



# Association of California Water Agencies

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(9/23/14) Board Meeting  
Draft Drinking Water Systems General Permit  
Deadline: 8/19/14 by 12:00 noon



Sent via ELECTRONIC MAIL to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

August 19, 2014

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

**Re: Association of California Water Agencies' comments regarding the draft Statewide National Pollutant Discharge Elimination System Permit for Drinking Water System Discharges to Surface Waters**

Dear Ms. Townsend:

The Association of California Water Agencies ("ACWA") appreciates the opportunity to comment on the State Water Resources Control Board's ("SWRCB," or "State Board") draft Statewide National Pollutant Discharge Elimination System Permit for Drinking Water System Discharges to Surface Waters ("Draft Permit"). ACWA has a number of comments related to the Draft Permit which are set forth in detail below. ACWA encourages the State Board to carefully consider these comments, as well as the detailed comments submitted by individual water agencies from around the state, during the development of any final permit for adoption in order to ensure that it efficiently and effectively achieve its regulatory objectives.

## **I. INTRODUCTION**

ACWA represents nearly 430 public water agencies that collectively supply 90% of the water delivered for domestic, agricultural and industrial uses in California. Many of ACWA's public agency members are entrusted with the responsibility of supplying the public with safe and reliable drinking water. Ensuring the safety of drinking water supplies by complying with all relevant state and federal laws and regulations is the highest priority of these agencies.

ACWA has a number of comments related to the Draft Permit, including concerns with the scope of coverage, the types of discharges covered, the cost of compliance, the ability of public water system dischargers to comply, and the potential for some requirements to conflict with public water systems' responsibilities under the Health and Safety Code. ACWA also encourages the

State Board to ensure that stakeholders are given an adequate period of time to review any changes made to the permit in response to these and other public comments by releasing a revised draft permit for an additional round of public comments prior to the adoption hearing.

ACWA's comments are intended to reflect areas of shared concern among interested ACWA member agencies. ACWA strongly encourages the State Board to also carefully consider the comments submitted by individual water agencies as it works to understand and address the concerns of a diverse cross-section of water systems from around the state.

## **II. THE DRAFT PERMIT SHOULD BE REVISED TO CLARIFY THE SCOPE OF COVERAGE**

ACWA has two concerns related to the scope of coverage of the Draft Permit: the inclusion of a provision requiring some public water systems to submit a Notice of Non-Applicability and the Draft Permit's automatic termination of existing coverage under other Waste Discharge Requirements.

### ***(a) The Notice of Non-Applicability Provisions in the Draft Permit Should Be Removed***

The Draft Permit would require all public water systems to either submit a Notice of Intent to enroll under the permit, or to file a Notice of Non-Applicability with the State Board.<sup>1</sup> ACWA encourages State Board staff to clearly identify the authority under which the State Board can require public water systems that are not otherwise subject to the terms of the Draft Permit to file Notices of Non-Applicability. To date, the only other SWRCB permit that has been adopted with a requirement of this kind is the statewide General Permit for Storm Water Discharges Associated with Industrial Activities. In that permit, those provisions are clearly linked to specific authority granted the Water Boards by the Stormwater Enforcement Act of 1998.<sup>2</sup>

ACWA encourages the State Board to provide the authority under which it can require public water systems to submit a Notice of Non-Applicability for discharges not otherwise regulated under the Draft Permit, or else remove the requirement from the revised draft permit.

### ***(b) The Draft Permit's Automatic Termination of Existing Coverage Under Other Waste Discharge Requirements Should Be Limited***

The Draft Permit would terminate existing coverage under Regional Water Board permits for discharges that fall within the scope of the Draft Permit.<sup>3</sup> However, State Board staff have acknowledged that coverage under existing Regional Water Board permits may continue to be necessary for certain types of discharges that would not be authorized under the Draft Permit.

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<sup>1</sup> SWRCB Draft Statewide National Pollutant Discharge Elimination System Permit for Drinking Water System Discharges to Surface Waters (July 3, 2014) ("Draft Permit"), at pp. 8, 9.

<sup>2</sup> SWRCB Order 2014-0057-DWQ, General Permit for Storm Water Discharges Associated with Industrial Activities, at p. 68.

<sup>3</sup> Draft Permit, at p. 10.

The revised draft permit should establish a framework whereby existing permit coverage is not automatically terminated if continuing coverage under a Regional Water Board permit is required or desired by the public water system discharger. Including such a framework in the revised draft permit would eliminate potential inefficiencies and confusion caused by automatic termination of coverage in instances where continuing coverage may be required.

**III. THE DRAFT PERMIT SHOULD CLEARLY IDENTIFY THE TYPES OF DISCHARGES FOR WHICH COVERAGE UNDER THE DRAFT PERMIT WOULD BE REQUIRED**

ACWA encourages the State Board to refine the Draft Permit's description of the categories of discharges for which coverage under the permit would be required, and to clarify the applicability and effect of the Draft Permit's "Multiple Uses/Beneficial Reuse" provision.

***(a) The Draft Permit Should Not Require Coverage for Discharges Exempted Under the Federal Water Transfers Rule***

Certain types of drinking water system discharges may be exempt from the requirement to obtain NPDES permit coverage, such as discharges that fall under the federal Water Transfers Rule.<sup>4</sup> The Draft Permit currently alludes to such exemptions by explaining that, "In order to legally discharge, this Order requires enrollment of all water purveyors in California that discharge...to waters of the [United States], unless otherwise exempt from the requirement to obtain an NPDES permit under federal law."<sup>5</sup>

In order to provide clarity for public water system dischargers and others charged with implementing and enforcing the permit, the revised draft permit should clarify which provisions of federal law, including the Water Transfers Rule, provide exemptions from the requirement to obtain permit coverage.

***(b) The Applicability and Effect of the "Multiple Uses/Beneficial Reuse" Provisions of the Draft Permit Should Be Clarified***

The Draft Permit would require enrollment for public water systems that discharge to waters of the United States, with certain exceptions.<sup>6</sup> The Draft Permit also includes a provision intended to encourage public water system dischargers to "place the discharge to multiple uses or a beneficial reuse" by eliminating any requirement that a public water system discharger authorized to discharge under the Draft Permit "obtain any other waste discharge requirements if

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<sup>4</sup> 40 C.F.R § 122.3(i).

<sup>5</sup> Draft Permit, at p. 4.

<sup>6</sup> Draft Permit, at pp. 4, 5.

the discharge is collected and reused for landscape irrigation or other uses in a manner that augments the existing supply...”<sup>7</sup>

ACWA encourages the State Board to more clearly define the broad range of multiple uses/beneficial reuse to which this provision is intended to be applicable, including the use of drinking water system discharges for irrigation of agricultural lands. Clarity on this point will help to ensure that public water system dischargers and others charged with implementing and enforcing the permit are aware of the full range of potential uses to which the provision applies.

The revised draft permit should also clarify how the multiple uses/beneficial reuse provision of the Draft Permit is intended to operate. The Draft Permit would only authorize discharges to waters of the United States, but it is likely that many discharges applied to multiple uses/beneficial reuse—such as the “low impact development features” and “other groundwater-recharge systems” specifically identified in the Draft Permit—are not made to waters of the United States. Accordingly, the provision may not apply to any discharges otherwise authorized under this permit.

Finally, the revised draft permit should incorporate the incentives identified by State Board staff in the Draft Permit workshops and the public hearing before the State Board, including the elimination of monitoring requirements for discharges applied to multiple uses/beneficial reuse. At present, the only effect of the provision is that, “[d]ischarges authorized under this Order that are put to multiple use or beneficial reuse are not required to obtain any other waste discharge requirements...”<sup>8</sup> However, any discharge that is authorized under this permit should not be required to be covered under additional waste discharge requirements, whether applied to multiple uses/beneficial reuse or not. Accordingly, it is unclear what incentive, if any, the Draft Permit provides for public water systems that apply discharges to multiple uses/beneficial reuse. The revised draft permit should add and clearly explain permit provisions that incentivize the application of discharges to multiple uses or beneficial reuse.

#### **IV. THE STATE BOARD SHOULD SEEK TO MINIMIZE THE COST OF COMPLIANCE WITH THE DRAFT PERMIT**

Water agencies around the state have a variety of concerns related to the potential cost of compliance with the Draft Permit. For example, the Draft Permit’s proposed Notice of Intent form currently includes a requirement to prepare a “site schematic” that includes an identification of receiving waters and the alignment of any storm water collection systems.<sup>9</sup> Compliance with each of these proposed requirements may involve considerable costs, such as in cases where a formal jurisdictional determination and delineation of waters of the United States across a water system’s geographically dispersed distribution system is required, or impossible,

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<sup>7</sup> Draft Permit, at p. 16.

<sup>8</sup> *Ibid.*

<sup>9</sup> Draft Permit, Attachment B-2.

such as in cases where maps indicating the alignment of storm water collection systems do not exist.<sup>10</sup> Many agencies are also concerned that compliance with the Draft Permit's proposed requirement that all direct discharges to waters of the United States be monitored, no matter how limited those discharges may be in terms of volume or duration, will require agencies to incur significant costs. Finally, the enrollment and annual fee amounts that are currently proposed for adoption into the State Board's fee regulations are substantial, and should be evaluated as part of the overall cost of compliance with the Draft Permit. The State Board should carefully consider the various cost concerns identified by individual water agencies in a continued evaluation of the costs of compliance with the Draft Permit.

ACWA also encourages the State Board to identify areas where existing Division of Drinking Water requirements, such as monitoring that is currently required under the Health and Safety Code, can provide a relevant input into the revised draft permit. The March 2014 Drinking Water Reorganization Transition Plan identified "program implementation" and "permitting synergies" as potential benefits of the Drinking Water Program transfer.<sup>11</sup> ACWA encourages State Board staff to identify areas of potential overlap between programs where efficiencies might be gained and costs saved through the development of new provisions in the revised draft permit that capture some of these synergies.

**V. THE DRAFT PERMIT SHOULD BE REVISED TO MODIFY PROVISIONS WITH WHICH PUBLIC WATER SYSTEMS MAY BE UNABLE TO COMPLY OR WHICH PRESENT POTENTIAL CONFLICTS WITH EXISTING MANDATES**

Certain provisions in the Draft Permit present substantial compliance challenges for some public water systems or may conflict with existing mandates or requirements of public water systems under the Health and Safety Code.

***(a) Numeric Effluent Limitation for Turbidity***

The Draft Permit includes a proposed numeric effluent limitation of 10 NTU.<sup>12</sup> In most cases, it is highly unlikely that public water system wells would be able to comply with this limitation immediately after startup or rehabilitation. Moreover, depending on the averaging period for turbidity samples, the low numeric effluent limitation might incentivize water systems to pump and discharge additional water in order to meet the limitation.

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<sup>10</sup> For example, as the Ninth Circuit Court of Appeals has observed about large sections of Los Angeles County, "The length of the MS4 system and the locations of all storm drain connections are not known exactly because a comprehensive map of the storm drain system does not exist." (Los Angeles County Flood Control District v. NRDC, 673 F.3d. 880, 884 (2013).)

<sup>11</sup> California Environmental Protection Agency & California Health and Human Services Agency, Drinking Water Reorganization Transition Plan (March 2014), at p. 15.

<sup>12</sup> Draft Permit, at p. 16.

Other State Board statewide NPDES general permits have cited studies which have found that, “turbidity values in background receiving water in California’s ecoregions range from 16 NTU to 1716 NTU (with a mean of 544 NTU),” and have included non-enforceable “numeric action levels” for turbidity of 250 NTU.<sup>13, 14</sup> ACWA encourages State Board staff to carefully consider the appropriateness of a 10 NTU numeric effluent limitation for turbidity in drinking water system discharges and include a limit for turbidity in the revised draft permit that is possible for public water systems to meet given their operational realities.

***(b) Use of Maximum Contaminant Levels as a Discharge Standard***

Maximum contaminant levels (“MCLs”) are primary and secondary drinking water standards. The Draft Permit incorporates MCLs into a number of its provisions related to discharge water quality. Several concerns related to the incorporation of MCLs into the Draft Permit are outlined below. The State Board should carefully consider the use of these drinking water standards in the Draft Permit to ensure that the MCLs are being incorporated and interpreted in a manner that is consistent with the Health and Safety Code.

i. Requirement That All Discharges Meet MCLs

The Draft Permit would require that all discharges meet MCLs in order for a public water system discharger to be eligible for coverage.<sup>15</sup> In many cases, drinking water system discharges that are required in the regular course of a public water system’s operations—such as certain maintenance activities or releases of pre-treatment “raw” source water—may involve the discharge of water that does not meet MCLs. Excluding discharges that are in excess of MCLs from coverage significantly limits the scope of discharge activities regulated under the Draft Permit. ACWA encourages the State Board to eliminate the requirement that all discharges meet MCLs in order for public water systems to be eligible for coverage under the permit.

ii. Requirement to Meet MCLs in Discharges to All Water Bodies

The Draft Permit would require that all discharges meet MCLs in order for public water systems to be eligible for coverage under the permit. However, compliance with MCLs is not directly relevant for water bodies that have not been designated with the “municipal” beneficial use, as they are not used as a drinking water source. The revised draft permit should remove the requirement that discharges meet MCLs when they are made to water bodies that are not designated with the “municipal” beneficial use.

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<sup>13</sup> SWRCB Order 2009-0009-DWQ (as amended), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (“Construction General Permit”), factsheet at p. 18

<sup>14</sup> Construction General Permit, at p. 28

<sup>15</sup> Draft Permit, at pp. 4, 5.

iii. Method for Determining Compliance with MCL-based Requirements

The Draft Permit would provide that compliance with the MCL-related provisions of the permit be based on a “running annual average” of monitoring results.<sup>16</sup> Under the Health and Safety Code, compliance with many drinking water standards is based on a running annual average of regularly scheduled monitoring results, and in some cases, public water systems may be permitted to monitor for certain parameters less than annually. In contrast, when determining compliance with MCLs for the purposes of the Draft Permit, State Board staff have indicated that the running annual average will be calculated using all available monitoring results. This provision is inconsistent with existing practices and requirements, because under the Draft Permit, monitoring would likely not be conducted on a regularly scheduled basis; instead, monitoring would be conducted intermittently depending on when conditions of discharge exist. ACWA encourages the State Board to clarify how running annual averages are intended to be calculated for the purposes of this General Permit.

*(c) Incorporation of Total Maximum Daily Load Provisions*

The Draft Permit proposes to incorporate a number of provisions related to Total Maximum Daily Loads (“TMDLs”) that have been adopted for water bodies in the Los Angeles and San Diego Regional Water Quality Control Boards’ jurisdictions. The revised draft permit should clarify the requirements of the TMDLs incorporated into the Draft Permit in two ways.

First, the revised draft permit should correctly characterize the TMDLs that have been included in the Draft Permit. At present, the Draft Permit includes the following description of the TMDLs that have been incorporated into the permit:

A review of Regional Water Board TMDLs found that, as of the adoption date of this Order, only the Los Angeles Regional Water Board and the San Diego Regional Water Board have TMDLs that either directly apply WLAs [Waste Load Allocations] to, or may indirectly imply that WLAs are applicable to, the discharges from drinking water systems regulated under this General Permit. None of these TMDLs established WLAs that apply exclusively to discharges from drinking water systems. ***Instead, the WLAs apply to general categories of discharges (e.g., “other NPDES dischargers”) that include discharges from drinking water systems.***<sup>17</sup> (Emphasis added.)

The revised draft permit should clarify that not all TMDLs in these Regional Board jurisdictions include waste load allocations which may directly or indirectly apply to drinking water discharges.

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<sup>16</sup> Draft Permit, at p. 5, 6.

<sup>17</sup> Draft Permit, factsheet at F-19.

Second, the revised draft permit should clearly state that public water system dischargers which discharge in compliance with the permit have satisfied the requirements of any relevant TMDLs incorporated therein. The Draft Permit currently states the following:

Based on the data that is currently available, and due to the high quality and intermittent and short-term nature of the discharges from drinking water systems authorized under this Order, it is unlikely that these discharges contribute to the impairment of the TMDL-related water bodies. *Therefore, it is consistent with the assumptions and requirements of the WLAs in these TMDLs for this Order to not include any TMDL-specific requirements.*<sup>18</sup> (Emphasis added.)

The revised draft permit should clarify that the inclusion of any TMDL into the permit does not operate to prohibit public water system discharges into water bodies with a WLA that might otherwise be construed as disallowing any discharges.

#### **VI. A REVISED DRAFT PERMIT SHOULD BE RELEASED FOR PUBLIC COMMENT PRIOR TO CONSIDERATION OF ADOPTION BY THE STATE BOARD**

The adoption hearing for the permit is currently scheduled for September 23, 2014. Following the close of the comment period on August 19, 2014, State Board staff have indicated that they plan on releasing a revised draft permit by September 13, 2014. This schedule provides only six working days for stakeholder review of the revised draft permit prior to the adoption hearing.

At the staff workshops held on the Draft Permit, State Board staff indicated that substantial changes may be made to the permit, and ACWA believes that the Draft Permit can and should be re-evaluated and revised by the State Board in response to public comments. ACWA encourages the State Board to release a revised draft permit for an additional round of public comment to help ensure that the permit addresses the concerns articulated by ACWA and other stakeholders.

#### **VII. CONCLUSION**

ACWA strongly encourages the State Board to carefully consider the comments outlined above, as well as the comment letters submitted by individual water agencies, as it works to understand and address the concerns of a diverse cross-section of water systems from around the state.

ACWA appreciates the substantial efforts of State Board staff to organize stakeholder workshops that allowed drinking water community stakeholders with an opportunity to provide constructive input into the Draft Permit. ACWA and water agencies around the state stand ready to continue to work with State Board staff as they refine the permit in order to ensure that it can most effectively and efficiently achieve its regulatory objectives.

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<sup>18</sup> Draft Permit, factsheet at F-19, F-20.



ACWA is confident that through careful consideration of the varied operational and environmental circumstances facing water agencies, the Water Board will be able to develop an approach to the regulation of drinking water system discharges that is protective of the environment and supportive of water agencies' continuing efforts to supply the public with safe and reliable drinking water at a reasonable cost.

If you have any questions regarding this matter, please feel free to contact me at AdamW@ACWA.com or (916) 441-4545.

Sincerely,

A handwritten signature in blue ink that reads "Adam Walukiewicz". The signature is fluid and cursive, with the first name "Adam" and last name "Walukiewicz" clearly distinguishable.

Adam Walukiewicz  
Regulatory Advocate

cc: Mr. Tom Howard, Executive Director  
Mr. Jonathan Bishop, Chief Deputy Director  
Ms. Vicky Whitney, Deputy Director  
Ms. Diana Messina, Supervising Water Resources Control Engineer