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September 18, 2012

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, California 95814
Sent via email to: commentletters@waterboards.ca.gov



Subject: Comment Letter – 2012 Draft NPDES Industrial General Permit

Dear Ms. Townsend:

This letter serves to provide written comments on the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit) Draft Version dated July 18, 2012. We have developed these comments based on over 20 years of experience implementing storm water pollution prevention plans (SWPPPs) for more than 300 industrial facilities and otherwise implementing California storm water Industrial General Permit requirements, as well as input from our clients regarding their experiences in complying with these requirements.

We appreciate your consideration on the public's comments and concerns on specific conductance and its removal in the current Draft Permit.

We appreciate your review and consideration of our comments on the items below related to the 2012 Draft NPDES Industrial General Permit.

Limitation of Two Professional Registrations Exempted from QISP Training

Currently, the following are proposed professionals exempted from all three levels (I through III) of QISP training: California registered professional civil engineer and California registered professional geologist or engineering geologist.

In our experience, an environmental professional developing an industrial facility SWPPP must have expertise with environmental regulations and management of hazardous materials and wastes, whereas general knowledge of civil engineering or geology may not be applicable or completely relevant. In the 20 years since the regulations were passed, a variety of environmental professionals in California have successfully developed SWPPPs for industrial facilities.

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1 Bureau Veritas recommends that the Board also designate the following professional registrations be exempted from all levels (I through III) of QISP training:

- Registered Professional Chemical Engineers.
- Environmental Professionals, as defined by the US EPA per 40 CFR 312.10, with the appropriate experience in developing industrial facility SWPPPs.

Limitation for the Legally Responsible Person (LRP)

The Draft Permit includes a requirement for the LRP of a facility to submit the quarterly reports in conjunction with the annual report via SMARTS. It may be difficult for the LRP of a facility, for example the vice president, to submit the quarterly and annual reports given the time constraints, frequencies of the reports, and possible scheduling conflicts that may occur.

2 We request that the Board consider including the ability for the LRPs to assign this responsibility to a delegated responsible person. The construction Permit allows for this type of delegation, for another person or position to submit the quarterly and annual reports via SMARTS on behalf of the LRP.

Limitation for Sampling Frequency Reduction

The Draft Permit includes requirements for sampling frequencies and the possibility for a facility to reduce its sampling frequencies from four times a year (once per quarter) to only the first qualifying storm event after October 1 of each reporting year. This sampling reduction frequency is applicable for facilities that do not have a NAL exceedance for eight consecutive quarters. Facilities that have sampling data without an exceedance for the past two years under the current General Permit do not see the logic behind having to commence sampling four times a year for eight consecutive quarters from the adoption date forward to be eligible for the sampling frequency reduction.

3 We request that the Board consider allowing facilities to utilize historic analytical data and be eligible for the sampling frequency reduction from the adoption date forward instead of having to collect samples four times a year and waiting two years before being eligible for the sampling frequency reduction. Facilities can compare the historic analytical data to the new proposed benchmarks in the Draft Permit to determine whether they were in compliance with the new proposed benchmarks and apply for the sampling frequency reduction if they meet the new proposed benchmarks for pH, total suspended solids, and oil & grease from the adoption date forward.

Limitation for Annual NAL Exceedance

The Draft Permit includes an annual NAL exceedance procedure for facilities to follow and determine if they are in compliance with discharge limits. The procedure requires averaging four quarterly sample results within a reporting year and comparing it to the proposed annual NAL benchmarks. The annual NAL benchmarks are lower than the instantaneous NAL benchmarks.

It is possible for facilities to experience a qualifying storm event for one or two quarters and no additional qualifying storm event for the remaining quarters due to weather patterns in California, timing of discharge, and operating business hours. This would result in the annual NAL being averaged from one or two sampling events rather than four. Facilities are concerned that averaging data from one or two



sampling events may result in an exceedance of an annual NAL benchmark since the annual limits are lower than the instantaneous limits. Whereas, if a facility was allowed to average data from four sampling events (even if over two consecutive years), the data would be more representative of the longer term conditions at the facility.

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We request that the Board consider allowing facilities to average data from the four most recent sampling events rather than average sampling data within the reporting year if the facilities experienced less than four qualifying storm events in the reporting year. This should reduce the likelihood of a facility having to report an annual NAL exceedance based on an analytical data point which may be a potential statistical outlier. Statistically, having more analytical data points (even if over two consecutive years), will allow facilities to avoid having outliers skew the data evaluation and limit the number of facilities that will be required to notify the agency for exceeding an annual NAL benchmark.

Limitation for Sample Location Reduction (SLR)

The Draft Permit allows facilities to combine sampling locations that are similar in physical characteristics. Large facilities may find it difficult to collect samples from numerous discharge points onsite even with the proposed less stringent time constraint of collecting samples within the first four hours in comparison to the current time constraint of collecting samples within the first hour of discharge.

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We request that the Board consider including in the sample location reduction an option to allow facilities that have multiple discharges with similar physical characteristics to perform alternate representative sampling for each quarter. For example, if a facility has four discharge points with similar physical characteristics, it can collect samples from two discharge points for one quarter and collect samples from the other two discharge points in the following quarter as representative samples of all four discharge points.

Limitation for Qualifying Storm Event (QSE)

The Draft Permit includes the definition of what is considered as a QSE. Under the new definition, facilities are required to have an onsite rainfall measurement device. This creates a cost burden for facilities that currently do not own a rainfall measurement device. Based on a limited internet search, a rainfall measurement device can range from a complicated device priced at \$1,000 to a simple device priced at \$20.

In addition, one of the requirements for a QSE is a minimum of 1/10th inch of rainfall. There are storm events that produce runoff from some facilities with less than 1/10th inch of rainfall while in other facilities, having a storm event with a minimum of 1/10th inch of rainfall may not produce runoff.

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We request that the Board consider removing the minimum of 1/10th inch of rainfall requirement and replace it with language that instead references a storm event that produces runoff. This will eliminate the need for purchasing, installing, and maintaining a rainfall measurement device and reduce the cost burden for facilities currently without a rainfall measurement device. If the QSE retains the 1/10th inch minimum rainfall requirement, we request the Board consider the following items:



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- Clarify what is the minimum standard for a rainfall measurement device to minimize the potential cost burden for facilities without such a device. Will the only requirement for a rainfall measurement device be its ability to measure 1/10th inch of rainfall?
 - Allow flexibility in terms of the rain gauge requirement. A facility could either purchase a rain gauge or use an acceptable alternative. For example, facilities located close to a local weather station can monitor the weather for a QSE using the local weather station or an acceptable online weather tracking website (i.e., weatherunderground.com) in lieu of a rain gauge. Additionally, there are facilities located along the coastal area of California that may receive false information from a rain gauge due to potential condensation in the rain gauge from coastal fog. By allowing facilities to elect an alternate method in determining a QSE, facilities can minimize the potential cost burden of purchasing a rain gauge and monitoring the gauge as well as the potential cost burden due to acting on a false positive registered during use of a rain gauge.

Clarification on Notice of Non-Applicability (NONA)

The Draft Permit includes an option for facilities to apply for a NONA if they do not discharge to waters of the U.S.

We request some clarification on the NONA that includes:

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1. Does the facility have to self-recertify or be re-certified by a professional engineer every year that it does not discharge to waters of the United States?
 2. If a facility has an SIC Code that would otherwise require a SWPPP but its industrial activities take place indoors, would it be required to submit an NOI, prepare a SWPPP, and apply for an NEC or can they apply for a NONA to be excluded from coverage under the Draft Permit?

Responsibility of Co-Tenants

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We request that the Board clarify the requirements that would apply to facilities where part of the facility is leased to tenants. For example, if a facility contains a utility-owned transformer or a tank owned/operated by another company, or another company performs industrial activities that would be covered by the Draft Permit, would the facility have to address the minimum BMPs for the utility-owned transformer, tank or other activities owned/operated by others? If so, what liabilities are there for the facility owner? Who is considered the LRP for the utility-owned transformer, tank or activities owned/operated by others?

Increased Reporting Costs for Compliant Businesses

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The Draft Permit includes requirements to perform monitoring and sampling more frequently than is currently required. This will require significantly more time for industrial facilities to perform inspections, collect and analyze samples and evaluate data. Our clients are understandably concerned that this places a new burden on currently compliant facilities. On our clients' behalf, we request that the Board review this requirement to determine if increased monitoring requirements will have a beneficial effect for the environment sufficient to justify the additional burden to compliant businesses.



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Public Access

The Draft Permit requires all facilities to submit their quarterly and annual report via SMARTS which is open to the public. Our clients have raised several concerns in terms of having the public be allowed access to files that were typically not publicly available. These concerns include:

- Facilities may be forced to screen more information that it lists in its SWPPP such as details about minor spills in order to avoid being scrutinized or misinterpreted by the public.
- Facilities will be subjected to additional labor costs to mark confidential information from their reports and SWPPP. Information included in the reports or SWPPP may be considered trade secrets that facilities would prefer to keep confidential.
- If facilities mark certain information on their reports or SWPPP as trade secret, how will the information updated to SMARTS be able to protect their business. How can specific pages be removed from the public's view. Will the facility have to develop a separate document that does not include all regulatory information since it excludes some confidential information?
- Reports or SWPPP information can be read incorrectly or misinterpreted by inexperienced readers, especially related to analytical laboratory results or federal and state regulations.

CLOSING

If you have any questions, please contact me at (925) 426-2681 or via email at mike.zimmerman@us.bureauveritas.com.

Sincerely,

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National Practice Leader - Environmental Compliance
Health, Safety, and Environmental Services