



California Stormwater Quality Association®

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February 3, 2017

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

Subject: Comment Letter – Variance Policy – Scoping Comments

The California Stormwater Quality Association (CASQA) would like to take this opportunity to provide comments regarding the Informational Document for the Public Scoping Meeting for Proposed Statewide Water Quality Standards Variance Policy Amendments to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries (Informational Document).

CASQA supports the State Water Board's efforts to develop statewide REC-1 bacteria objectives, and its development of a statewide variance policy for inclusion along with the bacteria objectives in the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries. Stormwater agencies statewide face many challenging water quality issues, including bacteria, mercury, and toxicity among others. The variance policy, once finalized, would be a useful tool for Regional Water Boards in setting requirements for municipal separate storm sewer system (MS4) permittees regulated by Phase I and Phase II National Pollutant Discharge Elimination System (NDPES) permits, and Total Maximum Daily Loads (TMDLs). Since our members will be impacted by the proposed variance policy, we request that the State Water Board develop comprehensive information and guidance to ensure consistent and efficient use of the policy by the Regional Water Boards. In addition, CASQA would like to offer the following comments for your consideration:

CASQA requests that a model variance be included as part of the policy.

A model variance should be included as part of implementation guidance on the variance policy. A model variance would provide a roadmap/template for Regional Water Boards to use when adopting variances in the future. Additionally, it would be helpful for future variance adoption to provide guidance and examples/case studies of real-world situations and circumstances where variances can be applied.

CASQA requests that a streamlined variance policy be included for bacteria along with the general variance policy.

A streamlined variance policy for bacteria should be included along with the general variance policy. The Central Valley Regional Water Board developed both a general variance policy and a variance program for salinity that allows a streamlined approval procedure for multiple permittees that share the same challenges in achieving their water quality based effluent limitation for the same pollutant(s). A similar process could be included with the statewide variance policy, to allow a streamlined process for stormwater agencies with similar justification for a variance from the

bacteria objectives (e.g., natural sources, seasonal use, low flows, or an economic consideration). For example, State Water Board staff could develop guidance for variances based on conditions such as seasonal or low flows, similar to how staff plans to develop guidance for setting high flow suspensions in Element 4 of the Statewide Bacteria Objectives Scoping Document (2015).

CASQA requests that the scope of the analysis considers the time-limited nature of variances.

Because a variance policy is in essence a temporary modification of water quality objectives, the implementation requirements to meet water quality objectives are not modified by a variance policy. As a result, it is important that the potential impacts of the water quality objectives be fully considered even if a variance policy is available. When considering the reasonably foreseeable methods of compliance and potential impacts of a variance policy, the Water Boards should analyze the differences between a temporary modification of objectives provided by a variance and other regulatory strategies being considered as part of the implementing provisions for the statewide bacteria objectives that provide more long term modifications.

CASQA requests that, in addition to the six factors under 40 CFR 131.10(g), a variance be allowed for additional conditions in waterbodies that do not support recreational use, such as seasonal use.

Because there are a variety of conditions that can preclude the attainability of a designated use in a waterbody, CASQA supports the State Water Board's reference to the factors listed in the federal regulations as circumstances under which a variance is appropriate. In addition to those six factors, there are additional circumstances where contact recreation beneficial uses may not be attainable. Numerous waterbodies in California are not supportive of recreation year-round due to physical limitations on access or unsafe conditions due to high flows that are not conducive to water contact recreation. When developing a variance, Water Boards should consider 40 CFR 131.10(f), which allows for the consideration of seasonal uses and differences in the ability of a waterbody to support the use during different seasons. It would also be helpful to provide examples or guidance on circumstances under which a variance would be justified for each of the factors.

CASQA recommends that the State Water Board consider including action-based options to numeric performance-based limitations for stormwater permittees.

The proposed variance policy states that a variance shall be the "applicable water quality standard for the limited purpose of developing NPDES permit limits and requirements . . ." and the proposed definition of a variance notes that it is a "time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance." This language is most applicable to POTW discharges which have continuous discharges, and implies the need for performance-based limitations.

Stormwater runoff is intermittent and more variable in pollutant concentrations than wastewater discharges. The United States Environmental Protection Agency (USEPA) has long recognized that most regulated stormwater discharges can be adequately controlled to meet water quality standards by managing activities that have the potential to contribute pollutants through a best

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management practice (BMP) framework¹. CASQA requests that the State Water Board allow optional interim approaches for stormwater, such as BMP or action based options.

In closing, CASQA appreciates the opportunity to comment on the Informational Document and we hope that our comments will assist you in development of the variance policy. CASQA also requests continued consideration of the other points provided in our February 20, 2015 comment letter on the statewide bacteria objectives scoping document. Please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620 if you have any questions or would like to discuss our comments further.

Sincerely,



Jill Bicknell, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors, Executive Program Committee, and Policy & Permitting Subcommittee

¹ USEPA. 2004. National Pollutant Discharge Elimination System (NPDES) Storm Water Program Questions and Answers, January 21. Available at:
http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/stormwater/docs/sw_qanda_entiredocument.pdf