



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 N. HARBOR DR.
SAN DIEGO, CA 92132-0068

IN REPLY REFER TO:

5090
Ser N40/ 147
February 12, 2018

Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95814



Dear Ms. Townsend:

As the DoD Regional Environmental Coordinator (REC) for California, thank you for the opportunity to comment on the Proposed Amendment to the Statewide Industrial General Permit (IGP) Amendment.

Most significantly, Attachment I attempts to regulate a discharge to groundwater as opposed to a surface water body (lysimeters and Maximum Contaminant Levels (MCLs)). It is well established in law that the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) permits are only applicable to discharges to surface water bodies and not to ground water. This requirement could open up the IGP to lawsuits which could delay implementation and result in an unfavorable decision against California.

Additionally, we wish to point out that the IGP Amendment's proposed Total Maximum Daily Load (TMDL) Numeric Action Levels (TNALs) are not adequately linked to the respective implementation schedule associated with each TMDL. Full attainment of the TNAL should only be required after the end of the specific TMDL implementation schedule, and not upon immediate adoption of the IGP amendment. TMDLs are designed to be phased to achieve compliance and not create an immediate attainment; therefore TNALs should also be phased.

The proposed IGP applies Safe Drinking Water Act (SDWA) Maximum Contaminant Levels (MCLs) to a storm water discharge. No other Waste Discharge Requirement (WDR) for land discharges has to meet SDWA MCLs and it is our professional opinion that the MCL requirement will be nearly impossible to meet by any discharger. As such, we believe this requirement is unreasonable and unattainable. This also ignores site specific non-beneficial use areas.

Finally, DoD supports the provision that provides the State Water Board Executive Director the authority to "incorporate a reanalyzed Regional Water Board adopted Water Effects Ratio (WER) into this General Permit" to better protect beneficial uses. DoD also recommends this Permit makes clear that this authority applies to both NALs and TNALs. Enclosure (1) provides these and additional comments/recommendations.

If you have any questions or concerns regarding these comments, my point of contact on this matter is Mr. Michael Huber, DoD REC Manager, who can be reached at COMM: (619) 532-2303.

Sincerely,

C. L. STATHOS
Deputy Regional Environmental Coordinator
By direction
of the Commander

Enclosure: 1. Industrial General Permit Amendment comments

DOD COMMENTS ON THE PROPOSED AMENDMENT TO THE STATEWIDE INDUSTRIAL GENERAL PERMIT AMENDMENT

(STATE WATER RESOURCES CONTROL BOARD)

Feb 13, 2018

General Comments:

1) The proposed TMDL Numeric Action Levels (TNALs) are not adequately linked to the respective implementation schedules associated with each TMDL. Many adopted TMDLs have interim waste load allocations (WLAs) that are not reflected in the proposed TNALs. Full attainment of the TNAL and final WLAs should only be required in accordance with a specific TMDL implementation schedule and not upon immediate adoption of the IGP amendment. TMDLs are designed to be phased to achieve compliance and not an immediate attainment. TNALs should be phased as well or be adjusted to account for interim WLAs as outline in the specific TMDL implement schedule. Implementation of WLAs in TMDLs are over a period of time to allow for implementation of the BMPs and BMP management plans, as well as coordination with educational programs, special studies, and associated monitoring. TNALs as proposed disrupt these current and ongoing activities that many dischargers have already been involved in.

Recommended change: Adjust TNALs to account for interim WLAs and TMDL implementation schedules from adopted TMDLs. This will allow for implementation of the BMPs, BMP management plans, as well as coordination with educational programs, special studies, and associated monitoring.

2) TNALs are proposed ONLY as instantaneous values/exceedances and not annual averages as the IGP NALs. TMDLs are based upon overall load allocations within each affected 303(D) water body and not an instantaneous end of pipe value. An average TNAL is more appropriate for episodic storm water in a TMDL than an instantaneous TNAL.

3) It is not clear in the IGP amendment that industrial dischargers in a watershed subject to a TDML should only monitor for constituents linked to their SIC code listed in the IGP, or if they must monitor for all TMDL constituents in addition to the IGP parameters? Recommend limiting the provision to SIC code monitoring consistent with other program requirements

Please insert a new Section VII.A.4 that states:

“Existing dischargers are required to the conduct the TMDL monitoring and reporting actions identified in Section VII.C, as well as Attachment E, only if the discharger has identified in their SWPPP the applicable TMDL pollutant(s) as industrial pollutant(s) present at their facility, in accordance with Section X.G.2.a.ix of this General Permit.”

4) TNALs are unfair to industrial facilities downwind of area sources (aerial deposition from freeways, etc) who may never be able to bring TNAL discharges to compliant levels via on-site controls. Similar to the other parts of the IGP, DoD recommends adding a provision to allow a facility to make a demonstration that “but for” aerial deposition, their facility would be deemed in compliance with the TNALs.

**DOD COMMENTS ON THE PROPOSED AMENDMENT TO THE
STATEWIDE INDUSTRIAL GENERAL PERMIT AMENDMENT**

(STATE WATER RESOURCES CONTROL BOARD)

Feb 13, 2018

Specific Comments:

Section	Page	Comment
I.F.52	9	DoD supports this provision that provides the State Water Board Executive Director the authority to “incorporate a reanalyzed Regional Water Board adopted Water Effects Ratio (WER) into this General Permit” to better protect beneficial uses. Additionally, DoD recommends this Permit makes clear that this authority applies to both NALs and TNALs.
I.A	1 - 4	DoD recommends adding a section to define and discuss TMDL Numeric Action Levels (TNALs) in the General Findings portion of the permit.
VIII.C.3	25	This provision requires a discharger to self-calculate TMDL violations for SMARTS reporting, placing an unreasonable burden on the discharger. DoD recommends adding this functionality to SMARTS.
Section	Page	Comment
Attachment I		The proposed IGP applies Safe Drinking Water Act (SDWA) Maximum Contaminant Levels (MCLs) to a storm water discharge. No other Waste Discharge Requirement (WDR) for land discharges has to meet SDWA MCLs and it is our professional opinion that the MCL requirement will be impossible to meet by any discharger. As such, we believe this requirement is unreasonable and unattainable. This also ignores site specific non-beneficial use areas.
Attachment I		Attachment I regulates a discharge to groundwater as opposed to a surface water body (lysimeters and MCLs). It is well established in law that NPDES permits are only applicable to discharges to surface water bodies and is only applicable to discharges to ground water in specific cases where there is a connection between the groundwater and a jurisdictional surface water body The groundwater must act as a “discernible conveyance[s]” to navigable waters” to be subject to an NPDES permit. This requirement could open up the IGP to lawsuits which could delay implementation and result in unfavorable decision against California. We recommend complete removal of Attachment I to enable the proposed IGP amendment to be enacted within a minimal number of successful lawsuits against attachment I and the IGP as a whole. We suggest that the SWRCB establish streamlined General Waste Discharge Requirement (WDR)

**DOD COMMENTS ON THE PROPOSED AMENDMENT TO THE
STATEWIDE INDUSTRIAL GENERAL PERMIT AMENDMENT**

(STATE WATER RESOURCES CONTROL BOARD)

Feb 13, 2018

		<p>that apply to infiltration Best Management Practices (BMPs). The General WDR could rely on the future work product that will be developed under RFQ No. 17-083-250 entitled, Statewide Standards for Storm Water Capture and Infiltration Dry Wells. In the interim, the implementation of infiltration BMPs would rely on Best Professional Judgment by a California licensed professional engineer.</p>
<p>Amendment Effective Date</p>		<p>It is impracticable for industry to immediately comply with the TMDLs. Accordingly, we request sufficient time between the Permit Amendment adoption date and its effective date be provided. This is necessary to plan, design, permit, construct, and commission the BMPs necessary to comply with the TMDLs. For Federal agencies such as the Department of Defense, it takes approximately two to five years to budget, request funding from Congress, and complete many other Congressionally mandates fiscal actions before projects for implement advanced BMPs can be started. We also recommend the amendment include discussion on the steps needed to seek a time scheduled order in accordance with Section 13300 of the California Water Code if additional time is necessary to implement advanced BMPs.</p>
<p>Attachment C Responsible Discharger</p>		<p>Responsible Discharger 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.</p> <p>To clarify that only a responsible discharger that has identified the TMDL pollutant(s) as industrial pollutant(s) present at their facility is required to conduct the TMDL monitoring and reporting actions identified in Section VII.C, as well as Attachment E, please add the following sentence to the description of a responsible discharger:</p> <p>“A responsible discharger is required to conduct the TMDL monitoring and reporting actions identified in Section VII.C, as well as Attachment E, only if the discharger has identified in their SWPPP the applicable TMDL pollutant(s) as industrial pollutant(s) present at their facility, in accordance with Section X.G.2.a.ix of this General Permit.”</p>
<p>Attachment I Section II.6.a</p>		<p>The Discharger shall ensure that all influent entering the infiltration BMP(s) meets applicable Maximum Contaminant Level (MCL) criteria for industrial pollutants at the facility, as specified in Table A below.</p>

**DOD COMMENTS ON THE PROPOSED AMENDMENT TO THE
STATEWIDE INDUSTRIAL GENERAL PERMIT AMENDMENT**

(STATE WATER RESOURCES CONTROL BOARD)

Feb 13, 2018

Prior to Attachment I Section II.6.a, please insert the following text:

“The MCL criteria do not apply where the discharger is infiltrating storm water in a groundwater area that is excepted from municipal beneficial uses in the applicable Regional Water Quality Control Board’s Basin Plan.”