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October 22, 2012

Submitted Via Email: commentletters@waterboards.ca.gov
Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812



RE: AT&T Comments on the California Water Resources Control Board's 2012 Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Discharge of Storm Water Associated with Industrial Activities

To Whom It May Concern:

AT&T appreciates the opportunity to comment on the California State Water Resources Control Board ("Board") 2012 Draft National Pollutant Discharge Elimination System ("NPDES") General Permit for the Discharge of Storm Water Associated with Industrial Activities ("Draft IGP"). It is our understanding that these comments are timely if received by noon Pacific Time on Monday, October 22, 2012. These comments are filed on behalf of AT&T Inc. and its affiliates (collectively, "AT&T").

AT&T provides telecommunications services to households, businesses, and federal, state and local government agencies in California and nationwide. To provide such services, AT&T operates a number of different types of facilities in California, including so-called "central offices" that contain telecommunications switches; repeater huts, cell towers, and other widely-distributed small facilities; field operations centers, from which roving technicians are dispatched to maintain and otherwise service various AT&T and customer locations; and vehicle maintenance garages, which service vehicles used by such technicians and other AT&T employees. To date, all of such facilities have been deemed to take on AT&T's SIC code of 4813, and thus not be subject to stormwater permitting requirements.

AT&T's principal purposes in submitting these comments are: (1) to confirm its understanding that the new permit will not expand the universe of facilities currently required to obtain NPDES permit coverage for stormwater discharges; (2) to seek clarification by the Board of its interpretation of the breadth of the Transportation Facility category of permittees; and (3) to note an alternate analysis that could result in certain AT&T facilities being outside the class of facilities required to seek coverage for stormwater discharges under the new IGP.

1. Confirmation That Draft IGP is Not Intended to Expand the Universe of Facilities to Obtain NPDES Permit Authorization for Stormwater Discharges Under the Existing Permit

AT&T simply seeks confirmation of statements in the record that the Draft IGP is not intended to and will not expand the universe of facilities required to obtain NPDES permit authorization to discharge stormwater beyond facilities already required to obtain such authorization under the existing statewide general permit for industrial storm water discharges, excluding construction activities, Water Quality Order No. 97-03-DWQ.

2. Clarification of New Fact Sheet Language Concerning IGP Coverage

AT&T would like to confirm its understanding of the coverage of the new IGP. Specifically, this comment relates to AT&T's Customer Service Fleet Facilities. These are facilities from which AT&T service vehicles are dispatched each day to perform installations and maintenance at local customers' homes and businesses and to conduct installation, maintenance and repair of AT&T telecommunication infrastructure. The service vehicles return to the facility at night and are parked there. As necessary, maintenance is performed on the service vehicles at the facility. No other function is performed by vehicles based at these facilities and, specifically, neither those facilities nor the vehicles based at those facilities perform activities described by SIC codes 40XX-45XX or 5171.



Our question arises as a result of the inclusion of certain revised language in the draft Fact Sheet. That language appears at Section II (Rationale) and is as follows:

II. RATIONALE

A. Requirements for Receiving General Permit Coverage

1. Types of Industrial Storm Water Discharges Covered by this General Permit

This General Permit covers new or existing industrial storm water discharges and authorized NSWDS from:

- a. Facilities required by federal regulations to obtain a permit;
- b. Facilities designated by the Regional Water Boards; and,
- c. Facilities whose operators seek coverage under this General Permit with the permission of the Regional Water Boards.

40 C.F.R. section 122.26(b)(14) defines "storm water associated with industrial activity" and describes the types of facilities subject to permitting (mostly by Standard Industrial Classification (SIC) code). This General Permit covers all facilities with industrial activities described in Attachment A whether the industrial activity is the Discharger's primary or secondary industrial function.¹

It is AT&T's understanding that, in the absence of a designation by a Regional Water Board or a voluntary request for coverage, a facility must be a member of one of the classes of facilities described in 40 C.F.R. Section 122.26(b)(14) in order to be required to obtain an NPDES permit for stormwater discharges. (We believe that an identical list of industries is reproduced in Appendix A to the Draft IGP.) It further is AT&T's understanding that conducting vehicle maintenance at a facility does not by itself result in that facility becoming a Transportation Facility as described in Paragraph 8 of Attachment A to the Draft IGP unless the activities performed at that facility also, and independently, qualify it as a facility with an SIC code of "40XX through 45XX (except 4221-25) and 5171." Finally, it is AT&T's understanding that the revised language in the draft Fact Sheet stating that the new IGP "covers all facilities with industrial activities described in Attachment A whether the industrial activity is the Discharger's primary or secondary industrial function" does not alter the understandings described immediately above.

Put simply, it is AT&T's understanding with respect to its Customer Service Fleet Facilities that, so long as neither those facilities nor the vehicles based at those facilities perform activities described by SIC codes 40XX-45XX or 5171, those facilities do not constitute Transportation Facilities as defined in Draft IGP Appendix A and need not obtain NPDES authorization for stormwater discharges unless they are identified as a permissible facility by some other section of Draft IGP Appendix A, are specially designated by a Regional Water Board, or otherwise voluntarily request such coverage. We would greatly appreciate the Board's confirmation of AT&T's understandings as stated here.

3. Application of SIC Code Manual "Auxiliary" Designations

AT&T also would like to describe the treatment of "auxiliary establishments" under the U.S. Standard Industrial Classification ("SIC") system and the application of such classifications to the company's Customer Service Fleet Facilities. This analysis provides an independent basis for the company's position that its Customer Service Fleet Facilities are not among the classes of facilities required to obtain an NPDES permit for their stormwater discharges. This comment is being submitted for informational purposes only, and AT&T is not seeking a response to this comment.

¹ Draft Fact Sheet at 12-13 (emphasis added).



As stated in 40 C.F.R. 122.26(b)(14), the Draft IGP² and the draft Fact Sheet,³ the obligation to obtain an NPDES permit for certain industrial activities is determined based on the SIC code under which that establishment is classified.

In 1997, the North American Industrial Classification System (NAICS) was published, replacing the SIC code system in many applications. The U.S. EPA has indicated that it intends to incorporate the NAICS codes into the storm water regulations but has not yet done so. While the Board's SMARTS system has been designed to accept both SIC and NAICS codes and to convert NAICS codes into SIC codes, the Board properly states in the draft Fact Sheet that:

“The use of NAICS codes shall not expand or reduce the types of industries subject to this General Permit as compared to the SIC codes listed in the General Permit.”⁴

Thus, when determining whether an SIC code requiring permitting applies to a given facility it is the SIC system and its internal rules for assigning SIC codes that controls the analysis. The most recent articulation of the SIC system and its internal assignment rules was published by the OMB in 1987.⁵

The 1987 SIC Manual divides establishments into two categories: “Operating establishments” and “auxiliary establishments.”⁶ Operating establishments are classified based on what the establishment does; while auxiliary establishments providing services are classified based on the classification of the establishment they serve.⁷ That is, in colloquial terms, an auxiliary establishment as defined by the SIC system's internal classification rules would take the SIC code of its parent company.

The 1987 SIC Manual provides a list of examples of establishments that qualify for treatment as auxiliary establishments. That list, in part, is as follows:

“Specific Examples of Auxiliary Establishments

The following are examples of auxiliary establishments primarily engaged in performing management or support services for other establishments of the same enterprise:

- (1)
...
- (3) Warehouses and storage facilities primarily serving other establishments of the same enterprise.
- (4) Maintenance and repair shops primarily serving other establishments of the same enterprise for the maintenance and repair of its own machinery and equipment.

² “Industrial activities covered under this General Permit are described in Attachment A.” Draft IGP(I)(A)(16) at 2 and Appendix A.

³ Fact Sheet at 13.

⁴ *Id.*

⁵ Office of Management and Budget, *Standard Industrial Classification Manual* (1987) (hereinafter, “1987 SIC Manual”).

⁶ “Auxiliaries are establishments primarily engaged in performing management or support services for other establishments of the same enterprise. . . . Auxiliary establishments are distinguished from operating establishments that primarily produce goods and from those that primarily provide services for personal or household use or for other enterprises.” 1987 SIC Manual at 13.

⁷ “Auxiliary establishments are assigned four-digit industry codes on the basis of the primary activity of the operating establishments they serve.” 1987 SIC Manual at 16.



(5) Automotive repair shops or storage garages operated by an enterprise primarily for repair or storage of its own vehicles.

...

(11) ...⁸

AT&T's Customer Service Fleet Facilities perform one or more of these functions on behalf of AT&T and, thus, qualify as auxiliary facilities under these classification rules. As a result, these facilities take the SIC code of the operating establishment that they serve. Here, that operating establishment is AT&T, whose SIC code is 4813. Because SIC code 4813 is not among the SIC codes identified in 40 C.F.R. 122.26(b)(14) or in Appendix A of the Draft IGP as denoting an industry generating "stormwater associated with industrial activity," AT&T's Customer Service Fleet Facilities are not required to obtain an NPDES permit to authorize their discharge of stormwater.

Neither the Draft IGP nor the draft Fact Sheet addresses these issues, nor would they be expected to, as the classification of facilities is a function that will be performed by the regulated community in response to the issuance of the final IGP. Thus, AT&T provides the analysis above simply to inform the Board, and the Regional Water Boards, of the application of the SIC code classification system to auxiliary facilities and of AT&T's position that its Customer Service Fleet Facilities constitute auxiliary establishments that are classified under AT&T's SIC code and, thus, are not required to obtain NPDES permits for stormwater discharges.

3

AT&T appreciates this opportunity to provide the Board with its understandings and views with respect to certain aspects of the Draft IGP. Please feel free to contact the undersigned if the Board or its staff have any questions with respect to these comments.

Sincerely,

Jay P. Maille

AT&T Senior Manager EHS - CA Legislative & Regulatory
2600 Camino Ramon Room 3E000P
San Ramon, CA 94583
Office: 925.823.7430
Mobile: 925.216.4101

cc:

Paul Shorb, Legal
Mikki Bako Sorensen, Legal
Ralph Collipi, EHS Technical Support

⁸ 1987 SIC Manual at 15.