



COALITION FOR PRACTICAL REGULATION

"It's about saving jobs"

September 13, 2005

Mr. Bruce Fujimoto, Chief
Stormwater Section
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comments on Feasibility of Establishing Numeric Effluent Limits

Dear Mr. Fujimoto:

I am writing on behalf of the Coalition for Practical Regulation (CPR), an adhoc group of 43 cities within Los Angeles County that have come together to address water quality issues. Thank you for the opportunity to submit these comments for consideration by the Stormwater Panel of Experts that the State Water Board has convened to address the feasibility of establishing numeric effluent limits or some other objective criteria for stormwater discharges.

The Coalition for Practical Regulation requests that the Panel of Experts refrain from considering only the theoretical feasibility of establishing "numeric effluent limitations, or some other objective criteria" for inclusion in stormwater permits. Instead, the Panel should focus on whether numeric effluent limitations, or any other objective criteria, are practicable at this time. In other words, they should consider whether or not such criteria are capable of being carried out or put into effect at this time.

The State Board has specified several supplemental questions that must be answered before the Panel can address the broader question of technical feasibility. These questions include:

- How would numeric effluent limitations or other objective criteria be established?
- What information and data would be required to establish such limitations or criteria?

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
BRADBURY
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
MONROVIA
MONTEBELLO
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

- Does the State Water Board have the ability to establish appropriate objective limitations or criteria?
- How would compliance determinations be made?
- Do the dischargers and inspectors have the ability to monitor for compliance?
- Do the dischargers have the technical and financial ability to comply with the limitations or criteria?

When the Panel addresses the question of feasibility of establishing numeric limits or other objective criteria for area-wide municipal stormwater permits, it should first review the federal legislative determination in Section 402(p)(3)(B)(iii) of the Clean Water Act that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and such other provisions as the Administrator or the State determines to be appropriate for control of such pollutants."

It should then review the State Board's previous determinations that numeric effluent limits are not appropriate for stormwater regulation and USEPA's November 22, 2002 Memorandum to the Water Division Directors in all of its regional offices in which the Directors of the Office of Wetlands, Oceans, and Watersheds and the Office of Watershed Management clearly stated,

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.

Through the November 2002 memo, the Administrator clearly stated that USEPA expects that most water quality-based effluent limits for NPDES-regulated municipal and small construction project stormwater discharges will be in the form of BMPs. In fact, EPA Region IX, the State Water Board, and the Regional

Water Boards have already established an iterative BMP process that contains objective criteria – receiving water limitations.

If the State were to accept any recommendation that goes beyond the iterative BMP process for municipal and small construction stormwater discharges, it would be requiring numeric effluent limitations not required by federal law. This would require a thorough analysis prior to implementation of such limitations consistent with Water Code Sections 13000, 13241, and 13242.

Perhaps the greatest service that the Panel could perform would be to develop a work program for the development of a Statewide Stormwater Policy based, in part, on the answers to the questions that the State Water Board asked the Panel to address. In light of the need for data analysis associated with required monitoring and the need to address Section 13241 factors if the State were to require numeric effluent limitations not required by federal law, the work plan should include rigorous statistical and economic components.

The work program also should address the application of water quality criteria through the development of design standards. Currently, stormwater discharges are expected to achieve water quality objectives no matter what size storm. The Los Angeles Regional Water Quality Control Board is beginning to consider this issue. However, it is an issue that should be addressed statewide and is directly related to the technical and financial ability of dischargers to comply with any numeric effluent limitations or other objective criteria that the Panel might recommend to the State Water Board.

CPR also believes that any work program for developing a statewide stormwater policy or applying objective stormwater quality criteria must include a component for developing controls for atmospheric deposition sources of water pollutants. Unless State and Regional air quality regulators act to control water pollutants from atmospheric deposition, water quality objectives in much of California will not be achievable even if municipal, industrial and construction dischargers are forced to expend unimaginable sums of money controlling water quality at the end of pipe.

Several estimates of the potential costs of municipal discharges have been made in recent years. Studies by the California Department of Transportation (Caltrans) and the University of Southern California have been based on the assumption that the water quality objectives in Water Quality Control Plans (Basin Plans) must be achieved. Unless atmospheric deposition sources of water pollutants are controlled, the costs estimated in these studies are not only probable – they are almost inevitable unless water quality standards are revised.

CPR appreciates the Water Board's desire for a process that is easy to administer. However, storm water, by its nature, has no easy answers. We ask that the Panel consider all of the questions asked by the State Water Board and make recommendations to the State Board that recognize the highly episodic and variable nature of stormwater and the paucity of research on how to derive meaningful numeric standards for stormwater discharges with which municipalities would have the technical and financial ability to comply.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Forester". The signature is written in black ink and is positioned above the typed name.

Larry Forester
CPR Steering Committee
City Council Member, City of Signal Hill

cc: CPR Members
Alan Lloyd, Secretary – Cal EPA
Art Baggett, Chair – State Water Resources Control Board
Celeste Cantú, Executive Director – State Water Resources Control Board
Geoff Brosseau, Executive Director – California Stormwater Quality Association