/ SPECIAL HEARING 2/3/05

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122. Chemical Batch Processing monitoring group


stanzler funderburk & castellon llp

A LIMITED LIABILITY PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

Biltmore Court
520 South Grand Avenue, Suite 390
Los Angeles, California 90071-2600
Telephone (213) 623-7515
Telecopier (213) 532-3984
www.sfcfirm com

SAN FRANCISCO ADDRESS
180 Montgomery Street, Suite 1700
San Francisco, California 94104-4205
Telephone (415) 677-1450
Telecopier (415) 677-1476



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**VIA E-MAIL and TELECOPIER**
(916) 341-5620

Ms. Debbie Irwin
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, California 95812-0100

Re: Comments on the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activity (Industrial General Permit)

Dear Ms. Irvin:

This firm represents the Chemical Batch Processing Monitoring Group, Inc. ("CBPMGI"). CBPMGI is the umbrella group of two storm water monitoring groups, the Chemical Batch Processing Monitoring Group ("CBPMG") and the California Paint Council Monitoring Group ("CPCMG"). CBPMGI respectfully submits these comments on the proposed reissuance of the Industrial General Permit as issued in draft form on December 19, 2004 ("2004 Proposed Permit"). CBPMG and CPCMG are State Water Resources Control Board ("SWRCB") approved monitoring groups in good standing. CBPMGI has been operating under the provisions of the Industrial General Permit since 1992. Our comments are submitted with the desire of our members to meet their compliance obligations in a manner that will result in protection of the state's waters without placing unrealistic and arbitrary burdens of compliance on industrial dischargers. Group members have been proactive in their efforts to improve the management of storm water discharges since the original Industrial General Permit took effect in 1992 and are willing to engage in process of continuous improvement to effect further improvement.

The current proposed permit, however, contains several elements with which our members have expressed deep concern:

- The imposition of storm water effluent concentration limits either expressly so or in the form of target benchmark concentration limits that are employed by the permit in a manner that makes them "defacto" permit concentration limits;
- Some of the minimum best management practices (BMPs) in the current proposal create redundant compliance activities and documentation that are unnecessary;
- Proposed changes to group monitoring procedures will effectively make group leaders an extension of the regulatory enforcement function and will negatively impact the group leaders ability to proactively facilitate improved storm water management at group member facilities.

1. **The Proposed Permit Subverts the General Permitting 'Tiered' EPA Approach to Permitting by Creating Disincentives for Group Members to Stay in Groups**

Group members are motivated to join the group by a proactive desire to enhance their compliance efforts. One of the main incentives for joining the group is the affordable assistance and practical advise that is available to them in the person of the group leader who in most cases is an experienced professional. The members also benefit by the sharing of information with each other. Members have provided new ideas and practices that are available for adoption by all the group members as applicable.

The group monitoring approach is consistent with EPA's four-tier permitting strategy which emphasizes general permitting over watershed-based or individual permitting.

To obtain the technical and administrative assistance and training that the group offers, the members are willing to pay membership fees that break even with the cost savings realized by the reduced sampling and analysis requirements for members of approved monitoring groups. In addition to the membership fees facility owners and those with responsibility to maintain compliance with storm water regulations make a commitment to devote more of their time to these matters with respect to onsite activities and in participation in group training and other functions. As a result of frank and open discussions between the group leaders and the members, the members have become much more knowledgeable and experienced in compliance with General Permit requirements and the improvements in site management are visibly apparent at member facilities. In addition, the quality of storm water monitoring observations and annual report submittals has improved as a result of membership in a group. Opponents of groups can cite very few instances to the contrary and unfairly attempt to besmirch the image of all groups by the examples of a very few.

The requirements with respect to the Group Leader functions in the proposed permit, especially with respect to the group leader inspection reports, will introduce a negative an adversarial element into the relationship between the group leader and the members because the new requirements force the group leader into an enforcement role. This will destroy the basis of trust and confidence that leads to the frank and open discussions between the leader and the group members which result in enhanced compliance efforts on the part of the member. It also forces the group leader to act in a capacity that is not within his or her jurisdiction resulting in

unfairly imposed exposures to liabilities without indemnification and hold harmless protection from the government.

This is unnecessary because group leader inspection reports are already appended to the annual group evaluation report as part of the group monitoring requirements in the existing General Permit. Regulatory staff members already have the prerogative to follow-up group leader inspections with inspections of there own. The additional reporting and filing requirements will create greater economic burdens on the groups which will increase the cost of membership while simultaneously removing the incentive to belong to the group. The result will be a reduction in the overall quality of compliance efforts. The well considered benefits of groups to the environment and the members themselves will be lost. The resources of the regulatory agencies again would be better spent enforcing the requirements of the existing permit by focusing on non-filers and facilities that are obviously and visibly in non-compliance with permit requirements.

CBPMGI supports quality control of group leaders and empowering the State Board to de certify groups. A few 'bad apples,' including some of those highlighted by environmental groups at the 2003 industrial permit renewal should be held accountable through the annual vehicle of group monitoring plan review and evaluation by the State Board and Regional Water Quality Control Boards. If additional requirements are necessary for some groups, they should be added on a *group specific* basis and not with a buckshot-one-size-fits-all approach.

2. **The Proposed Permit Should Not Introduce Storm Water Effluent Concentration Limits into Future Permits Because the State Board Lacks Legal Authority to Promulgate Effluent Limits Due to Lack of Information**

The Clean Water Act ("CWA"), 33 U.S.C. Section 1362(11) defines effluent limits as restrictions on "quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters." The concept of limiting the total maximum daily loads ("TMDLs") of contaminants to bodies of surface water is based on this definition in its entirety. Ultimately, the critical factor which contributes to the impairment of surface waters is the mass of contaminants that are discharged to it rather than simple the concentrations, which in storm water are highly variable, or the rate of discharge which is also highly variable. The TMDL concept recognizes that the dynamic environment of surface waters, even those with impairments above water quality standards ("WQSs"), have an ability to assimilate certain levels of contaminant loading without further degradation to surface water quality.

Advocates of effluent limits such as The California Coast Keepers Alliance focus solely on setting the most restrictive limits with respect to the concentration of contaminants in storm water discharges.

This simplistic approach to regulating storm water discharges is inherently arbitrary and will result in unreasonable requirements being imposed on individual dischargers.

Further, it does not recognize the variability of the ability of individual surface waters to assimilate contaminants. The establishment of storm water effluent limits must be preceded by development of TMDLs which take into account water basin specific characteristics which would result in mass limitations that would vary from one basin to the next. Currently, there is not nearly enough information to develop defensible storm water effluent limits and at such time that there is, the general permit is not a suitable instrument to implement appropriately derived limits on a basin by basin bases. This should more properly be addressed in the Tier II Watershed Permitting approach envisioned in the Fact Sheet of the 1997 Reissued Industrial General Permit.

3. **The Proposed Permit Should Not Include EPA Benchmark Limits Because the Benchmarks Will be Construed as De Facto Effluent Limitations**

The State Water Resources Control Board ("SWRCB") has properly maintained the concept of BAT/BCT effluent limitations based on BMPs which is consistent with the goals and objectives of the CWA. CBPMGI does not support using the USEPA Target Bench Mark Concentration Levels as guidelines to evaluate whether or not BMPs have effectively been implemented and believes that incorporating the bench marks into the Industrial General Permit are not useful. Further, the benchmarks would become, in effect, effluent concentration limits due to the severe consequences that would result in any exceedance. The benchmarks were not intended to be used as a limit and so the use of them as such is arbitrary for the reasons described above and contradicts the SWRCB's own logic in justifying retention of the iterative BMP approach as a fundamental concept of the permit.

Moreover, the benchmarks do not take into account background levels and natural occurrence of many regulated constituents such as metals or their prevalence in our cities in the form of common building construction materials, vehicles and normal human activities. Aluminum, in the form of aluminum oxides, is present on painted buildings and zinc is common in buildings with galvanized metal siding or roofs, cyclone fences, and automobile tires and undercoating. Consequently, it is practically impossible for many manufacturing facilities, which are required to analyze storm water samples for zinc, to achieve the bench marks independent of whether they actually process or handle zinc or other metals in a manner that exposes them to storm water.

In fact, it is almost certain that facilities not falling into an SIC Code regulated by the Industrial General Permit could not achieve the bench marks if they were required to conduct storm water sampling and analysis. This would include such entities as school yards with cyclone fenced perimeters.

The repetitive additional sampling, corrective action and reporting requirements included in the proposal would therefore place an unfair burden on many dischargers to control things that are beyond their practical ability to control while other businesses in non-regulated SIC codes with similar infrastructure are not required employ any storm water management practices. The water boards already have the authority to require dischargers to implement

corrective actions based on the information that is already included in the annual storm water discharge report that each facility must submit by July 1st of each year.

The exhausting requirement to conduct repetitive sampling and reporting will result in a waste of human and financial resources from businesses that are already significantly more burdened by regulatory requirements than their competition. These additional burdens will not improve environmental quality and will result in more business closures and loss of employment at a time when California can least afford it. The current permit provides instruments for enforcement that, if employed will result in more practical enforcement that allows regulators practical discretion and judgment with respect to the many variables that must be considered for fair administration and enforcement of storm water discharge requirements and would not require regulatory agencies already handicapped by budget and staff shortages to spend disproportionate time to review and respond to an overwhelming number of reports and sampling results only to conclude that more are necessary. CBPMGI also believes that there are still significant number of non-filers and that visible and publicized enforcement against them and stricter enforcement of the existing permit would be more productive in improving the quality of storm water runoff than imposing more restrictive requirements that would be just as likely to be unenforced.

4. **If Repetetive Monitoring and Benchmarks are Required, these Provisions Should be Eliminated for Group Members**

Twelve years ago, the State Board struck a bargain with 'group monitoring' dischargers, such as CBPMGI members. Group members received credit, in the form of an 80% reduction in sampling, in exchange for performing additional tasks not required of individual dischargers. As the testimony in the January, 2005 hearings amply demonstrated, group members take storm water compliance seriously. CBPMGI is not asking for a free lunch. CBPMGI is simply requesting that the State Board recognize and give some credit to group members by modifying or eliminating the repetitive monitoring requirements and benchmarks for group members.

Such a provision in the permit would preserve the delicate balance reflected in providing group members with credit for performing actions above and beyond what is required by the permit. As indicated above, the State Board and the Regional Boards have authority to require individual groups to do more than what the permit requires. If necessary, problematic groups should have be the only ones subject to the State Board's new monitoring requirements.

5. **The Minimum BMPs in the Permit Should be Eliminated for All Dischargers, but At Least for Group Members**

While CBPMGI supports the basic concept of minimum BMPs, such as good house keeping and preventive maintenance, some of the secondary requirements of these minimum BMPs as included in the current proposal are duplicative of other requirements and will require discharges to focus more energy and expense on paper documentation instead of proper field implementation of BMPs For instance, the current proposal expands on the annual

comprehensive site compliance evaluation as included in the current permit by requiring that all potential sources of storm water pollution and the BMPs employed to control them be comprehensively evaluated four times per year instead of once per year. In addition, the proposed monitoring requirements also require pre-storm inspections of these very same things. The requirement to conduct weekly housekeeping or preventive maintenance inspections in addition to these other required evaluations is overly redundant without providing any environmental tangible benefit.

The courts have validated that the BMP approach to BAT/BCT effluent limits is consistent with the CWA and constitutes Water Quality Based Effluent Limits. Advocates of arbitrary effluent concentration limits disingenuously argue that the fact that the list of impaired surface water bodies has grown from 309 in 1994 to 687 in 2003 proves that the existing General Permit approach to storm water management does not work. They fail to point out, however, that the process of inventorying these water bodies was a work-in-progress that was only in its initial stages in 1994. In addition, a cursory analysis reveals that industrial storm water discharges are only a very small fraction of all stormwater discharges and that most impaired surface waters would still be impaired if the effect of industry was removed.

6. **Conclusion**

In conclusion, we strongly advocate retention of the provisions of the existing permit, modified perhaps by the more practical elements contained in the June 2003 draft Industrial General Permit. A partnership with industry to improve surface water quality that retains businesses and provides employment in California would be far more beneficial to the state and the environment than forcing them to shut down or relocate elsewhere. The proposed permit goes to far and will further encourage frivolous lawsuits from bounty hunter groups.

We appreciate the opportunity to present these comments. If you have any questions or comments, please feel free to call.

Very Truly Yours,

SIGNATURE ON FILE

William W. Funderburk, Jr

**From:** "Sandra Ramirez" <sramirez@sfcfirm.com>
**To:** <stormwater@waterboards.ca.gov>
**Date:** 2/18/05 4:59PM
**Subject:** CBPMG Comments

Enclosed please find the Chemical Batch Processing Monitoring Group's comments.

If you have any questions, please feel free to contact me.

Best Regards

Sandra Ramirez

Legal Assistant

213-623-0736

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STANZLER FUNDERBURK & CASTELLON LLP

Biltmore Court

520 South Grand Avenue, Suite 390

Los Angeles, California 90071-2600

Phone: 213-623-7515

Fax: 213-532-3984

Internet: www.sfcfirm.com

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manner. Thank you, and have a nice day.

**CC:** <wfunderburk@sfcfirm.com>