



February 14, 2018

**Public Comment  
Industrial General Permit Amendment  
Deadline: 2/14/18 by 12 noon**

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-2000



Submitted electronically – [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Subject: Comment Letter – Proposed 2017 Industrial General Permit Amendment**

Dear Ms. Townsend and Members of the Board:

Thank you for allowing us the opportunity to provide comments on the 2017 Proposed Industrial General Permit (IGP) Amendment. OC Waste & Recycling recognizes the importance of protecting water quality in the State of California and has been committed to reducing our facilities' potential contribution to storm water pollution by significantly upgrading the Best Management Practices (BMPs) at our facilities and providing our employees with the resources and training to take steps to minimize stormwater pollution in their daily jobs.

OC Waste & Recycling manages one of the nation's premiere solid waste disposal systems serving residents and businesses in Southern California area. On behalf of the 34 Orange County cities and over three million residents, OC Waste & Recycling operates a network of three active landfills and four household hazardous waste collection centers.

The Orange County community and surrounding counties generate over 3 million tons of waste each year in Orange County landfills. Careful disposal of the County's waste is fundamental to preserving public health and safety and is regulated at the federal, state, and local levels. OC Waste & Recycling is the entity charged with providing waste disposal services for the County.

California statutes governing solid waste handling and disposal are some of the most stringent standards in the nation. OC Waste & Recycling is responsible for complying with regulations that are enforced by such agencies as CalRecycle, the Solid Waste Local Enforcement Agency, South Coast Air Quality Management District, Regional Water Quality Control Boards, Army Corps of Engineers, United States Fish and Wildlife Service, the California Department of Fish and Game, local fire authorities, and other County departments.

These regulations often overlap with one another, which makes compliance challenging. Even though regulators may have the same goals and purposes, each agency requires that their issues be addressed separately. In addition, the level of regulatory scrutiny has greatly increase with the heightened awareness and growing demand for environmental protection. Nevertheless, OC Waste & Recycling has always been committed to working with regulators and stakeholders to develop reasonable regulations that provide protection to the environment while balancing the cost of compliance. Working on this principle, we have the following comments on the proposed language included the 2017 Proposed IGP Amendment.

**“Responsible Discharger” Definition is Inconsistent**

As proposed in the Fact Sheet on pg. 38, the definition of “Responsible Discharger” reads:

*“...Dischargers with Notice of Intent (NOI) coverage under this General Permit discharging storm water associated with industrial activities or Authorized NSWDs: 1) directly to an impaired water body(ies) with an applicable TMDL, or 2) through a municipal separate storm sewer system (MS4) discharging to an impaired water body(ies) with an applicable TMDL.”*

As proposed in Attachment C, the definition of “Responsible Discharger” reads:

*“A Discharger with Notice of Intent (NOI) coverage under this General Permit who discharges storm water associated with industrial activities (and Authorized NSWDs) to impaired waterbodies **or to an upstream reach or tributary to impaired waterbodies** either directly or through a municipal separate storm sewer system (MS4) included in a U.S. EPA approved TMDL.”*

The definitions are not consistent with each other in that the definition in Attachment C identifies facilities discharging to upstream reaches or tributaries to impaired waterbodies as a “Responsible Discharger” while the definition in the Fact Sheet does not include this caveat. The inclusion of “or to an upstream reach or tributary to impaired waterbodies” in the definition in Attachment C implies that dischargers are subject to the TMDLs in all downstream receiving waterbodies. It is recommended that the definition in Attachment C be revised to be consistent with the Fact Sheet by removing “or to an upstream reach or tributary to impaired waterbodies”.

#### **Maintain Consistency with IGP Pollutant Source Assessment Process**

Section X.G.2.d of the IGP requires that industrial facilities conduct a pollutant source assessment “to identify any additional parameters, beyond the required parameters in Section XI.B.6 that indicate the presence of pollutants in industrial storm water discharges.” This includes “the identification of the industrial pollutants related to the receiving waters with 303(d) listed impairments identified in Appendix 3 or approved TMDLs that may be causing or contributing to an exceedance of a water quality standard in the receiving waters.”(section X.G.2.a.ix)

As proposed in Attachment C, the definition of “Responsible Discharger” does not link a facility’s pollutant source assessment with TMDL applicability and implies that all dischargers with storm water discharges to an impaired receiving water body are “Responsible Dischargers”. It is recommended that the definition of “Responsible Discharger” be revised to clearly indicate that only facilities who have identified the impaired pollutant(s) at their facility through the pollutant source assessment are “Responsible Dischargers” and are required to comply with the corresponding TMDL limits in the receiving water body.

#### **Prepare Guidance to Assist Dischargers with Determining if They are a “Responsible Discharger”**

The proposed amendment does not clearly define “Responsible Discharger”. As written, the definition of “Responsible Discharger” included in Attachment C indicates that a facility is a “Responsible Discharger” for all impairments in the receiving water body. This is confusing because there are waterbodies with multiple TMDLs (San Gabriel River for example) for the same parameter. The definition of “Responsible Discharger” could be interpreted that a “Responsible Discharger” is subject to compliance with multiple TMDLs for one parameter. In addition to clarifying the definition of “Responsible Discharger”, it is recommended that clear guidance be prepared, and/or a tool be developed in SMARTS (similar to the Risk Determination tools for the Construction General Permit), to assist Dischargers with determining if they are “Responsible Dischargers” and what TMDLs are applicable to their facility.

**Use of EPA Benchmark Values as Numeric Action Levels**

The 2014 IGP currently uses EPA benchmark values as Numeric Action Levels (NALs). During the initial drafting of the 2014 IGP, it was stated in several public meetings and on-line seminars by the State Board that they did not have either the time or the resources to develop California specific numeric action levels (NALs) so they chose to use EPA benchmarks.

The EPA benchmark values are not specific to individual waterways or reaches within California, and storm water data collected from undisturbed areas in several watersheds in California indicate that background concentrations would result in exceedances of NALs currently in the 2014 IGP. As indicated previously, the State Board did not have either the time or the resources to develop California-specific NALs. However, after two years of monitoring under the 2014 IGP, storm water data exists, as do water body specific studies, to support alternate protective NAL values for some waterways. The State Board should recognize the substantial resources expended by dischargers to obtain these study results. Where data is available, NALs should be developed using receiving water-specific data and the affected dischargers should not be required to comply with the current NALs listed in Table 2.

It is recommended that the State Board undertake an evaluation of available storm water data from the first two years of monitoring under the 2014 IGP and available receiving water specific data to develop receiving water body-specific NALs that will be protective of water quality.

**TMDL Derived Values (TNALs or NELs) Should Replace the NAL**

Section II.F.5 of the amended Fact Sheet states:

*“This General Permit’s NALs found in Table 2 shall continue to apply in addition to TMDL WLA translations found in the General Permit TMDL Compliance Table.”*

As stated above, the State Board said that they did not have time or resources to develop California specific NALs so they chose to use EPA benchmarks. Now that the water body-specific TMDLs are being incorporated into the IGP, it is unclear why the EPA benchmarks would continue to be applicable for receiving waters that have TNALs/NELs for the same constituent.

It is recommended that the 2017 IGP Amendment clarify that NALs are not applicable in receiving waterbodies that have TMDL-derived TNALs/NEL for the same constituent.

**Annual Average NALs and Instantaneous Maximum TNALs are not Comparable**

As proposed, Section II.F.5 of the amended Fact Sheet states:

*“This General Permit’s NALs found in Table 2 shall continue to apply in addition to TMDL WLA translations found in the General Permit TMDL Compliance Table. The measurement of compliance with the TMDL translations (whether TNAL or NEL) differ from this General Permit’s NALs. The TMDL translations are assigned as an instantaneous maximum exceedance type in comparison to the annual average exceedance type assigned to NALs. As such, the TNAL value of a pollutant cannot be compared to the NAL value for the same pollutant found in this General Permit.”*

As proposed, Section II.F.5a (1) of the amended Fact Sheet then states:

*“There are three categories of discharge requirements for Responsible Dischargers subject to the thirty-six (36) TMDLs applicable to industrial storm water discharges:*

- 1. Comply with this General Permit  
Compliance with the requirements for all discharges regulated by this General Permit equates to compliance with TMDL requirements if the applicable TMDL:*

- *Does not assign a WLA specific to industrial storm water discharges or*
- *Contains a WLA that translates to a less stringent TNAL than the NAL value in Table 2 of the General Permit.”*

Although the proposed modifications to Section II.5.F state that “*the TNAL value of a pollutant cannot be compared to the NAL value for the same pollutant,*” in Section II.F.5a (1), it appears that the State Board is implying that TNALs and NALs are directly comparable with the statement, “*Compliance with the requirements for all discharges... equates to compliance with TMDL requirements if the applicable TMDL contains a WLA that translates to a less stringent TNAL than the NAL value in Table 2 of the General permit.*”

Section II.F.5a (1) contradicts what is stated previously in Section II.F.5. It is recommended that the State Board clarify the relationship of TNALs and NALs and define what is meant by “*less stringent*” when comparing TNALs to NALs.

Also, the statement, “*Compliance with the requirements for all discharges... equates to compliance with TMDL requirements if the applicable TMDL does not assign a WLA specific to industrial storm water discharges*” directly contradicts the latter half of the sentence directly preceding it, “*... for Responsible Dischargers subject to the thirty-six (36) TMDLs applicable to industrial storm water discharges.*” The Proposed IGP Amendment to incorporate TMDL-specific requirements only apply to TMDLs that specifically identify industrial storm water discharges as contributing to an exceedance of water quality standards in the applicable receiving water. It is recommended the condition “*does not assign a WLA specific to industrial storm water discharges*” be removed.

### **Conclusion**

OC Waste & Recycling recognizes the importance of protecting water quality in the State of California and has been committed to reducing our facilities’ potential contribution to storm water pollution by investing significant resources at our facilities. However, it is important that the proposed amendments be clear and protective of receiving water quality while not placing unnecessary burdens on dischargers who conduct business in California. OC Waste & Recycling believes it is prudent to incorporate water body-specific data and available storm water monitoring information when establishing and enforcing NALs and is in support of development of California and, where applicable, water body-specific NALs. Thank you for considering our comments on this important permit amendment.

If you have questions regarding our letter, please contact me at (714) 843-4115 or by email at [warisa.niizawa@ocwr.ocgov.com](mailto:warisa.niizawa@ocwr.ocgov.com).

Sincerely,



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