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October 19, 2012

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comments Regarding the 2012 Draft Industrial General Permit for Storm Water Discharges

Dear Ms. Townsend:

The Building Materials Industry (BMI) Storm Water Monitoring Group includes 170 facilities located in southern California that are subject to the Industrial General Permit ("IGP"). These facilities are engaged in the production of aggregate (sand and gravel), ready mixed concrete, asphalt, and other industrial materials. Sespe Consulting, Inc. acts as the Group Leader for the BMI Storm Water Monitoring Group.

Attached are BMI's comments to the 2012 Draft Revised IGP. We thank you for the opportunity to present these comments and look forward to working with the State Water Board to develop a permit that is practical and protects water quality.

Best regards,

A handwritten signature in blue ink that reads "Joseph L. King".

Joseph L. King, PE, CPESC
Vice President
Sespe Consulting, Inc.
Building Materials Industry Monitoring Group Leader

BUILDING MATERIALS INDUSTRY MONITORING GROUP

COMMENTS TO 2012 DRAFT IGP

October 19, 2012

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COMMENTS TO 2012 DRAFT IGP

October 19, 2012

1.0 INTRODUCTION

The Building Materials Industry (BMI) Storm Water Monitoring Group represents 170 facilities in southern California that are subject to the IGP. These facilities are engaged in the production of:

- Aggregate material (sand and gravel);
- Ready mixed concrete;
- Asphalt; and
- Other industrial materials.

BMI has reviewed the 2012 Draft NPDES General Permit for Storm Water Discharges Associated with Industrial Activities (hereafter “Draft Permit” or “2012 Draft”).

BMI sincerely appreciates the hard work of Board staff to prepare the 2012 Draft. This draft is greatly improved over the 2011 draft that was circulated. It is clear that Board staff has responded to industry’s comments and spent significant effort in addressing industry concerns and developing a permit that is more practical and provides greater clarity. Specifically, the following changes are a significant improvement from the 2011 draft:

- Removal of the Numeric Effluent Limits;
- Allowing facilities to not implement mandatory BMPs if they are inapplicable, infeasible, inappropriate, or exceed BAT/BCT;
- Developing inspection, monitoring, and sampling requirements that are practical;
- Inclusion of Compliance Groups; and
- Developing the Demonstration Technical Report “off ramps” to account for NAL exceedances that may be due to non-industrial sources, natural background, or where the facility meets BAT/BCT requirements.

However, we have some suggestions that we would like to see incorporated into the final permit to ensure that permit requirements can be met by regulated facilities. In summary, our major concerns with the IGP are related to:

- Permit Implementation Timing;
- QISP qualifications, training, and responsibilities;
- SWPPPs;
- SMARTS;
- Inspections and sampling; and
- Annual Reports.

Each of these is discussed in more detail in the following sections.

We appreciate the opportunity to present our comments and look forward to working with the State Water Board to develop a Permit that protects water quality and is reasonable for the facilities that must comply with it.

2.0 PERMIT IMPLEMENTATION TIMING

The Draft Permit contains “hard” dates for various compliance milestones. For example, facilities are required to prepare updated SWPPPs by July 1, 2013. As the Draft Permit has not been adopted, and the Water Board has no definitive timeline to adopt the Permit, this may leave a very short time period for facilities to develop and implement SWPPPs and train staff in the new compliance requirements. As an example, if the Board does not adopt the permit until March 2013, there would be three (3) months to develop SWPPPs and train staff. There is not enough experienced staff or consultants available to update the thousands of SWPPPs that will be required.

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Therefore, we recommend that the Permit be modified so that compliance dates are triggered based on the date of Permit adoption. For example, the deadline to update SWPPPs should be one (1) year after the Permit is adopted.

3.0 QISPs

We support the Board’s efforts to ensure a minimum proficiency of personnel responsible for storm water compliance. However, we have some concerns with the QISP program outlined in the 2012 Draft and some suggestions for improvement. Each of these is discussed below.

3.1 QISP Exemptions (“Licensees”)

The draft permit defines the following “Licensees” as automatically being a QISP I, II, or III:

- A California registered professional civil engineer;
- A California registered professional geologist; and
- A California registered certified engineering geologist.

The Draft Permit states that “due to their obligations to the California Board for Professional Engineers, Licensees will either have or obtain sufficient knowledge and expertise prior to performing the role of a QISP (Level I, II or III)” (Section IX.A.1, Footnote 3). While this may be true, engineers registered in other disciplines (chemical, mechanical, etc.) are also subject to California Board for Professional Engineers requirements. A chemical engineer is at least as qualified as a civil engineer to act as a QISP (consider identifying expected pollutants and proper sampling and analysis procedures). A mechanical engineer is at least as qualified as a geologist to act as a QISP (consider identifying preventive maintenance schedules for equipment at a fully-paved industrial facility).

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The Permit should be changed to allow any registered professional engineer to act as a QISP I, II, or III.

3.2 Training, Testing, and Registration

The Draft Permit states an individual (except Licensees) must attend a state-sponsored or state-approved training course, and a competency exam may be required in order to obtain QISP certification (Section I.I.47). The QISP training requirements should be clearly defined and explained prior to the adoption of the Permit. This includes defining any associated testing and registration requirements so that the public and regulated community has an opportunity to understand, and comment on, the requirements.

The Construction General Permit (CGP) also states that an individual must “attend” a state-sponsored or state-approved training course in order to be considered a QSD or QSP. However, after the CGP was adopted, the Board began requiring that, after taking the class, an individual also had to pass a test in order to be considered a QSD or QSP.

Furthermore, the State implemented a system that requires QSDs and QSPs to pay a fee (to a third-party, non-governmental entity) to “register” as a QSD / QSP.

To our knowledge, the testing and registration requirements were not publically noticed, nor were hearings held or comments taken on these issues.

3 Therefore, we strongly encourage the Board to include a full description of QISP certification requirements in a revised draft so that we may comment on it.

3.3 Test Out Provision

4 If passing a test will be a requirement to becoming a QISP, the Permit should contain a provision that allows people to take the test without having to take a class. If passing a test is used to determine competency in being a QISP, someone who is familiar with storm water issues, and has taken the time to understand the Permit and its requirements, should be allowed to take the test without having to spend several hundred dollars, and several days, to take a class.

3.4 Inactive Mining Operation Certification

5 Section XIII requires that a Civil Engineer perform Inactive Mining Operation Certifications. As these sites are inactive, and some sort of training and / or certification will be required for QISPs, there is no reason that these certifications cannot be prepared by a QISP II or III.

3.5 QISP I - Industry Sectors

6 Table 2 (“Role-Specific Permit Requirements (by Role)”) states that “a QISP I can only perform the QISP actions for 1 type of industrial activity.” This requirement is confusing and its purpose is unclear:

- If a QISP I works at a facility that has aggregate mining, concrete production, and asphalt production, he or she should be allowed to do storm water activities for all of these different types of industrial activity.
- If a QISP I is employed at a facility that is engaged in one type of industry, then switches jobs and begins working at a company that is engaged in a differently type of industrial activity, can he or she continue to perform QISP functions? Will he or she have to attend additional training? (This doesn’t seem likely as it doesn’t appear that the QISP training will be industry specific.)

The footnote to Table 2, and other references to this requirement, should be removed from the Permit.

4.0 SWPPPs

4.1 SWPPP Implementation Timing

The Draft Permit contains the following discussions of SWPPPs:

- Section II.D.3 states that “existing Dischargers shall implement necessary revisions to the SWPPP and Monitoring Program ... no later than the [sic] July 1, 2013.”
- 7 - Section II.G.1 states that “by July 1, 2014 ... all Annual Monitoring Reports and new or revised SWPPPs shall be: (a) prepared by a QISP I, II, or III...”
- Section IX.B states that “by July 1, 2014 ... Dischargers shall: (1) Ensure that the SWPPP was prepared by an appropriate level QISP.”

It is our understanding that SWPPPs can be prepared by individuals who are not QISPs prior to the July 1, 2013 deadline (because the QISP training program will not have been developed and there will be no QISPs).

The last two sections seem to be in disagreement. Section II.G.1 seems to state that a QISP is not required to update SWPPPs until after July 1, 2014 and then only if the SWPPP is new or revised. Section IX.B seems to state that SWPPPs prepared prior to July 1, 2013 will have to be recreated by July 1, 2014 by a QISP. This will result in the requirement that two different SWPPPs be prepared for each site in a period of less than a year. We do not believe that this is the Water Board’s intent.

We suggest that IX.B be removed from the permit entirely.

4.2 Mandatory BMPs – Design Storm Standards for Treatment Control BMPs

Section X.H.7 of the Draft Permit specifies design requirements for treatment control BMPs. This includes volume- and flow-based design criteria. Many mining facilities contain sediment basins that are used to contain storm water and / or control the level of pollutants in storm water discharges. Many of these basins have been in place for several years (or decades). Requiring that existing basins be redesigned to meet the criteria in the Draft Permit is not practical given the fact that this would take significant engineering and, in many cases, additional permitting. It is not reasonable to require that this be accomplished by the July 1, 2013 implementation date. In addition, the existence of many of these basins is codified in other environmental documents and permits (Conditional Use Permits, Reclamation Plans, EIRs, etc.) and modifying them is a significant undertaking with no demonstrated environmental benefit.

8 The IGP should contain a provision to “grandfather” existing sediment basins and other treatment control BMPs.

4.3 Relevant Plans

9 Section X.D.2.c of the Draft Permit requires that Dischargers “properly reference the original sources for any elements of existing plans, procedures, or regulatory compliance documents included as part of the SWPPP and shall maintain a copy of the documents at the facility as part of the SWPPP.”

A SWPPP may incorporate a number of other plans such as Hazardous Material Business Plans, Spill Prevention Control and Countermeasure (SPCC) Plans, Reclamation Plans, air quality permits, or internal procedures. Requiring that each of these be included as part of the SWPPP (and therefore uploaded into SMARTS) is an onerous task. At a complex facility, these documents are frequently being updated and revised. To include them in the SWPPP would require constant revision of the SWPPP document.

As other regulatory programs require that these documents be maintained and updated, we believe that referencing them in the SWPPP is sufficient and there is no need to include copies of them in the SWPPP document. Therefore, this requirement should be removed.

5.0 SMARTS

5.1 Availability of Information to the Public

The Draft Permit requires that facility, employee, and compliance information be submitted in SMARTS. We have a few concerns with this:

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- The Draft Permit requires that SWPPPs contain certain information (e.g. a list of significant materials) that may be proprietary information (although this information may not meet the legal definition of "trade secret"). The Permit should be revised to allow operators to omit information from their uploaded SWPPP that they do not want to make publicly available.

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- In addition, the Draft Permit requires that SWPPPs contain personnel information such as the name, phone number, and e-mail address of the QISP. There may be reasons that the QISP does not want this information to be available to the public. The Permit should be revised to allow operators to omit this information from the SWPPP that is uploaded into SMARTS.

5.2 SMARTS Availability

The Draft Permit requires that compliance information be submitted in SMARTS. However, there is no explanation of what a Discharger will be allowed to do if there is no access to SMARTS:

- What happens if SMARTS is not functioning when a Discharger is attempting to submit data?
- What if there is a widespread power outage?

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The Permit should have a mechanism that provides relief if SMARTS is not functioning and allow Dischargers to submit reports in hard copy if there is a natural disaster or other non-routine condition.

6.0 INSPECTIONS AND SAMPLING

6.1 Visual Monitoring and Sampling Safety

Section XI.C.5 of the Draft Permit states that "[s]ample collection and visual observations are not required under the following conditions:

- i. During dangerous weather conditions such as flooding or electrical storms; or,
- ii. Outside of scheduled operating hours..."

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While we appreciate the Board's concern for safety, we do not believe that this exclusion addresses all relevant scenarios. If a facility operates during hours of darkness, visual monitoring and sampling could be required at times when there is no natural light (e.g. if the first four hours of a storm are during hours of darkness). This could be dangerous depending on sampling and monitoring locations and how much light is available. **The Permit should be modified so that sampling and visual monitoring is only required during daylight hours.**

6.2 pH Testing

The Draft Permit requires that pH tests be performed in the field using a hand-held pH meter. While we realize that the EPA Test Method requires that pH tests be performed as soon as possible, we do not believe that field pH analysis with a hand-held meter is practical for operators, nor will it provide good data to the Board.

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Requiring facility staff to maintain, calibrate, and operate a pH meter in a manner that yields meaningful measurements is optimistic for many industrial facilities. **We believe that the permit should be modified to allow:**

- **The use of pH paper in the field; or**
- **The pH analysis to be conducted by an analytical laboratory. If runoff has a very high or very low pH, the pH is not likely to change significantly (e.g. from a pH above the NAL [e.g. 11] to a pH within the NAL range [e.g. 8.5]) over a one- or two-day holding period.**

6.3 Annual NAL - pH

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The Draft Permit describes an "Annual NAL exceedance" where "the Discharger shall determine the average concentration for each parameter using the results of all the sampling and analytical results for the entire facility for the reporting year" (Section XII.A). As you are aware, pH is calculated on a logarithmic scale. **The Permit should clearly state how to determine the average concentration for pH:**

- **Is it a simple arithmetic average of the pH values; or**
- **Is the Discharger responsible for converting the pH values to a concentration, averaging the concentration, and then determining the pH value of the average concentration?**

This same issue exists in the Construction General Permit (on a daily average basis) and there is no consistent guidance from the Water Board on how to calculate average pH.

7.0 ANNUAL REPORT PREPARATION

The draft permit requires that Annual Reports be submitted by July 15 (15 days after the end of the compliance year). While this is an improvement over the current IGP, which requires Annual Reports to be received on July 1 – allowing zero (0) days to complete the report – this is still insufficient time to prepare the Annual Report.

The 2012 Draft requires that Annual Reports be submitted in SMARTS and certified by the LRP. The process of preparing the Annual Report will take significant time, especially if outside resources (e.g. consultants) are needed. For example, in 2012, there were nine (9) working days between the end of the storm water year (June 30) and July 15 (assuming only one day is taken off for the 4th of July holiday). This is the time of year when people are on vacation, and there are a number of other July 1 regulatory deadlines. Nine (9) working days to gather the relevant information, submit it in SMARTS, and have the LRP certify it is insufficient.

Therefore, we request that the Annual Report due date be September 1, the same date that is used in the Construction General Permit.

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During one of the workshops held by Board Staff regarding the 2012 Draft, it was stated that “you can submit your Annual Reports early.” We do not believe this to be an appropriate course of action or prudent advice. While we haven’t seen the new Annual Report, we imagine that it includes some sort of certification statement that the information provided is “true, accurate, and complete” (as is required in other reports submitted to the Water Board). If an Annual Report was submitted on June 15 (prior to the end of the compliance year), and a storm event occurred on June 28, the LRP / operator would be subject to liability for having certified data in the Annual Report that was not complete. (Submitting an Annual Report prior to July 1 is akin to submitting one’s income taxes in December.)

Again, we appreciate the Board’s efforts in preparing this latest draft of the permit and look forward to resolving the issues presented.