CASQA
California Stormwater Quality Association®
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March 15, 2010

Constance Anderson, Environmental Scientist
State Water Resources Control Board, Division of Water Quality, Ocean Unit

Subject: Comment Letter – Scope of Program EIR for ASBS Discharge General Exception

Dear Ms. Anderson:

The California Stormwater Quality Association (CASQA[1]) appreciates the opportunity to comment on the scope and content of the program EIR for exceptions to the California Ocean Plan. These exceptions are intended to address discharges into Areas of Special Biological Significance (ASBS). Many of our municipal members currently discharge into ASBS or may discharge into ASBS designated in the future. The proposed Special Protections which are part of the exception will have significant impacts on these dischargers. We have the following major comments:

- ***Need to address current discharges prior to permit amendments*** – The March 3, 2010, federal court decision concerning the Los Angeles MS4 permit determined that the ASBS waste discharge prohibition was presumed to be included in the permit and was directly enforceable without regard for the permit's iterative process for compliance with water quality standards. Consequently, all current dischargers appear subject to enforcement during the period that the EIR is being prepared and the permits amended. We request that the Board address this current vulnerability. Most of the stormwater discharges into ASBS pre-existed the designation of ASBS and we doubt it was the intent of the Board to immediately prohibit these discharges when changes were made to the Ocean Plan in the 1980s. Certainly, the municipal dischargers received no notice at that time that these discharges would be banned.

  The Board may have several options to address this issue. The Board could amend the current permits as allowed by Ocean Plan section III.F.1 to include a schedule for coming into compliance with the general prohibition (or until the Special Protections/exceptions are approved and final). A second option is for the Board to make the Special Protections and permit amendments retroactive. As a third option, the Board could issue an interim exception that would preserve the status quo until the EIR is complete and the permanent exception is in place. If this problem is not addressed, the EIR and Special Protections may be moot since enforcement actions and corrective measures would be based on the current absolute prohibition.

[1] CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 26 million people in California. CASQA was originally formed in 1989 as the Stormwater Quality Task Force to recommend approaches for stormwater quality management to the California State Water Resources Control Board.

- ***New option for reducing pollutant loading*** – We appreciate the addition of the option of reducing pollutant loading as an alternative to complying with numeric concentration limits (Table B). This new option will allow dischargers the option of focusing their efforts on diversion or infiltration rather than requiring end-of-pipe treatment in all cases. This new approach supports LID/green technologies and potentially reduces the impacts from construction in the coastal zone. We request the Board clarify the basis for the selection of a 90% reduction, which may not be achievable and which may exceed the reductions attained by end-of-pipe treatment. The EIR will need to assess the facility requirements for a representative sample of ASBS discharges to achieve compliance with either the Table B constituents applied end-of-pipe or the percentage reduction. Facility requirements are a major unknown since dischargers have not had time to assess compliance with this latest version of the Special Protections.

- ***Need to amend the Ocean Plan prohibition*** – We remain convinced that the Ocean Plan will need to be amended to modify the absolute prohibition on discharge and the maintenance of "natural water quality."[2] As defined in the Special Protections, natural water quality is "without apparent human influence," and when water quality is impacted, discharges can only be justified by demonstrating runoff sample data that has equal or lower concentrations for the range of constituents at the applicable reference area(s). We believe that urban runoff, even with substantial treatment; will not consistently meet this standard. The draft Special Protections (I.A.2.h.) use an approach similar to the iterative compliance approach in MS4 permits and thus provide for a gradual implementation of this requirement. However, full compliance will ultimately be required by the Water Boards or third party enforcement. In many coastal locations, infiltration or use will not be viable. The remaining options are storage and treatment, diversion around the ASBS to new discharge locations, or pumping to inland disposal locations. The environmental impacts of full compliance will be substantial, including cumulative impacts along the entire coast. We request that the EIR examine these impacts from achieving full compliance even though the process outlined in I.A.2.h. may postpone them for several years.

- ***Sequencing of corrective measures*** – The Special Protections require compliance with Table B/90% reduction in 4 years. As noted above, compliance with the requirement for maintenance of natural water quality may take one or more permit cycles. Consequently, facilities built to address the first set of requirements may not be compatible with the facilities needed for maintaining natural water quality. It would be preferable if the full suite of compliance needs was clear initially so that municipal engineers could plan for full compliance. The incremental approach of the current Special Protections has the potential to increase impacts (and costs). An EIR alternative should examine the option of collecting adequate data so that all compliance requirements could be addressed concurrently.

- ***Economic assessment*** – The application of Table B constituents at end-of-pipe conflicts with the Ocean Plan section III.C.3, which applies Table B to the receiving water upon completion of initial dilution. This usage creates new objectives not currently in the Ocean Plan. Similarly, the specific requirements to comply with natural water quality create new objectives, for example, by comparing concentrations in a reference area with concentration

[2] See CASQA 2005 workshop comments .

in the runoff. Consequently, examination of economic considerations is needed as specified in Water Code in §13241.

- ***A better approach*** - CASQA has proposed that ASBS protection be based on comprehensive monitoring followed by controls focused on identified problems. Given municipal funding constraints, available monies should be directed to corrective actions solving real environmental problems.

We hope these comments are helpful. We have also attached detailed comments that address both EIR and technical issues regarding the Special Protections. If you have any questions or would like to discuss this further, please contact me at (949) 603-6242 or Geoff Brosseau, Executive Director, at (650) 365-8620.

Very truly yours,

Scott Taylor, Chair
California Stormwater Quality Association

Attachment: Detailed comments

cc: Charles Hoppin, Chair, State Water Board
Dorothy Rice, Executive Director, State Water Board
Jonathan Bishop, Chief Deputy Director, Division of Water Quality, State Water Board
Bruce Fujimoto, Section Chief-Stormwater, State Water Board
Dominic Gregorio, State Water Board
CASQA Executive Program Committee
CASQA Board of Directors

Detailed comments

Scope of Program EIR for ASBS Discharge General Exception

These comments address technical and administrative issues in addition to EIR scope.

1. **Baseline for 90% reduction** – The baseline for the 90% pollutant loading reduction is set at the effective date of the Special Protections. This provides a substantial disincentive for dischargers beginning now to decrease their discharge. It also penalizes those who have implemented measures in the last few years to reduce discharges.

2. **Cessation of dry weather discharge on the effective date of the Special Protections –** It is not clear, however, our understanding is that all dry discharges must cease, including the allowable now-storm water discharges listed in I.A.1.e.(2). If this is correct, then dischargers must begin planning and implementation now for discharges that in many cases may be extremely difficult to terminate. These include groundwater infiltration into storm sewers which happens in virtually all systems and natural drainage from hillsides (e.g., lateral drains for slope stability). The EIR will need to address the cumulative impacts of construction of the pump stations and diversion piping, where sanitary sewer systems are not available. [*If allowable non-stormwater discharges are permitted in dry weather then ignore this comment; however, I.A.1.a.(3)(iii) and other statements should be clarified*.]

3. **4-year implementation period for complying with Table B and achieving "natural water quality"** - Permitting and building the needed treatment/diversion facilities in constrained ROW coastal zones in 4 years may be impossible due to CEQA requirements, coastal zone permitting, and the need to identify needs, complete designs, and secure funding. Additionally, new discharge locations outside ASBS may be difficult to permit because of non-degradation requirements.

4. **Trash prohibition** – While we believe this is a reasonable requirement, it will have impacts. To comply with the Los Angeles area trash TMDLs, Caltrans has developed Gross Solids Removal Devices (GSRDs) which provide full and consistent capture of trash in right-of-way runoff. These devices, however, are large and will have a substantial visual and physical impact, as well as conversion of land to new purposes.

5. **Prohibition on new outfalls or increased flow** – In some cases communities may need to reroute flows as they redesign their systems to accommodate new roads or implement stormwater diversion projects (e.g., to address flows greater than the design storm). New outfalls should be allowed when justified and approved by the Regional Water Board and Coastal Commission.

6. **Development of SWMP Strategy Document** – The Special Protections require submittal of this document in one year. More than one year may be needed given the complexity of the problem assessment and planning needed to meet these new requirements.

7. **Non-compliance monitoring** – Most of the Ocean Monitoring appears directed at gathering general information on Ocean water, sediment, and biota, and not for compliance purposes. It is not appropriate to require MS4s to implement extensive monitoring which is essentially research-oriented and not needed to determine implementation of permit limitations.

8. **Responsibility for run-on** – In many coastal jurisdictions, stormwater runoff may pass through adjacent municipal jurisdictions prior to discharge. The Special Protections and associated policy should address which jurisdiction has compliance responsibilities in these cases.

9. **Surf zone monitoring** – Compliance for "natural water quality" requirements is determining by monitoring in the surf zone. This requirement effectively establishes a "mixing zone" but will obviously vary depending on the waves and swells occurring during sampling. We propose that the Board consider the alternative of a fixed distance defining the mixing zone. The federal Ocean Discharge Criteria establish a mixing zone of 100m (40 CFR 125.121). Because of the critical nature of ASBS, this could be reduced to 50m as the lateral distance from the discharge point to where samples would be taken. Sampling at this distance may also be safer and easier to complete.

10. **List of allowable discharges –** We strongly support the addition of *"(v) Naturally occurring groundwater seepage via a storm drain*" to this list.

11. **Allowable non-stormwater discharge compliance standards** – These flows must not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan (see I.A.1.e.(3)). This is a substantially more restrictive requirement than applies to stormwater which must comply with Table B objectives. Since both stormwater and allowable non-stormwater discharges are combined during wet weather, how will they be differentiated for compliance purposes?

12. **Public Education** – A newly added requirement is: "*The SWMP or SWPPP shall include non-structural BMPs that address public education and outreach."* It is unclear what the scope of this education and outreach program should be. In addition, we disagree that MS4s should have the responsibility to educate private property owners that discharge direct into ASBS.

13. **Sheet flow** – This term is defined as: "*Runoff that flows across land surfaces at a shallow depth relative to the cross-sectional width of the flow. These types of flow may or may not enter a storm drain system before discharge to receiving waters*." Our understanding is that sheet flow that enters a MS4 becomes a point source discharge. "Uncollected" sheet flow is a nonpoint source discharge and does not require an NPDES permit. The definition should be clarified.

14. **Use of monitoring results** – Attainment of natural water quality is determined by comparing a reference site with the discharge location. It is unclear from the specified monitoring exactly which of the monitored parameters are used in this comparison. The Special Protections should clearly indicate how attainment of natural water quality is determined

based on the specified monitoring. This will allow dischargers to better identify their compliance needs.

15. **Checklist** – Some of the categories checked as no impact, are likely to have potentially significant impacts. These include: 1. Aesthetics (treatment, pipelines in the coastal zone), 2. Forest resources (may be needed for treatment/diversion in park areas), 9. Hydrology & Water Quality (new infiltration locations will alter hydrology, new discharge locations potentially effect non-degradation WQS), 10. Land Use/Planning (conflict with coastal zone and habitat conservation plans), 17. Utilities & Service Systems (new discharge location outside ASBS may violate Monterey area discharge ban in Basin Plan), 18. Mandatory findings (cumulative impacts in coastal zone will be significant).