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Bruce Fujimoto, Supervisor
Division of Water Quality
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812

Subject: Technical Feasibility of Establishing Numeric Effluent Limitations for Inclusion in Stormwater permits – Stormwater Panel Meeting

Dear Mr. Fujimoto

The deliberations of the expert panel regarding the inclusion of numeric effluent limitations in stormwater permits are of considerable interest to the Orange County Permittees (County of Orange, Orange County Flood Control District and cities subject to Orders No. R9-2002-0001 and No. R8-2002- 0010), since they will presage the key compliance provisions of Southern California's fourth term municipal permits. The following comments are offered as our first contribution to what is hoped will be the continued development of a regulatory framework that supports and facilitates the Permittees' current jurisdictional, watershed and regional water quality planning processes defined by an iterative and adaptive approach to both management and permit compliance.

The Ability of the Water Board to establish appropriate objective limitations: In 1993, USEPA in Citizens for a Better Environment (CBE) v. USEPA explained why it was technically infeasible to derive numeric water quality based effluent limits for the discharge of metals in stormwater into South San Francisco Bay. The basic tenet of this position, that methodologies for determining effluent limits were developed for predictable process wastewater flows and were thus unsuitable for application to highly variable storm flows, was reiterated by USEPA in 1996 (see Interim Permitting Approach For Water Quality Based Effluent Limitations in Stormwater Permits, USEPA, 1996). The point is made in the letter from the California Stormwater Quality Association (CASQA) that technically appropriate methodologies have still to be developed, that their development would require a massive data collection and modeling effort and, indeed, that the effort to produce scientifically robust site specific effluent limits would likely be overwhelming. At a time of increasing activity regarding the development and implementation of TMDLs, the County is concerned that such an effort would be a diversion and misallocation of scarce resources.

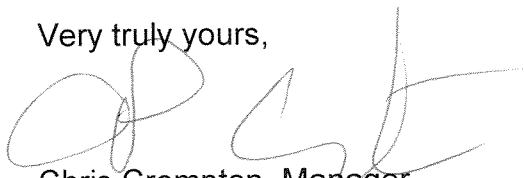
How compliance determinations would be made and the ability of dischargers to monitor compliance: The application of numeric effluent limits could mean that a sample from a single point in time and space becomes the test of compliance. There are two major concerns with such an approach. First, there is the issue of establishing the point of compliance within the municipal storm drain system. In Orange County, the storm drain systems of the eleven major watersheds contain hundreds, and possibly thousands, of outfalls to designated receiving waters. Second, the storm drain system discharges runoff from a variety of land uses (e.g. agriculture), facilities (e.g. federal facilities and educational institutions), and sources (e.g. aerial deposition and shallow groundwater) that are not necessarily under local government control but would ultimately result in holding local governments accountable for these discharges because of end-of-pipe monitoring.

The technical and financial ability of discharges to comply with limitations: Recent court decisions have affirmed the economic analysis provisions of Porter-Cologne to apply to the planning rather than permitting processes of water quality management and protection. It is therefore critical that any deliberation regarding the possible future development and implementation of numeric limits to stormwater consider the costs of achieving compliance. In Orange County, preliminary studies point to construction costs of approximately $1 billion to provide treatment controls (extended detention or wet basins) for its urban areas. Elsewhere, costs routinely in excess of a $1 billion are being estimated when compliance with TMDLs and the CTR is considered for large urban areas.

Regarding the provision of comments to the panel from representatives of the regulated community, the County of Orange Resources and Development Management Department has reviewed the testimony to be provided by the California Stormwater Quality Association and commends and endorses the position of CASQA on this issue.

Please direct any questions any questions regarding this letter to Richard Boon at (714) 973-3168.

Very truly yours,



Chris Crompton, Manager
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cc: Stormwater Panel of Experts