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the City of Los Angeles

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October 22, 2012

#64



Ms. Jeanine Townsend
Clerk to the board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

Re: Comment Letter – Draft Industrial General Permit

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the Draft Industrial General Permit (Draft Permit). LADWP acknowledges the work of the State Water Resources Control Board (Board) staff in developing this Draft Permit. It is particularly appreciated that the Board has convened informative workshops to better understand the Board's intention and direction in assessing the impacts to storm water runoff from industrial facilities.

Overall this Draft Permit is an improvement from the last draft with a more focused approach in achieving the industrial storm water goals. The Draft Permit compliance pathway is clearer to the discharger. LADWP supports the Board's decision not to include Numeric Effluent Limitations (NELs), and LADWP also supports the inclusion of a design storm. These changes have improved the 2012 Draft Permit from the 2011 version.

However, there are still issues that LADWP believes warrant additional revision, as detailed below.

LAWDP respectfully submits the following comments on the Draft Permit:

1. Numeric Action Levels (NALs)

1 LADWP recognizes the need to better measure and regulate BMP efficiency in regards to preventing storm water pollution; however the shift from a performance based approach to a numeric method is not reasonable for storm water discharges due to the randomness of storm events and natural background concentration of pollutants in regional and local areas.

First, storm events are random, and there is great variation in the amount of precipitation from year to year due to the cyclical nature of the weather patterns which are highly unpredictable. In addition, the duration of the storm events varies from year to year, and

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the time between subsequent storm events will also change. Therefore the pollutant loading in the storm water will vary greatly making it difficult to comply with any set NAL or benchmark. As we know, climate change will have a big influence in the storm patterns and precipitation and therefore, the amount of pollutants captured or discharged via storm water runoff will vary from year to year and past patterns in storm events may not be repeated in the future. That is the primary reason that storm water permits have always been performance - based and have not utilized based on numeric limits. It is difficult to determine or size a best management practice (BMP) to meet a national benchmark or NAL, as any NAL would need to be derived from studies done regionally and locally. Additionally, BMP performance can be variable – while BMPs do improve water quality significantly, use of BMPs does not assure that a specific number will always be attained in BMP effluent.

The Blue Ribbon Panel of Experts (PANEL) stated the need to make progress in monitoring and reducing pollutants in industrial storm water discharges, but also acknowledged that California could potentially be unduly penalized by adopting NALs based on a national database. By adopting NALs in the Draft Permit that have been based on national data and have the potential to lead to enforcement actions, LADWP believes the Board is implementing a program without the appropriate or sufficient data. It may take several years of specialized studies to correlate the relationship between BMP implementation and industrial storm water quality for the various industrial activities. In the meantime dischargers could be forced to implement costly structural and source reduction techniques that are not feasible to demonstrate compliance with the proposed NALs in this Draft Permit; these solutions may not be feasible or sustainable in the long-term.

For example in a semi arid desert region such as Southern California where storm events exhibit a very high degree of variability (i.e. seasonal variation, duration of storm, time between subsequent storm events and sample collection time after the onset of a qualified event), it would be difficult to correct a BMP and demonstrate compliance. Should a second exceedance occur in any subsequent year for that same pollutant, per the Draft Permit, the discharger would be elevated to a Level 2 Status, which requires costly Structural Source Control and/ or Treatment BMPs. If a discharger chooses at this point to do a Demonstration Technical Report (DTR) to prepare a Natural Background Demonstration or a Non-Industrial Pollutant Demonstration, over a year may be required to gather sufficient data for these reports due to the infrequent occurrence of qualified rain events in the Southern California region.

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Secondly, the Draft Permit proposes two NALs; one is an annual NAL, based on the 2008 MSGP benchmark value for all parameters, and the other is an instantaneous maximum applicable for some parameters.

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The use of the national MSGP benchmarks for the purpose of establishing NALs is also not feasible due to the background / ambient conditions in some hydro geologic zones that contribute pollutant loadings that would significantly contribute to, if not exceed, the NAL concentration. As discussed further below, in some areas, these conditions are well

known, and a permittee should be allowed to provide information establishing this fact well prior to being assigned to Level 2.

- 4 As noted on pp. 10-11, the Draft Permit proposed includes NALs. The facility with storm water monitoring data that exceeds these levels would be required to implement measures aimed at reducing concentrations of the constituents responsible for the exceedance. However, there is no data that supports NALs can be met consistently with current technology. Therefore, the facility must blindly implement BMPs hoping for a solution, wasting scarce resources and in the end receive a violation for its efforts with the responsibility of finding a solution or being further fined when the NAL may not be feasible due to background and ambient background levels.

The NALs proposed in the Draft Permit are inadequate for several reasons.

As mentioned above, there is no evidence that the annual NALs as stipulated in the Draft Permit can be met with current BMP technology. Neither USEPA or the State Board have assessed whether or not available treatment and control technologies are capable of meeting these limits. In fact, available evidence suggests that even the state-of-the-art treatment technologies cannot consistently meet the proposed NALs in the Draft Permit. For example, field testing performed by Washington Department of Ecology (Taylor Associates 2008) resulted in the adjustment of the originally proposed benchmark value for copper of 14 ug/L. The benchmark value was used in one of the State of Washington's general permits and was derived without consideration of technological capabilities, similar to the copper NAL of 33.2 ug/L proposed in the Draft Permit. This low limit was adjusted upward to a seasonal average benchmark of 50 ug/L and a daily average benchmark of 147 ug/L. In effect, the State of Washington concluded that the best available technologies were not capable of achieving a benchmark value for copper in storm water discharges that were any lower than 50 ug/l.

- 5 In addition, while the technical basis of the instantaneous maximum NALs (IMNALs) for TSS and Oil & Grease seems clear (i.e., 7 – 8% of samples exceed these values) and reasonably defensible, the basis of the IMNAL for pH is not. The Draft Permit Fact Sheet, page 47 explanation reveals several problems with the pH IMNAL. It states that the pH NEL associated with the Construction General Permit (CGP) was challenged and overturned – thus the proposed IMNAL for pH does not equate to a pH range that “has already been established for storm water discharges in California”.¹ Also, rainwater is usually more acidic and not in the neutral range and therefore would be frequently outside the proposed NAL for pH. Thus, the scientific basis of the IMNAL for pH seems inadequate based on the language of the Draft Permit.

Further, the pH IMNAL and the Annual NAL are not based on California specific data. Before establishing NALs, the Board should collect additional data to demonstrate the

¹ California State Water Resources Control Board Draft General Industrial Storm Water Permit, page 47.

typical range and what would be a feasible NAL. Ultimately, the NALs must be set at levels that are demonstrably achievable for California industrial dischargers.

6 With regards to background concentrations, the Draft Permit is structured such that if the concentration of a relevant pollutant in the storm water is discharged from an industrial facility exceeds an NAL, the facility moves from the status of Baseline Status to Level 1 for that pollutant. At Level 1 status, the discharge is required to evaluate the facility's storm water pollution prevention plan (SWPPP) and any sources of industrial pollutants at the site with the aim of identifying "whether additional operational source control BMPs and/or SWPPP implementation measures are necessary to prevent or reduce all industrial pollutants in industrial storm water discharges in compliance with BAT/BCT" (ref, Draft Permit, Page 46). If a discharger is in Level 1 status for a given pollutant and the NAL for that pollutant is exceeded in any subsequent reporting year, then the discharger moves to Level 2 status for that pollutant.

In Level 2 status the discharger is again required to evaluate the SWPPP and pollutant sources and to identify structural measures that may be taken to reduce pollutant levels. Additionally, the Draft Permit specifies that under relevant circumstances, a discharger in Level 2 status may submit Demonstration Technical Reports (DTRs) showing that relevant pollutants originate from sources not associated with the industrial activities at the site. For example, the discharger may submit a Non-Industrial Source Pollutant DTR that shows that the relevant pollutants are generated off-site and make their way to the industrial facility in storm water run-on, or that the relevant pollutants arrive at the facility via aerial deposition. Similarly, the discharger may submit a Natural Background DTR that shows that the NAL exceedance is attributable to natural background pollutant concentrations.

Given that non-industrial sources (e.g. aerial deposition, natural background) are often significant, LADWP commends this aspect of the Draft Permit. However, the Draft Permit would be improved if industrial dischargers had the opportunity to submit such DTRs at a Level 1 status as well as at Level 2. In circumstances where the industrial discharger has strong existing evidence to indicate that on-site industrial activities are not responsible for NAL exceedances, it would be far more efficient and economical for the discharger to submit the relevant DTRs as part of Level 1 status. Thus, the Draft Permit should allow for this option.

Suggestion for
Comment 3

Due to the local and regional variable nature, randomness, and unpredictability of storm events, LADWP recommends that the State Board 1) commence local and regional studies on common pollutants, the background and ambient levels of those pollutants in order to establish appropriate NALs; and 2) establish local and regional working groups to study different types of technologies and pollutant reductions; and 3) commences studies of the efficiency of BMPs employed at California industrial sites; and 4) allow for DTRs as part of the Level 1 status.

Suggestion for
Comment 4

2. Sampling Frequency

7 LADWP understands the need to obtain more data, but increasing the sampling frequency from two storm events a year to once per quarter is not feasible. As mentioned in comment #1 above, storm events are variable, especially in the Southern California region. In an arid desert region such as Southern California, there may be two to three storm events in the October through April (i.e., the wet season) that produce enough runoff to obtain a sample. There is rarely enough rain if any, during the third and fourth quarters. Qualified rain events that produce enough runoff to obtain a sample usually begin around January to February and may last until the end of April. There just won't be any rainfall in an arid desert region to take samples once per quarter.

8 The higher sampling frequency is also redundant in instances where the facility has demonstrated performance results that are consistently lower than the NAL limits. The current language allows for sampling frequency reduction if the discharger has taken samples in eight (8) consecutive quarters where Qualified Storm Events (QSEs) occurred that produced a discharge. In southern California it is highly unlikely to have a QSE once per quarter, and so it is highly unlikely that a frequency reduction could ever occur.

Therefore, LADWP recommends that the sampling frequency remain as is in the current permit, and a reduction of sampling for dischargers that have demonstrated at least four cumulative samples with no violation of a NAL be allowed to reduce sampling to the first QSE of the season (after October 1).

3. Qualifying Storm Event

LADWP believes it is unwarranted to change the definition of a QSE for the industrial storm water permit. LADWP believes the QSE should be consistent with the CGP as it becomes extremely confusing for holders of various permits to have different and potentially changing definitions of a QSE. Furthermore, LADWP believes the new definition of precipitation of 1/10 of an inch will most likely not produce enough rainfall to generate flow from many discharge locations. LADWP believes attempting to sample under low flow conditions will ultimately lead to contamination of samples, or to poor sample collection techniques as this threshold will require the collection of samples when there is very little flow present.

For the reasons stated above, LADWP recommends that the QSE definition for the industrial storm water permit be the same as that already established in the CGP.

4. Minimum BMPs

10 The Draft Permit provides minimum BMPs; currently, implementation of these BMPs serves as the basis for compliance with Best Available Technology (BAT) and Best Control Technology (BCT). For the type of Industrial facilities most represented with the Draft Permit, this may be sufficient and the discharger is allowed to work with any

combination of these BMPs if it only has a first exceedance with the NAL. However, should a discharger have a subsequent exceedance with an NAL for the same pollutant, as mentioned in comment #1 above, the discharger would be required to utilize costly structural controls without knowing if these technologies reduce the pollutant below the NAL.

Therefore, LADWP recommends that the SWRCB conduct additional studies, to quantify the efficiency and consistency of BMPs that are likely to be employed at industrial sites in California that have the potential to meet the stipulated NALs.

5. Training Requirements

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The Permit states that licensed civil engineers or geologists have professional overlap with topics of this General Permit and are not required to take the QISP training to obtain the status of being a QISP (ref, Draft Permit, Fact Sheet , pg. 25). However, LADWP would like clarity as to which licensees qualify for professional overlap. At LADWP there are employees with many classifications that do not hold a professional license but who are capable of adequately administrating this permit. LADWP invested quite bit of resources for environmental staff, who had past experience in developing storm water pollution plans and implementing BMPs, obtain the national certification for Professional in Storm Water Quality (CPSWQ). The CPSWQ is an accepted pre requisite to the Qualified Storm Water Developer (QSD) for the CGP. This certification requires related education, professional experience, references and an examination as well as continued education credits. It should also be allowed the same status as the professional civil engineer and geologist for being recognized as a QISP and not have to take additional training.

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Furthermore, there is currently no timeline for establishing the State required classes for the QISP. Since these classes are not developed or available, LADWP believes the July 2013 date in the permit is not practical. As with the CGP it was difficult to get training due to lack of availability, which led to an inflated financial burden on permit holders since courses had to be privately contracted before the deadline in order to be in compliance with the CGP.

Suggestion for
comment 11

LADWP recommends that 1) the CPSWQ be recognized in the new Industrial Storm water permit as an accepted pre requisite to be a QISP without further training, and 2) the effective date for the requirement of the QISP be delayed until the training has been developed and is available for the permit holders.

Suggestion for
comment 12

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6. TMDL Implementation

The Draft Permit currently provides that "Dischargers are not required to take any additional actions to comply with the TMDLs listed in Attachment D until the State Water Board reopens this General Permit and includes TMDL-specific permit requirements, unless notified otherwise by a Regional Water Board. TMDL-specific permit requirements are not limited by the BAT/BCT technology-based standards."

LADWP suggests that the SWRCB should include permit provisions that allow a permittee to meet TMDL requirements by implementing BMPs, provided that the permittee demonstrates that a BMP-based approach is expected to provide significant water quality improvement for the TMDL constituents at issue.

14 **7. Annual Reporting**

The Draft Permit requires the annual report to be uploaded into the SMARTS by July 15. LADWP believes that this is inadequate time since there are requirements due in the last quarter including the annual comprehensive evaluation which is usually not completed until the end of June.

LADWP recommends that the State Board allow until September 15, 45 days after June 30. This time frame is consistent with all other NPDES permit reporting.

In closing, LADWP looks forward to working with State Board staff with the renewal of this permit. Should you have any questions regarding this letter, please contact Ms. Charlynn Rachell of the Wastewater Quality and Compliance Group at (213) 367-2976.

Sincerely,



Katherine Rubin
Manager of Wastewater Quality and Compliance

CR:ms

- c: Mr. Charles Hoppin – Chairman, SWRCB
- Ms. Fran Spivy - Weber –Vice Chair, SWRCB
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