SCAP
SOUTHERN CALIFORNIA ALLIANCE OF PUBLICLY OWNED TREATMENT WORKS

August 31, 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 re Feasibility of Numeric Limits in Storm Water Permits

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) appreciates the opportunity to provide comments on the issue of the feasibility for developing numeric limits or other quantifiable measures for inclusion in storm water permits.

The Southern California Alliance of Publicly Owned Treatment Works – or SCAP as we are commonly referred to – represents 63 public agencies that provide both water and wastewater treatment to nearly 18 million people in parts of Los Angeles, Orange, San Diego, Santa Barbara, Riverside, San Bernardino and Ventura counties

Not all SCAP member agencies have jurisdiction over stormwater. The several members that are stormwater permittees have asked that their concerns and recommendations be presented in both written form and orally at the stormwater workshop on September 14, 2005.

The establishment of numeric limits on stormwater discharges can result in problematic consequences for all stormwater permitted discharges including industrial general permits, construction general permits, and area-wide municipal permits. The problem is even more pronounced with municipal stormwater discharges because of the much wider drainage area and more complex nature of its storm sewers, and drainage facilities.

In the past, the State Board has considered imposing numeric limits on industrial and construction stormwater permits in addition to municipal permits. Thus far, for all stormwater permits, it has been deemed to be infeasible to calculate and impose such limits. The language included in these permits states: "It is not feasible at this time for the SWRCB to establish numeric effluent limitations. The reasons why it is not feasible to establish numeric effluent limitations are discussed in detail in SWRCB Order Nos. WQ 91-03 and WQ 91-04. Therefore, the effluent limitations contained in this General

Permit are narrative and include the requirement to implement appropriate BMP's."

The SWRCB Order Nos. 91-03 and 91-04 cited several reasons such as "difficulty of establishing numeric effluent limitations which have rational basis, the lack of technology available to treat stormwater discharges at the end of the pipe, and the huge expense such treatment would entail." The BMP approach was determined to be more appropriate and proper than numeric limits for addressing stormwater.

The above reasons cited by the SWRCB in 1991 still hold true at this time. The challenge for stormwater is its inherent variability and its diffused sources. The highly variable nature of stormwater, which presents dramatic changes in the character of stormwater (flow and pollutant concentration), from time to time, storm to storm, or from location to location, makes establishment and enforcement of numeric limits impractical. Moreover, the science and technology of characterizing stormwater has not yet reached the level of precision and certainty needed to relate numeric limits with water quality impacts and benefits. Monitoring and compliance problems will also result if numeric limits are imposed, especially for highly urbanized areas with complex drainage areas and different types of pollutants with different sources.

The establishment of numeric limits may result in various (and even unintended) regulatory and policy consequences. Numeric limits in stormwater permits would trigger the mandatory minimum penalty rule and potential citizen lawsuits. This could result in further diversion of public and private resources away from meaningful implementation of compliance strategies. Stormwater permittees are concerned with the potential expense of litigation and the expense of extraordinary compliance measures for end of the pipe treatment. Numeric limits will most likely lead to the capture and treatment of virtually all stormwater flows. Many wastewater treatment facilities do not have the capacity to accept diversions, especially the small and mid-size facilities.

Consistent with EPA issued guidelines and policy for addressing stormwater, we believe that the BMP approach is the more appropriate approach to control pollutants in stormwater compared to numeric effluent limits. A BMP approach is more economically feasible and would result in a more coordinated and comprehensive stormwater management approach.

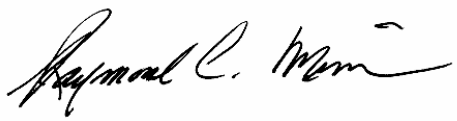
It is also important to note that numeric effluent limitations are not required under federal law. See accord Communities for a Better Environment v. State Water Resources Control Board (2003) 109 Cal.App.4th 1089 [1 Cal.Rptr.3d 76], rehg. den., 2003 Cal.App. LEXIS 1082 (1st. Dist. June 27, 2003), cert. 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 BMP's 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, a requirement to impose numeric limits on stormwater would be going beyond federal law and would,

therefore, require a Water Code section 13241 analysis prior to imposition of those requirements. See City of Burbank v. SWRCB and LARWQCB, 35 Cal. 4th 613 (2005).

Due to the ramification and impacts to including numeric limits or quantitative measurements in stormwater permits, SCAP recommends a more comprehensive approach to deal with this issue. The stormwater policy listening sessions that were launched last year were a big step in starting to address the major issues relating to stormwater management in California. The State Board has several models where they have brought together various interested parties to develop a reasonable approach to resolving very complex regulations. We know this workshop will not answer the question posed for comment in the short term. Most permittees have more questions than answers. For example, how will the Water Board establish appropriate objective limitations or criteria, how will compliance be determined, how will dischargers monitor for compliance; and most important, do the stormwater permittees have the technical and financial resources to comply with limitations or criteria? We look forward to the panel's insights on these questions.

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

Very truly yours,



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