122.26.(d)(2)(iv)(4) requires consideration of retrofitting opportunities, the consideration is limited to flood management projects (i.e. public right of way) and does not require consideration of private areas. At a minimum, the retrofit provision requirement should clearly state that it only applies to flood management projects in the public right of way.
- **Retrofitting Vehicle Wash Areas to be Plumbed to Sanitary Sewer:** This requirement (and the option hauling washwater offsite) may be a challenge for some Permittees. An NPDES MS4 permit should not specify the conditions under which a wastewater treatment provider accepts vehicle wash water. This language should be modified to state "or discharge to comply with conditions as permitted by the local wastewater authority."
- **Annually Train All Employees and Contractors Who Use Pesticides:** Contractors are hired for their expertise and knowledge, providing annual training for contractors is excessive and may be in conflict with other certified pesticide applicator requirements. The requirement should be modified to annually for all employees and ensure contractors have been trained.

Requested Action:

Modify as recommended above.

CONSTRUCTION AND INDUSTRIAL DISCHARGES

The Draft Order requires Permittees to prohibit non-storm water discharges through the MS4 to receiving waters with a number of exemptions including authorized non-storm water discharges separately regulated by an individual or general NPDES permit. The NPDES Permits include discharges from construction sites (General Construction Permit No. CAS000002) and from industrial facilities (General Industrial Permit No. CAS000001). Under Part VI.A.2 "Legal Authority", the Draft Order stipulates that Permittees "control the contribution of pollutants to its MS4 from storm water discharges associated with industrial and construction activity and control the quality of stormwater discharged from industrial and construction sites. This requirement applies [...] to industrial and construction sites with coverage under an NPDES permit [...]. Grading ordinances must be updated and enforced as necessary to comply with this Order."

Discharges currently regulated under the NPDES Permits and specifically exempt from the MS4 Permit's Discharge Prohibitions should not be subject to redundant regulations under MS4 Permits.

Requested Action:

Remove requirements for the Permittees to regulate discharges from construction sites and industrial facilities listed in the paragraph (i) under Part VI.A.2 "Legal Authority", because discharges from those sites/operations are regulated by the Regional Water Board under separate NPDES General Permits.

TMDLS: COMPLIANCE WITH FINAL WLAs

The Draft Permit allows a BMP-based compliance option for interim Waste Load Allocations (WLAs). However, this option is not available for compliance with final WLAs. According to an EPA issued memo in 2002¹, EPA expects that water quality-based effluent limits (WQBELs) will be expressed as BMPs and that numeric limits for most WQBELs will only be used in rare instances. The memo goes on to recognize the need for an iterative approach to controlling pollutants in stormwater discharges – that discharges implement BMPs and make adjustments as needed to improve water quality. EPA issued another memo in 2010 stating that where feasible, the NPDES permitting authority may exercise its discretion to include numeric effluent limitations. The memo also provides for WQBELs to be expressed as BMPs. No state or federal law requires the use of numeric effluent limitations.

The TMDL implementing conditions in the stormwater NPDES permit should be established in a manner that clearly conveys that the requirements of the Federal regulations have been satisfied; the provisions provide objective and measureable direction to permittees; preserve the ability to adapt the implementation to meet changing conditions, and provide a means to assess compliance. To do this, the permit needs to be modified to:

1. Establish WQBELs to implement the WLAs in the permit, but the WLAs should not be identified as the WQBELs. The WLAs as established by TMDL can be incorporated into the permit to provide the linkage to the WQBELs, but should not be considered a WQBEL.
2. Clearly define the process for determining compliance and ensure one option is through the iterative implementation of BMPs per the approved implementation plans or Watershed Management Program. Where implementation actions are implemented per the approved schedule, the Permittee would be in compliance. Where implementation plans are not implemented per the approved schedule, the Permittee would not be in compliance. Consistent with recent MS4 permits in California² and Washington D.C.³, and EPA guidance, the compliance assessment provisions can be structured in a manner that provides accountability and enforceability while still utilizing adaptive management for the implementation of BMPs.
3. Compliance assessment should also consider other instances in which the Permittee would be in compliance (such as attainment of water quality standards in receiving waters, no discharge, etc.). Compliance assessment can also include a fall back to the WLAs as numeric effluent limits when a permittee fails to implement the required implementation actions.
4. Define attainment of the WLAs and compliance with the permit provisions as clearly separate concepts. For example, if WLAs are not *attained*, the permit could require additional actions from the Permittees, but as long as the approved implementation plan was implemented per the approved schedule, then the Permittee would be in *compliance*.
5. Monitoring and reporting requirements need to be consistent with the approved TMDLs, but flexible enough to allow for the development of integrated monitoring programs. The monitoring requirements need to provide the information needed to evaluate progress towards attaining the WLAs. The monitoring points need to be clearly defined as one

¹ Wayland, R. and J. Hanlon. 2002. Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. Washington, DC.

² R8-2010-0036 San Bernardino County Flood Control District

³ NPDES Permit No. DC0000221, October 7, 2011, issued by USEPA Region 3.

Mr. Sam Unger
July 23, 2012
Page 6 of 6

option for defining compliance and not the sole option. As noted above, where the WLAs are expressed as BMPs, there is an important distinction between attaining the WLAs and complying with the permit provisions. The monitoring and reporting requirements can be structured in a way to ensure that the implementation of BMPs is resulting in attainment of the WLAs.

Requested Action:

Provide an option for flexible implementation of BMPs through an iterative process for compliance with final WLAs as described above.

Thank you for your time to consider our comments and suggestions. If you have any additional questions or further clarification, please contact Arne Anselm at (805) 654-3942.

Sincerely,



Gerhardt Hubner
Chair

Attachments:

- 1 Non-Stormwater Action Level Assessment
- 2 Critique of Treatment Control BMP Performance
- 3 CASQA Proposed Language for Receiving Water Limitation Provision

cc: Renee Purdy, Regional Program Section Chief
Ivar Ridgeway, Stormwater Permitting Chief
Ventura County Stormwater Quality Program Managers

Assessment of Non-Stormwater Action Levels

Non-Stormwater Action Levels

The Los Angeles MS4 Draft Order in Attachment G establishes non-stormwater action levels (NALs). Action levels from the Draft Order for inland surface waters with salinity < 1 ppt, as daily maxima and/or monthly averages are shown in the following table. It is worth noting that not all action levels apply to all watersheds in the Los Angeles region.

	<i>E. coli</i>	Chloride ¹	Sulfate ¹	TDS ¹	MBAS	cyanide	pH	Nitrite-N	Turbidity
Units	MPN/100 ml	mg/l	mg/l	mg/l	mg/l	ug/l	pH-units	mg/l	NTU
Daily Max.	235	--	--	--	--	8.5	6.5-8.5	--	--
Monthly Avg.	126	BP	BP	BP	0.5	4.3	6.5-8.5	1	5
	Al	Cu ²	Cd ²	Pb ²	Ni ²	Se	Ag ³	Zn ²	Hg
Units	ug/l	ug/l	ug/l	ug/l	ug/l	ug/l	ug/l	ug/l	ng/l
Daily Max.	--	50	12	30.5	276.2	8.2	?	387.2	100 (all watersheds) 1000 (SCR only)
Monthly Avg.	1,000	24.9	6	15.2	137.7	4.1	?	193	51

¹Action levels depend on water body segment, and are in accordance with applicable water quality objectives in Basin Plan (BP).

²Action level at hardness > 400 mg/l is shown (applies to 78 % of Ventura County outfall observations). Action levels decrease as hardness decreases.

³Hardness-based action levels for total silver were missing in the draft order and could not be evaluated.

Comparison of Ventura Dry Weather Monitoring Data with Proposed NALs

The Ventura Countywide Stormwater Quality Program has been conducting non-stormwater monitoring since 1996. These data were compared with the NAL and the following table shows the frequency of action level exceedance for each outfall (exceedances/total observations), and total percentage of exceedances averaged across all stations. Stations with more than 20% exceedances are highlighted in red (exceeding daily maximum levels) and orange (exceeding monthly average levels). It is important to note that no more than 5 observations are available per outfall, and 20% exceedance rate corresponds to at least one exceedance.

Constituent	Daily (D) or monthly (M)	Units	NAL	Max	Municipality														Total (%)
					A	B	C	D	E	F	G	H	I	J	K	L	M	N	
<i>E. coli</i>	D	MPN/100 ml	235	43,520	2/5	4/4	2/2	2/2	2/3	2/3	4/5	2/4	1/4	1/1	2/2	1/4	0/5	0/2	54
	M	MPN/100 ml	126	43,520	2/5	4/4	2/2	2/2	3/3	2/3	5/5	3/4	2/4	1/1	2/2	4/4	2/5	1/2	76
Chloride	M	mg/l	60-250	4,600	1/3	1/2	0/2	NA	3/3	1/1	3/3	0/2	2/2	0/1	NA	2/2	3/3	NA	67
Sulfate	M	mg/l	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TDS	M	mg/l	500-850	9,900	3/3	0/2	0/2	NA	2/3	1/1	3/3	2/2	2/2	0/1	NA	2/2	3/3	NA	55
MBAS	M	mg/l	0.5	2.4	0/3	0/2	0/2	NA	0/3	1/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	4
Cyanide	D	ug/l	8.5	<2.7	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Cyanide	M	ug/l	4.3	<2.7	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
pH	D/M	pH-units	< 6.5	7.51	0/5	0/3	0/2	0/1	0/4	0/2	0/5	0/3	0/3	0/1	0/1	0/3	0/5	0/1	0
pH	D/M	pH-units	> 8.5	9.91	4/5	0/3	0/2	0/1	2/4	1/2	0/5	3/3	0/3	0/1	0/1	0/3	1/5	0/1	38
Nitrite-N ¹	M	mg/l	1	0.25	NA	NA	0/1	NA	0/2	NA	0/2	NA	NA	NA	NA	NA	0/1	NA	0
Turbidity	M	NTU	5	12.67	2/4	0/3	2/2	1/1	1/3	1/2	0/4	2/3	0/3	1/1	0/1	0/3	0/4	0/1	26
Al, total	M	ug/l	1,000	170	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Cu, total ²	D	ug/l	50	84	0/3	0/2	0/2	NA	0/3	0/1	0/3	1/2	0/2	0/1	NA	0/2	1/3	NA	8
	M	ug/l	24.9	84	1/3	0/2	0/2	NA	0/3	0/1	0/3	2/2	0/2	0/1	NA	0/2	3/3	NA	25
Cd, total ²	D	ug/l	12	0.82	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
	M	ug/l	6	0.82	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Pb, total ²	D	ug/l	30.5	2	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
	M	ug/l	15.2	2	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Hg, total	D	ng/l	100	51	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
	M	ng/l	51	51	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Ni, total ²	D	ug/l	276.2	16	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
	M	ug/l	137.7	16	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
Se, total	D	ug/l	8.2	42	0/3	1/2	0/2	NA	0/3	0/1	0/3	0/2	2/2	0/1	NA	0/2	3/3	NA	25
	M	ug/l	4.1	42	0/3	2/2	0/2	NA	0/3	0/1	0/3	0/2	2/2	1/1	NA	0/2	3/3	NA	33
Ag, total	D	ug/l	?	< 0.04	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	M	ug/l	?	< 0.04	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Zn, total ²	D	ug/l	387.2	20	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0
	M	ug/l	193	20	0/3	0/2	0/2	NA	0/3	0/1	0/3	0/2	0/2	0/1	NA	0/2	0/3	NA	0

¹Nitrite-N was calculated as NO₂+NO₃-N minus NO₃-N, and was only available for a few stations.

²Exceedances based on actual hardness in sample

A review of the table provides the following observations.

- Daily maximum action levels were exceeded for *E. coli*, pH (high), copper and selenium at one or more Ventura County outfall stations. *E. coli* exceedances were observed at almost all outfalls.
- Average monthly action levels were exceeded for *E. coli*, chloride, TDS, MBAS, pH (high), turbidity, copper and selenium at one or more Ventura County outfall stations. *E. coli* exceedances were observed at all outfalls. Note that average monthly outfall concentrations cannot be calculated since samples are at least one month apart. Therefore, exceedances of average monthly action levels were based on single samples.
- Maximum observed concentrations for cyanide, nitrite-N, aluminum, cadmium, lead, nickel and zinc were well below tentative daily maximum and monthly average action levels.

STORMWATER ACTION LEVELS REVIEW

Sections VIII of the Los Angeles MS4 Draft Order presents Municipal Action Levels (MALs) for stormwater discharges. The MALs were based on nationwide Phase I MS4 monitoring data for pollutants in storm water, and specifically by computing the upper 25th percentile for selected pollutants for Rain Zone 6. For the purpose of this review, the database used in the derivation was analyzed using the DAT Tool and the upper 25th percentile values were compared against the proposed MALs. The proposed MALs appear reasonable – the differences in the proposed MALs and the calculated upper 25th percentile are minor and may be explained by the different approaches used for assigning numerical values to non-detect samples in the dataset. The MALs and calculated upper 25th percentile values are presented in the tables below.

Conventional Pollutants (all values in mg/L unless noted)

Pollutant	pH (std units)	TSS	COD	TKN	Nitrate + Nitrite	P-total
Proposed MAL	7.70	264.1	247.5	4.59	1.85	0.80
Calculated upper 25 th %-ile	6.70 - 7.70 ⁽¹⁾	258.5	240.8	4.49	1.83	0.79

(1) shows lower and upper 25th percentile since pH objectives are usually expressed as a range.

Metals (total fraction, all values in µg/L)

Pollutant	Cd	Cr	Cu	Pb	Ni	Zn	Hg
Proposed MAL	2.52	20.20	71.12	102.00	27.43	641.3	0.32
Calculated upper 25 th %-ile	1.84	19.81	68.57	94.12	26.42	614.1	0.20



California Stormwater Quality Association®

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

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision**D. RECEIVING WATER LIMITATIONS**

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.