Subject Matter Code: H Paperwork Reduction Act

Comment ID: CTR-019-004b
Comment Author: Richards, Watson & Gershon
Document Type: Local Government
State of Origin: CA
Represented Org: Cities of Barst
Document Date: 09/25/97
Subject Matter Code: H Paperwork Reduction Act
References: Letter CTR-019 incorporates by reference letters CTR-001, CTR-013, CTR-027 and CTR-036

Attachments? N
CROSS REFERENCES I

Comment: THE PROPOSED RULE DOES NOT COMPLY WITH THE PAPERWORK REDUCTION ACT

The preamble states at page 42192 that the CTR "requires no new or additional information collection." It is difficult to believe that a rule which, unless modified, may effectively require end-of-pipe treatment of storm water discharges would not require any "additional information collection." For example, simply a demonstration that WQBEL's are infeasible requirements for either municipal storm water permits would necessarily require an significant amount of additional data collection and reporting. USEPA should have conducted a full analysis of the potential information gathering requirements of the CTR before proposing this rule.

The preamble to the proposed rule sets forth in detail the various efforts that USEPA employed to obtain public input on the CTR. However, to our knowledge, none of the cities on whose behalf we are submitting these comments, nor any of the other cities which we represent were contacted by EPA in advance of the proposed rulemaking or given a reasonable opportunity to participate.

In closing, we join in the requests made by other local governmental entities that the proposed rule be modified to exclude any application to storm water discharges to municipal separate storm sewer systems.

RICHARDS, WATSON & GERSHON 333 So. Hope Street, 38th Floor Los Angeles, California 90071

John J. Harris

Response to: CTR-019-004b

EPA disagrees with the commenter that the proposed CTR does not comply with the Paperwork Reduction Act, and that the CTR will impose new, additional requirements on storm water dischargers. The preamble states that the action requires no new or additional information collection subject to the Paperwork Reduction Act. The CTR promulgates water quality criteria for priority toxic pollutants. The State is required to implement water quality criteria through its water quality control programs, specifically through the NPDES permit program. The State implements water quality-based effluent limitations or WQBELs in NPDES permits for any pollutant for which reasonable potential exists. Thus, the CTR does not directly place any requirements on any discharger.

Reporting and monitoring requirements already exist for all NPDES dischargers, including storm water dischargers, under the NPDES regulations. The CTR does not impose any additional reporting or monitoring requirements. As noted above, the CTR promulgates criteria for toxic pollutants, and the State will use the criteria in developing water quality-based effluent limitations in NPDES permits for the pollutants where reasonable potential exists. The rule does not impose any additional reporting or monitoring burden on any discharger.

The CTR poses no direct information collection burden on the State of California. The CTR places an indirect burden for reviewing and revising the toxic pollutants that were promulgated. (See the National Toxics Rule discussion of the Paperwork Reduction Act at 57 FR 60848, Tuesday, December 22, 1992.) The general Water Quality Standards regulations Information Collection Request (ICR) estimated an average indirect burden on respondents (States) for reviewing and revising water quality criteria, and toxics criteria are merely a subset of those criteria. Thus, the CTR poses no direct burden, and any indirect burden on the State for a required triennial review has been estimated and updated in the general Water Quality Standards.

EPA acknowledges the comment concerning EPA's outreach to the public for input. In 1995, EPA sent out a newsletter to all interested parties, including all NPDES permit holders in the State of California, soliciting comments and attendance at public meetings. EPA held two public meetings on August 24, 1995 in San Francisco, where again comments were solicited from the discharger community, including storm water dischargers. In addition, EPA attended each of the State's Task Force Meetings for the development of the new statewide implementation plan; the storm water discharger community was invited to attend all of these meetings. EPA was available to the public for questions and answers on both the CTR and the State's proposed implementation. Reasonable opportunity existed for the storm water community to submit input on the CTR.

Subject Matter Code: I Stormwater/Wet Weather Flows

Comment ID: CTR-019-004a
Comment Author: Richards, Watson & Gershon
Document Type: Local Government
State of Origin: CA
Represented Org: Cities of Barst
Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References: Letter CTR-019 incorporates by reference letters CTR-001, CTR-013, CTR-027 and CTR-036

Attachments? N
CROSS REFERENCES H

Comment: THE PROPOSED RULE DOES NOT COMPLY WITH THE PAPERWORK REDUCTION ACT

The preamble states at page 42192 that the CTR "requires no new or additional information collection." It is difficult to believe that a rule which, unless modified, may effectively require end-of-pipe treatment of storm water discharges would not require any "additional information collection." For example, simply a demonstration that WQBEL's are infeasible requirements for either municipal storm water permits would necessarily require an significant amount of additional data collection and reporting. USEPA should have conducted a full analysis of the potential information gathering requirements of the CTR before proposing this rule.

The preamble to the proposed rule sets forth in detail the various efforts that USEPA employed to obtain public input on the CTR. However, to our knowledge, none of the cities on whose behalf we are submitting these comments, nor any of the other cities which we represent were contacted by EPA in advance of the proposed rulemaking or given a reasonable opportunity to participate.

In closing, we join in the requests made by other local governmental entities that the proposed rule be modified to exclude any application to storm water discharges to municipal separate storm sewer systems.

RICHARDS, WATSON & GERSHON 333 So. Hope Street, 38th Floor Los Angeles, California 90071

John J. Harris

Response to: CTR-019-004a

EPA's EA, which uses many conservative costing assumptions, indicates that the cost of the State implementing water quality standards based on the proposed criteria in the CTR is likely to be below $100 million per year. Benefits are also estimated to be below $100 million per year. These estimates indicate that the action is not "significant" under E.O. 12866, under the provision concerning annual effects on the economy.

Criteria, by themselves, do not directly impose economic impacts. Criteria are one of three parts of a water quality standard. A water quality standard is comprised of: a criterion, a designated use, and an

antidegradation requirement. The CTR promulgates criteria for priority toxic pollutants. When these criteria are combined with State adopted designated uses and antidegradation requirements, water quality standards will be created. When the State implements these water quality standards, costs may be imposed. However, in the spirit of the intent of E.O. 12866, EPA prepared the EA which looks at the costs and benefits of the State's implementation of the resulting water quality standards based on the CTR criteria into the NPDES permit program.

The Unfunded Mandates Reform Act of 1995 (UMRA) in general requires federal agencies to assess the effects of their regulatory actions on State and local governments, and on the private sector. The agency must prepare a written statement including a cost-benefit analysis for actions with a "federal mandate" that may result in expenditures to State and local governments, in the aggregate, or to the private sector of $100 million or more in any one year. The CTR does not contain any federal mandate that may result in expenditures by State and local governments, or the private sector, of $100 million or more in any one year. The CTR imposes no direct enforceable duties on the State, local or private sector; rather the rule promulgates water quality criteria which, when combined with State-adopted designated uses and antidegradation requirements, will create water quality standards. The CTR does not directly regulate or affect any entity and therefore is not subject to the requirements of UMRA.

The Regulatory Flexibility Act in general requires federal agencies to describe the impact of their regulatory actions on small entities as part of the rulemaking. If the Administrator certifies that the action will not have a significant economic impact on a substantial number small entities, the agency is not required to prepare the analysis. The Administrator certified in the proposed rule, and is certifying again today that the rule will not have a significant economic impact on a substantial number of small entities. EPA's promulgation of water quality criteria will assist the State in establishing water quality standards. The State will, in turn, implement the resulting water quality standards in its water quality regulatory programs such as the NPDES permit program. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet those standards. While the State's implementation of water quality standards based on federally-promulgated criteria may result in new or revised discharge limits being placed on small entities, the criteria or standards themselves to not apply to any discharger, including small entities. Thus, EPA's action today does not impose any of these as yet unknown requirements on small entities.

As described in EA that accompanied the proposed CTR (SAIC and Jones and Stokes Associates, 1997), EPA assumed that regulatory alternatives such as phased total maximum daily loads/water quality assessments, site-specific criteria modifications, standards variances, metals translators, etc., are considered under certain circumstances. Specifically, under the low-end scenario, regulatory alternatives were assumed necessary if the cost for a sample facility exceeded $200 per toxic pounds-equivalent.

EPA assumes that a facility, when faced with the challenge of meeting water quality-based effluent limitations (WQBELs) based on CTR criteria, will select the most cost-effective controls, including regulatory alternatives. In fact, this has been the case in California, where several major POTWs have performed studies in pursuit of regulatory alternatives such as metals translators and site-specific criteria, rather than install costly controls to comply with WQBELs. EPA acknowledges that the actual cost-effectiveness value will vary by facility depending upon many factors, including the characteristics and volume of discharge, the receiving water, etc. However, EPA disagrees that the cost trigger is unrealistic, as it was reasonably based upon the highest reported cost-effectiveness values for industry categories subject to effluent limitations guidelines and standards.

Nonetheless, in the high-end estimate developed for the cost analysis accompanying the final CTR, no cost trigger was used and, thus, EPA's high-end cost estimate did not include the use of a regulatory

alternative for any sample facility.

Reference: SAIC and Jones and Stokes Associates, Inc. 1997. Analysis of Potential Costs Related to the Implementation of the California Toxics Rule. Prepared for U.S. EPA, Office of Science and Technology and U.S. EPA Region IX, May 5.

Comment ID: CTR-030-004c
Comment Author: Utility Water Act Group
Document Type: Trade Org./Assoc.
State of Origin: DC
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References:
Attachments? Y
CROSS REFERENCES G-02
G-04

Comment: D. EPA's Endorsement of Five-Year Compliance Schedules and Interim Permit Limits for Modifications is Appropriate

UWAG strongly supports EPA's recognition that modifications necessary to comply with new or more stringent effluent limitations may necessitate the use of five-year compliance schedules. 62 Fed. Reg. at 42,187, col. 3. UWAG believes, however, that in certain circumstances a longer compliance schedule may be appropriate. Steam electric facilities that need retrofits to meet water quality-based effluent limits (WQBELS) often require extensive engineering design and testing prior to the actual retrofit. Additionally, nuclear facilities must ensure that any design changes are compatible with Nuclear Regulatory Commission regulations. Therefore, the availability of five-year compliance schedules is certainly well-justified. Further, EPA should consider whether longer compliance schedules should be available, at least in some limited circumstances.

Additionally, UWAG strongly supports EPA's approval of interim permit limits for use in permit modifications. This flexibility will allow dischargers to stay in compliance while necessary process or design changes are carried out.

Response to: CTR-030-004c

EPA dropped its proposed five year compliance schedule from the final CTR. Based on public comments, EPA has determined that, in California, establishment of a compliance schedule is an implementation issue. Thus, the State should have discretion to establish a compliance schedule subject to EPA approval.

Comment ID: CTR-031-004c
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:

Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References: Letter CTR-031 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES C-17a
C-17b

Comment: If the proposed rule is carefully and sufficiently modified to affirm a commitment by EPA to effect only its Congressional authorization as established by CWA section 402(p), then EPA's failure to assess municipal storm water dischargers" ability to attain the proposed standards and associated economic and environmental impacts may be set aside at this time. However, if EPA persists in maintaining the CTR as drafted in this regard, the ambiguities presented in the preamble demand serious consideration and analyses as follows.

a. Many of the criteria are not attainable or scientifically valid with regard to municipal stormwater dischargers, nor is the proposed approach consistent with an appropriate delegation of authority to the State.

ii. Scientific Defensibility of Standards

Municipal storm water discharges require a uniquely different scientific as well as regulatory approach. The episodic nature of storm flow events; the huge variances in flow volume, rate, timing, concentrations, and loads; the variability in receiving waters; and organism tolerance for and recovery f rom episodic exposure need to be taken into account in developing standards.

In a July 1992 memorandum addressing a Combined Sewer Overflow/Wet Weather workshop, Tudor Davies, Director of EPA's Office of Science and Technology wrote: "Changes being considered in the aquatic criteria development methodology to enhance the scientific defensibility of the criteria would be applicable to both constant and to wet weather discharges. One such change undergoing consideration is a change in the duration and frequency of exposure assumptions to make criterion more toxicologically realistic.

EPA has begun this work and is apparently nearing completion. With EPA's own Science and Technology office recognizing the inadequacy of the current approach to setting criteria relative to wet weather discharges, it must be concluded any attempt to apply the CTR criteria to municipal stormwater system discharges is ill-founded and likely inconsistent with the CWA.

Response to: CTR-031-004c

EPA believes the CTR is consistent with current State and federal regulatory approaches. Regarding the comment that the CTR is not coordinated with the State Implementation Procedures, the CTR and the State Implementation Plan have been coordinated by EPA and the State in order to be made effective in a similar timeframe. In addition, EPA will review the State Implementation Policy for consistency with the Clean Water Act.

The comment regarding NEPA and ESA review assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in Comment ID CTR-001-002, EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

EPA's interim policy regarding application of the CTR to storm water dischargers is described in response to Comment ID CTR-001-002. The issue raised here is more one of how criteria are implemented for storm water dischargers and not the criteria themselves, which are developed to be protective of aquatic life and human health. In addition, the criteria are biologically based and, as such, if applied with the appropriate duration and frequency for storm water events, reflect a biologically-based approach.

Comment ID: CTR-031-005b
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References: Letter CTR-031 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES G-02

Comment: If the proposed rule is carefully and sufficiently modified to affirm a commitment by EPA to effect only its Congressional authorization as established by CWA section 402(p), then EPA's failure to assess municipal storm water dischargers" ability to attain the proposed standards and associated economic and environmental impacts may be set aside at this time. However, if EPA persists in maintaining the CTR as drafted in this regard, the ambiguities presented in the preamble demand serious consideration and analyses as follows.

a. Many of the criteria are not attainable or scientifically valid with regard to municipal stormwater dischargers, nor is the proposed approach consistent with an appropriate delegation of authority to the State.

iii. State Flexibility and Authority

The CTR states, "The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State adopted numeric toxics criteria when applied to the same use classifications..." p. 42206

[INDENT]This language supports State Water Resources Control Board decisions and the San Francisco Basin Plan which have made it clear that municipal storm water dischargers need to address water quality standards only through the implementation, and escalation as necessary, of best management practices. As noted previously, the language of this section must be better supported in the preamble.

Notwithstanding the above statement on page 42206, the CTR actually diminishes state flexibility in implementing the rule and is inconsistent with state compliance schedules. The CTR mandates implementation limits on the state and implies a 5-year limit on compliance.

A five-year compliance schedule for municipal storm water dischargers is entirely inconsistent with the State's, EPA'S, and Phase II stakeholder's understanding of the unique challenges of storm water permitting. The draft Phase II regulation submitted to OMB includes a comprehensive reevaluation of

storm water programs after two permit terms, and recommends no added best management practices or changes in the Phase II program until such evaluation and research are completed.

Response to: CTR-031-005b

See response to CTR-040-004.

EPA believes the CTR is consistent with current State and federal regulatory approaches. Regarding the comment that the CTR is not coordinated with the State Implementation Procedures, the CTR and the State Implementation Plan have been coordinated by EPA and the State in order to be made effective in a similar timeframe. In addition, EPA will review the State Implementation Policy for consistency with the Clean Water Act.

The comment regarding NEPA and ESA review assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in Comment ID CTR-001-002, EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

Comment ID: CTR-036-008
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES

Comment: We are concerned that the proposed rule precedes actions to evaluate wet weather flows by EPA Headquarters and the establishment of an appropriate scientific approach for stormwater compliance.

Response to: CTR-036-008

EPA's interim policy regarding application of the CTR to storm water dischargers is described in response to Comment ID CTR-001-002. The issue raised here is more one of how criteria are implemented for storm water dischargers and not the criteria themselves, which are developed to be protective of aquatic life and human health. In addition, the criteria are biologically based and, as such, if applied with the appropriate duration and frequency for storm water events, reflect a biologically-based approach.

Comment ID: CTR-036-010b
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA

Represented Org:
Document Date: 09/25/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES G-02

Comment: We are concerned that the five-year compliance period for stormwater discharges to meet the criteria is untenable. The linkage between the application of best management practices and water quality benefits is long term and will thus be hard to demonstrate. Even in a direct product substitution situation, such as the removal of leaded gasoline from fuels, data from Orange County shows a very slow and long-term reduction in lead concentrations in our water bodies over multiple years.

Response to: CTR-036-010b

EPA dropped its proposed five year compliance schedule from the final CTR. Based on public comments, EPA has determined that, in California, establishment of a compliance schedule is an implementation issue. Thus, the State should have discretion to establish a compliance schedule subject to EPA approval.

Comment ID: CTR-042-004
Comment Author: Cal. Dept. of Transportation
Document Type: State Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References:
Attachments? Y
CROSS REFERENCES

Comment: 4. The CTR criteria are not appropriate for application to storm water discharges.

In addition to the fact that the CTR criteria are not applicable to municipal storm water discharges, the water quality criteria proposed in the CTR are also based on the continuous or steady flows associated with wastewater discharges. As such, these criteria may not be applicable to the intermittent flows associated with storm water discharges. It is Caltrans understanding that EPA Headquarters is currently reviewing the applicability of water quality criteria to wet weather discharges. Currently, there exists no published scientific study assessing the impacts of storm water discharges on the designated beneficial uses of receiving waters. Given the variability of storm water flows, discharge points, pollutant quantities, and quality, EPA might consider a different approach to adopting criteria that takes into consideration this variability.

Requests:

Caltrans requests that the CTR criteria not be applied to municipal storm water discharges.

Response to: CTR-042-004

See response to CTR-040-004.

Every two years, the California State Water Resources Control Board (SWRCB) submits a report on the State's water quality to the U.S. EPA pursuant to Section 305(b) of the Federal Clean Water Act. These reports present water quality assessment information compiled by California's nine Regional Water Quality Control Boards. SWRCB (1996) indicates that urban runoff and storm sewers are major and moderate sources of impairment of beneficial uses in estuaries, lakes and reservoirs, rivers and streams, and wetlands. The extent of this impairment is shown in the table below.

Sizes of Waters Impaired by Urban Runoff and Storm Sewers by Contribution to Impairment

Waterbody Type (Units)	Major^1	Moderate and Minor^2
Estuaries(Acres)	899	52,552
Lakes and Reservoirs (Acres)	120,320	7,985
Rivers and Streams (Miles)	92	1,620
Wetlands, Freshwater (Acres)	1	58,316
Wetlands, Tidal (Acres)	0	184

Source: SWRCB (1996).
1. A major contributor is a source that is either the only one responsible for nonsupport of any designated use or it predominates over other sources.
2. A moderate contributor is a source that is the only one responsible for partial support of any use, predominates over other sources of partial support, or is one of multiple sources of nonsupport that have a significant impact on designated use attainment. A minor contributor is a source that is one of multiple sources responsible for nonsupport or partial support and is judged to contribute relatively little to this nonattainment.

State Water Resources Control Board (SWRCB). 1996. California 305(b) Report on Water Quality. Prepared as Required in Clean Water Act Section 305(b). August.

Comment ID: CTRH-002-006a
Comment Author: Chris Compton
Document Type: Public Hearing
State of Origin: CA
Represented Org: County of Orange
Document Date: 09/18/97
Subject Matter Code: I Stormwater/Wet Weather Flows
References:
Attachments? N
CROSS REFERENCES J

Comment: Does the California Toxics Rule meet the legal requirements of the Clean Water Act and other federal policies and laws?

Previous municipal stormwater speakers have questioned, as we have, EPA's interpretation of Section 402(p) of the Clean Water Act. In addition, the California Toxics Rule raises significant questions regarding its conformance with other federal policies and laws including Executive Order 12866, the Unfunded Mandates Reform Act, the Regulatory Flexibility Act, and the authority for EPA to adopt blanket criteria without considering the designated uses of such waters as required under the Clean Water Act.

To give you just one example, I'd like to briefly compare the California Toxics Rule with the compliance of Executive Order 12866:

Under Executive Order 12866, any "significant" federal regulatory action must be referred to the Office of Management and Budget for review before it can be approved. In this context, a "significant" action includes one which will "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy." Though admitting that there "may be a cost to some dischargers" to comply with the water quality standards that will be derived from these toxics criteria, the EPA nonetheless argues that the proposed rule is not a significant action because it "establishes ambient water quality criteria which, by themselves, do not directly impose economic impacts."

First, nothing in Executive Order 12866 indicates that only actions with direct economic impacts are to be considered by OMB. Second, for the EPA to ignore the link between the toxics criteria in the proposed rule and the obligations being imposed is very questionable. Is EPA conceding that State and regional water boards may simply ignore these criteria when promulgating water quality standards and issuing permits? Nothing in the preamble indicates that EPA views these criteria as merely advisory.

Despite stating that Executive order 12866 is not applicable, EPA goes on to include an economic analysis which purports to demonstrate that the proposed rule will result in a net economic benefit. The problem with this analysis is that it completely ignores the enormous cost that municipalities will bear if they are forced to bring their stormwater discharges into compliance with these toxics criteria. For example, a 1990 study conducted for the Sacramento Stormwater Program estimated that it would cost nearly $2 billion to implement a treatment program to achieve the water quality criteria proposed in the former Inland Surface Water Plan. Costs to comply with the proposed toxics criteria would be similar, if not higher, than those proposed in the Inland Surface Water Plan. Ultimately, the costs of compliance may reach into the ten of billions of dollars.

In short, EPA cannot have it both ways. It cannot state that stormwater discharges are subject to the proposed toxics rule and then turn a blind eye toward the costs associated with the implementation of this rule. The costs of the proposed rules are direct and significant, and therefore the rule must be submitted to OMB for review.

We have comparable concerns with the other federal laws that I cited previously, and we will elaborate on them in our written comments.

Response to: CTRH-002-006a

As with all NPDES storm water program rules, the CTR gives operators the flexibility to implement controls and measures as they deam appropriate to achieve the goals of the rule. MS4 operators can employ professional expertise, innovation or industry standards, and their previously-demonstrated legal authoriy (MS4 application, part 2 requirement) to achieve MEP (and to pay for it, if necessary), with the goal being cost-effective compliance with the CTR. WQS are considered in the CTR, as the rule allows the State to develop site-specific criteria when appropriate (see also the response to CTR-020-001 and

CTR-040-004).

Subject Matter Code: I-01 Application Sec 301 vs. MEP

Comment ID: CTR-001-003
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: SECTION 402(P) ONLY SUBJECTS MUNICIPAL SEPARATE STORM SEWER SYSTEMS TO MAXIMUM EXTENT PRACTICABLE ("MEP") LEVEL CONTROLS

The implementation approach adopted by the State and Regional Boards is compelled by Section 402(p) of the Clean Water Act, which directs that a distinction to be drawn between industrial and municipal dischargers, and subjects municipal systems only to those controls that reflect pollution reductions to the maximum extent practicable.

Section 402(p)(3)(A) of the Clean Water Act as amended in 1987 provides that:

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section (301).

42 U.S.C. 1342(p)(3)(A) (Emphasis Added).

In contrast to Section 402(p)(3)(A), which makes industrial storm water sources subject to "section 301," Section 402(p)(3)(B) provides that MS4 discharges need only satisfy the dual requirements of: (1) effective prohibition of non-storm water discharges, and (2) controls to reduce the discharge of pollutants in storm water to the maximum extent practicable ("MEP"). 33 U.S.C. S 1342(p)(3)(B). That subsection contains no cross reference to Section 301 as is found in the industrial discharge provision.

Section 301(b)(1)(C) sets a "timetable for achievement of objectives" that directs "point sources" to achieve "any more stringent limitation, including those necessary to . . . implement any applicable water quality standard established pursuant to (the CWA (such as the CTR)]" by July 1, 1977. 42 U.S.C. S 1311(b)(1))(C). This section has been cited by EPA as a basis for imposing numeric effluent limitations exceeding MEP-level controls on municipal storm water systems.

Yet, until the addition of Section 402(p) in 1987, municipal storm water systems were not subject to a NPDES permitting requirement. To read Section 301(b)(1)(C) as applying to municipal storm water systems would necessitate the retroactive application of Section 402(p), since under that reading such systems would have been required to address water quality standards ten years before the provision was added to the Act.

An interpretation of the statute resulting in such retroactive application would be strongly disfavored in the absence of clear Congressional intent to establish such retroactivity. N.J. Singer, Sutherland on Statutory Construction, S 41.04 (Sands 5th ed. 1993) ("Sutherland") ("Retrospective operation is not

favored by the courts however, and a law will not be construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application.").

However, Section 402(p) avoids this problem by expressly describing the applicability of Section 301, distinguishing between industrial storm water sources (which were always subject to Sections 402 and 301 and are confirmed by the 1987 Amendments to remain subject to Section 301), and municipal storm water sources (which were not subject to Section 402 prior to the 1987 Amendments and are only subject to MEP-level controls). The applicability provisions of Section 402(p) are also accommodated directly in Section 301(b)(1)(C), which only requires the achievement of "applicable" water quality standards. (*3)

The express applicability provisions of Section 402(p) also eliminate any argument that Congress intended to make Section 402(p) retroactively applicable to municipal storm water systems, thereby requiring such systems to have achieved water quality standards ten years previously. Not only is evidence lacking of any Congressional intent to make the provision retroactive, any argument of such intent is definitively rebutted by the clear distinction in Section 402(p) between industrial and municipal storm water systems.

Under standard rules of statutory construction, the more specific provision (402(p)) prevails over the more general provision (301(b)), and the express reference to Section 301 for one category of dischargers (industrial) precludes implication of the same reference for another category of dischargers (municipal) that is specifically addressed and does not contain such a reference. (*4) In other words, while Section 402(p) arguably makes the water-quality-related provisions of Section 301 applicable to industrial discharges, the Clean Water Act establishes a distinct system for MS4s that relies on the prohibition of non-storm water discharges and escalating best management practices.

EPA in the preamble to its 1990 storm water regulations acknowledged the statutory distinction in stating that:

The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including technology and water quality based standards. However, the new Act makes significant changes to the permit standards for discharges from municipal storm sewers . . . . The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA . . . but permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable . . . .

55 Fed. Reg. 47992-94 (November 16, 1990).

It is therefore important that the CTR confirm the implementation provisions of the 1995 Basin Plan and corresponding State Board decisions, and conform to the distinction set forth in Section 402(p) of the Clean Water Act. There is no authority under the Act for subjecting municipal storm sewer systems to control obligations exceeding the MEP standard.

(*3) Section 301(a), by reference, also requires compliance with Section 302, which provides that where a discharge:

would interfere with the attainment or maintenance of that water quality in a specific portion of the

navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

33 U.S.C. S 1312(a). Such "alternative effluent control strategies" which "can reasonably be expected to contribute" to this goal are generally comparable in description to the MEP standard.

(*4) In any event, Section 302 expressly allows "alternative effluent control strategies" and only requires limitations "reasonably" anticipated to "contribute" to meeting objectives. Similarly, EPA's regulations for the issuance of NPDES permits simply require the "imposition of conditions [that] ensure compliance with the applicable water quality requirements of all affected States.,, 40 C.F.R. S 122.4(d). For the San Francisco Bay Area, those requirements are expressed in the 1995 Basin Plan, which explicitly states that numerical water quality objectives are infeasible and provides for the sort of escalating management practices required under the NPDES permit for the ACCWP. The approach is also contemplated by EPA's regulations which state that NPDES permits should include " - . . best management practices to control or abate the discharge of pollutants when: . . . (2) Numeric effluent limitations are infeasible . . . . I, 40 C.F.R. S 122.44(k).

Response to: CTR-001-003

This comment is outside the scope of this rule which concerns what criteria should apply to California waters. The rule is distinct from the issue of whether storm water dischargers must comply with water quality standards. The issue raised by the commenter has been addressed by EPA's storm water program in other contexts. EPA disagrees with the comments. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c.

Comment ID: CTR-001-005
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: INCONSISTENT AND AMBIGUOUS LANGUAGE IN THE PREAMBLE SUGGESTING A DIFFERENT RESULT MUST BE REMOVED

Reaffirmation of the provisions in Section 402(p) that make municipal storm water systems subject only to MEP-level controls is critically important since a number of statements in the preamble are either expressly, or ambiguously, overbroad. For example, the preamble states that:

Point source and nonpoint source allocations are established so that predicted receiving water concentrations do not exceed water quality standards.

Page 42185. As discussed above, there is no authority in the Clean Water Act for imposing wasteload allocations on municipal storm water systems that require more than MEP-level controls. Likewise, the following statement could be read to impermissibly substitute numeric effluent limitations for the MEP control standard:

National Pollutant Discharge Elimination System (NPDES) permits for wet weather point source discharges must include limits necessary to implement applicable water quality standards, through application of water quality-based effluent limitations of WQBELS.

Page 42186. Other statements in the preamble are somewhat less direct but nonetheless problematic.

When these proposed federal criteria take effect, they will create legally applicable water quality standards in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the CWA.

Page 42160. Similarly, the following statement at page 42162 could be read in an overbroad manner as applied to MS4 discharges:

CWA section 301(b)(1)(C) . . . requires NPDES permits to contain limitations required to implement any applicable water quality standard established in the CWA.

So long as this "implementation" occurs through adoption of MEP-level BMPs, the result may be correct, but it is correct only because 402(p) subjects MS4s to the MEP standard, rather than due to the provisions of Section 301(b)(1)(C), which only apply to industrial and not municipal storm water systems under the applicability scheme established in Section 402(p).

Likewise, the apparently broad statement at page 42184 that:

If a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric or narrative water quality criteria, the permitting authority must develop permit limits as necessary to meet water quality standards.

must be qualified as applied to MS4s by the distinction set forth by Congress in Section 402(p). From the same statutory language of Section 402(p) comes the corollary that wasteload allocations reflecting reductions beyond MEP do not apply to municipal storm water discharges. (*6)

Any attempt to subject MS4s to controls exceeding the MEP standard would be unauthorized, and the statements in the preamble suggesting such a result must be removed. (*7)

(*6) The limited time allowed by the proposed rule for compliance schedules also does not adequately accommodate the MEP standard, since it may not be practicable (or even possible) to meet NELs or WLAs within the deadlines allowed under the proposal. The rule should allow compliance schedules for as long as necessary to meet the requirements using MEP-level controls.

We note in this regard that the proposed State Implementation Policy would provide that:

In no event shall a schedule of compliance for point source discharges, including stormwater discharges, exceed 10 years from the date of adoption of this Policy.

Draft SIP at 17. This provision would violate both Section 402(p) of the Clean Water Act and the cost-benefit balancing provisions of the Porter Cologne Act discussed below, to the extent that compliance within ten years could not be achieved through MEP-level controls.

(*7) We recognize that there is useful language in the discussion of "Wet Weather Flows" at page 42186-87, which states:

EPA recognizes that it is commonly infeasible to express (water quality based effluent limitations or] WQBELs as numeric limits for wet weather discharges and that in such cases best management practices ("BMPs") may serve as WQBELs . . . . It is therefore anticipated that WQBELS, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather discharges, NPDES permits, when the permitting authority determines that it is infeasible to express WQBELS as numeric limits.

We agree that MS4 permits should be established on the basis of BMPS. But EPA's discussion at page 42187 still fails to implement Section 402(p) to the extent that the agency would evaluate the feasibility of "expressing" numeric WQBELS rather than "satisfying" or "meeting" WQBELS. Section 402(p) only requires MS4s to adopt controls to the MEP level. It is the practicability of controls that is central to this system, not just the practicability of writing permits. The discussion at page 42187 should therefore be modified to acknowledge directly that MS4s are only required under Section 402(p) to adopt MEP level controls, regardless of whether it would be "feasible" from an administrative standpoint to write permits containing NELs or WLAS.

Response to: CTR-001-005

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c.

Comment ID: CTR-001-011
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: CONCLUSION

The most fundamental concern of the ACCWP is that any decision to subject MS4 dischargers to numeric effluent limitations and/or wasteload allocations that could trigger extensive collection and

end-of-pipe treatment facilities should take place directly and openly, rather than implicitly through ambiguously drafted regulation and preamble discussion. The ACCWP believes that it is currently in full compliance with its Clean Water Act obligations, through the adoption and implementation of a Storm Water Management Plan that has won numerous awards.

Only controls to the maximum extent practicable are required under Clean Water Act Section 402(p), and the State and Regional Boards are likewise precluded from adopting draconian control measures under analogous limitations of the state Porter Cologne Act.

These are not just nettlesome roadblocks to EPA action, but instead reflect a considered determination made by the legislative branch of both the state and federal governments that resources need only be devoted to this subject to the extent practicable. Given the magnitude of the public expenditures that would be involved statewide from numeric effluent limitations and/or reductions to meet wasteload allocations more stringent than achievable from MEP-level controls, and the fact that Congress has already addressed the matter in Section 402(p), a decision of this type and magnitude cannot be made administratively.

If EPA's intention is to conform its rule to Section 402(p), it should do so clearly and cleanly and remove the conflicting statements in the proposed rule's preamble that suggest a different result.

Response to: CTR-001-011

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-013-001
Comment Author: County of Los Angeles
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-013 incorporates by reference letter CTR-027

Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following concerns which greatly impact the Los Angeles County Stormwater Program:

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. With regard to stormwater permits, the USEPA states in the preamble that:

NPDES permits for wet weather point source discharge must include limits necessary to implement applicable water quality based standards, through application of water quality-based effluent limitations or WQBELS. When this rulemaking is complete, these (numeric) criteria will be used to determine water quality standards in California and will, therefore, be the basis of WQBELs in NPDES permits for wet weather point sources. (Page 42186)

We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewer systems (MS4s) into Section 410(p) (3) (B) of the Clean Water Act. To date, we are unaware of any USEPA regulation which has taken the noted position.

The Preamble goes on to state: "It is ... anticipated that WQBELS, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather discharges' NPDES permits, when the permitting authorities determines that it is infeasible to express WQBELs as numeric limits." Although this statement is intended to soften the earlier position, the difficulty for municipalities is that even with an aggressive BMP-based program, a municipality will likely not be able to comply with the proposed water quality standards. This was found in the analysis conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District. If this is the case, the permitting agency would be required to develop a permit with WQBELs that essentially require end-of-pipe treatment of stormwater and the municipalities would face significant costs for complying with the limits.

We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-013-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-014-001
Comment Author: City of Lakewood
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-014 incorporates by reference letters CTR-013 and CTR-027

Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality

standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410 (p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to Clarify that MS4s arc not required to comply with water quality standards.

Response to: CTR-014-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-019-001a
Comment Author: Richards, Watson & Gershon
Document Type: Local Government
State of Origin: CA
Represented Org: Cities of Barst
Document Date: 09/26/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-019 incorporates by reference letters CTR-001, CTR-013, CTR-027 and CTR-036

Attachments? N
CROSS REFERENCES J

Comment: We recognize that the basic purpose for the proposed rule is to establish water quality criteria for priority toxic pollutants for point source discharges. However, in proposing to extend that criteria to storm water discharges, it is clear that EPA has not fully assessed the potential impact of such an extension on local governmental agencies, nor the complete lack of feasibility of attempting to apply numeric effluent standards to discharges to municipal separate storm sewer systems ("MS4s"), or the enormous cost of such an effort which would potentially require a complete reengineering and if not reconstruction of MS4s in California to include end-of-pipe treatment.

Our comments should be considered in the proper context. The cities which we represent are acutely aware of the problems associated with pollution from... urban runoff. Their residents and businesses share a common concern to preserve and enhance the water quality of our bays, rivers, estuaries and the Pacific Ocean. Our cities are fully committed to doing what they reasonably can to achieve these objectives. Our cities have been working with staff of the State Water Resources Control Board ("SWRCB") and its Regional Water Quality Control Boards ("RWQCB's") to develop effective storm water management programs under current municipal NPDES permits which comply with state and federal law. However, the proposed rule does not appear to reflect or recognize that individual cities' fiscal and administrative resources for implementing unfunded mandates are limited. Of all governmental agencies in California involved in the process, the many small cities which we represent are the least suited to bear the brunt of the responsibility for controlling pollution from urban runoff.

The primary portion of the proposed rule that has caused concern among our cities is the statement at

pages 42186-42187 of preamble that:

"When this rulemaking is complete, these criteria will be used to determine water-quality standards in California and will therefore be the basis of WQBELs in NPDES permits for wet weather point sources. However, EPA recognizes that it is commonly infeasible to express WQBELs as numeric limits for wet weather discharges and that in such cases best management practices ("BMPs") may serve as WQBELS. (Emphasis added.)

Our concern is further heightened by the comment at page 42187 of preamble that:

"It is therefore anticipated that WQBELS, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather dischargers' NPDES permits, when the permitting authority determines that it is infeasible to express WQBELS as numeric limits." (Emphasis added.)

The comments appear to indicate that in any further municipal NPDES permitting situations, the proposed rule potentially can be interpreted to require the implementation of WQBELs unless an analysis is prepared determining the infeasibility of each of the WQBELs as numeric limits.

As applied to storm water discharges, WQBELs are almost by definition infeasible. It should also be kept in mind that it is not the cities themselves that are the sources of stormwater pollution; municipal facilities have not been identified, to our knowledge, as being significant sources of contaminated urban runoff. Rather, the sources of this type of pollution, to the extent they can be identified, appear to be primarily the result of hydrological changes brought about by urbanization. These are activities over which cities have very little practical control. Nevertheless, the cities and counties of California are bearing the full and financially unassisted responsibility of ending stormwater pollution themselves.

We agree with the comments of the County of Los Angeles and the ACCWP that EPA's effort to apply numeric effluent limits to municipal storm water discharges is in direct conflict with the plain language of Congress in adopting the "maximum extent practicable" standard for controlling pollution in storm water discharges to a MS4. The proposed rule as applied to wet weather flows is also clearly inconsistent with both the EPA Is and the SWRCB's approach of addressing this problems through the adoption of Best Management Practices ("BMP's").

As noted in the SWRCB's own Municipal Storm Water Best Management and Practices Guidebook, "the sources of storm water pollution are extensive, ill-defined and highly variable." The State Board previously determined in its order entitled "In the Matter of Petition of Natural Resources Defense Council, Inc. for Review of Waste Discharge Requirements Order No. 90-079," Order No. WQ 91-04 (May 16, 1991), that:

"We find here also that the approach of the Regional Board requiring the dischargers to implement a program of best management practices which will reduce pollutants and runoff and prohibiting non-storm water discharges, is appropriate and proper. We base our conclusion on the difficulty of establishing numeric effluent limitations which have a rational basis, the lack of technology available to treat storm water discharges at the end of the pipe, the huge expense such treatment would entail, and the level of pollutant reduction which we anticipate from the Board's regulatory program. We feel compelled to note here our agreement with the Regional Board that this permit does truly represent a massive undertaking." (Emphasis added.)

As discussed in detail in the technical comments filed in response to the proposed rule, the EPA has not

explained how the proposed numeric effluent guidelines can be achieved through the implementation of BMP's. Under the circumstances, the ultimate result of the application of the rule to storm water discharges would be end of pipe treatment controls.

However, the EPA has already recognized, as the SWRCB, that end of pipe treatment controls for storm water discharges are technically unfeasible and unreasonable. The EPA has recognized that "it was not the intent of Congress to acquire municipal permits to required end of pipe treatment technology but to implement a comprehensive stormwater management program to reduce the discharge of pollutants from municipal storm sewer systems." 55 Fed.Reg., p. 48038 (November 16, 1990).

Each of our cities strongly believe that the proposed rule must be modified to clearly state that numeric effluent guidelines do not and will not apply to discharges to the municipal separate sewer systems.

Response to: CTR-019-001a

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-021-006e
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES J
E-01c
R
S

Comment: It is with a sense of reluctance that Sunnyvale joins in CASA/Tri-TAC's adverse comments on the CTR and the EA, and Sunnyvale does so in a spirit of constructive criticism and with an expectation that the Agency will make the necessary adjustments in its approach towards the CTR before the final rule is promulgated. In addition, in the same spirit and with the same expectation, Sunnyvale would like to make the following points on its own behalf:

3. Failure to Address Important Stormwater-Related Issues. In addition to its POTW, Sunnyvale is the owner of a system of storm drains which contribute wet weather flows to the South Bay. We are concerned that the EA entirely neglects the potential impacts of the proposed CTR on the storm drains. The EA entirely omits any meaningful analysis of the costs of bringing storm drains into compliance with the proposed CTR, thereby significantly understating the overall costs of the CTR. We believe that this omission is violative of the Agency's legal obligations under the authorities cited in the preceding paragraph.

In addition, we join in the comments being filed by the various other operators of stormwater collection systems to the effect that EPA has overstated the legal requirements for storm drains to comply with numerical criteria.

Response to: CTR-021-006e

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a. For further discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act, see the preamble to the final rule.

Comment ID: CTR-024-001
Comment Author: City of Hawthorne
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-024 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-024-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-027-001
Comment Author: California SWQTF
Document Type: Storm Water Auth.

State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040
Attachments? N
CROSS REFERENCES

Comment: MAJOR ISSUES

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. In the preamble to the proposed rule, US EPA suggests that the numeric water quality standards in the CTR will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. With regard to stormwater permits, USEPA states in the preamble that:

NPDES permits for wet weather point source discharge must include limits necessary to implement applicable water quality based standards, through application of water quality-based effluent limitations or WQBELS. When this rulemaking is complete, these (numeric) criteria will be used to determine water quality standards in California and will therefore be the basis of WQBELs in NPDES permits for wet weather point sources. (Page 42186)

We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 420(p)(3)(B) of the Clean Water Act. To date we are unaware of any USEPA regulation, which has taken the position in the proposed rule. Furthermore, the basis for USEPA's position is primarily the "Elliot memo". This memo is an internal memorandum and has not been subject to public or judicial review. Further discussion regarding this issue is found in the responses to the CTR by the Alameda Countywide Clean Water Program, County of Orange and County of Sacramento, which are incorporated herein by reference.

The Preamble goes on to state: "It is ....anticipated that WQBELS, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather discharges' NPDES permits, when the permitting authority determines that it is infeasible to express WQBELs as numeric limits." Although this statement appears to soften the earlier position, the difficulty for municipalities is that even with an aggressive BMP based program, a municipality will likely not be able to comply with the proposed water quality standards. We point to the analysis conducted by the County of Sacramento and the Fresno Metropolitan Flood Control District. If this is the case, the permitting agency could likely be required to develop a permit with WQBELs that essentially require end-of-pipe treatment of stormwater and the municipalities would face significant costs for complying with the limits (see following discussion regarding economic analysis).

Recommendation: USEPA should modify the Preamble statement to clarify that MS4s are only required to satisfy the MEP standard, and are not obligated to adopt controls beyond MEP-levels to achieve water quality standards.

Response to: CTR-027-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation

of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-030-010
Comment Author: Utility Water Act Group
Document Type: Trade Org./Assoc.
State of Origin: DC
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? Y
CROSS REFERENCES

Comment: F. EPA Should Provide a Consistent Standard for Application of BMPs to Wet Weather Flows

UWAG applauds EPA's recognition that "it is commonly infeasible to express WQBELs as numeric limits for wet weather discharges and that in such cases best management practices (BMPS) may serve as WQBELS." 62 Fed. Reg. at 42, 186-87. But EPA also obscures the standard for determining when use of BMPs is appropriate by stating:

It is ... anticipated that WQBELS, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather discharges' NPDES permits, when the permitting authority determines that it is infeasible to express WQBELs as numeric limits.

62 Fed. Reg. at 42,187, col. 1. This statement differs from the standard EPA proposed in a recently released question and answer document (61 Fed. Reg. 57,425 (Nov. 6, 1996)) on wet weather flows. According to the question and answer document, permitting authorities may use alternative permit conditions "where numeric water quality-based effluent limitations are determined to be unnecessary or infeasible." Id. at 57,426, col. I (emphasis added). Thus, EPA has narrowed the applicability of BMPs to wet weather flows for purposes of the California proposal. If EPA wants to promote consistent treatment of wet weather flows, it should modify the proposed preamble to the California water quality standards to reflect that the permitting authority may apply BMPs or other alternative permit conditions whenever a numeric WQBEL is unnecessary or infeasible.

Furthermore, EPA should explicitly state that the permitting authority bears the burden of showing that a numeric WQBEL for a wet weather flow is feasible or necessary. Since EPA admits that such limitations are "commonly infeasible," the permittee should not bear the burden of proving numeric limits unnecessary or infeasible.

Response to: CTR-030-010

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-031-001a
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-031 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES I-02

Comment: 1. The preamble of the proposed CTR, and therefore the apparent intended application of the rule, is inconsistent with the Clean Water Act.

Several broad, ambiguous statements in the preamble of the proposed rule imply that Clean Water Act section 301 requirements apply to all dischargers, including municipal stormwater systems. These presumptions must be qualified to recognize the clear intent of Congress and plain language of the CWA, section 402(p) which clearly require municipal storm water dischargers only to adopt controls to reduce pollutants in storm water to- the maximum extent practicable and to eliminate non-storm water discharges. The section's intent is demonstrated through the application of section 301 requirements, and related application of numeric effluent limitations or wasteload allocations in NPDES permits, to industrial stormwater discharges only.

EPA is obviously aware of Congress's intent as to municipal storm water discharge requirements. EPA included in its published draft Phase I municipal storm water regulations a quote from the Congressional Record of October 16, 1986, citing that intent.

Without a clear citation of the provisions of CWA section 402(p), the preamble to the proposed rule appears to be an attempt to codify the Elliot memorandum of January 9, 1991, and to create via this rule a result not authorized by Congress.

In order to eliminate this fundamental legal flaw in the proposed CTR, and eliminate the potential for future misinterpretation and controversy, each of the following statements from the preamble (at a minimum) must be clarified and/or qualified so that they do not appear to override or retract CWA section 402(p).

"When these proposed federal criteria take effect, they will create legally applicable water quality standards ... in California ... for all purposes and programs under the CWA." [p. 42160. This statement must include recognition that for municipal storm water dischargers, the CWA objectives can be addressed through best management practices, implemented to the maximum extent practicable (MEP), as established by CWA section 402(p).]

"CWA section 301(b)(1)(C) ... requires NPDES permits to contain limitations required to implement any applicable water quality standard established in the CWA." [p. 42162. The text should note that section 301 (b) (1) (c) does not apply to municipal storm water dischargers, as established through section 402(p).]

"If a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric

or narrative water quality criteria, the permitting authority must develop permit limits as necessary to meet water quality standards." (P. 42184. Again, for municipal storm water dischargers, the preamble and CTR must make clear the MS4 permits must: address this CWA objective through the MEP requirement.]

"Point source and nonpoint source allocations are established so that predicted receiving water concentrations do not exceed water quality standards." [p. 42185.1; and

"[NPDES] permits for wet weather point source dischargers must include limits necessary to implement applicable water quality standards, through application of water quality-based effluent limitations or WQBELs." [p. 42186. These two statements are only correct as applied to industrial storm water dischargers; numeric effluent limitations or wasteload allocations can not be legally, reasonably, or practically applied to municipal storm water discharges.]

Response to: CTR-031-001a

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-035-036
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: pp. 42186-42187 -- Wet Weather Flows Consistent with a recommendation by the Permitting and Compliance Issues Task Force, we recommend that EPA include language in the Preamble stating that, for permits such as stormwater permits that do not generally contain quantitative effluent limits but instead require the implementation of control measures and best management practices, compliance shall be determined based on the degree of implementation of the required control measures and the reduction of pollutants to the maximum extent practicable (SWRCB, 1995, Part VI).

Response to: CTR-035-036

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-036-001

Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES

Comment: Applicability of Criteria to Municipal Stormwater Discharges

In the preamble to the proposed rule, EPA assumes without discussion that these criteria for priority toxic pollutants apply to municipal stormwater discharges. Specifically, the preamble states, "When this rulemaking is complete, these criteria will be used to determine water quality standards in California and will therefore be the basis of WQBELs [Water Quality-Based Effluent Limitations] in NPDES permits for wet weather point sources." [62 Fed. Reg. 431861.

We note for the record, however, that the applicability of WQBELs to municipal stormwater discharges is an issue which has not yet been resolved. Under Section 402(p)(3)(A) of the Clean Water Act ("CWA"), permits for industrial stormwater discharges must comply with the applicable provisions of the CWA concerning effluent limitations. [33 U.S.C. section 1342(p)(3)(A)]. In contrast, permits for municipal Stormwater discharges are only required to ensure reduction of the pollutant discharges "to the maximum extent possible." [33 U.S.C. section 1342(p)(3)(B)].

In the preamble, EPA acknowledges that it is "commonly infeasible" to express WQBELs as numeric limits for wet weather discharges and that in such cases best management practices (BMPs) "may serve as WQBELS." [62 Fed. Reg. 42186-871.] Implicit in that acknowledgment is the assumption that the application of WQBELs to municipal stormwater discharges remains appropriate and that numeric limits can be imposed on such discharges at some time in the future. We believe such an assumption is wrong and is directly contradicted by the plain language of Section 402(p). The distinction drawn between industrial stormwater discharges and municipal stormwater discharges under that Section are real and cannot be ignored by EPA in adopting the proposed rule.

Conclusions

The proposed California Toxics Rule in its current form has many flaws, with respect to its presumption of applicability to municipal stormwater discharges. The comments provided above indicate a need to substantially revise the rule and assure conformance with federal policies and laws. Consideration should also be given to allowing the State of California to resume control over rule promulgation. As a result, the County of Orange recommends that the rule not be adopted at this time and that discussions be initiated with municipal stormwater dischargers through the California Stormwater Task Force to resolve the many issues raised.

Response to: CTR-036-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges,

see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-040-003
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

1. Concern: The Rule, as presently proposed, appears to require discharges from municipal stormwater programs to meet water quality based effluent limits (WQBELs).

* Reference Section--Preamble, page 42186 of the Federal Register under "4. Wet Weather Flows." This language appears to replace the municipal stormwater BMP standard established in the Clean Water Act (CWA) section 402(p)(3)(B), that municipal stormwater programs "shall require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP)..."

* Many of the urban streams in Sacramento County are effluent dominated during storm events. Thus, the flow in these urban streams is primarily stormwater. if WQBELs apply to municipal stormwater, then stormwater discharges to many county urban streams will have to meet the numeric water quality criteria proposed in the Rule.

* If the Rule intends that municipal stormwater discharges will be required to meet WQBELS, the Rule will force the Sacramento Stormwater Management Program to implement end-of-pipe treatment.

Response to: CTR-040-003

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-042-001
Comment Author: Cal. Dept. of Transportation
Document Type: State Government

State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? Y
CROSS REFERENCES

Comment: The California Department of Transportation (Caltrans) submits the following comments on the proposed California Toxics Rule ("CTR") relative to its status as a NPDES storm water discharge permit holder. As this proposed rule could have serious financial impacts on storm water dischargers, Caltrans welcomes the opportunity to provide comments to EPA that could decrease the impact of this rule while still affording a similar level of environmental benefit. It is our hope that you will give serious consideration to the following comments:

1. The CTR improperly applies water quality-based effluent limits to municipal storm water discharges.

The Preamble to the CTR discusses application of the rule to wet weather discharges by stating:

NPDES permits for wet weather point source discharges must include limits necessary to implement applicable water quality standards, through the application of water quality-based effluent limitations or WQBELS. Section 301(b)(1)(C) of the CWA, 33 U.S.C. 1311(b)(1)(C); see also Memorandum of E. Donald Elliot, Assistant Administrator and General Counsel, to Nancy J. Marvel, Region 9, dated January 9, 1991. When this rulemaking is complete, these criteria will be used to determine water quality standards in California and will therefore be the basis for WQBELs in NPDES permits for wet weather point sources.

62 Fed. Reg. 42,186 (Aug. 5, 1997). The position taken by EPA in this excerpt, namely that WQBELs must be applied to all wet weather discharges, is inconsistent with the plain language of the Clean Water Act ("CWA"). The CWA at section 402(p)(3)(B)(iii) specifically states that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable." Unlike industrial storm water dischargers, which are required to "meet all applicable provisions of this section and section 1311 of this title" (See section 402(p)(3)(A)), municipal storm water dischargers, such as Caltrans, must only reduce the discharge of pollutants to the Maximum Extent Practicable ("MEP"). The Preamble language mistakenly applies the WQBEL requirements of section 301 to municipal storm water dischargers when it is clear that Congress never intended for municipal dischargers to meet this more stringent standard.

Request: Caltrans respectfully requests that the Preamble be modified to clarify that municipal storm water discharges are not required to meet water quality standards, but must only control discharges to the MEP.

Response to: CTR-042-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-056-015a
Comment Author: East Bay Municipal Util. Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-056 incorporates by reference letter CTR-054
Attachments? N
CROSS REFERENCES C-24

Comment: Third, regarding the criteria being proposed for adoption in the draft CTR, EBMUD recommends that EPA should:

* Should clearly recognize within the CTR that the existing, approved Basin Plan for the San Francisco Bay includes requirements specifically designed to address wet weather overflows and grants provisions for exemptions where an inordinate burden would be placed on the discharger relative to the beneficial uses protected. It should also be acknowledged through inclusion in the CTR that the requirements and applicable exemptions previously justified and approved by EPA and the State should not be affected by the proposed rule.

Response to: CTR-056-015a

The purpose of the CTR is to fill the current gaps in water quality criteria in inland surface waters, enclosed bays, and estuaries. Any existing exemptions in a State Basin Plan that have been approved by the State and EPA would not be negated by the CTR.

Comment ID: CTR-060-011
Comment Author: San Diego Gas and Electric
Document Type: Electric Utility
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: PROVISIONS SDG&E DOES NOT SUPPORT

As described in the following comments SDG&E does not support the following provisions:

Application of effluent limits/BMPs to stormwater

The preamble (see 62 Fed. Reg. at 42,186, Col. 3) states that: 1) NPDES permits "...for wet weather point source discharges must include limits necessary to implement applicable water quality standards,

through application of water quality-based effluent limits or WQBELs"; and 2) "...these criteria will ... be the basis of WQBELs in NPDES permits for wet weather point sources". The preamble further recognizes that "it is commonly infeasible to express WQBELs as numeric limits for wet weather discharges and that in such cases best management practices (BMPS) may serve as WQBELS." (see 62 Fed. Reg. at 42,186-87). However, the standard for determining when the use of BMPs is appropriate is different from that provided in a recent Federal Register notice (see 61 Fed. Reg. 57425-29) "Questions and Answers Regarding Implementation of an Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits" (the "Notice"). Whereas the Notice states that permitting authorities may use alternative permit conditions "where numeric water quality-based effluent limitations are determined to be unnecessary or infeasible." Id. at 57,426, col. 1 (emphasis added), the preamble to the CTR indicates that BMPs may only be used where it is determined that "...it is infeasible to express WQBELs as numeric limits."

EPA should revise the preamble to the CTR to state that BMPs or other alternative permit conditions may be utilized whenever a numeric WQBEL is unnecessary or infeasible.

Furthermore, EPA should explicitly state that the permitting authority bears the burden of showing that a numeric WQBEL for a wet weather flow is feasible or necessary. Since EPA admits that such limitations are "commonly infeasible," the permittee should not bear the burden of proving numeric limits unnecessary or infeasible.

Response to: CTR-060-011

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-062-001
Comment Author: City of Downey
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-062 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

1 . The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the U.S. EPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewer systems (MS4s) into section 41 0 (p) (3) (B) of the Clean Water Act. We

recommend that the U.S. EPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-062-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-071-001
Comment Author: City of Rosemead
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-071 incorporates by reference letter CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

1 . The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA. the numeric water quality standards in the California Toxic Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 41 0(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-071-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-072-001
Comment Author: City of Bell Gardens
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP

References: Letter CTR-072 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxic Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 41 0(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-072-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-073-001
Comment Author: City of Paramount
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-073 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxic Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 41 0(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-073-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-074-001
Comment Author: City of San Gabriel
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-074 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

1. The Application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410 (p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-074-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-075-001
Comment Author: City of El Monte
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-075 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program;

I. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410(p)(3)(B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-075-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-076-001
Comment Author: City of Cudahy
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-076 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR) , which are of major impact to our stormwater program:

1. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the maximum extent practicable standard for municipal separate storm sewers systems (MS4s) into section 410(p)(3)(B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are, not required to comply with water quality standards.

Response to: CTR-076-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-078-001
Comment Author: City of Maywood
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-078 incorporates by reference letter CTR-013
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

I. The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal Stormwater discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the maximum extent practicable,, standard for municipal separate storm sewers systems (MS4s) into section 410(p)(3)(B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-078-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-079-001
Comment Author: City of Glendale
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-079 incorporates by reference letters CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

1. The application of water quality standards to calculate water quality based effluent limits for NPDES permits for municipal stormwater discharges. As proposed by the USEPA, the numeric water quality

standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-079-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-087-001
Comment Author: Morrison & Foerster LLP
Document Type: Storm Water District
State of Origin: CA
Represented Org: SCVURPPP
Document Date: 09/24/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-087 incorporates by reference letters CTR-001 and CTR-027
Attachments? N
CROSS REFERENCES

Comment: Members of the SCVURPPP strongly endorse and fully incorporate by this reference, the comments being submitted to you on the California Toxics Rule ("CTR") by the State Storm Water Quality Task Force, the Alameda Countywide Clean Water Program, and other municipal stormwater programs located throughout California. As those comments make clear at greater length, Congress's directive in Clean Water Act section 402(p)(3)(B) requires that the Agency expressly exclude municipal stormwater permits from the scope of proposed section 131.38(e)(1). Specifically, this section of the rule should be modified to state: "It is presumed that new and existing point source dischargers except for municipal stormwater dischargers, will promptly comply with any new or more restrictive water quality-based effluent limitations ("WQBELs") based on the water quality criteria set forth in this [rule]."

As other commenters have made clear, the Agency's current position in the CTR's preamble which "presumes" that municipal stormwater discharges are subject to water quality-based effluent limitations ("WQBELs") flies in the face of the plain language used by Congress in enacting section 402(p)(3)(B) of the Clean Water Act. It also ignores the contrast that Congress drew in the statute between the NPDES permitting requirements specifically delineated for municipal stormwater discharges and those expressly made applicable to stormwater discharges "associated with industrial activities." cf. 33 U.S.C. 1342(p)(3)(B) with 33 U.S.C. 1342(p)(3)(A). While best management practices ("BOPS") are certainly more appropriate tools for permit writers to use in stormwater permits than numeric effluent limitations, when it comes to municipal stormwater permits, Congress clearly required that such permit requirements be derived from section 402(p)(3)(B)(iii)'s maximum extent practicable standard, not through WQBELs based on the type of numeric water quality standards being promulgated in the CTR.

Response to: CTR-087-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c.

Comment ID: CTR-090-014
Comment Author: C&C of SF, Public Utl. Commis.
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES

Comment: Impacted Facilities - p 42160. Potentially Affected Facilities--- This list should include separate storm water systems and combined sewer systems in addition to POTWS. The preamble is vague as to whether these facilities must eventually comply with water quality criteria. If municipal wet-weather discharges must comply with strict application of the CTR, the potential infrastructure costs of compliance for metropolitan areas will be considerable. San Francisco spent $1 billion to address wet weather pollution. Assuming comparable per capita costs ($1,300 pc), and an urbanized population of 25,000,000 in California, wet weather capital costs could run over $32,000,000,000. Annual amortization costs (I = 5%) would exceed, $2,500,000,000. Even if only 5% of urbanized areas needed to use structural solutions for wet weather discharges, annual costs would be in the order of $125,000,000. It is essential that EPA decide whether it expects wet weather discharges to comply with the numerical standards and then state this assumption explicitly. EPA is doing a disservice to the public ff it maintains this dichotomy in the document: (1) an assumption in its economic analysis that storm water will not need substantial controls to meet the requirements of the rule-making, and (2) the position that this rule-making will promote the attainment of those designated uses adopted by the state.

Response to: CTR-090-014

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTR-092-011
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References: Letter CTR-092 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES

Comment: Application of Rule to Municipal Stormwater Dischargers

The CTR does not clearly state how the establishment of these criteria is intended to be implemented to municipal stormwater dischargers. The City opposes to any scenario that would directly apply numerical water quality objectives to this permitted program. The Rule needs to be revised to clearly state that the criteria established by the rule will not be used to calculate numeric water quality based effluent limitations for municipal storm water dischargers.

If the Rule were to result in the imposition of numeric water quality based effluent limitations on municipal storm water dischargers, it would be inconsistent with the plain language used by Congress in incorporating the "maximum extent practicable" standard into Section 402(p)(3)(B) of the Clean Water Act. Revision of the Rule to clearly state that it will not result in the imposition of numeric water quality based effluent limits on the Municipal storm water dischargers is also necessary to conform the rule with EPA's Economic Analysis, which assumes that the Rule will have no economic impact on these dischargers. EPA's failure to assess the costs of bringing municipal storm water dischargers into compliance with numeric water quality based effluent limits would represent a substantial violation of its legal requirements under Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (2 U.S.C.A. 1511 et seq.), and the Regulatory Flexibility Act (5 U.S.C.A. 601 et seq.).

Specific areas of the Rule that need to be revised to clarify application of the rule to municipal storm water dischargers are Section F4 of the preamble, relating to wet weather flows and Section 131.38(e)(1). The discussion of the "unfeasibility" of imposing numeric limits for wet weather dischargers in the preamble is not an adequate statement that numeric limits will not be imposed. Moreover, the Rule itself states that it "presumed" that new and existing point source dischargers will promptly comply with any new or more restrictive water quality based effluent limits based on the water quality criteria set forth in this section. In order to be consistent with the Economic analysis, the Rule should explicitly state that it can only be used to establish BMP's as WQBEL's for municipal stormwater dischargers.

Response to: CTR-092-011

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTRE-002-002
Comment Author: G. Fred Lee & Associates
Document Type: Academia
State of Origin: CA
Represented Org:
Document Date: 09/18/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N

CROSS REFERENCES

Comment: As you heard from speaker after speaker yesterday, the urban stormwater dischargers are justifiably concerned about the confusing situation that exists today where they are being informed by the US EPA that NPDES-permitted urban stormwater runoff will be subject to having to meet water quality standards (objectives) in the receiving waters for the stormwater runoff during the time of runoff and after through a process of ever-increasingly more stringent and expensive BMPS. As I testified at the hearing and as is well understood in the field, the US EPA "Gold Book" water quality criteria, including those being promulgated under the California Toxics Rule, were not designed to address short-term, episodic events of the type that routinely occur in stormwater runoff from urban areas and highways. As a result, administrative exceedances of the California Toxics Rule criteria can readily occur without any real impairment of the designated beneficial uses for the receiving waters for the stormwater runoff. By real impairment I mean an altered number, types and/or characteristics of aquatic life in the receiving waters for the runoff.

There have been a sufficient number of studies conducted now to document that it will indeed be rare that the constituents which occur in urban stormwater runoff from residential and commercial areas are in toxic, available forms for a sufficient duration in the receiving waters for the ninoff to be adverse to aquatic life. As long as the US EPA persists with its improperly developed and adopted Independent Applicability policy, where chemical criteria/standards have to be met, even if appropriately conducted studies show that the constituents of concern such as heavy metals in urban stormwater runoff, are in non-toxic, non-available forms, the urban stormwater dischargers face the situation of ultimately having to spend large amounts of public funds to achieve administrative exceedances of inappropriate criteria/standards for urban stormwater runoff with no expected improvement in the real beneficial uses of waterbodies in which the exceedances occur that are of concern to the public who must ultimately pay for the control programs.

The administrative exceedances arise from well-known, technically invalid, inappropriate approaches that were adopted by the US EPA in the 1980s for implementing the "Gold Book" criteria that the Agency under various administrations has yet to address. Even today, based on discussions at the US EPA's Multi-Regional Water Quality Criteria and Standards meeting that was held at the end of August 1997 in St. Louis, Missouri, the Agency is still unwilling to address in a meaningful way the problems in regulating urban stormwater runoff water quality. For the Agency to announce, as it did at this meeting, that wet weather issues are no longer part of the ANPRM represents a serious deficiency in the Agency's current policy that must be corrected.

Response to: CTRE-002-002

EPA disagrees with the comments. The ANPRM and the scope of section 402(p) are outside the scope of the rule. See response to CTR-001-003. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004.

Comment ID: CTRH-001-001a
Comment Author: Robert Hale
Document Type: Public Hearing

State of Origin: CA
Represented Org: CA Stormwater Task Force
Document Date: 09/17/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES J

Comment: MR. HALE: Good afternoon. My name is Robert Hale and I'm the chairman of the California Stormwater Quality Task Force which is located at 951 Turner Court, Suite 300, in Hayward.

This task force is a statewide organization representing municipal separate storm sewer systems that hold National Pollutant Discharge Elimination System, NPDES, permits to discharge stormwater.

My comments today are on behalf of the -- principally on behalf of that task force. I also am chairman of the management committee of the Alameda Countywide Clean Water Program. I will make some comments with respect to Alameda County.

As proposed by EPA, the preamble language, which is the principal point here in referring to numeric effluent limitations and water quality based effluent limitations, is clearly inconsistent with the plain language used by Congress in incorporating the maximum extent practicable standard into Section 402(p)(3)(B) of the Clean Water Act.

You may argue that this reference is only in the preamble and not in the main text of the rule; but it's my understanding, however, that the preamble itself is supposed to explain and clarify the meaning of the rule and the Clean Water Act. This proposed language would instead appear to be trying to change one of the fundamental points of the Clean Water Act.

The reason I think this point is fundamental is that the cost to society, and to our county in this case and to the states, is an important consideration. Congress considers the entirety of the tasks that the country has to do, rather than going for broke on one issue such as stormwater quality.

In short, the Congress balances the larger picture, and the language in Section 402(p)(3)(B) actually reflects that balance. I believe that Section 402(p) says what it says for a good reason. The only economically feasible means of achieving water quality standards is through best management practices.

To illustrate this point, I work in Alameda County as chairman of the Clean Water Program there, and I did some rough calculations here. We often get storms as much as 2 inches in a 24-hour period. That's several times a winter. If you had a one-day storm, as I figure it, that will work out to 5 billion gallons of runoff water.

To treat this much water, if we were driven to this sort of the extreme case by the language in the preamble -- and I'm not talking about the text of the rule so much as the language in that preamble -- if it were to drive us in this extreme case to have -- to do end-of-pipe treatment for our discharges in order to meet the standards that are there, and to keep up -- basically keep up with the storms, which often come one behind the other within a couple days, it would necessitate building dozens, perhaps more, treatment plants of substantial size and would necessitate the use or acquisition of valuable industrial properties on the margins of the bay. Which I just did a little separate figuring here; I'm figuring it costs about $3 a gallon to treat -- to secondarily treat sanitary sewage and about $4 a gallon to store it.

I estimate that a storm of this size -- to be able to handle a storm of this size would cost between 35 and $50 billion for Alameda County alone. This is for a population of l.35 million residents.

And this does not account for the acquisition of property needed to do this, assuming we could store it in facilities or properties we already own. And it also does not account for the secondary treatment. In fact, we might have some difficulty achieving the standards that are in the rule.

And there's a way you can express this getting down to the nuts and bolts of it, which I like to do. I did some rough estimates of the size of the Oakland Coliseum, and if you were to use structures the size of the Oakland Coliseum for storing this water from one of these storms, I figured it would come out to -- you'd need 50 of them to store the runoff from this one storm that I've got here.

And I know some of you might be thinking about how the A's are doing right now and this might not be a bad idea. We can, say, think about leaving an extra one there for the A's and Raiders and build 50 more of them.

But the point is, we're talking about a tremendous investment in the infrastructure here, and it's very difficult for us to keep up with.

So let's see. Just a few more points here.

So we're not really talking about upgrades to existing delivery and treatment systems. We would have to start from scratch and build pumping systems, conveyance systems, to build an entire infrastructure. The cost would be prohibitive for us in Alameda County. This is a -- sort of one of the worst-case scenarios. And I think that the economic rule -- or the economic analysis in the rule doesn't do this justice.

So --

MR. MORRIS: Have you done any modelling?

MR. HALE: This is strictly back-of-the-envelope type calculations at this point. I don't know whether or not -- what discharges the storm concentrations would result in.

The first question I have on modeling is to see what these discharges of stormwater with these effluent concentrations -- under the storm conditions if we would be -- would have a higher flow than the drought flow condition which was modeled.

When you have a storm event, the stream conditions are different, the hydrology is different, the modeling characteristics. We could work out the scenario. And it's true that when you've got a huge storm, water fires right out the bay and out the Golden Gate. We might even probably need to talk about that and work on that.

Response to: CTRH-001-001a

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs,

see response to CTRH-002-006a.

Comment ID: CTRH-001-004
Comment Author: Alan Waltner
Document Type: Public Hearing
State of Origin: CA
Represented Org: Almeda Cnty Clean Wtr Pgm
Document Date: 09/17/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: MR. WALTNER: Thank you.

Good afternoon. My name is Alan Waltner and I have served as counsel to the Alameda Countywide Clean Water Program for seven years now, through the first and second rounds of NPDES permits and also the 1995 Basin Plan amendments for the San Francisco Bay area. I'll be following up on Robert Hale's comments he presented about the practical issues we're worried about.

Our concern fundamentally is a set of inconsistent statements in the preamble regarding how this rule would apply to municipal stormwater dischargers. At one point, for example, it states that alternate anticipated criteria may apply through simply best management practices, which is happening currently.

At other points in the preamble it suggests that we would have to do whatever it takes to make wasteload reductions under a waste allocation system or water-based numeric effluent limitations that would be keys to the standards. And depending on which of those interpretations you apply, the difference is significant.

Right now we're doing best management practices under the criteria of Section 402(p), that we have to do all that we can to the maximum extent practicable, and we estimate addressing pollution in stormwater for Alameda County to cost somewhere in the approximate neighborhood of 10 million a year, if I'm right.

It we had to do whatever it took, it -- by initial analysis, if we had to do whatever it took to provide a wasteload reduction that would be a proportionate share -- actually, copper mostly -- by end-of-pipe treatment of the entire stormwater flow of the county to produce the proportionate reductions, and you start coming up with figures in the range of $60 billion from Alameda County.

So it's incredibly important for us that the preamble language be clarified or -- and we think in a way that's consistent with Section 402(p), that the municipal stormwater systems only need to do appropriate MEP level controls.

Now, industrial stormwater dischargers under Section 402(p) may be subject to 301 and the numeric effluent limitations waste water quality standards. There is a clear distinction in Section 402(p) between the treatment of the industrial stormwater dischargers and the municipal stormwater dischargers. We think you need to maintain that distinction.

Now, I've noted that the regulation itself seemed to preserve the existing implementation policy of the State Water Resources Control Board. The policy of the State Water Resources Control Board simply requires implementation of BMPs to comply with 402(p) criteria. And to the extent that the rule keeps that implementation policy in place, then we're simply continuing what we're doing, the implementing of BMPs. That is something that we've already bought into and recognized we're obligated to do.

But if some of the significant statements in the preamble language were to prevail and we should have to do whatever it takes to provide proportionate wasteload reductions, it would lead to significant disruption and other legal problems that violate the description of Section 402(p) review procedures for the 1995 Basin Plan.

In that sense you would be impliedly repealing that implementation which would violate the review of the EPA subject to the 1995 Basin Plan, because it's impliedly repealing the implementation provision that we only have to do best management practices.

I think the bottom line is we're asking for EPA to clarify that Section 402(p) is what controls in this situation when applied to municipal stormwater dischargers, that we are obligated to keep pursuing maximum extent practicable controls, but that Congress has concluded there shouldn't be a requirement that we do whatever it takes, regardless of cost. And again, the costs are substantial to meet these numbers.

Thank you.

Response to: CTRH-001-004

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTRH-001-006
Comment Author: Doug Harrison
Document Type: Public Hearing
State of Origin: CA
Represented Org: Fresno Met. Flood Control
Document Date: 09/17/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: MR. HARRISON: Doug Harrison, General Manager of the Fresno Metro Flood Control District. I also happen to serve currently as a member of EPA's Wet Weather Advisory Committee and as liaison for FACA to the Stormwater Phase II FACA, so I've had the benefit of some additional exposure to some of these issues of concern recently.

I would endorse the comments of concern that Mr. Waltner just described. We're going to address these in written comments, but I wanted to touch verbally today on some that stand out, that flow from those concerns.

We agree with the concern that the preamble appears to try to codify the Elliott memorandum of 1991 and as to produce a result that was not intended by Congress in the 1987 Act amendments.

There are references on pages 42184, 186 and 187 of your preamble where these concerns arise, where you fail to address the clear language spelled out in the Clean Water Act that relates to municipal stormwater systems. We think for the rule to resolve this deficiency that there needs to be some clarification specifically addressed.

We believe that EPA itself is aware of the congressional intent with respect to the language in Section 402(p) as that relates to the municipal systems. In its draft stormwater regulations of October 1986, EPA included specific language that cited quite clearly the congressional intent and the understanding of that intent as it related to municipal systems and the issues around the permittings of those municipal stormwater systems.

Response to: CTRH-001-006

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTRH-001-031
Comment Author: Dave Brent
Document Type: Public Hearing
State of Origin: CA
Represented Org: CA Water Qual. Task Force
Document Date: 09/17/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: MR. BRENT: Good afternoon.

I thank you for this opportunity to speak on the proposed rule. I'm Dave Brent, vice chairman of the California State Water Quality Task Force and supervisor of the City of Sacramento's stormwater management facility. I've been supervisor of the City of Sacramento's Stormwater Management Program for the past six years.

My comments are representative of at least nine major metropolitan stormwater programs in California, all with active stormwater management programs through the State Water Quality Task Force. You will also be provided with comments down in Los Angeles tomorrow.

We would echo Bob Hale and Doug Harrison. I think it's important that you hear from the state water interests, the State Water Quality Task Force on stormwater and the technical elements of the CTR itself.

This said, there are four major concerns that the State Water Quality Task Force and the Sacramento Stormwater Program have with this proposed CTR.

The first concern is the discussion in the preamble that states that the municipal stormwater permits must include limits necessary to implement applicable water quality standards. This approach continues the erosion of Congress's intent in the 1987 Clean Water Act amendments as implemented in Part 402(p) of 40 CFR, that applied the MEP standard, maximum extent practicable, to municipal stormwater discharges.

While the proposed rule appears as if it may recognize this MEP standard by giving the permit writers flexibility to express effluent limits as best management practices when the permitting authority determines that it is infeasible to express numeric limits, it doesn't come out and say what the regulations clearly require, that municipal stormwater dischargers must effectively control non stormwater discharges and control the discharges of pollutants to the maximum extent practicable.

In short, we believe that the preamble should not mince words and should clearly state that stormwater -- municipal stormwater discharges are subject to MEP.

Response to: CTRH-001-031

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTRH-001-040
Comment Author: Kathy Russick
Document Type: Public Hearing
State of Origin: CA
Represented Org: Sacremento Co. Stormwater
Document Date: 09/17/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: MS. RUSSICK: Kathy Russick, speaking on behalf of the Sacramento County Stormwater Quality Section, who is one of four member agencies of the Sacramento Stormwater Management Program, the other agencies being the cities of Sacramento, Galt and Folsom.

And I would like to note that many of the challenges facing the Sacramento Stormwater Program which I raise here are also the same challenges facing other stormwater programs in the state.

Specifically, I will be addressing today the concern raised by these stormwater agencies that the California Toxics Rule will require municipal stormwater programs in California to meet numeric water quality limits.

The interpretation of the rule that we are -- this interpretation of the rule we are concerned with was discussed last week at a state Stormwater Quality Task Force meeting. We discussed it with a representative of the State Water Resources Control Board and he confirmed the interpretation specifically that municipal stormwater programs will have to implement ever-escalating BMPs until the numeric discharge limits are achieved.

Response to: CTRH-001-040

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of the scientific validity of CTR criteria, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004.

Comment ID: CTRH-002-001
Comment Author: Chris Compton
Document Type: Public Hearing
State of Origin: CA
Represented Org: County of Orange
Document Date: 09/18/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: My name is Chris Crompton and I'm the manager of environmental resources for the Orange County Public Facilities and Resources Department. My office address is 10852 Douglass Road, Anaheim, California.

Today I'm presenting comments on the draft California Toxics Rule on behalf of the County of Orange and the Orange County Flood District. The County of Orange is the principal permittee on municipal stormwater permits for Orange County. These permits cover stormwater discharges for the county, flood district, and 31 incorporated cities.

In the main, the County of Orange supports the comments presented on behalf of the California Stormwater Quality Task Force by Chairman Robert Hale at the public hearing in San Francisco yesterday and by other municipal speakers from Sacramento County and Fresno. The County has been an active participant in the Task Force and in the development of those comments. Today I will be presenting our general concerns regarding the California Toxics Rule as it applies to our municipal stormwater quality management program. More detailed written comments on the proposed rule are being prepared for inclusion in the public record.

Our written comments will focus on challenging a number of basic assumptions in the California Toxics

Rule. In brief, we're going to be questioning the following:

Are the criteria applicable to municipal stormwater discharges?

In the preamble to the proposed rule, EPA assumes that these criteria for priority toxic pollutants apply to municipal stormwater discharges. We note for the record, however, that the applicability of water quality based effluent limits on municipal stormwater discharges has not been resolved. The Clean Water Act only requires dischargers of municipal stormwater to reduce pollutants "to the maximum extent practicable."

As noted in the Task Force testimony yesterday, in the preamble, EPA assumes that the application of water quality based effluent limits to stormwater discharges is appropriate and that the numerical limits can be imposed on such discharges sometime in the future. We believe that this assumption is incorrect and is directly contradicted by the plain language of Section 402(p) of the Clean Water Act.

Response to: CTRH-002-001

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.

Comment ID: CTRH-002-008
Comment Author: Chris Compton
Document Type: Public Hearing
State of Origin: CA
Represented Org: County of Orange
Document Date: 09/18/97
Subject Matter Code: I-01 Application Sec 301 vs. MEP
References:
Attachments? N
CROSS REFERENCES

Comment: We recommend deletion of the staff interpretation of the applicability of water quality based effluent standards to municipal stormwater discharges presented in the preamble.

Response to: CTRH-002-008

EPA disagrees with the comments. See response to CTR-001-003. For a discussion of EPA's evaluation of studies concerning costs associated with achieving water quality criteria for storm water discharges, see responses to CTR-013-003 and CTR-040-004. For a discussion of the scientific validity of CTR criteria with regard to WQBELs and storm water discharges, see response to CTR-031-004c. For a discussion of the relationship between criteria, standards, effluent limitations and implementation costs, see response to CTRH-002-006a.
