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April 29, 2011

**VIA E-MAIL**

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
commentletters@waterboards.ca.gov

**Re: Expanded Comments – Draft Industrial General Permit**

Dear Ms. Townsend and Members of the Board:

My name is James Keating, Quality Control Manager for Gladding, McBean. I also serve as the administrator of the Plant's Storm Water Pollution Prevention Plan. I presented oral comments and a written summary at the March 29, 2011 hearing. The following expands on those comments and includes additional comments on the proposed permit.

Gladding, McBean appreciates the opportunity to comment on the draft Industrial General Permit because it has had unique experience with respect to efforts to comply with the previous General Permit and its enforcement.

Despite having a Storm Water Pollution Prevention Plan in effect since the inception of the Board's regulatory program, and a positive relationship with the Central Valley Regional Water Quality Control Board with respect to this program – meaning no Notices of Violation or other enforcement – on August 29, 2007, Gladding, McBean received a Notice of Violation and Intent to File Suit by the California Sportfishing Protection Alliance (CSPA). Thereafter, pursuant to the citizen suit provision of the federal Clean Water Act, on February 8, 2008, a complaint was filed in U.S. District Court in Sacramento.

Gladding, McBean entered into a settlement agreement with CSPA to resolve the matter and, as agreed, has committed substantial resources to reduce the volume of storm water runoff from the plant and to reduce the concentrations of pollutants, including structural BMPs such as enhanced impoundment capacity, paving, and advanced treatment technology. By the time the agreement expires, the Company will have spent nearly \$1 million to comply at a clay products plant that employs 240 people at a time when the Plant and the industry is struggling to survive.

Comment 1: Technical and Economic Infeasibility of Meeting Enforceable Discharge Limits

Despite the efforts described above, the Plant may not ever be able to meet the benchmarks established as “guidelines” for the following reasons:

- ✓ Aluminum: The Plant is a clay products plant sited on clayey soil; clay is an aluminum silicate compound. As a result, aluminum concentrations exceed the 0.75 mg/l benchmark. This is true even when TSS meets its benchmark due to artificial solubilization of aluminum during sample preservation.
- ✓ Electro Conductivity (EC) often substantially exceeds 500 units due to saturated ground conditions at this plant, which cannot be practically controlled. The 200 micro-siemens limit at Table 1 in the proposed permit cannot feasibly be met, which virtually assures non-compliance, or forces zero discharge.
- ✓ Zinc concentrations frequently exceed the 0.117 mg/l benchmark due to the galvanized metal roofing on the buildings. Chemical removal technology will be tested this year, but control to the benchmark is not assured.

Although benchmarks have not been achieved, concentrations have been reduced, and the volume of discharges is much lower due to elimination of discharge points and expanded impoundment capacity. However, upon review, it does not appear that the draft permit will provide any relief despite the progress that has been made. Instead, the draft permit will, through a three-step process, turn benchmarks first into Numerical Action Levels (NALs), and then into Numerical Enforcement Levels (NELs). According to this formula, Gladding, McBean faces significant enforcement issues during 2014-2015 as the draft permit is currently written. Our review of “Level 3 Compliance Tier Exceptions” does not provide confidence that a plant that makes reasonable technical and economic efforts to comply will be spared mandatory minimum penalties.

Our recommendations to address Comment 1 are:

1. Revise the NEL setting criteria from an automatic imposition of the benchmark NAL to NEL, to a more technically sound site-specific NEL setting process similar to how discharge limits are set in NPDES and WDR permits. This would allow for site-specific aquatic habitat and other technical parameters to be more fully considered. For example, volume of discharge is as important a factor as pollutant concentration and should be considered. The NAL stage would be an appropriate trigger, allowing time for this process to be applied.
2. Incorporate into the “Level 3 Compliance Tier Exceptions” technical and economic feasibility criteria, as well as environmental impairment criteria because feasibility and accommodation, not just environmental impact, is consistent with federal and state water pollution control policy. For example, the NALs and NELs are based on concentration of pollutant not mass of pollutant, which is vastly more important in terms of environmental impact. Whereas Gladding, McBean has substantially reduced the mass of pollutant discharge by limiting the

amount of storm water runoff, it is still judged solely on the basis of pollutant concentration.

3. The mandatory minimum penalty policy should be revised to handle storm water benchmarks turned into NEL as minor violations because storm water discharges are highly variable, subject to unforeseeable events, and represent enforcement of benchmarks or guidelines, not regulatory discharge limitations or water quality criteria.

#### Comment 2: Criteria for Zero Discharge

The draft permit's criteria for a Conditional Exclusion based on No Discharge Certification are prohibitively expensive and may result in environmental impacts due to massive excavation and impoundment contamination and maintenance. Given these impacts, this aspect of the draft permit should be subject to an Environmental Impact Report pursuant to CEQA. The offending criteria, namely: (1) The facility is engineered to contain and not subsequently discharge storm water generated by a 100-year 24-hour storm event, or (2) Based upon its geographic location, storm water discharge from the facility cannot discharge to water of the U.S. under any condition, is arbitrary in that experts with whom Gladding, McBean has consulted indicate that a 25-year or even 10-year 24-hour storm event would be more than adequate to achieve the level of control of storm water pollutants required under the federal Clean Water Act, and even reasonable state objectives. There are many factors that warrant containment criteria on a site-by-site basis that the proposal ignores:

- The conditions on the site preclude the use of infiltration practices due to the presence of impervious soil or shallow bedrock, as is the case at Gladding, McBean's Lincoln plant.
- The design of the site precludes the use of soil amendments, plantings of vegetation, or other designs that can be used to infiltrate and evapotranspire runoff.
- Water harvesting and use are not practical or possible because the volume of water used for industrial processes is not significant enough to warrant the design and use of water harvesting and use systems, or to use a sufficient amount of storm water.
- Small sites where the lot is too small to accommodate infiltration practices adequately sized to infiltrate the volume of runoff from impervious surfaces.
- Soils that cannot be sufficiently amended to provide for the requisite infiltration rates.
- Situations where site use is inconsistent with the capture and use of storm water or other physical conditions on-site that preclude the use of plants for evapotranspiration or bioinfiltration.
- Retention and/or use of storm water on-site or discharge of storm water on-site via infiltration may have a significant adverse effect on the down gradient water balance of surface waters, ground waters, or receiving watershed ecological processes.

In addition to these issues, the cost to implement a zero discharge configuration, including documentation of the No Discharge Certification by a California Registered Professional Engineer (PE) would be substantial and prohibitive for any small or mid-sized business or facility. Based on Gladding, McBean's experience investigating the No Discharge option, assuming that adequate containment could be constructed, the costs of PE certification would exceed \$5,000 for the SWPPP submission, and at least \$2,000 annually for SWPPP amendments and corrective action certifications. This does not include added internal cost for staff time consumed in dealing with outside consultants.

Our recommendations to address Comment 2 are:

1. Amend the No Discharge engineered containment to less than the 100-year 24-hour storm to a 10-year event as a reasonable baseline.
2. Adopt criteria that allows for departure from the baseline criteria based on site-specific factors.
3. Eliminate the annual recertification requirement and fee by establishing a fee more appropriate to capture the initial costs of No Discharge Certification, and a Certification of No Change thereafter.
4. Prepare an Environmental Impact Report pursuant to CEQA for any requirement that would have the effect of forcing construction of containment systems to meet 100-year 24-hour storm containment that considers all impacts, reasonable alternatives, and the cost of such requirements.

#### Comment 3: Best Management Practice Changes

The proposed changes in Best Management Practices will result in substantial costs without any demonstrated benefit, especially for facilities that are in compliance with benchmarks. Based on Gladding, McBean's experience, weekly inspections of the 15 areas that currently have documented monthly inspections by qualified supervisors and group leaders will add a combined 25 man-hours per month and an annual cost of \$15,000 per year at a time when the manufacturing plants cannot afford the additional costs, and which are not consistent with plants under U.S. EPA requirements or in most other states.

#### Comment 4: Proposed Enhanced Monitoring Requirements

The proposed visual monitoring of the first qualified storm each month is too restrictive and burdensome compared to the current permit. A perimeter and pond inspection at Gladding, McBean takes about 40 minutes using 2 people, plus 30 minutes documentation time. The new requirement for inspections of impoundments and drainage areas prior to any "anticipated storm event," which in and of itself is unclear, will result in additional costs. Our estimate for 50 rain days and 92 man-hours per year devoted to pre-storm inspections. That is 92 hours at an equivalent cost of about \$4,000 per year.

Comment 5: Annual Recertification of No Exposure Exclusion

This proposed provision is another example of an unnecessary or excessive burden on business and other facilities beyond what is required by the U.S. EPA and other states. In fact, U.S. EPA requires only a 5-year recertification, whereas the proposed General Permit specifies annual with a \$200 fee. What makes this provision especially burdensome is the existence of county and municipal storm water programs that have jurisdiction over any facility that discharges to county storm water, but focus particularly on industrial and commercial facilities that are exempt or excluded from the state General Permit. Consequently, this proposed provision results in an unnecessary cost of fees, as well as the administrative burdens associated with resubmitting the NEC form.

Our recommendations to address Comments 3, 4, and 5 are:

1. Reconsider the additional BMP requirements (weekly inspections), monitoring requirements (pre-storm event inspections), and annual NEC resubmission. We recommend that the current permit's or U.S. EPA's requirements be adopted as baseline, and then in the event of non-compliance with benchmarks and/or violation of a No Exposure Criterion that enhanced measures be adopted as part of the tiered enforcement system. To automatically assume that such enhanced controls are necessary without sound technical support is unreasonable and ignores economic reality of the costs of such measures compared to the incremental environmental benefits that may be achieved.

In summary, Gladding, McBean has carefully examined the proposed General Permit and estimated its costs on a plant already heavily invested in storm water containment, best management practices, and treatment in the amount of nearly \$1 million. The additional annual costs, which we have calculated in excess of compliance to the current permit are:

Housekeeping Inspections	\$15,000
Pre-Storm Inspections	4,000
Storm Inspections	4,000
Lab Testing	12,000
Extra Reporting	4,000
PE Certifications and SWPPP	<u>3,000</u>
Total Additional Costs	\$42,000

As indicated above, despite such expenses, our plant, like others, may still not be able to achieve compliance with the proposed tiered enforcement scheme.

Thank you for the opportunity to provide these comments, and for their fair consideration.

For Gladding, McBean

Jim Keating

JAMES KEATING  
Quality Control Manager

JK:kmb