



## California Stormwater Quality Association®

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

January 19, 2015

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board



Subject: SWRCB /OCC Files A-2236(a) through (kk); Comments on Proposed Order *In Re*  
*Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit*  
*(Order No. R4-2012-0175)*

Dear Ms. Townsend:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) Proposed Order *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (Proposed Order). In its Proposed Order, the State Water Board reviews the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) November 2012 adoption of the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within Los Angeles County (hereinafter referred to as the "Los Angeles MS4 Order"). Within this context, the Proposed Order makes significant findings with respect to municipal stormwater permitting in general, and alternative compliance pathways for meeting receiving water limitations as contained in most municipal stormwater permits.

CASQA is a nonprofit corporation with approximately 2,000 members throughout California, including hundreds of local public agencies. Almost 300 CASQA members hold MS4 permits issued under state and federal law (referred to as National Pollutant Discharge Elimination System or NPDES permits and waste discharge requirements). Accordingly, we are very interested in the Proposed Order since it will guide the structure and implementation of receiving water language provisions in California permits for the foreseeable future.

In summary, CASQA generally supports the Proposed Order's findings and discussion with respect to alternative compliance pathways for complying with receiving water limitations. As a preliminary matter, however, CASQA continues to support the approach it proposed in its August 15, 2013 submittal to the State Water Board as being preferable. For CASQA, our approach is preferable because it provides for additional flexibility, and more importantly, provides permittees with additional legal protection for complying with receiving water limitations through implementation of a Strategic Compliance Program.

### Recommendation

Thus, while CASQA appreciates the Proposed Order's reference with respect to the CASQA "Strategic Compliance Program" in footnote 124, we respectfully request that the Proposed Order be revised to more directly affirm CASQA's Strategic Compliance Program as a preferable approach. This can easily be accomplished by referencing the Strategic Compliance Program directly in Section B.7. of the Proposed Order. For example, where the Proposed Order references the WMP/EWMP approach, we recommend that it state:

"...the WMP/EWMP approach or the CASQA Strategic Compliance Program..."

With respect to the Proposed Order in its current form, we have several key issues of concern, and we believe that it needs to be modified to strengthen the alternative compliance pathways. First, CASQA is concerned that the Proposed Order is too narrowly drafted to address MS4 permitting for Phase I permittees only, and as a result, leaves Phase II communities with no alternative compliance path. Second, the Proposed Order's direction to other regional water boards for revising language in existing Phase I permits is too passive. Third, the Proposed Order's revisions with respect to the Los Angeles Water Board's finding of compliance with receiving water limitations through use of the 85th percentile retention standard may disincentivize use of this approach, and further, fails to recognize that at some future point some water quality standards may need to be revised as they are applied to stormwater. In addition to these key issues, CASQA provides additional comment and suggested revisions to proposed permit language revisions on other related issues such as: anti-backsliding, anti-degradation, updated reasonable assurance analysis, and numeric water quality-based effluent limitations.

### **I. The Proposed Order is Too Narrowly Directed to Phase I MS4s**

CASQA appreciates that the Proposed Order provides some direction to other regional water boards for an approach to addressing compliance with receiving water limitations.<sup>1</sup> However, the Proposed Order focuses solely on Phase I MS4 permits, and does not recognize that Phase II permittees have the same practical compliance issues.

Specifically, the Proposed Order as a whole retains the inclusion and application of receiving water limitations in MS4 permits as set out by the State Water Board in Order WQ 99-05.<sup>2</sup> As explained in the Proposed Order, the State Water Board considers this to mean that receiving water limitations incorporated into permits as directed by Order WQ 99-05 are independent requirements, and that compliance with the iterative process does *not* constitute compliance with such limitations or excuse exceedances of water quality standards.<sup>3</sup> The Proposed Order then looks to well defined, transparent, and finite alternative paths to compliance with receiving water limitations for those that are "willing to pursue significant undertakings beyond the iterative process."<sup>4</sup> Further, in its specific direction to other regional water boards, the Proposed Order limits the consideration of alternative paths to the issuance of Phase I MS4 permits.<sup>5</sup>

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<sup>1</sup> See, e.g., Proposed Order at pp. 48-49.

<sup>2</sup> Proposed Order at p. 14.

<sup>3</sup> Proposed Order at pp. 14-15.

<sup>4</sup> Proposed Order at p. 15.

<sup>5</sup> See Proposed Order at pp. 48-49.

Nowhere within the Proposed Order does it mention or recognize Phase II communities and their need for alternative compliance pathways under the State Water Board's own MS4 permit for Phase II communities. In light of the fact that the Proposed Order continues to maintain application of the receiving water limitations language as adopted in Order WQ 99-05, and the fact that the Proposed Order specifically states that compliance with the iterative process does not excuse compliance with water quality standards, the Proposed Order must be revised to recognize an alternative compliance pathway for Phase II communities, and make some level of commitment to work with CASQA, Phase II communities, and others to develop a feasible, alternative compliance path option for such permittees, and commit to revising the Phase II General Order accordingly.

Moreover, in developing such an option for Phase II communities, the Proposed Order should recognize that what constitutes a "significant undertaking" for one community will vary as compared to that of another community. In other words, alternative compliance pathways need to be a viable option, and reachable, by all communities and should not be limited to those with more resources.

#### Recommendation

CASQA recommends that the conclusion portion of section B.7 of the Proposed Order be revised to recognize that the Phase II General Order will also need to be revised, and that the State Water Board commits to such an undertaking. This can be accomplished by adding the following paragraph at the end of section B.7:

"Further, we recognize that municipalities subject to the Phase II General Order as adopted by the State Water Resources Control Board also need access to a viable alternative compliance path for meeting receiving water limitations. To that end, we commit to working with CASQA, Phase II communities, and other stakeholders to develop a viable and feasible alternative compliance path option for meeting receiving water limitations. The principles identified here will guide the State Water Board in its development of such an option in the Phase II General Order."

## **II. The Proposed Order's Direction to Other Regional Water Boards is Too Passive**

As indicated above, CASQA appreciates the direction that the Proposed Order provides to other regional water boards, and the principles articulated in the Proposed Order.<sup>6</sup> However, CASQA is concerned that the direction given to other regional water boards is too passive in that it only "directs all regional water boards to consider the WMP/EWMP<sup>7</sup> approach to receiving water limitations compliance when issuing Phase I MS4 permits going forward."<sup>8</sup> Rather than limiting regional water board consideration of the WMP/EWMP approach to permits going forward, CASQA recommends that this direction be more explicit in that it would require all regional water boards to review existing Phase I MS4 permits, and in instances where there is not an

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<sup>6</sup> See, e.g., Proposed Order at pp. 48-49.

<sup>7</sup> WMP refers to Watershed Management Program and EWMP refers to Enhanced Watershed Management Program, as the terms are used and defined in the Los Angeles MS4 Order. (See Los Angeles MS4 Order at pp. 47, 48.)

<sup>8</sup> Proposed Order at p. 48.

appropriate WMP/EWMP or equivalent approach, direct regional water boards to revise existing permits as necessary.

#### Recommendation

CASQA recommends that the language in the Proposed Order be revised as follows:

“We direct all regional water boards to review existing Phase I MS4 permits, and consider if there is an appropriate ~~the~~ WMP/EWMP approach, or alternative, to receiving water limitations compliance. If there is no such approach, or an alternative, then the applicable regional water board should consider revising existing Phase I MS4 permits in a timely and efficient manner. ~~when issuing Phase I MS4 permits going forward.~~”

### **III. Retention Standard is an Appropriate Path for Compliance With Receiving Water Limitations**

Proposed Order section B.5 addresses the issue of compliance through implementation of an EWMP, and where (1) all non-stormwater and (2) stormwater runoff up to and including the volume equivalent to the 85th percentile, 24 hour event is retained for the drainage area tributary to the applicable receiving water (hereafter referred to as the “stormwater retention approach”).<sup>9</sup> As correctly noted, implementation of the stormwater retention approach as contained in the Los Angeles MS4 Order creates compliance with final water quality-based effluent limitations, other total maximum daily load (TMDL)-specific limitations and receiving water limitations, but does so in a manner that may not actually result in strict compliance with such requirements. The Proposed Order finds fault with this approach for several reasons, and proposes revisions accordingly. CASQA is concerned that the Proposed Order’s revisions here may take away incentives for using the stormwater retention approach as intended in the Los Angeles MS4 Order, and that the revisions further perpetuate a myth that compliance with all water quality standards is feasible for stormwater given sufficient time and resources.

The Proposed Order appropriately recognizes the water quality and multiple environmental benefits associated with the Los Angeles MS4 Order’s stormwater retention approach.<sup>10</sup> However, the Proposed Order is hesitant to accept the stormwater retention approach as compliance because, in the words of the Proposed Order, the administrative record currently lacks sufficient evidence to show that the approach “will lead to compliance with receiving water limitations in all cases.”<sup>11</sup> CASQA is concerned with the Proposed Order’s conclusions with respect to the Los Angeles MS4 Order’s stormwater retention approach for several reasons.

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<sup>9</sup> Proposed Order at p. 39.

<sup>10</sup> See, e.g., Proposed Order at p. 40 [“Furthermore, in addition to preventing pollutants from reaching the receiving water except as a result of high precipitation events (which also generally result in significant dilution in the receiving water), the storm water retention approach has additional benefits including recharge of groundwater, increased water supply, reduced hydromodification effects, and creation of more green space to support recreation and habitat.”].

<sup>11</sup> Proposed Order at p. 40.

### **A. State Water Board Should Find That Implementation of the Stormwater Retention Standard Constitutes Compliance**

As indicated in the Proposed Order, the State Water Board, and thus by extension regional water quality control boards (regional water boards), have the authority to forego requiring compliance with water quality standards (i.e., receiving water limitations).<sup>12</sup> Use of this authority could be used to delete receiving water limitation requirements in their entirety, or could be used in certain specific situations where the State Water Board or an individual regional water board determines that implementation of specific technology is sufficient, and that in light of other factors such as economics, it is not appropriate to then further require compliance with receiving water limitations. However, the Proposed Order would have the State Water Board reject the Los Angeles Water Board's use of this authority even in instances where the stormwater retention standard is being implemented (a standard that all agree has multiple environmental benefits). Rather, the Proposed Order continues to mandate compliance with receiving water limitations in the Los Angeles MS4 Order, at some future date, even though we all recognize the multiple beneficial values associated with the stormwater retention standard.<sup>13</sup>

#### Recommendation

Considering the multiple benefits created from the stormwater retention approach, as well as the considerable costs associated with implementation of such an approach, CASQA encourages the State Water Board to uphold the Los Angeles MS4 Order as adopted, and *not* require further compliance with numeric water quality-based effluent limitations, other TMDL-specific requirements, and receiving water limitations. Otherwise, permittees subject to the Los Angeles MS4 Order may not be willing to make the significant investment in the stormwater retention approach if there is no certainty with respect to compliance with receiving water limitations and other water quality-based requirements. Accordingly, CASQA recommends that the Proposed Order uphold the Los Angeles MS4 Order and its stormwater retention standards as adopted. To that end, Proposed Order section B.5 would require significant revision.

### **B. Reconsideration of Water Quality Standards as Applied to Stormwater May Be Appropriate in the Future**

Further, CASQA is concerned that in its effort to require compliance with receiving water limitations, the Proposed Order fails to recognize that at some point in the future re-evaluation of certain water quality standards as they apply to stormwater may be necessary. Specifically, and to the extent that the State Water Board rejects CASQA's recommendation immediately above, rather than requiring a plan for additional control measures,<sup>14</sup> the Proposed Order should be revised to recognize that at some point in the future it may be appropriate to reconsider water quality standards (i.e., receiving water limitations), and how they apply to municipal stormwater. As indicated above, the Proposed Order still presumes that compliance with receiving water

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<sup>12</sup> Proposed Order at p. 11.

<sup>13</sup> The Proposed Order would revise the Los Angeles MS4 Order to require monitoring, and would include requirements for additional control measures for achieving compliance with final water quality-based effluent limitations, other TMDL-specific requirements, and receiving water limitations should data indicate that compliance with such requirements is not being achieved even though the stormwater retention approach has been fully implemented. (See Proposed Order at pp. 39-44.)

<sup>14</sup> See Proposed Order at p. 44.

limitations in all cases is achievable. Considering the nature of municipal stormwater, such a presumption is problematic and fails to recognize reality for some ubiquitous pollutants such as bacteria. Further, such an approach fails to consider longstanding State Water Board precedent that clearly realizes that changes to water quality control plans may be necessary when compliance with water quality standards is not reasonably achievable.

For example, *In the Matter of the Petition of the City of Lompoc*, Order WQ 81-5 (Lompoc Order), the State Water Board noted that “[w]here compliance with the limitations cannot be achieved by *reasonable efforts*, review of the appropriateness of the water quality objective may be required.”<sup>15</sup> In that case, the State Water Board specifically directed the regional water board to review the propriety of the water quality objective in the water quality control plan (i.e., Basin Plan) for the constituent of concern at issue. Here, implementation of the stormwater retention approach as it is included in the Los Angeles MS4 Order arguably constitutes *reasonable efforts*.<sup>16</sup> Thus, to the extent that implementation of the stormwater retention approach does not result in compliance with receiving water limitations *in all cases*,<sup>17</sup> it is appropriate for the Proposed Order to direct the Los Angeles Water Board to consider the propriety of the water quality objectives in the Basin Plan as they apply to stormwater that is *not* retained via the stormwater retention approach.

#### Recommendation

Accordingly, CASQA recommends, to the extent that the State Water Board rejects CASQA’s recommendation in section III.A above, that the Proposed Order at page 43 be revised in part as follows:

~~We are not willing to go as far as saying that compliance with the storm water retention approach alone constitutes compliance with final WQBELs and other TMDL specific limitations for all time, regardless of the actual results. Nonetheless,~~  
~~w~~We anticipate that implementation of such retention projects will bring the drainage area most and, in many cases, all of the way to achievement of water quality standards, and further, we believe that implementation of such projects constitutes reasonable efforts. Where there is still a gap in required water quality improvement, we will direct the regional water board to consider the appropriateness of the water quality objectives where the gap exists, and in particular, direct the regional water board to consider the appropriateness of applying the water quality objective to stormwater that is not retained through implementation of such projects. Should the

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<sup>15</sup> Lompoc Order at p. 6, emphasis added.

<sup>16</sup> See, e.g., Proposed Order at p. 42.

<sup>17</sup> Reference to compliance with receiving water limitations *in all cases* is an extremely high bar, and as a practical matter is not realistic or even consistent with application of existing water quality objectives/criteria. For example, when dealing with California Toxics Rule constituents, the determination of compliance is based on whether or not more than one exceedance occurs within a three-year period. Further, it is unlikely that significant new information could ever meet the burden of providing evidence at a level that ensures with certainty that implementation will lead to compliance with receiving water limitations in all cases. Rather, the State Water Board and the regional water boards need to consider if there is substantial evidence in the record to support the finding at issue—not certainty for compliance in all cases. (*Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1268 (*AGUA*); see also *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511; *Envtl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 614.)

regional water board determine that the water quality objective is appropriately applied in such circumstances, we then direct the regional water board to require that Permittees have an approved plan in place to close that gap with additional control measures in order to be considered in compliance with the WQBEL or other TMDL-specific limitation. To the extent that the regional water board determines that an approved plan is necessary to close the gap with additional control measures, there are various mechanisms to provide assurances that the plan will be implemented to achieve the WQBEL or other TMDL-specific limitation, and in some instances, it may be appropriate for the Los Angeles Water Board to issue a time schedule order governing the implementation of further control measures.

CASQA further recommends that the Proposed Order on page 44 be revised as follows:

Where water quality monitoring under VI.C.7 shows that final water quality-based effluent limitations and final receiving water limitations are not in fact being achieved, the Los Angeles Water Board shall review the appropriateness of the final water quality-based effluent limitations and final receiving water limitations, and the water quality objectives from which the requirements are derived, and their application to storm water that is not retained through such projects. The Permittee shall remain in compliance with the final water quality based effluent limitations and final receiving water limitation while the Los Angeles Water Board conducts its review of appropriateness, and while the Los Angeles Water Board undertakes the process to amend the water quality control plan if the Los Angeles Water Board determines that such requirements are not appropriate in this situation. Should the Los Angeles Water Board determine that no amendment to the water quality control plan is necessary, the Permittee remains in compliance only if the Permittee proposes a plan for additional control measures for achievement of these final limitations and submits the plan to the Executive Officer for approval within 30 days of receiving notice from the Executive Officer that such a plan is necessary. ~~the final deadline.~~

**C. At the Very Least, The Proposed Order Should Remand This Specific Issue to the Los Angeles Water Board With Direction to Develop and Identify Sufficient Evidence to Support Findings With Respect to the Stormwater Retention Approach Being Able to Achieve Substantial Compliance With Final Requirements**

Should the State Water Board reject CASQA's two recommendations identified above in sections III.A and III.B, at the very least the State Water Board should remand this issue to the Los Angeles Water Board and direct it to develop and/or identify substantial evidence with respect to the efficacy of the stormwater retention approach and its ability to achieve substantial compliance with final requirements. Notably, direction on remand should reference the appropriate level of evidence needed to support the Los Angeles Water Board's stormwater retention approach, and not the level of evidence needed as implied by the Proposed Order. Specifically, the Proposed Order implies that there needs to be definitive evidence that provides certainty that implementation will lead to compliance with receiving water limits in all cases. As we stated earlier, such a standard exceeds the legal evidentiary standard, which requires the Los Angeles Water Board to support its findings based on substantial evidence in the record.<sup>18</sup> It is

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<sup>18</sup> See *AGUA, supra*, 210 Cal.App.4th at p. 1267.

also worth noting that during the December 16 workshop, Los Angeles Water Board staff acknowledged that they had carefully considered and supported the 85% retention requirement because it resulted in a 94-95% reduction in pollutant loads.<sup>19</sup>

#### **IV. Comments on Additional Issues**

##### **A. Anti-backsliding**

In general, CASQA agrees with the Proposed Order's discussion with respect to anti-backsliding, and its findings that receiving water limitations are imposed under the discretionary provisions of Clean Water Act section 402(p)(3)(B) and therefore not subject to the anti-backsliding provisions contained in Clean Water Act section 402(o). However, as CASQA discussed at length in its October 15, 2013 comments (as well as the Los Angeles Water Board testimony during the permit hearings), CASQA further believes that anti-backsliding does not apply here because the receiving water limitations in question are not effluent limitations, standards, or conditions as meant under the U.S. EPA's regulations at Code of Federal Regulations, title 40, section 122.44(l).

##### Recommendation

Accordingly, CASQA recommends that the Proposed Order be revised to recognize the fact that receiving water limitations are not effluent limitations as defined under federal law and federal regulations.

##### **B. Anti-degradation**

With respect to the anti-degradation discussion contained in the Proposed Order, CASQA disagrees with the finding that baseline water quality is considered to be the best quality of water since 1968. Specifically, the state's anti-degradation policy (otherwise known as Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*) does not establish baseline water quality as of 1968. Rather, the state's policy refers to "[w]henever the existing quality of water is better than the quality established in policies *as of the date on which such policies become effective . . .*"<sup>20</sup> Although not defined within Resolution No. 68-16, the term "policies" as used in Resolution No. 68-16 is clearly meant to refer to policies other than Resolution No. 68-16 because the term "policy" or "this policy" is used when referring directly to the policy created by Resolution No. 68-16.<sup>21</sup>

When considered in context with water quality control plans and the establishment of water quality objectives under Porter-Cologne, a better reading of Resolution No. 68-16 is that

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<sup>19</sup> Notably, the retention of the 85th percentile runoff volume is a requirement for new development and redevelopment in the Los Angeles MS4 Order. Considering that the Los Angeles Region uses this same standard for development and redevelopment, and its use in that manner has not been challenged here, it seems to us that the State Water Board should also find it sufficient for determining compliance with receiving water limitations as included in the EWMP provisions of the LA MS4 Order.

<sup>20</sup> Resolution No. 68-16, Resolve 1, emphasis added.

<sup>21</sup> See *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 777 [stating that sentences should "be viewed . . . in light of the statutory scheme" in which they are found]; see also *Cal. Drive-in Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292 [stating that the rules of statutory interpretation also apply to the interpretation of agency regulations].



“policies” refers to water quality control plans and the policies contained therein, including water quality objectives. For example, whereas clause no. 2 specifically refers to “water quality control policies” that have been or are being adopted. Then, Resolve No. 1 refers to “such policies” and when they become effective. Under the Proposed Order’s finding of baseline, all such other policies would not matter because baseline is said to be best water quality since 1968. The Proposed Order’s finding of baseline is inconsistent with Resolution No. 68-16 because it ignores reference to such policies, which would render such language superfluous.<sup>22</sup>

#### Recommendation

In light of reference to water quality control policies, baseline water quality must be determined in a manner that is consistent with such policies, as they become effective. To achieve such consistency, we believe that baseline water quality is constituent and region-specific, and is dependent on the date that the water quality objective in question is adopted into the water quality control plan. Accordingly, CASQA recommends that the Proposed Order be revised to accurately describe baseline as it is set forth in Resolution No. 68-16.

#### Recommendation

Next, on page 28 of the Proposed Order, it recommends changes to the Los Angeles MS4 Order, and includes references to Resolution No. 68-16. The Proposed Order recommends language changes that state in part, “[], the Board must find that not only present, but also anticipated future uses of water are protected, and must ensure best practicable treatment and control of the discharges.” To ensure consistency with Resolution No. 68-16, the term “best practicable treatment and control” needs to be revised to state “best practicable treatment *or* control.” The same revision is needed to finding 2.b on page 29. Further, and as discussed immediately above, the proposed language changes that claim baseline to be 1968 needs to be revised to reflect that baseline actually varies based on policies as adopted in water quality control plans. Other conforming changes with respect to baseline water quality also need to be made.

#### Recommendation

On page 29 of the Proposed Order, proposed finding 2.a should be revised. Currently, the Proposed Order would include a maximum benefit finding that “some discharge of storm water is essential for maintaining instream flows that support beneficial uses.” CASQA is concerned that such a finding would require municipalities to continue to discharge stormwater, which could hinder the development and implementation of stormwater retention projects. To replace this sentence, CASQA recommends the following: “The discharge of stormwater in certain circumstances is to the maximum benefit to the people of the state because it may be necessary for flood control and public safety purposes, as well as accommodate development in the area.” Further, finding 2.a. should be revised to clarify that the Order requires compliance with receiving water limitations over time, and thus does not result in water quality less than established standards.

### **C. Timing for Reasonable Assurance Analysis Updates**

As noted in the discussion on page 38 of the Proposed Order, revisions to the Watershed Management Programs and reasonable assurance analysis may be needed to ensure that the long

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<sup>22</sup> See, e.g., *Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 253 [courts should avoid interpretations that render language superfluous].

term WMPs/EWMPs achieve relevant water quality goals. However, updating a WMP/EWMP and reasonable assurance analysis is a significant and costly undertaking that should only be required if conditions have changed significantly such that they would alter the model results. For example, if water quality monitoring data demonstrates that progress towards meeting the water quality goals is being achieved at a rate equal to or faster than predicted by the initial analysis, the monitoring data should be sufficient evidence that sufficient progress towards meeting water quality goals is occurring. In cases where progress is not being achieved as anticipated, significant changes to the proposed control measures have been identified as part of the adaptive management process, or monitoring has revealed that initial assumptions were incorrect, refining the reasonable assurance analysis would be appropriate. Additionally, CASQA would like to suggest modifications to the proposed schedule for conducting the updates to the reasonable assurance analysis. We suggest that as part of the Report of Waste Discharge (ROWD), permittees conduct an analysis of whether conditions have sufficiently changed to warrant an update to the reasonable assurance analysis and if so, provide a schedule for conducting the updated analysis.

#### Recommendation

CASQA requests that the language on page 38 of the Proposed Order to add a new subsection b to part VI.C.8 be modified as follows:

##### b. Watershed Management Program ~~Six-Year~~ Resubmittal Process

i. In addition to adapting the Watershed Management Program or EWMP every two years as described in Part VI.C.8.a, Permittees must submit an evaluation of the watershed conditions and reasonable assurance analysis utilized to develop the Watershed Management Program or EWMP as part of the Report of Waste Discharge (ROWD). If the evaluation demonstrates a change of condition that warrants a revised reasonable assurance analysis, the ROWD will propose a schedule for developing an updated Reasonable Assurance Analysis and Watershed Management Program or EWMP that shall not exceed one year ~~updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis at an interval to be determined by the Regional Board but not to exceed every six years for review and approval by the Regional Water Board Executive Officer. If needed, the~~ updated Reasonable Assurance Analysis must incorporate both water quality data and control measure performance data gathered in prior years ~~and, as appropriate, any new numeric analyses or other methods for the reasonable assurance analysis.~~ The updated Watershed Management Program or EWMP must comply with all provisions in Part VI.C. The Regional Water Board Executive Officer will allow a 60-day public review and comment period with an option to request a hearing. The Regional Water Board Executive Officer must approve or disapprove the updated Watershed Management Program or EWMP within 120 days of submittal.

#### **D. Numeric Water Quality-Based Effluent Limitations**

While the Proposed Order provides a reasonable discussion of the rationale for including numeric water quality-based effluent limitations in the Los Angeles Permit, CASQA continues to strongly support the inclusion of best management practice-based effluent limitations in MS4 permits and appreciates the acknowledgement in the Proposed Order that numeric effluent limitations may not be appropriate for all MS4 permits.

Recommendation

In light of the recently released 2014 USEPA Memorandum that replaces the 2010 USEPA Memorandum cited in the Proposed Order, CASQA requests that modifications to the discussion on page 53 be revised in accordance with the new memorandum. In particular, the section should recognize that the recommendation is now to include “clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations.” The feasibility of including numeric effluent limitations should be a required determination for any permits that choose to include numeric effluent limitations based on water quality standards.

Additionally, the language should include a discussion to clarify that numeric effluent limitations can include limitations with a quantifiable or measurable parameter, such as on-site stormwater retention volume and do not have to be based on water quality standards.

**V. Conclusion**

CASQA appreciates the thoughtful and well-articulated analysis set forth in the Proposed Order, and as stated above, generally supports the Proposed Order. However, to ensure that all municipal stormwater agencies have an option of meeting receiving water limitations through an alternative compliance path, CASQA recommends that the Proposed Order be revised to include a specific commitment from the State Water Board for revising the Phase II General Order and that the Proposed Order be revised to provide more explicit direction to other regional water boards. CASQA also encourages the State Water Board to further consider the stormwater retention approach as being an appropriate path for compliance with receiving water limitations. In this regard, the State Water Board should uphold the Los Angeles MS4 Order. Further, CASQA believes it is appropriate for the State Water Board to uphold such an approach because it will further improve water quality in the state’s waters, and such an approach has other important environmental benefits.

If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Gerhardt Hubner, Chair  
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee