ATTORNEYS AT LAW
225 Broadway, Suite 1900
San Diego, CA 92101
619.231.5858
619.231.5853 (fax)

www.envirolawyer.com

SUZANNE R. VARCO
svarco@envirolawyer.com

S. WAYNE ROSENBAUM
swr@envirolawyer.com

LINDA C. BERESFORD
lindab@envirolawyer.com

Of Counsel
JANA MICKOVA WILL
jwill@envirolawyer.com

ENVIRONMENTAL LAW GROUP LLP
Varco & Rosenbaum

February 12, 2018

Submitted Via Electronic Mail Only

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

commentletters@waterboards.ca.gov

Re: Comment Letter – Industrial General Permit

Dear Ms. Townsend:

I represent clients who operate industrial facilities in San Diego, including facilities that ultimately discharge to Chollas Creek. Please accept this comment letter on the proposed amendment to the Industrial General Stormwater Permit ("IGP") on their behalf.

The proposed amendment to the IGP, which would incorporate new discharge levels associated with Total Maximum Daily Loads ("TMDLs"), requires dischargers to reduce certain pollutants in stormwater discharges to incredibly low levels. I have attended several meetings to discuss the proposed amendment, and many in the scientific community do not believe that the proposed levels can be physically accomplished. Given the significant change in the proposed discharge levels, we request that the State Water Resources Board ("Board") consider the following modifications to the IGP amendment.

First, it is hugely important that the timelines to meet the new discharge limits be phased in. The IGP adopted in 2014 was a significant change from the 1997 permit, and operators are doing their best to comply with this new permit. Many operators have taken significant steps to install treatment systems and implement other practices to meet the current IGP. If the new limits are implemented immediately, operators will have no time to budget, permit and install new systems. Given that these effluent limits could subject operators to penalties, it is imperative that operators be given time to determine how best to respond. Stormwater treatment cannot occur overnight, and operators should be given the opportunity to design the best system and not be forced to spend significant dollars without the benefit of thoughtful planning.

Second, for the same reason the Board should incorporate a process that will allow an operator to negotiate a Time Schedule Order with its Regional Board. Meeting these new discharge levels will be extremely challenging. Operators need time to consult with experts, design and plan systems, obtain necessary permits, and install the systems, and they should be able to engage in this process without the fear of being sued. Indeed, the resolution of most Clean Water Act lawsuits accomplish the same a result – a timeline by which the operator will implement certain treatment systems. However, the operator is also then required to pay significant dollars (in both attorneys' fees and penalties), which

diverts monies from actual stormwater treatment efforts and makes it more difficult for the operator to budget for treatment systems. A Time Schedule Order process which requires the operator to use its best efforts to achieve compliance is a necessary piece to realistically allow operators to meet the goals of the proposed amendment.

Third, the proposed Attachment I includes a compliance option which would allow a discharger to meet the requirements of the IGP if the operator retains a certain amount of stormwater on site. Currently the compliance option requires retention of the 85th percentile of a 24 hour storm, and requires the discharger to be able to use the stormwater within 24 hours so that the discharger can then retain an additional 85th percentile of a 24 hour storm event. We ask the Board to consider reducing this total capture capacity to the 85th percentile of a 24 hour storm event, with the water to be discharged within 72 hours, as the capture quantity as currently written is extremely difficult to achieve. The Board should also consider reducing the infiltration requirements and not require infiltrating stormwater to meet MCLs. While we understand the need to protect groundwater resources, if operators are required to treat to such a high level, it seems more likely that they will simply discharge the stormwater to the storm sewer system. If municipalities want to capture this stormwater for future use, the infiltration requirements should be a more practical level that will encourage operators to infiltrate the stormwater.

Last, the scope of the amendment is unclear. For example, do the new TNALs or NELs apply to only those operators who discharge directly to the listed water body, or to any operator who discharges somewhere that can reach the listed water body? We ask the Board to clarify that the TMDLs only apply to operators who actually discharge to the portion of the water body that is listed as impacted. It is unclear why operators who discharge to those portions of water bodies that are not impacted must meet these significantly lower levels, when the water bodies to which they discharge have not shown similar impacts. For example, the proposed TNALs or NELS for Chollas Creek should be limited to the 3.5 miles of Chollas Creek that is actually listed as impaired.

The economic impact of compliance with the current IGP is overwhelming for many operators. Responding to the new proposed amendments will be equally costly, and many are concerned that compliance will be scientifically impossible. We ask that you please consider these comments to give operators time to plan and budget for what in many cases will be overwhelming costs. Thank you for your consideration of these comments.

Sincerely,

ENVIRONMENTAL LAW GROUP LLP
VARCO & ROSENBAUM

Linda C. Beresford

Linda C. Beresford