Storm Water Panel Report
Deadline: 9/1/06 5pm



# California Council for Environmental and Economic Balance

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September 1, 2006


Ms. Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812-0100

**RE: Comment Letter – Storm Water Panel Report**

Storm Water Panel Recommendations to the SWRCB Regarding the Feasibility of Numeric Effluent Limits Applicable To Storm Water Associated With Municipal, Industrial and Construction Activities

Dear Members of the Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit organization of business, labor and community leaders that seeks to achieve the State's environmental goals in a manner consistent with a sound economy.

CCEEB commends the SWRCB and the Blue Ribbon Panel ("Panel") for considering the important issue of whether numeric effluent limitations, or some other quantifiable limit, are feasible for storm water discharges associated with municipal, industrial or construction activities. CCEEB appreciates the work that the Panel has done and supports a number of its recommendations.

In general, we regard the effort as a commendable first step in determining the feasibility of Numeric Limits in different situations. We agree with the Panel's findings that numeric limits are not feasible for MS4s and small construction sites. We also agree with the Panel that Action Levels and iterative best management practices ("BMPs") should be explored and incorporated in storm water permits where feasible.

However, CCEEB is concerned that some of the statements in the report, as written, are overly broad, lack sufficient support, and could be miss-read. For example, the Report concludes that, subject to a number of concerns and reservations, numeric limits are technically feasible for "some industrial categories" and for "pollutants commonly associated with storm water discharges" at larger construction sites (pages 15-16; 19). These statements should be clarified. CCEEB's understanding of the conclusion for "some" industrial categories is that numeric limits may in concept be feasible for one or more industrial categories where a database is adequate to ascertain whether practical and achievable numeric limits can be established. We also understand the conclusion recognizes that there are with site-specific factors and variability that may make categorical numerical limits infeasible and impractical. Such an interpretation would be consistent with other statements in the Report including the Report's observation that the current data base to establish numeric limits is

inadequate and that "The Board needs to reexamine the existing data sources, collect new data as required and for additional water quality parameters...to establish practical and achievable Numeric limits" (page 19, 4th paragraph). The Report also does not resolve other aspects of feasibility that the Board tasked the Panel to consider (e.g., financial ability of dischargers to comply with the limitations or criteria, etc.) (Page 3).

Similarly, CCEEB is concerned that some of the statements in the Construction Activity portion of the Report could be also miss-read. The Report concludes that, subject to a number of concerns and reservations (e.g. permission for chemical addition, high natural background turbidity and/or TSS levels in storm water, etc) (pages 15, 16), numeric limits are technically feasible for "pollutants commonly associated with storm water discharges" at larger construction sites. This statement requires careful interpretation especially in light of the Panel's reservation that "whether the use of Numeric Limits is prudent, practical or necessary to more effectively achieve non-point pollution control is a separate question that needs to be answered, but is outside the scope of this Panel. In this light the breadth of the initial conclusion of technical feasibility of numeric limits at larger construction sites that appears to be broad, is more theoretical than practical and may be quite limited in application. Also, as with industrial sites, the Report does not resolve other aspects of feasibility that the Board tasked the Panel to consider (e.g., financial ability of dischargers to comply with the limitations or criteria, etc.) (Page 3).

Many industrial and large construction activities and sites face factors very similar to the MS4 factors in the Report that led the Panel to conclude that MS4s do not have the technical ability to comply with numeric limits. CCEEB believes that the Board should answer the questions outlined by the Panel and address the other aspects of feasibility that the Board outlined to the Panel for consideration (e.g., site specific factors; ability to achieve technical based effluent limits, including economic considerations, etc.) in order to properly address the appropriateness of numeric limits for construction and industrial activities.

In addition, linear projects (small and large) would face numerous challenges with numeric limits not considered by the Panel. These challenges include, the fact that linear projects frequently include multiple discharge locations that change daily or weekly as the project progresses; for projects in city streets, runoffs containing pollutants from sources beyond the project's control such as oils and exhaust from vehicles, landscape irrigation runoff, and illicit discharges; and difficulty of sample collection in city streets due to sheet flow or the relatively small "stream" flow size and the inability in most if not all cases to use automated sampling systems. For linear projects that go "cross country", implementing monitoring and treatment (numeric limits) would likely be infeasible due to the mobile nature of the work and the many drainages (often very small) that are crossed. Also, constructing retention ponds on these mobile projects to retain storm water for treatment would be problematic.

CCEEB urges the SWRCB to conduct further analyses regarding dischargers' technical ability to comply with numeric limits for industrial and large and linear construction activities. We support a collaborative effort that develops a process to establish when, where, how and under what conditions numerical limits or other quantifiable limits are feasible and otherwise appropriate. We believe this effort must also consider other aspects of feasibility that the Board outlined for consideration by the Panel including (1) the Board's ability to establish appropriate objective limitations or criteria; (2) how compliance determinations would be made; (3) the ability of dischargers and inspectors to monitor for compliance; and (4) the technical and financial ability of dischargers to comply with the limitations or criteria.

CCEEB recognizes the need to make progress in improving monitoring and the quality of storm water discharges. The type of management approaches that are the most prudent, practical, and necessary to effectively achieve discharge pollutant control is likely to differ between industrial categories, construction categories, and individual sites. We support a practical phased implementation process that 1) begins with monitoring and iterative BMPs with action levels where feasible, 2) determines whether further refinement of BMPs with action levels is the appropriate approach, and as data becomes available and if determined to be feasible, progresses to technologically based effluent limits, and then if necessary and feasible, water quality based effluent limits.

CCEEB recognizes the large task the Board faces as it attempts to ascertain feasibility of applying numeric limits to particular industrial categories and large construction sites including difficult considerations regarding (1) the Board's ability to establish appropriate objective limitations or criteria; (2) how compliance determinations would be made; (3) the ability of dischargers and inspectors to monitor for compliance; and (4) the technical and financial ability of dischargers to comply with the limitations or criteria - especially in light of all of the recommendations, data requests, reservations and concerns expressed by the Panel throughout the Report. To ensure effective use of limited resources, CCEEB believes it is essential to follow the panel's specific recommendation to prioritize the implementation of this approach to achieve the greatest reduction of pollutants statewide and to consider the total economic impact.

CCEEB believes that the analysis conducted to address the above issues and considerations should be developed through a regulatory process separate from the construction and industrial storm water permit adoption process and with broad stakeholder involvement. We believe the analysis and proposed conclusions should be made available for public review and comment prior to including numeric limits in any state or regional storm water permit. The Panel's Report is a step in the right direction along this path.

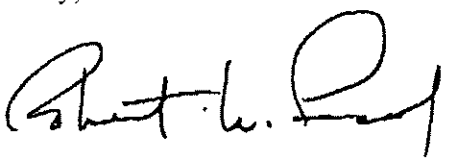
We additionally note that the Report recommends that numeric limits and action levels not apply to storms of unusual event size and/or pattern for construction activities but a similar recommendation was not included for industrial activities. CCEEB believes that this was an oversight. Like construction activities, industrial facilities need design storm criteria to design BMPs or treatment. CCEEB recommends that design storm criteria for industrial facilities be developed and that action levels and numeric limits, if determined to be feasible, not apply to storms exceeding the design storm criteria.

Finally, we believe that the Board faces a significant task to develop data adequate to ascertain whether numeric limits are feasible and otherwise appropriate for industrial categories and large construction sites. We believe it is essential for the Board to develop adequate information prior to including numeric limits in any state or regional storm water permit. In addition, it is important to a significant number of CCEEB members who operate in multiple jurisdictions within the state to have consistency in requirements statewide. We therefore request statewide direction and coordination regarding the numeric limits issue.

CCEEB appreciates the work that the Panel has done and supports a number of components of its recommendations. CCEEB recognizes the significant task before the Board and the dischargers before numeric limits can be ascertained and established. We look forward to working with you to develop a practical program.

Thank you for considering our comments. If you have any questions, please contact me at (916) 444-7337.

Sincerely,



Robert W. Lucas

cc: Victor Weisser, CCEEB
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