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September 12, 2005

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

RE: Comments for the Expert Panel on Storm Water Concerning Feasibility of Numeric Effluent Limits in Storm Water Discharge Permits

Dear Mr. Fujimoto:

As you may know, the California Association of Port Authorities (CAPA) represents the State of California's eleven commercial, publicly owned ports. On behalf of those ports, CAPA is pleased to submit these comments for consideration by the panel of storm water experts (Expert Panel) convened by the State Water Resources Control Board (SWRCB) to evaluate the feasibility of developing and employing numeric effluent limits in storm water permits. CAPA commends the SWRCB for convening the Expert Panel to focus on the technical considerations in this difficult issue.

As we will describe below, the potential use of effluent limits to measure compliance with storm water permits is a critical issue for our member ports since there are enormous costs and potentially very serious regulatory compliance issues at stake. There are numerous complex, technical issues that must be resolved if meaningful, scientifically sound and legally defensible numeric limits are to be developed. Of equal importance is the question of whether the development of numerical criteria for storm water is consistent with the current TMDL development program. CAPA urges the Expert Panel to consider very carefully the relationship of, and likely conflicts between, these two efforts. TMDLs are currently being developed for numerous receiving waters. We are very concerned that when the TMDL process and the numerical criteria process produce different results, the ports will be put in an untenable regulatory position.

Bruce Fujimoto

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As the panel well knows, storm water runoff is a non-point source. The types of pollutants mobilized in the storm water from a given facility, the spatial and temporal variability of receiving water quality, the variability of sample results, and the variability in the quantities of storm water discharged to receiving water are just some of the factors that raise considerable obstacles to the establishment of science-based numerical limits that would meaningfully relate to impacts on receiving water quality. These and other issues have been raised in comments in drafts of the General Permit for Discharges of Storm Water From Industrial Activities. We understand the California Storm Water Quality Association (CSQA) will discuss these issues in detail in its statements before the Expert Panel. We concur with and adopt CSQA's submission.

An important component of the feasibility of numeric effluent limits is a reasonable degree of certainty. Numeric effluent limits would obligate storm water permittees' to expend millions of dollars in public funds for facility retrofits, and operational upgrades (including increased staffing), treatment systems, greatly expanded monitoring programs, and responses to enforcement actions. Consequently, it is imperative that any numeric effluent limit directly relate, with a high degree of certainty, to measurable, persistent water quality impacts. That is, even if other scientific and technical hurdles could be overcome, numeric effluent limits on storm water discharges must provide a defensible and scientifically certain basis by which impact on the quality of receiving waters may be measured. Otherwise, the public funds expended by permittees to achieve such limits may not produce any measurable water quality benefit. We have not seen any data that clearly link numerical effluent limits on storm water runoff to improved coastal receiving water quality, and without such a link the entire basis for numerical limits on storm water is questionable.

The questionable basis for numeric effluent limits is exacerbated by the uncertainty inherent in each of the variables that affect the measurement of pollutants in storm water.¹ When a cautionary margin is factored in for each of the variables affecting accurate measurement, the resulting numeric limit represents a highly unreliable threshold for judging water quality impacts. A rigid numeric limit that contains so much uncertainty cannot reliably be the basis for determining acceptable or unacceptable levels of pollutants in storm water. CAPA concurs with CSQA that numeric effluent limits are technically infeasible.

Further, CAPA doubts that a single numeric limit could fairly measure the storm water impact from operational facilities in different watersheds discharging to receiving waters with different sizes, salinities, sediment loads, circulation regimes, etc. Ports have vast expanses of pavement that are necessary for terminal operations, and those expanses are typically adjacent to receiving waters. It does not make sense to apply the same requirements to coastal facilities as to facilities that may be unpaved, located miles inland from any receiving water, and with very different storm water runoff characteristics.

CAPA agrees that the simplicity of an enforceable number is appealing, but we submit that establishing a meaningful number that will result in measurable water quality benefits at a cost commensurate with those benefits is anything but simple. To establish such a number for enforcement of penalties requires any such number to have a reasonable scientific basis. Otherwise, such limits will be considered arbitrary and capricious and be deemed unenforceable.

¹ For example, it is common knowledge that analytical results from a split grab sample may vary 60% or more for some parameters.

Bruce Fujimoto

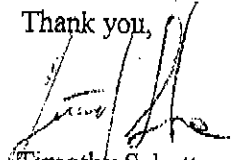
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CAPA submits that a focused effort targeting source control to prevent contaminants from coming into contact with storm water is a much more meaningful approach than numerical limits. We think that source control should prove to be cost effective; moreover, it would be more equitable because it would place preventive responsibilities on all parties that control or use the land on which storm water falls. Even the TMDL process, for all of its uncertainties, represents a scientifically sounder approach because it specifically considers the variabilities in receiving waters and runoff, discussed above.

CAPA appreciates this opportunity to be involved in an effective permit program for addressing storm water quality, and looks forward to participating in future regulatory developments.

Thank you,



Timothy Schott,
Association Secretary