CITY OF BURBANK
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PUBLIC WORKS
DEPARTMENT

September 8, 2005

State Water Resources Control Board
Storm Water Section
Division of Water Quality
P.O. Box 100
Sacramento, CA 95811-0100

RE: Meeting of Storm Water Panel of Experts Regarding Feasibility of Numeric Limits in Storm Water Permits

The City of Burbank wishes to provide the following comments to the Storm Water Panel of Experts regarding the feasibility of numeric effluent limitations in municipal separate storm sewer system (MS4) permits.

The City of Burbank has a population of approximately 105,000 people, and covers a geographic area that measures a little over 17 square miles. The storm drains in Burbank discharge to local receiving waters at approximately 88 separate locations. These discharges are from drainage basins that range in size from less than an acre to over a square mile.

Rainfall averages approximately only 35 days per year in Burbank. Therefore, unlike continuous wastewater discharges, stormwater runoff volumes, pollutant types, and pollutant concentrations dramatically demonstrate temporal variance over the course of individual storms, and throughout the water year. Similarly, wide geographical variations exist in runoff quantity and quality, even within the same watershed. Storm water discharge is highly variable both as to flow and pollutant type and concentrations. Because of these variations, it would likely be necessary to collect a minimum of two samples each rainy day, from every one of the 88 discharge locations, to demonstrate compliance with numeric effluent limits on storm water discharge. This would result in the collection of 6,160 stormwater samples in an average year.

Burbank has a contract with a laboratory to analyze samples from its Water Reclamation Plant. Using the prices negotiated in that contract to estimate the cost to analyze stormwater samples, the cost would likely be $204,820 in an average year to analyze for total petroleum hydrocarbons, $585,200 to analyze for organo-chlorine pesticides, and $731,500 for chlorinated herbicides. The total annual cost for analyses

of just these three pollutants would be **over $1.5 million**. Adding in the cost of monitoring for all metals, all priority pollutants, and all conventional and non-conventional pollutants, the cost would likely be several million dollars per year. This is money that will not clean up local storm water pollution, but merely measure and characterize that pollution. The cost of one year's worth of analysis for just three pollutants would pay for the installation of full-capture trash excluders on all public catch basins in Burbank to be deemed in compliance with the Trash TMDL adopted for the Los Angeles River basin.

"EPA expects that most WQBELs (water quality-based effluent limits) for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.... EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances." Memorandum from Robert H. Wayland, III, Director of US EPA Office of Wetlands, Oceans and Watersheds and James A. Hanlon, Director of US EPA Office of Wastewater Management, to Water Division Directors US EPA Regions 1-10, November 22, 2002. Consistent with EPA policy, the City of Burbank believes that the BMP approach is the superior approach to addressing the control of stormwater pollutants.

The Ninth Circuit Court of Appeals, in *Defenders of Wildlife v Browner*, confirmed that Congress through the adoption of the 1987 Clean Water Act amendments did not intend for municipal storm sewer dischargers to strictly comply with state water quality standards. (*See* 191 F. 3d 1159 (9th Cir. 1999).) Instead, the court found that the Clean Water Act's plain language is unambiguous in asserting that municipal storm sewer discharge controls should "reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices..." CWA § 02(p)(3)(B)(iii). Because numeric limits on storm sewer discharges are, therefore, not required by Federal law,[1] the establishment of numeric effluent limits on storm sewer discharges would require a Water Code Section 13241 analysis prior to implementation of those numeric limitations. (*See* City of Burbank v. SWRCB and LARWQCB, 35 Cal. 613 (2005)).

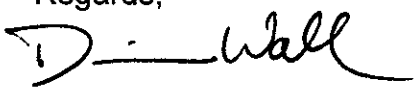
Using the money, which will inevitably be spent on special studies to determine applicable numeric limits, on litigation over these numeric limits, and on analyzing storm

[1] *See also Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089 [1 Cal.Rptr.3d 76], rehg. den., 2003 Cal.App. LEXIS 1082 (1st. Dist. June 27, 2003), cert. Den., 2003 Cal. LEXIS 7251 (Sept. 24, 2003) (stating that 40 C.F.R. §122.44(d) never uses the word "numeric" in relation to effluent limitations.) Furthermore, the use of BMPs in lieu of numeric effluent limitations is specifically authorized by federal regulations. See 40 C.F.R. §122.44(k)(2) and (3)(Allowing BMPs where authorized to control stormwater discharges or where numeric effluent limitations are infeasible). Thus, mandatory numeric limits on storm water would be going beyond federal law requirements.

water samples to determine compliance with these limits, to invest in and implement BMPs would provide a far greater benefit to improving the water quality in our state. California is currently facing many water quality challenges; however it is important to remember that selecting the right tool to address each of these challenges is a critical step in the process. Given the body of expert opinion and case law acknowledging the variable nature of storm sewer discharge in terms of flow, pollutant types and concentrations, and the regional issuance of stormwater permits; BMPs, and not numeric effluent limitations, are the right tool for addressing and reducing stormwater pollution.

Thank you for the opportunity to comment. Please provide panel members with a copy of this letter.

Regards,



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