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September 6, 2005

**VIA FACSIMILE TRANSMISSION [916-341-5543]
AND UNITED STATES MAIL**Bruce Fujimoto
Division of Water Quality
State Water Resources Control Board
P.O. Box 1977
Sacramento, CA 95812-1977**Re: Comments Regarding Consideration of Numeric Effluent
Limitations by the Independent Panel of Experts**

Dear Mr. Fujimoto,

Best Best & Krieger LLP hereby submits comments on behalf of over seventy (70) public entities (the "Permittees") regarding the consideration of numeric effluent limitations by an independent expert panel (the "Panel"), to be convened by the State Water Resources Control Board ("SWRCB") on September 14th and 15th of 2005. The posted notice regarding this meeting states that the Panel will consider the feasibility of imposing numeric effluent limitations under the Industrial General Permit, the Construction General Permit, and the Area-Wide Municipal Permit. The Permittees represented by Best Best & Krieger include school districts, community college districts, water districts, community services districts, and other special districts.

The Permittees understand the impact of storm water pollution and seek to proactively work with the SWRCB to reduce storm water pollution by raising issues and addressing concerns related to the feasibility of numeric effluent limitations. Therefore, in our comments below we have focused on the issues that we believe are likely to arise from the potential imposition of numeric effluent limitations. None of the comments or examples included below are intended to limit the scope of the analysis of the SWRCB or the Panel in its responses.

COMMENTS

The Permittees request that the SWRCB and Panel consider the implications of setting baseline pollutant levels, against which numeric effluent limitations would likely be calculated. How would such baseline levels be established, and how would they accommodate regional or local variations in the presence or absence of pollutants? Would baseline levels be established as

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to each Regional Water Quality Control Board, as to each watershed, as to each community, or according to some other means? Would the baseline levels, once formed, be strictly applied, or would the Permittees be permitted to present evidence why the established baseline level should not apply? Given the central role that baseline values may play in the formation of numeric effluent limitations, the Permittees request that particular attention be paid to this issue.

The Permittees request that the SWRCB and Panel consider how the violation of numeric effluent limitations would be determined where a party other than the Permittee causes the violation of a numeric effluent limitation. Specifically, where polluted storm water flows from one parcel onto Permittees' property and subsequently results in a violation of a numeric effluent limitation, how will such situations be handled? Will the burden of proving the source of the pollutant fall on the Permittees and will safe harbor provisions apply to shield the Permittee from enforcement actions by the State and Regional Water Boards?

The Permittees ask that the SWRCB and the Panel consider the practical implications of setting a numeric effluent limitation for pollutants which may arrive on the Permittees' property through weather or other natural phenomena. For example, if precipitation is already at an acidic pH, then the violation of a numeric effluent limitation may occur through no fault of the Permittee. Additionally, Permittees are concerned that wind deposition of pollutants or dust on their property may contribute to the Permittees' violation of a numeric effluent limitation. The Permittees ask that the SWRCB and Panel consider this issue and address its implications.

The Permittees ask the SWRCB and Panel to address whether the Permittees would be allowed to conduct their own analysis of pollutants subject to numeric effluent limitations. Similar self-testing schemes have been proposed for pH and specific conductance under the General Industrial Permit, and might prove cost-effective for Permittees which have the ability to conduct their own field tests. Further, the Permittees ask that the SWRCB and the Panel consider the test methods which may be used to determine the presence or absence a pollutant. Would Permittees be allowed to select the methods by which they compare storm water samples with numeric effluent limitations?

The Permittees are concerned as to the scope of enforcement actions for the violation of numeric effluent limitations. Specifically, Permittees ask that the SWRCB and Panel consider the situation where a Permittee is faithfully implementing all required BMPs under their current storm water permit, but nonetheless remains in violation of a numeric effluent limitation. Would "safe harbor" provisions apply to shield the Permittee from enforcement actions?

The Permittees have concerns regarding the sampling and monitoring requirements that may accompany the imposition of numeric effluent limitations. How many samples would the Permittees be required to take, and how often? Permittees also ask that the SWRCB and the Panel consider the location from which samples would be gathered. Would Permittees need to gather samples directly from the pipe or channel which collects the storm water, or should samples be collected from the area where the storm water leaves the Permit site? The frequency,

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timing, and location of sampling and monitoring could affect compliance with numeric effluent limitations and also result in increased costs to the Permittees.

The Permittees have great concern regarding the impact that numeric effluent limitations will have on group monitoring plans. Under the Industrial General Permit, for example, similarly situated Permittees may utilize a group monitoring plan which appropriately allocates the costs of storm water compliance while allowing meaningful and effective pollution monitoring and reduction. For Permittees with restrictive budgets, school districts in particular, group monitoring provides a highly valued benefit. The Permittees are concerned that the potential imposition of numeric effluent limitations, and the additional monitoring and sampling requirements which will likely accompany them, will do away with the cost effectiveness of group monitoring. This would force individual Permittees, such as school districts, to bear the full costs of storm water compliance at the expense of educational goals.

Finally, what does the SWRCB intend to do with the information obtained through establishing numeric effluent limitations? Will the imposition of numeric limitations lead to modeling the treatment of urban water runoff to that of sanitary sewer effluent?

CONCLUSION

On behalf of our public agency clients, we believe that the SWRCB and Panel should consider a more effective means to mitigate storm water pollution before imposing additional time consuming and costly sampling and analysis requirements through numeric effluent limitations. The Permittees further request that the SWRCB and Panel acknowledge the success of the group monitoring approach and support its continuation.

We trust that the SWRCB and Panel will take a moment to consider these comments and address the questions and concerns raised herein in its consideration numeric effluent limitations. We look forward to working collaboratively and cooperatively with the SWRCB to address storm water pollution through the consideration and clarification of these comments. Best Best & Krieger LLP is pleased to provide you with these comments of the Permittees. Thank you in advance for the careful consideration that you have given to their concerns.

Very truly yours,


Marguerite S. Strand
of BEST BEST & KRIEGER LLP