



California Stormwater Quality Association™

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

August 24, 2005

Mr. Arthur Baggett
Chairman
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Subject: Workshop on the California Ocean Plan, Areas of Special Biological Significance, Waste Discharge Prohibition

Dear Mr. Baggett:

In anticipation of the August 31, 2005 workshop regarding the California Ocean Plan's Area of Special Biological Significance (ASBS) waste discharge prohibition, the California Stormwater Quality Association (CASQA) would like to follow-up to CASQA's comments submitted on January 11, 2005. CASQA's January correspondence expressed CASQA's general and specific concerns regarding the State Water Resources Control Board's (State Water Board) current approach to addressing the discharge of stormwater directly into ASBS as a violation of the California Ocean Plan discharge prohibition. As part of that letter, CASQA discussed the need for the State Water Board to develop a comprehensive statewide policy for the management of urban stormwater runoff.¹ CASQA still believes that the State Water Board must address the unique and peculiar issues associated with urban stormwater by developing a statewide stormwater policy and offers its assistance to accomplish this. However, until the time that such a policy is developed and adopted, CASQA supports the following approach for addressing specific issues associated with the discharge of urban stormwater into ASBS.

Amend the California Ocean Plan

CASQA supports an amendment to the California Ocean Plan that would allow stormwater discharges to ASBS as long as certain conditions are met. An amendment to the California Ocean Plan is a preferable option over the need to obtain an exception from the California Ocean Plan because it allows for more certainty and consistency amongst the various municipalities and amongst the Regions and will be economically efficient while equally protective of the environment. It would also be more efficient for state staff resources for it avoids the need to address every ASBS stormwater discharge on an exception-by-exception basis.

¹ In previous correspondence, CASQA has questioned the State Water Board's interpretation of the Ocean Plan's discharge prohibition and its application to urban stormwater. With this communication, CASQA does not concede to the State Water Board's interpretation but proposes an alternative to address the issue.

CASQA Recommendations for Addressing Stormwater and ASBS

As a starting point of reference, CASQA encourages the State Water Board to reconsider the proposed amendments contained in the State Water Board's *Information Document for the Proposed Amendment of the Water Quality Control Plan for Ocean Waters of California*, December 2003. In that document, State Water Board staff proposed to reclassify "Areas of Special Biological Significance" to "State Water Quality Protection Areas (SWQPAs)" and establish implementation provisions for discharges into SWQPAs. (Issue 3, page 21.) In that proposal, State Water Board staff recommended that the 2001 California Ocean Plan be amended "to establish special conditions, pursuant to Section 36710(f) of the PRC [Public Resources Code] under which discharges authorized by an NPDES storm water permit will be allowed. The amendment would include minimum requirements for discharges authorized under NPDES storm water permits that discharge to SWQPAs that would be addressed through a discharger's Storm Water Management Plan/Program or Storm Water Pollution Prevention Plan." (Issue 3, page 32.)

For the most part, CASQA supports the general approach articulated in the December 2003 staff recommendation. However, after careful review, CASQA has a number of recommendations regarding the specific language that should be used for an Ocean Plan amendment that is intended to address the issue of urban stormwater discharges. CASQA's specific recommendations are as follows.

1. Reclassification of ASBS to SWQPA

Issue: CASQA does not support the need to reclassify ASBS as SWQPAs in the California Ocean Plan. California Public Resources Code section 36700 (f) contains the definition of a SWQPA. The definition in section 36700(f) states that ASBS is a subset of SWQPA that requires special protection as determined by the State Water Board in the Ocean Plan. Because ASBS is a subset of SWQPA as defined, it is not necessary to reclassify ASBS under Public Resources Code section 36750. Also, the staff proposed amendments in 2003 proposed to reclassify ASBS by replacing ASBS automatically with the term SWQPA. This proposal automatically expanded the ASBS subset to all SWQPAs without following the ASBS designation procedures contained in the Ocean Plan. Thus, CASQA does not support an amendment that replaces the term ASBS with SWQPA. At the most, CASQA would support an amendment that clarifies that ASBS in the Ocean Plan is a subset of SWQPA as defined in Public Resources Code section 36700 (f) and is therefore subject to the applicable provisions contained therein.

Proposed CASQA Language: Amend Appendix I, Definition of Terms

AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) are those areas designated by the SWRCB as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are by definition a subset of State Water Quality Protection Areas established in California Public Resources Code section 36700 et seq. and are therefore subject to the applicable provisions contained therein.

2. Special Conditions for Discharges of Urban Stormwater into ASBS

Issue: As a subset of SWQPAs, ASBS are subject to the provisions of Public Resources Code section 36710(f), which requires that waste discharges be “prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (cite omitted) and implementing regulations, including, but not limited to the California Ocean Plan....” It is under the authority of this provision that CASQA makes the following recommendations for what constitutes special conditions for urban stormwater discharges into ASBS pursuant to the California Ocean Plan.

Proposed CASQA Language: Amend Chapter III.E., Implementation Provisions for Areas of Special Biological Significance (ASBS)

- 1) Waste shall not be discharged to areas designated as being of special biological significance unless the discharge is authorized under the special conditions in subsection (3) below, or if an exception has been granted under subsection (4) below. Discharges not authorized to discharge in the ASBS shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in the areas.
- 2) (Stat.)
- 3) A discharge is allowed into ASBS if it meets all of the special conditions identified below:
 - (a) The discharge is an existing discharge authorized under an NPDES storm water permit issued by the SWRCB or RWQCBs;
 - (b) The discharge complies with the provisions of the NPDES storm water permit, including any Storm Water Management Plan or Storm Water Pollution Prevention Plan;
 - (c) The Storm Water Management Plan or Storm Water Pollution Prevention Plan and/or the NPDES storm water permit describe Best Management Practices (BMPs) and other actions to reduce pollutants, and within six months of the effective date of this Plan the NPDES storm water permit and/or the SWMP or SWPPP shall specifically address discharges into ASBS and must include a schedule for implementation, and be subject to the approval of the RWQCB. The schedule must be developed to ensure BMPs are implemented as soon as practicably possible;
 - (d) The discharge does not cause or contribute to an exceedance(s) of applicable water quality objectives. A discharger may meet this special condition by submitting a report to the RWQCB within 30 days of receipt of water quality monitoring results that indicate that the discharge is causing or contributing to an exceedance(s) of applicable objectives, and that report describes BMPs that are currently being implemented, describes BMPs that are planned for in the SWMP or SWPPP, describes additional BMPs that may be added to the SWMP or SWPPP and includes an implementation schedule. The Regional Board may require modifications to the report. If the Regional Board requires modifications, the discharger must submit modifications to the report within 30 days of receiving the Regional Board’s request for modifications. Once the report is approved by the Regional Board, the discharger shall revise the SWMP or SWPPP within 30 days and then implement the revised SWMP or SWPPP in accordance with the approved schedule. As long as dischargers have complied with the procedures set forth in this section and are implementing the revised SWMP or SWPPP, the dischargers do not have to repeat the same procedure for continuing or recurring exceedances of the same water quality objectives, unless directed by the RWQCB to develop additional BMPs;

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- (e) All discharges authorized under an NPDES storm water permit issued by the SWRCB or RWQCB shall be controlled so as not to cause downstream erosion;
 - (f) The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials to surface waters, in quantities that alter or threaten to alter the natural water quality or adversely impact the benthic community of the ASBS is prohibited.
 - (g) The discharge shall not violate the requirements found in Chapter II.A.2 of this Plan; and,
 - (h) The discharger must comply with the monitoring requirements in Chapter III.G.1 and the storm water monitoring requirements in Appendix III.
- 4) Point source discharges authorized under and in compliance with a NPDES permit issued by the SWRCB or RWQCBs, and that are covered by an exception granted by the SWRCB to the ASBS discharge prohibition are allowed. These discharges must be in compliance with all of the requirements in this Plan, including but not limited to the monitoring requirements in III.G.1 and Appendix III.

Amend Appendix I, Definition of Terms by adding a definition for “Existing Storm Water Discharge.”

EXISTING STORM WATER DISCHARGE, relative to ASBS, includes any discharge subject to a storm water NPDES permit issued by the SWRCB or RWQCB, and which drains through an outfall that was constructed prior to the effective date of this policy.

Amend Appendix III, Standard Monitoring Procedures by adding monitoring requirements for discharges into ASBS.

Monitoring Requirements for Permittees discharging into ASBS

- A. For discharges authorized under an NPDES storm water permit issued by the SWRCB or RWQCB, the following are required:
- 1) Discharge monitoring that includes all of the following:
 - a) flow measurements;
 - b) visual observations for trash at the point of discharge in the ASBS; and,
 - c) any other discharge monitoring otherwise required in a permit issued by the SWRCB or RWQCB.
 - 2) Monitoring of receiving water, only to the extent the receiving water may be directly affected by the discharge, that includes all of the following:
 - a) indicator bacteria analysis as required above in this Appendix III for water contact recreation;
 - b) chronic toxicity (TUc) shall be measured using critical life stage toxicity tests on a minimum of three test species (a marine fish, invertebrate and plant) according to methods specified above in this Appendix III:
 - i) Sampling shall take place within the surf zone at the point where the discharge meets the surface waters of the ocean. Sample sites must be representative of pollution control measures and land uses within the watershed, as determined by the RWQCB.
 - ii) Sampling shall take place, at a minimum during the first storm event and during at least one additional storm event during each storm

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season. Upon implementing sufficient control measures to reduce pollution in storm water runoff, so that the water quality objectives are met for at least two consecutive years, the RWQCB may reduce the frequency of chronic toxicity monitoring.

- c) monitoring of bioaccumulative toxicants in the discharge, as determined by the chemical analysis of mussel tissue (e.g., mussel watch) or sand crab tissue;
 - d) an intertidal and/or subtidal community analysis; and,
 - e) any other receiving water monitoring otherwise required in a permit issued by the SWRCB or RWQCB.
- 3) For all other discharge and receiving water monitoring, the discharger shall implement a monitoring plan, upon approval by the RWQCB that specifies the sampling frequency, sample locations, and other monitoring details. In making this determination, the RWQCB should consider the size and characteristics of the watershed contributing to the discharges.
- 4) With the exception of self-monitoring for the discharge and receiving water chronic toxicity required in sections 1) and 2) above, the RWQCB, in lieu of requiring the discharger to perform receiving water self-monitoring, may allow the discharger to participate in an appropriate watershed or regional monitoring program. The regional program must include the applicable receiving waters and microbiological, tissue chemistry, and ecological components.

B. For discharges that are not authorized under a NPDES storm water permit issued by the SWRCB or RWQCB but are authorized to discharge as an exception under Chapter III.E, subsection (4) of this Plan. (CASQA has provided a placeholder for the State Water Board for further monitoring provisions that would apply to exceptions granted that are not authorized under NPDES stormwater permits. However, CASQA does not make any specific recommendations for such discharges because they are outside the area of immediate concern to CASQA and its members.)

Amend Individual and Statewide Stormwater Permits with ASBS Specific Provisions

In addition to amending the California Ocean Plan with the language recommended above, CASQA supports the amendment of existing individual and statewide stormwater permits to include ASBS specific provisions where applicable. Such provisions should, at a minimum, mirror the special conditions as put forth in the Ocean Plan. RWQCBs may also include more stringent provisions relative to BMPs and monitoring in individual NPDES stormwater permits if so warranted.

Allow and Encourage Watershed Based Monitoring for ASBS

As indicated above in CASQA's proposed monitoring language, which essentially repeats the State Water Board staff proposal of December 2003, dischargers must be allowed to work cooperatively in watershed or regional monitoring programs to meet the monitoring requirements associated with the ASBS discharges. Ocean monitoring is expensive and outside the normal monitoring costs anticipated by stormwater dischargers subject to NPDES permit requirements. In addition, where there are multiple discharges into or around and ASBS, it is appropriate to evaluate and consider the impact of all discharges and not those individually.

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Furthermore, there currently exists a void of information regarding the actual impact of discharges authorized under NPDES stormwater permits into ASBS. Watershed or regional monitoring programs will allow dischargers in cooperation with the RWQCBs and the State Water Board to evaluate these impacts. Once a baseline of information is obtained, the stormwater agencies, the RWQCBs, the State Water Board and others can better determine if existing stormwater management programs are protective of ASBS. Such a process is consistent with the adaptive iterative approach currently used for the regulation of municipal stormwater discharges.

Conclusion

In summary, CASQA continues to encourage and support the development of a statewide policy for the management of urban stormwater runoff, whether discharged to inland surface waters, enclosed bays and estuaries or the ocean. As always, CASQA is available and willing to assist the State Water Board in such an endeavor.

In the meantime, CASQA encourages the State Water Board to re-evaluate the need for amending the California Ocean Plan to address NPDES permitted stormwater discharges into ASBS. A Plan that makes the exception the rule does not make common sense. The current approach of issuing Cease and Desist Orders and requiring virtually every agency to obtain an exception is not workable in the long run and in reality only provides a band-aid to a problematic policy issue. CASQA supports the general approach recommended by the State Water Board staff in December of 2003, and has provided specific language in keeping with the original proposal.

CASQA appreciates the State Water Board's continued interest in this issue and looks forward to communicating its position at the upcoming August 31, 2005 workshop. If you have any questions regarding CASQA's proposal, please do not hesitate to call me at (530) 753-6400.

Sincerely,



Karen Ashby, Chair
CASQA

cc: Bruce Fujimoto, Chief – Storm Water Program
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