INDUSTRIAL ENVIRONMENTAL ASSOCIATION

January 11, 2013

Mr. Wayne Chiu
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California, 92123-4340

Sent Via Email to: wchiu@waterboards.ca.gov

Re: Comment – Tentative Order No. R9-2013-0001, NPDES No. CAS0109266
Regional MS4 Permit

Dear Mr. Chiu:

Please find attached comments prepared and submitted by the Industrial Environmental Association (IEA) regarding the San Diego Region MS4 Permit Reissuance.

The Industrial Environmental Association (IEA) was formed in 1983 to promote responsible, cost-effective environmental laws and regulations, facilitate environmental compliance among member companies and provide related education activities for the community at large. IEA actively insists on strong environmental compliance efforts among member companies as a matter of written policy. Further, IEA urges reliance on scientific, analytical data to evaluate the regulations necessary to protect the public and the environment.

After many hours of review and consideration, we appreciate the opportunity to submit these suggestions which we believe will help meet the goals of the Regional Board in a manner that avoids excessive cost and regulatory burden for our members.

We appreciate the opportunity to work with the Board and Staff throughout what has been a very open process, and we look forward to the opportunity to discuss these issues more comprehensively in the weeks ahead. .

Sincerely,

Jack Monger
Executive Director

Industrial Environmental Association (IEA)
Comments

Tentative

Order No. R9-2013-0001

NPDES No. CAS0109266

National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region

1. **Overall Methodology**- In general, IEA supports a Regional MS4 Permit promoting an adaptive planning and management process that allows implementation of appropriate strategies, control measures, and best management practices (BMPs) to protect and preserve water quality and suitable beneficial uses of waters of the state.

2. **Water Quality Improvement Plan Approach-** IEA recognizes the general intent of the Water Quality Improvement Plans (Provision B) is for Copermittees to develop focused watershed-based plans to identify water quality conditions and issues, develop priorities, establish strategies and schedules, and implement adaptive processes to carry out prioritized actions to improve water quality. IEA welcomes the opportunity to participate in the Water Quality Improvement Plan development process and collaborate with Copermittees to develop targeted and cost-efficient strategies and assessment metrics aimed at water quality improvement.

3. **Monitoring and Assessment**- IEA recognizes a key goal of an effective Monitoring and Assessment framework (Provision D) is the collection of precise and useful data to inform stakeholders about water quality conditions in discharges and receiving waters. It is presumed that this data will allow for focused implementation actions and water quality improvement strategies. IEA supports a monitoring framework that provides cost-effective informed data to guide future actions. Accordingly, IEA supports coordination of Regional Water Quality Control Board (RWQCB) staff and Copermittee stakeholders in identifying an iterative, strategic, cost-effective, question-driven monitoring approach. The approach should incorporate short-, medium-, and long-term goals and outline procedures to collect comparable data across watersheds/jurisdictions that allows for future statistical assessments. Short-term goals can include discharge and receiving water characterization to understand current conditions and track progress. Medium-term goals can include planning for Clean Water Act Section 303(d) listings/delistings and best available science-based TMDL development in accordance with the Clean Water Act. Long-term goals can include collecting data appropriate for development of site-specific water quality objectives and potential revisions to Basin Plan objectives.

4. **Non-Storm Water Discharges**- There is still confusion in the Regional MS4 Permit regarding which non-storm water discharges are effectively prohibited and must be eliminated and those that are authorized. The Regional MS4 Permit both states that it authorizes and prohibits non-storm water discharges but it is not always clear which are authorized and which are prohibited. In multiple locations (e.g. Finding 15), the Regional MS4 Permit states that non-stormwater discharges into the MS4s must be

"effectively prohibited" or eliminated. This language conflicts with other provisions (Provision II.A.1.b., for example), which state, consistent with EPA's regulations, that non-stormwater discharges authorized by a NPDES permit are authorized to be discharged to the MS4 system. One change that would help to clarify this issue would be to revise Finding 15 as follows:

> **Non-Storm Water and Storm Water Discharges.** Non-storm water discharges from the MS4s are not considered storm water discharges and therefore are not subject to the MEP standard of CWA section 402(p)(3)(B)(iii), which is explicitly for "Municipal … *Stormwater Discharges* (emphasis added)" from the MS4s. Pursuant to CWA 402(p)(3)(B)(ii), non-storm water discharges into the MS4s must be effectively prohibited. *However, consistent with EPA's regulations, the draft Permit authorizes discharges of non-storm water to MS4s that are either authorized by a separate NPDES permit, or the discharge is a category of non-storm water discharges or flows that must be addressed pursuant to Provisions E.2.a.(1)-(5) of this Order.*

IEA recognizes the Regional MS4 Permit intent to reduce transport of pollutants through elimination of non-storm water discharges (Provision E. 2). However, this intent can also be achieved through implementation of appropriate BMPs if, and when, the listed sources of non-storm water are found to be sources of pollutants to the receiving water. This is the approach used in previous MS4 permits and is consistent with EPA storm water regulations.

A good example of this is non-emergency firefighting flows from fire suppression equipment maintenance activities that can and have been treated with BMPs. IEA recognizes that the RWQCB has identified fire suppression equipment maintenance discharges "contain waste"1 and thus need to be prohibited by the Copermittees as illicit discharges through ordinance, order, or similar means. IEA recommends the Regional MS4 Permit be modified to allow the Water Quality Improvement Plan process to incorporate the use of BMPs for fire suppression equipment maintenance activity discharges.

IEA recommends the following amendment of Provision E.2.a.6:

> If the Copermittee or San Diego Water Board identifies any category of non-storm water discharges listed under Provisions E.2.a.(1)-(4) as a source of pollutants to receiving waters, the category must be prohibited through ordinance, order, or similar means and addressed as an illicit discharge. *Alternately, the Copermittee can designate different and/ or additional BMPs to be implemented as opposed to prohibiting the category of non-stormwater.*

[1] Order R9-2010-0016 Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the County of Riverside, the Incorporated Cities of Riverside County, and the Riverside County Flood Control and Water Conservation District within the San Diego Region. NPDES No. CAS0108766. November 10, 2010.

Further, the Regional MS4 Permit currently specifies that air conditioner condensation [Provision E.2.a.(4).(a)] is a non-storm water discharge that must be directed to landscaped areas or other pervious surfaces *where feasible* (emphasis added). IEA members have previously independently evaluated this potential action and have identified potentially significant costs for compliance. A case study in the Los Penasquitos watershed estimated that due to current system configuration, re-routing the condensation line at one building facility would require ~$12,000 investment. For these reasons, it is suggested that these requirements be limited to new development and the actual footprint of any re-development, unless otherwise required by the Water Quality Improvement Plans.

5. **Development Planning**- IEA supports the implementation of cost-effective methods to reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP) and effectively prohibit non-storm water discharges to provide the reasonable protection, preservation, enhancement, and restoration of water quality and designated beneficial uses of waters of the state. IEA supports the business and development community in requesting the Development Planning (Provision E.3) criteria for priority development project structural BMP requirements and alternative compliance be carefully examined. Given the poor soil infiltration rates in much of San Diego County, many development projects will likely demonstrate technical infeasibility in implementing cost-effective Low Impact Development (LID) and hydromodification controls. The process currently identified in the Regional MS4 Permit does not provide sufficient detail for consistency among Copermittees in evaluating technical infeasibility conditions and implementation of feasible mitigation alternatives. IEA supports development of a stakeholder-lead Technical Advisory Committee to assist in the revision of Provision E.3 to meet multiple objectives for both improved water quality and consideration of site-specific conditions and economic constraints.

6. **Existing Development Management-Inspections-** In general, IEA recognizes the importance of Copermittee inspection activities at inventoried existing development to ensure compliance with applicable local ordinances and permits and the Regional MS4 Permit. However, Provision E.5.c currently contains language that provides for "volunteer monitoring or patrol programs" to conduct visual and verification inspections for Copermittees. IEA strongly opposes authorization of volunteer monitoring and/or patrol programs for third party inspections of industrial or commercial facilities through the Regional MS4 Permit. This type of action has potentially serious safety, procedural, and liability issues for the volunteer program responsible party, Copermittees and inspected facility owner. IEA recognizes there may be some amount of water quality, collaboration, and cost-efficiency value in engaging properly-trained and insured volunteer programs for certain types of visual observation activities on public right-of-way property. However, Provision E.5.c.(1). (a) (i) is not the appropriate permit provision to reference this type of collaboration in the Regional MS4 Permit.

IEA recommends Provision E. 5.c..(1).(a) (i) be revised to delete provision [c] that states: "Inspections by volunteer monitoring or patrol programs trained by the Copermittee". As an alternative, IEA recommends the "volunteer monitoring or patrol programs trained by the Copermittee" language be added to Provision E. 5.c.(1). (a) (i) [a] such that the whole section would as indicated below. Further IEA

recommends a footnote be added to the word "program" to clearly identify that volunteer program staff shall conduct visual observations in the public right-of-way only as indicated below.

..(1) Inspection Frequency

(a) Each Copermittee must establish appropriate inspection frequencies for inventoried existing development in accordance with the following requirements:

(i) At a minimum, inventoried existing development must be inspected once every five years utilizing one or more of the following methods:

[a] Drive-by inspections by Copermittee municipal or contract staff, or volunteer monitoring or patrol program[1] staff trained by the Copermittee, and

[b] Onsite inspections by Copermittee municipal and contract staff;

[1] Volunteer monitoring or patrol program staff shall be limited to only inspection activities performed in the public right-of-way, when conducted at the direction of a copermittee.

In order to further clarify this issue, IEA recommends Provision E.5.c.(2). (a) be revised to delete the words "by the Copermittee or volunteer monitoring or patrol programs". Provision E. 5.c.(2).(a) would then read:

..(2) Inspection Content

(a) Inspections of existing development must include, at a minimum:

Finally, IEA recommends the Regional MS4 Permit language and/or Attachment F - Fact Sheet/Technical Report include language that requires participating volunteer monitoring or patrol programs to demonstrate appropriate training, equipment calibration records, and proof of professional liability insurance to Copermittee or other responsible party(s) prior to engagement in visual or other monitoring activities under the Regional MS4 Permit. This requirement will work to both protect the interests of Copermittee and other interested organizations as well as provide reasonable assurance that data collected by volunteer monitoring or patrol programs is consistent and of high quality.