

# Construction Industry Coalition on Water Quality

April 18, 2012

Submitted via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814



**Subject:** Comments on the proposed amendment to the California Ocean Plan regarding designating State Water Quality Protection Areas to protect Marine Protected Areas, and the draft Substitute Environmental Documentation

Dear Ms. Townsend,

On behalf of the more than 3,000 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we would like to thank the California State Water Resources Control Board (State Board) for this opportunity to comment on the proposed Ocean Plan Amendments related to the designation of State Water Quality Protection Areas to protect Marine Protected Areas (MPA amendments), and the associated Substitute Environmental Documentation (SED).

## I. Introduction

CICWQ is an education, research, and advocacy 501(c)(6) non-profit group representing builders and trade contractors, home builders, labor unions, landowners, and project developers. Our membership is comprised of members of four major construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the Engineering and General Contractors Association in San Diego and United Contractors located in San Ramon. Collectively, members from these associations build much of the public and private infrastructure and land development projects in California. Members of all of the above-referenced organizations are affected by the Ocean Plan Amendment, as are thousands of construction employees and builders working to meet the demand for modern infrastructure and housing in California.

Our membership has two fundamental concerns with the proposed Amendment: i) it appears to be unnecessary, as the State Board already has adequate marine area protections in place, and an established process for providing any additional protections, if needed, and ii) the Amendment, if adopted, appears to our membership to effectively prohibit new development or redevelopment of properties within certain coastal areas by prohibiting any increase in discharges of stormwater.

## **II. Specific Comments on Ocean Plan Amendment and Substitute Environmental Documentation**

A. We are concerned that the proposed MPA amendments are far more stringent than the recent protections adopted for ASBS, even though it appears from State Board Resolution Nos. 2010-0057 and 2011-0013 that the proposed amendments are intended to provide a level of protection for MPAs that falls somewhere between the protections recently adopted for Areas of Special Biological Significance (ASBS) and the level of protection afforded to the ocean in general by the Ocean Plan. . Two examples of ways in which the proposed MPA amendments are more stringent than the requirements of the exception recently adopted for ASBS are illustrative:

- i. The proposed MPA amendments would require the monitoring of all discharges into SWQPA-GP areas, regardless of the size of pipe, whereas the ASBS regulations require monitoring of discharges from 18-in or 36-in and larger pipes.
- ii. The proposed MPA amendments provide no exception process, such that the requirements and prohibitions would be applied uniformly and without exception. By contrast, although the Ocean Plan prohibits certain discharges to ASBS areas, the State Board has provided an exception process by which certain discharges could be allowed (with conditions).

We believe that the proposed MPA amendments extend the requirements imposed upon discharges to ASBS even farther. We continue to be concerned that the ASBS requirements are too stringent, and that the “natural water quality” requirement as imposed in that regulation is scientifically inappropriate. Our recommendation is to adopt a No Action alternative, defined as “continued reliance upon the Ocean Plan water quality objectives and discharge requirements applicable to all ocean water of the State,” as there is simply no compelling need to provide additional protections for marine areas beyond those specified in the Ocean Plan. Protections are already in place and working.

B. Water Code Section 13241 requires assessment of specific factors when adopting water quality objectives, including economic considerations. Section 13242 requires that the program of implementation include a description of the nature of the actions that are necessary to achieve the objectives, time schedules, and required surveillance actions. State Board staff maintain that they are not required to do Section 13241 or 13242 analyses because the proposed MPA amendments would not alter existing water quality objectives or result in new water quality objectives, and because the proposed amendments do not include the designation of any new SWQPAs. We believe that the proposed MPA amendments would adopt new water quality objectives, as follows:

- i. The proposed MPA amendments would prohibit the discharge of trash, effectively establishing a water quality objective of zero (0) for trash, a requirement not currently included in the State's Ocean Plan.
- ii. The proposed MPA amendments would establish a number of prohibitions, including prohibitions on dry weather discharge (where diversions are feasible), and prohibitions on new discharges, intakes, and increases in nonpoint or permitted storm drain discharges that are not currently part of the Ocean Plan for non-ASBS Ocean Waters. These prohibitions have the force and function of water quality objectives and thus are effectively water quality objectives.

Under the Porter-Cologne Act, water quality objectives means "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." (Water Code § 13050, subdivision (h).)

The proposed discharge prohibitions set such limits at zero. These limits are new and do not merely implement existing narrative standards in the Ocean Plan, and thus must be evaluated to comply with Section 13241 and 13243. The record indicated that the State Board has not considered any of the factors identified in 13241, including without limitation, the fiscal and economic costs of programs or alternative conveyance and treatment facilities to ensure compliance with the discharge prohibition. The State Board likewise has not identified a meaningful implementation program that describes what actions are likely required to comply with the prohibitions. While it would no doubt be possible to provide a more detailed level of analysis at the time an SWQPA-GP is designated, it does not relieve the State Board of its statutory obligation to complete the required analyses at the time the objectives are established.

- C. Application to stormwater is excessive, and will result in huge costs with little or no environmental benefit. The SED, in explaining why no peer review was performed, states that "scientific analysis does not serve as the basis for any portion of these amendments." There was no analysis of the current water quality in MPAs, much less any analysis of whether the proposed measures are necessary to achieve the beneficial uses in these areas. Put simply, the amendments were proposed to fill a perceived void in the regulatory regime for Ocean Waters, not to address any specific and actual problem. This is improper.

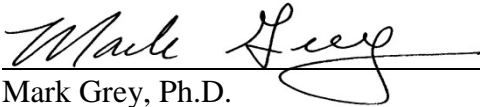
Before a new requirement may be adopted, work needs to be done to identify water quality problems in MPAs. Once the problem, if any, is identified, a regulatory response can be proposed, if one were needed at all. Instead, the proposed MPA amendment would put in place an extraordinarily stringent regulatory framework that is likely to result in significant costs that are not proportionate to the environmental

benefit. The SED rejects the No Action alternative in part because it asserts that without the proposed MPA amendments, the coastal Regional Boards lack the flexibility to tailor water quality protection needed to achieve the goals of establishing MPAs. Yet, the SED does not identify any instance where a Regional Board is unable to take needed action to protect water quality under the current framework. What is clear is that the proposed MPA amendments would mandate and establish an inflexible program—a program for which there is no evidence to indicate any actual need. Until such analysis has been performed, we encourage the State Board to adopt the No Action alternative as defined above.

### III. Concluding Remarks

CICWQ membership and its coalition partners are in the forefront of water quality regulation, providing to water quality regulators practical ideas that have as their goal clean water outcomes. If you have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 213, (909) 525-0623, cell phone, or [mgrey@biasc.org](mailto:mgrey@biasc.org).

Respectfully,



Mark Grey, Ph.D.  
Technical Director  
Construction Industry Coalition on Water Quality