



California Council for Environmental and Economic Balance

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February 14, 2018

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



RE: SWRCB Industrial General Permit Amendment Comment Letter

Dear Ms. Townsend:

On behalf of the California Council for Environmental and Economic Balance (CCEEB), I appreciate the opportunity to provide the following comments regarding the State Water Resources Control Board's (SWRCB) amendment to the Industrial General Storm Water Permit (IGP Amendment or Amendment).

CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

I appreciate staff taking the time over the course of the last two years to engage with CCEEB and its members on the development of the Amendment and alternative compliance options. We have found that the opportunity to walk through the intent and concerns in person is incredibly helpful. That said, we must convey a few points of concern and highlight some areas in need of clarification.

Develop Tool(s) to Identify TMDL Applicability

Although the Amendment is currently focused on incorporation of TMDLs in just four regions, many of the over 30 that are in scope relative to identified industrial discharges are complex and will be challenging for industrial dischargers relative to compliance. At the outset, it is not clear how a discharger will definitively know whether they are subject to just one or multiple TMDLs and their respective requirements. Further complicating matters, it appears some TMDLs overlap watersheds and are focused on the same constituent. In this regard, an industrial discharger may find it needs to comply with multiple TMDLs for the same constituent with different, potentially conflicting requirements in the same watershed. In this regard, we urge the Board to develop additional tools prior to the effective date of the Amendment so as to assist dischargers with determining applicability of the full scope of TMDL requirements based on their location.

Applicability to Direct Discharge Waterbody Only, Same Requirements for Parameter

Also important, is providing clarification in the Amendment that industrial dischargers need not implement different strategies for the same parameter. The focus of their requirements and

compliance should be limited solely to the TMDLs associated with the impaired waterbody to which they directly discharge.

Pollutant Source Assessment Link Unclear, Only Relevant Pollutants should Apply

Under the current IGP, industrial entities conduct pollutant source assessments to determine what pollutant sources and discharges may be applicable to their site. The findings of the assessment determine what pollutant-specific BMPs should be implemented as well as the requisite monitoring requirements. This is an important indication of the understanding that not all industrial operations are created equal and that industries may have different exposures depending on the nature of their operations.

CCEEB is concerned that it is not clear that the assessment findings are taken in to consideration under the IGP Amendment. To address this lack of clarity, the IGP Amendment should be consistent with this approach, requiring only those facilities with assessments identifying the TMDL pollutant and that are sited within and directly discharge to the impaired water body to comply with the new TMDL TNAL/NEL requirements

Pollutant Loading Varies Among Permittees

In line with the pollutant source assessment consideration, we urge the Board to consider that not only do the pollutants associated with industrial activity vary from one industry to another; loading among permittees may vary as well. More specifically, one industrial discharger may be responsible for significant pollutant loading into the waterway annually, while another may load a de minimis amount. These entities should not be treated equal and the IGP Amendment requirements should account for risk and the differences among permittees who are attempting to be in compliance versus those that choose to ignore regulatory requirements in their totality.

Develop Process, Compliance Flow Chart for Clarity

As previously noted, the IGP Amendment is complex with multiple steps, requirements and pathways to compliance. Even the most resourceful companies may have difficulty navigating the requirements and determining what is applicable to their facility and the timeline associated with those requirements.

During our meetings with staff, there seemed to be an understanding of this lack of clarity and the need to develop a flow chart describing the requirements under the IGP as currently drafted, proposed to be amended and the compliance pathways associated with the entirety of the IGP. Notably, the IGP amendment includes multiple compliance pathways, but each of them has monitoring, exceedance requirements, follow up actions, reporting and more that are not consistent in each circumstance. CCEEB strongly supports the development of such a process and compliance flow chart as an important tool providing clarity for all industrial dischargers regardless of their size and resource level.

TNAL or NEL Compliance should Satisfy NAL Requirements

As explained to CCEEB by staff, the IGP Amendment would require industrial dischargers to continue to comply with the current IGP's NALs identified in Table 2 **in addition to** complying with the TNALs and NELs in the Amendment provisions related to the incorporation of TMDLs. CCEEB questions this approach as one that may be inconsistent, unnecessary, potentially conflicting and certainly costly.

The TMDLs being incorporated have, notably, been adopted at the local level on a site-specific basis with associated TNALs or NELs tied specifically to the impairment of a specific waterbody or watershed. Requiring dischargers to comply with different requirements for the same constituents is confusing, overly burdensome and unnecessary. NALs are more general values derived from the U.S. EPA Multi Sector Permit benchmark values; where TNALs and NELs are locally derived based on site specific impacts and discharger characteristics. Further, the TNAL and NEL thresholds are typically more stringent than the current NAL values. While we are highly concerned about the implications and ability to comply with the NEL requirements, having to comply with NALs as well is inefficient, costly and unnecessarily burdensome.

In this regard, we urge the Board to explicitly recognize that compliance with TMDL TNAL and NEL requirements shall replace the NAL requirements for the same constituent.

Provide Clearer TNAL Compliance Language, Consider Compliance Certificates

Relative to TNALs, CCEEB is concerned that the TNALs for certain pollutants are infeasible as proposed in the Amendment. This could be addressed, in part, by establishing the thresholds using the same regulatory procedures required to establish water quality based effluent limits (WQBEL). We're told that for copper and zinc, in particular, fewer than 50% of relevant industrial dischargers are in compliance in the Los Angeles and Long Beach Harbor. Further, we question whether WLAs were appropriately applied and set for receiving waters directly as TNALs applicable to storm water discharges. In doing so, it has seemingly led to incredibly low and infeasible TNALs.

CCEEB urges the Board to incorporate clearer permit compliance language to help ensure industrial discharger compliance and to help them guard against citizen suit litigation based solely on exceedances of TNALs. Such clarity is particularly important for dischargers who may have significant challenges meeting the TNAL values. Further, the Permit, as amended, must clearly state that exceedances of TNALs are not permit violations. Instead, the SWRCB should consider incorporating water board issuance of compliance certificates for dischargers implementing ERAs and Compliance Options.

RPA must be Conducted, EPA Procedures Followed before NELs Incorporated

As already suggested, it is critically important for the industrial discharger community that clear and available compliance pathways to comply with realistic and properly established numeric effluent limits (NELs) be provided. This clarity is critically important given the IGP Amendment would, for the first time, impose NELs, exceedance of which would constitute a permit violation. That said, as currently drafted CCEEB is concerned that the language may not be sufficiently clear for dischargers and may provide loopholes for third party entities to pursue enforcement actions against a discharger who believes he is in compliance. Further, we question the process for establishing the NELs under the Amendment.

As you well know, NELs are a type of WQBEL and WQBELs are established based on U.S. EPA regulations that dictate the required analysis and procedures. It is not clear to CCEEB that these components were followed with the incorporation of NELs in the Amendment. The process requires SWRCB to conduct a Reasonable Potential Analysis (RPA) and to use procedures accounting for existing controls on point and nonpoint sources of pollution, the variability of the pollutant in the effluent, and the dilution of the effluent in the receiving water when setting WQBELs. Instead, however, it appears the local findings and thresholds were plugged in without an RPA and the other required components. By not conducting the RPA and other required procedures and merely lifting the regional board's assessments, the NELs proposed seem to be

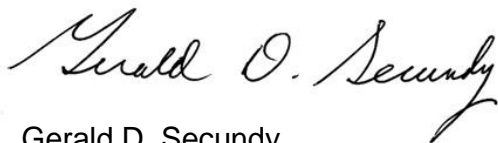
inappropriately established and possibly lower than they might otherwise be to the detriment of industrial dischargers seeking to comply with the IGP Amendment requirements. For these reasons, the SWRCB must first conduct the required Reasonable Potential Analysis and procedures before adopting NELs in the permit.

Extend IGP Amendment Effective Date

Finally, CCEEB is concerned about the timing of the Board approving the IGP Amendment and its effective date thereafter. As noted, the IGP Amendment contains more challenging requirements that will be problematic for industrial dischargers across sectors to comply with absent some lead time so as to assess the TMDL applicability to their facilities, determine the relevant requirements and devise the best compliance strategy. With the Amendment provisions still under discussion, somewhat unclear and possible revisions yet to come, it will be next to impossible for industrial dischargers to anticipate what the final permit will entail and what compliance will look like for their facility. An immediate effective date upon approval by the Board would likely render all industrial dischargers out of compliance on day one. Instead, CCEEB strongly urges the Board to extend the effective date to allow time for industrial dischargers to update their SWPPPs and Monitoring Implementation plans (MIP), assess the workability of the alternative compliance options, and for those subject to NEL requirements to have sufficient time to make the case for a TSO from the Regional Water Board.

On behalf of CCEEB, I greatly appreciate the opportunity to provide these comments. If you have questions regarding the points raised in this letter, please contact CCEEB Water, Chemistry and Waste Project Manager Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Sincerely,



Gerald D. Secundy
CCEEB President

cc: Mr. Jonathan Bishop, Chief Deputy Director, SWRCB
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