



California Stormwater Quality Association®

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

June 9, 2022

The Honorable Ben Allen, Chair
Senate Environmental Quality Committee
1021 O Street, Suite 3230
Sacramento, CA 95814

Subject: AB 2106 (Rivas), as amended June 8, 2022 – Oppose Unless Amended

Dear Senator Allen:

The California Stormwater Quality Association (CASQA)¹ is writing to provide our perspective on AB 2106 (Rivas). Since the bill's inception, we have been discussing the proposed legislation with the sponsor and author's office and will continue to do so.

THESE ISSUES SHOULD BE ADDRESSED THROUGH THE REGULATORY PROCESS

The issues addressed in this bill are standard regulatory activities of the State Water Resources Control Board (State Water Board). We continue to strongly support allowing regulatory processes to be led and managed by the professionals with the expertise to carry out the executive function of the state. Legislating regulatory requirements supersedes the ability of the State Water Board to set its own priorities. The precise language of bills such as AB 2106 is therefore important, to ensure that if enacted, the expertise of the staff from the State Water Board is not constrained and the intended goals of the legislation can be achieved. All of our requested amendments are focused on achieving that outcome.

IF ENACTED, FUNDING TO IMPLEMENT THIS BILL MUST BE PROVIDED BY THE STATE

The current permit fee setting process passes on all costs of the State Water Board's programs to permittees, including municipal local governments. As Proposition 218 created a significant barrier for stormwater funding, there are not rate payers who will cover these increased permit fees. Such increased fees are paid for directly from local general funds.

Such a passthrough most notably occurred this past year when all municipal, construction, and industrial stormwater permit fees were increased to fund the implementation of [SB 205](#), despite all analyses of the bill stating that the funding would be provided by new enrollees of the Industrial General Permit. Most recent discussions with the State Water Board's Department of Financial Services indicate that stormwater permit fees were increased \$600K to implement SB 205. For AB 2106, the Assembly Appropriations Committee's fiscal analysis indicates it will cost \$2.9M to implement. Permittees are significantly concerned about the annual and continual increase of permit fees resulting from bills such as AB 2106. This concern is particularly relevant to the proposed establishment of a statewide Construction, Industrial, and Institutional (CII Permit) and the additional costs that will be needed by the State Water Board to implement and enforce a new, significant, statewide program. We respectfully request that if

¹ CASQA is a nonprofit corporation that advances sustainable stormwater management protective of California water resources. With approximately 2,000 members, our membership is comprised of a diverse range of stormwater quality management organizations and individuals, including over 180 cities, 23 counties, special districts, federal agencies, state agencies, ports, universities and school districts, wastewater agencies, water suppliers, industries, and consulting firms throughout the state. Collectively, CASQA represents over 26 million people in California.

the legislature opts to create mandates for the State Water Board via bills such as AB 2106, that the legislature then appropriates funding for those mandates.

- **Requested Amendment:** Require all aspects of AB 2106 to be contingent upon appropriations from the legislature

DEVELOPMENT OF A NEW STATEWIDE PERMIT IS A SIGNIFICANT REGULATORY ACTION THAT REQUIRES ADEQUATE TIME AND PUBLIC PARTICIPATION

Section 3 of the bill (13383.1.(a)) proposes to require the issuance of a draft order for an entirely new statewide CII Permit, by December 31, 2024. Statewide permits are extremely complicated and require significant time to develop, including the necessary time for all interested parties to participate in the process and for State Water Board staff to draft a proposed order. For example, State Water Board is currently in the process of reissuing four statewide permits. The timeframe for each process is several years. Establishing a new permit (not simply reissuing an existing permit), will be a significantly larger undertaking. In addition, while there is a CII permit under development in the Los Angeles Region for two local watersheds, that process will not include the input of stakeholders throughout the state, nor will the Los Angeles Regional Water Quality Control Board be required to consider the perspective of parties outside of their region and broader state impact. Further, to issue such an NPDES permit, EPA will need to use its residual designation authority to allow the State to issue such a permit. Currently, EPA has not done so. Our primary concerns are ensuring that there is legal authority to issue the permit and adequate time and public participation to develop a permit that is appropriate for statewide implementation.

Further, the amendments of June 8, 2022 introduce additional confusion. While we support ensuring there is consistency in the approaches in the existing statewide Industrial General Permit and the proposed new CII permit, the amended language appears to introduce more confusion rather than clarity.

- **Requested Amendment:** In lieu of requiring a draft order by December 31, 2024, require the initiation of the public workshop process that is standard for all statewide permitting efforts. Make the initiation of the process contingent upon receiving the legal permitting authority from EPA.

THE STATE WATER BOARD SHOULD NOT BE LIMITED IN THE FOCUS AND CONTENT OF PUBLIC WORKSHOPS

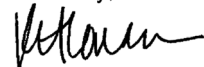
Section 4 of the bill proposes a series of workshops on stormwater permits, with a report to the legislature by December 31, 2024. The direction for these workshops, however, limits the scope to the topics in a prescribed list, (See 13383.11.(c)). While there are several considerations on the prescribed list that we strongly support, it should also be recognized that to achieve the ultimate goal of improving stormwater permits, all ideas and concepts should be welcome and included. CASQA has included such concepts in our [Vision for Sustainable Stormwater Management](#) (see Vision Action 2.1).

At a broader scale, the actions needed to protect beneficial uses in California's waters, as well as to create a climate resilient future, must focus on increasing stormwater capture, pollution prevention at the source (e.g., true source control), and funding and investment in these solutions. We strongly support and encourage the requested report from the State Water Board to the legislature to provide recommendations to achieve those solutions, which require actions and holistic problem solving well beyond the regulatory framework of a stormwater permit.

- **Requested Amendment:** Modify language to note topics "shall include but not be limited to"

Thank you for considering the concerns of the stormwater community. If you have any questions, or would like to set up a meeting to discuss the needs of stormwater, please contact me at (310) 462-4939 or karen.cowan@casqa.org.

Sincerely,



Karen Cowan, Executive Director
California Stormwater Quality Association