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2/3/05
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109. Capa

FACSIMILE TRANSMISSION COVER LETTER

TO: Debbie Irvin - State Water Resources Control Board

FROM: Tim Schott / Lina Bernal

DATE: February 18, 2005

NO. OF PAGES (INCLUDING COVER): 11

OPERATOR: _____

COMMENTS:

Attached for your review are comments on the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities, as submitted by the California Association of Port Authorities (CAPA).

Please call to let us know you have received this document.

Thank you.

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

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February 3, 2005

Ms. Debbie Irvin, Clerk to the Board
 State Water Resources Control Board
 1001 I Street, 24th Floor
 P.O. Box 100
 Sacramento, CA 95812-0100

Re: Comments on the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities (Industrial General Permit), December 2004 Draft

To Members of the State Board:

On behalf of the Ports of California, the California Association of Port Authorities (CAPA) presents these comments on the proposed draft General Permit for Discharges of Storm Water Associated with Industrial Activities (Draft Permit), released on December 15, 2004. CAPA represents the state's eleven, commercial, publicly owned ports.

CAPA commends the State Water Resources Control Board (SWRCB) for its efforts to modify the General Permit to make it clearer, more practical and better organized. We generally support changes that will benefit overall water quality, but we have concerns over changes that have no clear link to water quality while in some cases substantially increasing costs and workload of both individual permittees and the Group Leader of a Group Monitoring Program (GMP).

CAPA members are most concerned with the application of Numeric Benchmarks. CAPA submitted comments in 2003 (on the May 2003 draft) objecting to, and underscoring the problems with, numeric effluent limits. In our view, the draft permit effectively applies the USEPA benchmarks as numeric effluent limits rather than as guidance, as USEPA intended. Moreover, they signal a move toward numeric effluent limits without any scientific determination of whether the limits have any meaningful relationship to water quality or that there is a scientific basis for any particular numeric limit.

If the SWRCB is going to pursue numeric effluent limits, it must use sound science and follow the process established by state and federal law. To develop numeric BAT limits under the Clean Water Act, the SWRCB must consider a number of factors, including the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as EPA deems appropriate. (33 U.S.C. §1314(b)(2)(B).) The Porter-Cologne Act requires the SWRCB to consider other factors, including the water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area, and economic considerations. (Water Code §§13263 and 13241).

Provision VIII.4.f.¹ provides that if a sampling result exceeds a benchmark, the permittee must "collect and analyze samples in accordance with Section VIII.5.c. from at least the next two consecutive qualifying events" and "continue sample collection and analysis until two consecutive samples result in no further exceedances of the USEPA benchmarks." In addition, the permittee must undertake an iterative process of evaluating their operations and pollutant sources under V.7.

As a preliminary matter, USEPA developed these benchmarks as one factor among many for facility operators to consider in evaluating the effectiveness of facility-specific Best Management Practices (BMPs). USEPA is clear that the benchmarks are not numeric effluent limits and should not be used as such. USEPA further emphasizes that an exceedance of a benchmark is not a violation, but rather an indication of *potential* concern. (See, 60 Fed. Reg. 50804, 50824-26.)

The Draft Permit does not allow for the possibility, as USEPA did, that an exceedance of a benchmark might *not* be a concern. Rather, it ignores the scientific uncertainty of grab sampling and assumes a single sample result represents a problem when it automatically triggers sampling of the next two storm events and a complex, time-constrained evaluation process. There is no allowance for pollutants that are not associated with industrial activities (the scope of the permit), such as those which originate from off-site sources (e.g., air deposition) or sources beyond the control of the permittee (e.g., building materials.) If the exceedance is caused by pollutants the permittee does not generate and cannot control, the permittee may have to sample every storm indefinitely, unable to ever obtain results below the benchmark. The application of benchmarks in the Draft Permit is effectively punitive and contrary to USEPA's intent because it requires the permittee to collect samples when the results can serve no useful value in evaluating the permittee's BMPs. This result is not consistent with USEPA's intent, to facilitate an evaluation of whether BMPs are effective.

As is well established, the sampling method on which the determination will be based – grab sampling – has serious limitations for storm water. Grab samples do not provide a

¹ We note that this provisions should be numbered VIII.5.f. owing to omission of a number to paragraph 3 ("Non-storm Water Discharge Visual Observations") on the previous page. Nevertheless, to limit confusion, we refer to the uncorrected numbering in the draft permit.

reliable measure of pollutants in storm water, as CAPA explained in its letter of June 27, 2003, a copy of which is attached. CAPA incorporates those comments here without repeating them. Grab samples of storm water are often highly variable. The variability is real and not just an artifact of field quality control and sampling techniques, although that adds to the variability. Grab samples are thus an inaccurate measure of storm water quality. In addition, it is simply not accurate to say that in all cases and under all circumstances, a numeric benchmark creates a bright line between acceptable and unacceptable levels of pollutants in storm water. The permit, if it incorporates benchmarks, *must* allow permittees discretion to consider industrial operations, BMPs, off-site sources, receiving waters and other site conditions and factors when evaluating a result that exceeds a benchmark. Additionally, the required evaluation outlined in V.7. is fraught with unworkable terms, as discussed below. CAPA thus cannot endorse the use of benchmarks to trigger evaluation and sampling requirements as proposed in the Draft Permit. CAPA submits that such an approach provides no demonstrable water quality benefit, increases permittee costs and provides a ready basis for claims of permit violations that could lead to arbitrary enforcement action. Additional follow-up sampling should not be required except when a completed evaluation concludes that additional or revised BMPs are appropriate, and those BMPs have been implemented. In that event, benchmarks may be useful in evaluating the effectiveness of BMPs, but the significant limitations of storm water grab samples must be acknowledged and the order must be clear that exceedance of a benchmark does not constitute a permit violation.

CAPA urges the SWRCB to:

- **Remove the unqualified requirement at VIII.4. f. [sic] to sample two subsequent storm events and**
- **Remove paragraphs VIII.7.c, d, e, f, g and h.**

These modifications are essential to utilize the USEPA benchmarks in a fashion consistent with the purpose for which they were designed.

Additional Comments

1. Follow-up sampling required is excessive.

Secondarily to the above comments, the follow-up sampling of all the parameters associated with the facility, as is prescribed by the reference to Section VIII.5.c. in paragraph f.ii., is excessive, unnecessary and costly. Even if follow-up sampling were appropriate as proposed, it should be limited to only the constituent that exceeded a benchmark. The SWRCB has provided no justification for requiring analysis of all constituents.

CAPA members interpret the provision to require follow-up sampling of the next two storm events that occur *after the permittee receives laboratory results*. Permittees cannot, in fairness, be held responsible for collecting follow-up samples *before* they even learn of an exceedance, and the requirement should not be interpreted to compel far more expensive expedited sample processing, particularly at a time labs will be inundated by samples from numerous facilities. If this requirement is to remain in the

permit, some reasonable timeframe after receiving sample results, such as ten business days, is necessary to review and consider the validity of those results.

Finally, there must be relief from the requirement to continue sampling until benchmarks are not exceeded, if the permittee's evaluation concludes that the source of the exceedance is from off-site, not associated with the facility's industrial activity or otherwise not in the control of the permittee.

Recommendation: Short of the recommendation above to remove the unqualified requirement at VIII.4. f. [sic] to sample two subsequent storm events CAPA urges the SWRCB to amend the Draft Permit to, at a minimum:

- Remove the unqualified requirement at VIII.4. f. [sic] to sample two subsequent storm events. Additional follow-up sampling should not be required until after the evaluation is completed, and then only if the evaluation determines that the parameter exceeded is associated with the facility's industrial activity and revised or new BMPs are indicated. If the sample results are questionable or only slightly above the benchmark, the permittee might be allowed to verify the exceedance with additional sampling before undertaking the full evaluation. Three samples out of four exceeding the benchmark would be a more rational basis for further action;
- Limit any follow-up sample analysis to the parameters that exceed a benchmark;
- Clarify the requirement to sample the "next storm" by defining the "next storm" as that which occurs no less than 10 business days after the permittee receives the analytical results of sampling; and
- Provide that follow-up sampling is not required if the permittee's evaluation concludes that the source of the exceedance is from off-site, not associated with the facility's industrial activity or otherwise not in the control of the permittee;

2. **The Evaluation process for benchmark exceedances is unworkable.**

The evaluation process, as noted above, is disconnected from the follow-up sampling requirement. Additionally, the evaluation process as proposed sets permittees up for multiple permit violations for failure to successfully navigate a procedure that contains unworkable timing elements and reliance on unassured agency action.

First, a permittee cannot predict with certainty, and accordingly certify, that an exceedance of a benchmark will not occur in the future. Due to the scientific uncertainties with storm water grab samples; permittees cannot even certify that results *under* the benchmark reliably indicate that no additional BMPs are necessary. Certification should be limited to good faith and best judgment.

Second, design, permitting and construction of a new structural BMP could take well over 90 days and once constructed, it may take several storm water events to refine operations and confirm that the BMP is effective. Also, for a Group Monitoring Program, it may take additional time and effort for the Group Leader to assist tenants in selecting and implementing appropriate BMPs and demonstrating their adequacy. Such delay is aggravated by required RWQCB approval, which is without any time

frame. The permittee's report should be deemed approved if the RWQCB does not object within a specified time period. Additionally, the permit should allow permittees a reasonable period as specified in their report (rather than 90 days) to commence implementation of BMPs when the report is approved (either expressly or by default).

Finally, the Draft Permit leaves permittees subject to enforcement action even if they are undertaking the evaluation in good faith, have received no response from the RWQCB, or are unable to otherwise take the step required within the timeframes provided. This provision unfairly denies permittees a reasonable period of time to follow up on an exceedance with confirmatory testing, BMP design and implementation, and effectiveness evaluation. Permittees should be afforded a measure of protection during the evaluation period with language explicitly providing that a permittee implementing the required procedures are not in violation of the permit.

Recommendation: Short of the recommendation above to remove paragraphs VIII.7.c., d., e., f., g., and h, CAPA recommends the SWRCB amend the Draft Permit to, at a minimum:

- Allow the permittee an opportunity to collect additional samples to verify an exceedance before undertaking an extensive evaluation. A frequency of exceedance (say, three out of four samples) would be a better basis for triggering an extensive evaluation;
- Limit the certification requirement under V.7.c. to good faith and best judgment;
- Establish that reports submitted under V.7.c. are deemed approved if the RWQCB does not object within a specified time period, such as 30 days;
- Provide permittees a reasonable period as specified in a schedule their report submitted under V.7.c. (rather than 90 days), and that such period commences when the report is approved (either expressly or by default);
- Provide that permittees undertaking the V.7. evaluation process in good faith are not in violation of the permit; and
- Bring closure to the evaluation process when further evaluation will be fruitless. Exempt permittees from further evaluations for a particular parameter when an evaluation establishes that the pollutant is not associated with the permittee's industrial activities, or originates from off site, or is otherwise outside of the control of the permittee.

3. The evaluation required when Receiving Water Limitations are violated is unworkable.

Provisions: V.6.

Permittees are required to undertake an iterative process of evaluating their operations and pollutant sources when there is a violation of Receiving Water Limitations.

Comment: The evaluation is identical with that required when benchmarks are exceeded, and thus CAPA incorporates its comments to V.7. above. The weaknesses

in the evaluation process are even more critical than for the benchmark exceedance since the permittee is in violation of the permit (Receiving Water Limitations) at the outset.

Recommendations: CAPA recommends the SWRCB:

- Remove paragraphs VIII.6.c, d, e, f, g and h.

Short of this, CAPA requests the SWRCB revise VIII.6. in accordance with the recommendations under VIII.7. above.

4. **The one time pollutant scan is not a scientifically valid method to gather data, is for an inappropriate purpose (numeric effluent limits), and is thus a futile and expensive exercise.**

Provision: VIII.6

The Draft Permit requires permittees to analyze at least one sample collected from the first storm event during the 2008-2009 monitoring year for a number of constituents regardless of their likelihood of being on site as a result of industrial activities.

Comments: While CAPA objects to the attempt to collect data at the cost of the permittee, the greater concern is the SWRCB's stated intent to use the data to develop numeric effluent limits. Surely the SWRCB appreciates the limitations of data generated by storm water grab samples, which are compounded by variability in quality control in the field. CAPA again refers the SWRCB to its letter of June 27, 2003. These variables include first flush; the variation in rainfall volume; intensity and duration, the type of industrial activity that is occurring while sampling, a one time, even insignificant spill incident, and many other factors. A one-time sample does not provide a true representation of the facility discharge and certainly does not provide scientifically defensible data for the development of numeric effluent limits, even assuming numeric effluent limits was scientifically defensible means of measuring permit compliance. In any event, if the SWRCB is intent on numeric effluent limits, such limits must be technology based limits rather than water quality based limits, and they must be derived using scientifically sound methods that incorporate independent scientific peer review.

Recommendation: CAPA objects both to the use of numeric effluent limits to measure permit compliance and to the proposed pollutant scan to generate data for developing numeric effluent limits. CAPA recommends removal of the one-time pollutant scan requirement.

5. **Permittees should not have to continue sampling for constituents that have not been detected in storm water discharges.**

Provision: The Draft Permit eliminates the option under the 1997 General Permit allowing permittees to discontinue analysis for constituents that are not detected in significant quantities in storm water. The Draft Permit also eliminates the reduced sampling option under section B.12 of 1997 General Permit.

Comment: There is no point in analyzing for constituents a permittee has successfully eliminated from storm water discharge, as demonstrated by the absence

of that constituent in samples. Consistent results showing no detection of the parameter shows the facility is implementing effective BMPs to eliminate pollutants. Facilities that have been successful in their storm water management programs should not be penalized by having to sample regardless of whether a constituent occurs in their discharge. There is no good scientific justification for requiring permittees to continue to sample for pollutants that are not being detected.

Recommendation: The SWRCB should reconsider this revision and retain some provision for the elimination of constituents or reduction of sampling events.

6. Sampling Within the First Hour of Discharge

Provision: VIII.8

The Draft Permit mirrors the current permit by providing that all storm water samples be collected within the first hour of discharge. However, the current permit acknowledges that under some circumstances, samples may not be collected within the first hour of discharge, and requires permittees to provide an explanation in the annual report. The language allowing for explanation when samples are collected outside the one-hour period has been omitted from the Draft Permit.

Comment: This modification appears to force permittees to undertake sampling themselves rather than employing better qualified consultants because realistically, consultants cannot mobilize and sample at the facility within one hour of discharge. Many facilities do not have staff with the qualifications or expertise to properly handle samples, which can lead to collection of unrepresentative samples, sample contamination and error in the results. The proposed revision puts these facilities that use consultants in technical violation of the permit, and insists that facility personnel perform the sampling even if the result is poorer quality data. A decision to forbid the use of consultants might be appropriate if it produced a great benefit. But sampling within the first hour seems not to be important enough to warrant the elimination of consultants. We have heard that stormwater studies show elevated pollutant levels long after the first hour, and that the peak concentrations are not necessarily within the first hour. Before requiring permittees to fire their consultants, the State Board should re-evaluate the available data on how pollutant concentrations change from the beginning of discharge to the end.

This requirement also eliminates the option of Group Monitoring Programs to employ consultants. Not only does individual monitoring add another variable to data quality – inconsistently applied sampling techniques – but group participation is less attractive to participants. Group monitoring programs provide a valuable additional level of compliance oversight.

Recommendation: We recommend the SWRCB reconsider the importance of sampling within the first hour, consider the greater value of data collected by trained consultants, and restore the option for the permittee (or group leader) to sample and make discharge observations later than the first hour of discharge.

7. Alternative Monitoring Procedures should be allowed.

Provision: B.9 of the 1997 General Permit, Alternative Monitoring Procedures, has been removed from the draft permit.

Comments: The alternative monitoring option. Many facilities do not have conventional storm drain systems and rely on sheet flow or other locations to sample from. Other areas present safety hazards, so the sample must be taken from the location before discharge. Without allowing for alternative monitoring procedures, the Draft Permit fails to acknowledge and provide for alternative monitoring protocols.

Recommendation: Restore an option for alternative monitoring.

8. Requiring storm water discharge and facility visual observations in darkness is unproductive.

Provision: VIII.3.e and VIII.3.f [Note: these sections should be renumbered to VIII.4.e. and f.]

The Draft Permit requires permittees to record discharges that do not produce a discharge, and to conduct observations prior to anticipated storm events. The Draft Permit limits these observations to operating hours, but deleted provisions in the prior draft limiting them to daylight.

Comments: The deletion of "daylight hours" requires the permittee to also perform inspections in the dark. Many Ports have busy facilities that operate in the dark. This not only presents a safety issue for the inspector, but may also be a worthless endeavor because observations may not be an accurate due to poor light conditions.

Recommendation: CAPA recommends that observations need only be performed during daylight AND operating hours.

9. Clarifications

Some areas of the permit are unclear. Considering the purpose of the permit and of storm water protection efforts, CAPA submits the reasonable interpretation of these provisions is as follows:

- a. Sampling of "all drainage areas," as required by VIII.7.d., means sampling is required only of drainage from areas where industrial activities occur.
- b. The five-year summary of analytical results mentioned in VIII.12.f., which appears nowhere else in the permit, means only a compilation of five years of monitoring data and does not create an additional requirement to create a new summary, analysis, evaluation, or document of any kind.
- c. The revision to provision IX.3.f., expanding the group leader's obligation to "assess each participant's list of significant materials and potential pollutant sources to identify additional facility BMPs" means a one-time limited review of facility operations for purposes of confirming that participation in the group is

appropriate, recognizing that in some cases, facility-specific BMPs may differ among facilities. CAPA believes this provision was not intended to require an intensive, in-depth review of the participant's operations or SWPPP.

- d. CAPA members are concerned that inconsistencies and conflicts may arise between the requirements of the industrial general permit and municipal storm water permits. Permittees who have coverage under the Industrial General Permit and are subject to regulation by a municipal permittee may face conflicting expectations and need some assurance that their efforts to comply with the Industrial General Permit are not viewed as inadequate by municipal permittee/regulators. Permittees who are covered by both the Industrial General Permit and a municipal storm water permit conclude that compliance with the Draft Permit fulfills the requirement to address storm water issues at their industrial facilities under the municipal permit.
- e. Permittees expect, and are due, sufficient clarity in the requirements imposed by regulatory action that they can reasonably discern what is required to comply. The permit should be reviewed to ensure that all requirements can be objectively determined. CAPA assumes that when the permit is not clear about what must be attained, or when the apparent requirement is impossible or beyond the reasonable reach of the permittee, the provision is optional.
- f. Finally, CAPA is concerned, particularly in light of overlapping municipal storm water permit coverage, about the potentially substantial costs permittees will incur to comply with the Draft Permit, as proposed. Before issuing the permit in final form, the State Board should consider the factors identified in Water Code §§13263 and 13241, including the water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area, and economic considerations. There are at least two good reasons for these considerations. First, the question of whether these factors must be considered is now pending before the California Supreme Court in the City of Burbank case, and if the Court decides in favor of the City of Burbank, these evaluations will be required before the permit can be issued. Second, even if the Court rules against the City of Burbank, the State Board should consider these factors because this permit, unlike an individual permit, will affect thousands of dischargers throughout the State of California. Its requirements will be so widespread that it is more like amending a basin plan to include new water quality objectives than like the issuance of a permit. New water quality objectives can be established only after consideration of the factors in Water Code §13241. Because changes in the general industrial stormwater permit have an even more widespread effect throughout the State, permit changes should be subject to the same review, and should also include a CEQA review of the environmental effects of the proposed revisions.

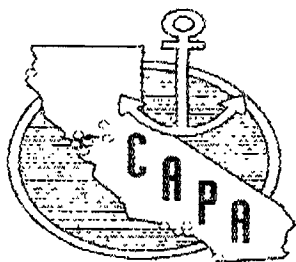
CAPA's comments are intended to be constructive. CAPA believes that a clear, practical, achievable and cost-effective program has the best chance of being successfully implemented and therefore will be most protective of water quality.

CAPA appreciates this opportunity to comment on the Draft Industrial Storm Water Permit and looks forward to reviewing a revised draft prior to its adoption.

Thank You,

A handwritten signature in black ink, appearing to read 'Tim Schott', with a long horizontal line extending to the right.

**Tim Schott
Association Secretary**



attachment

ok
[Signature]

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FACSIMILE TRANSMISSION COVER LETTER

TO: Debbie Irvin – State Water Resources Control Board

FROM: Tim Schott / Lina Bernal

DATE: February 22, 2005

NO. OF PAGES (INCLUDING COVER): 4

OPERATOR: _____

COMMENTS:

Attached is the letter referenced in our comments faxed to you on February 18, 2005, relative to the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities.

Please call if you have any questions or comments.

Thank you for your time.

1510 14TH STREET, SACRAMENTO, CALIFORNIA 95814 (916) 444-7158

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Timothy N. Schott
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June 27, 2003

California State Water Resources Control Board
Division of Water Quality
PO Box 1977
Sacramento, CA 95812-1977

Attention: Leo Cosentini

Subject: Comments: Revised Draft General Permit for Discharges of Stormwater
Associated with Industrial Activities

Dear Mr. Cosentini:

The California Association of Port Authorities (CAPA) represents all major California Ports. These Ports operate California's major container cargo terminals and some of its major airports. Consequently, the Ports have a direct interest in the content and approach of the Draft General Permit for Discharges of Stormwater Associated with Industrial Activities in the form released May 19, 2003 (Industrial General Permit). CAPA members support the Industrial General Permit and its goal of assisting in maintaining and/or improving water quality. CAPA members also recognize the hard work of State Water Resources Control Board (SWRCB) staff in attempting to address the wide range of legitimate concerns expressed by a variety of sometimes conflicting interests. Finally, CAPA members commend the Board for proposing a permit that, in substantial part, provides adequate protection of water quality and can be administered in an equitable and fair manner across the regulated community.

In general, CAPA members support the Industrial General Permit in its current form, and concur with the comments of the California Storm Water Quality Association with regard to their suggested refinements to clarify compliance obligations. However, CAPA members oppose the initiative by stakeholders within the environmental community that seek to introduce numeric effluent limits in the permit and to expand required monitoring to include sampling of receiving waters.

Numeric Effluent Limits

Numeric effluent limits should not be included in the General Industrial Permit. In addition, we believe that inclusion of water quality objectives contained in the SWRCB's California Toxics Rule or RWQCB Basin Plans would be inappropriate as effluent limits for storm water discharges. Briefly stated, the wide variety of situations in which industrial facilities are located and storm water conveyed, along with the variables affecting field monitoring, pose insuperable difficulties to the establishment of meaningful numeric effluent limits for storm water. Among the variables that can dramatically affect monitoring of storm water are the following:

- Pollutant levels in storm water vary significantly over the course of a single storm, between different storm events, and over the course of the wet season;
- The quality of storm water run-on to a site from offsite is variable, and in many cases cannot be controlled by the permittee;
- Some pollutants originate from atmospheric sources or adjacent water masses, and may be introduced to the facility at highly variable rates;
- Facilities vary in many respects, such as size, amount of impervious surface, proximity to receiving waters or to other pollutant sources, etc.;
- In the specific case of Ports, facilities are often designed for sheet flow of storm water runoff from the site, which precludes meaningful end of pipe monitoring.

These variables are difficult, if not impossible, to quantify, account for, and correct for. Most are also beyond the control of the discharger, and thus make the concept of storm water management to reach effluent limitations meaningless. Because of these variables, the U.S. EPA and SWRCB have found that the establishment of effluent limitations for storm water is infeasible.¹ Moreover, judicial interpretation of regulations providing for establishment of effluent limitations is explicit that such limitations need not be numeric:

“We see nothing in the regulation which mandates numeric [water quality based effluent limitations] in all circumstances. The definition of ‘effluent limitation’ in the [Clean Water Act] refers to ‘any restriction,’ does not specify that a limitation must be numeric...”²

¹EPA policy entitled, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permit*, 61 Fed. Reg. 43761 (August 26, 1996); and NPDES General Permit/Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Sites, State Board Order No. 97-03-DWQ, April 17, 1997; NPDES General Permit/Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activity, State Board Order No. 99-08-DWQ August 19, 1999, as reissued December 8, 2002.

²*Communities for a Better Environment v. SWRCB*, 2003 Cal. App. LEXIS 877 at 30-31; 2003 Cal. Daily Op. Service 5149 (May 30, 2003), analyzing the requirements of 40 C.F.R. 122.44(d)(1)(vi).

In fact, Best Management Practices (“BMPs”) are appropriate in lieu of effluent limitations, an approach reflected in the federal regulations,³ and supported by the courts. Consequently, CAPA submits that establishment of numeric limitations would be, per se, arbitrary and capricious.

Those that argue numeric effluent limitations are necessary overlook the feasibility of their establishment. A cursory review of select, limited storm water data from two years does not accurately measure trends in industrial storm water impacts on receiving waters; nor does it establish that water quality objectives can serve appropriately as effluent limitations for storm water; nor does it support claims that the iterative process is a failure or that dischargers’ performance is inadequate or declining.

The SWRCB might consider the use of benchmark values, as EPA has, to trigger the iterative process of assessment and BMP enhancement. However, the permit must be clear that such benchmark values, or any other water quality criteria or objectives, shall not provide the basis for enforceable effluent limitations at the point of discharge. The use of water quality criteria or objectives, such as those contained in a basin plan or the California Toxic Rule, as effluent limits for storm water discharges is entirely inappropriate.

Receiving Water Monitoring

Monitoring of receiving waters will not provide meaningful information on the impact of storm water discharges from any particular facility. Receiving waters vary in sensitivity to and impairment by various pollutants and background concentrations depending on an infinite variety of circumstances, none of which are necessarily related to any individual facility. In most cases, permittees discharge into storm water conveyance systems well upstream of receiving waters. Once in these conveyance systems, discharges from permitted industries commingle with non-permitted flows prior to discharge to receiving waters. The same situation arises when, for instance, Port facility runoff in receiving waters commingles with other non-Port sources, such as maritime vessels. As a result, it is nearly impossible to determine to what extent a permitted discharge contributes to any observed exceedance of water quality criteria in receiving waters.

In summary, CAPA opposes any incorporation of permit provisions that establish numeric criteria for storm water discharges or require monitoring of receiving waters at this time. Should the SWRCB propose such revisions, the regulated community expects it would have an opportunity to review, consider and comment on the specific proposed revisions. CAPA and its members appreciate this opportunity to provide their views on these important issues.

Sincerely,

Tim Schott
Association Secretary

³ 40 C.F.R. 122.44(k).