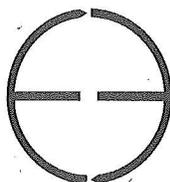


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California Council for Environmental and Economic Balance

Public Comment
Industrial General Permit
Deadline: 10/22/12 by 12 noon

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October 22, 2012

#14

Chairman Charlie Hoppin
Members of the State Water Resources Control Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Via email: commentletters@waterboards.ca.gov

RE: Comments Regarding the 2012 Draft National Pollution Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Industrial Activities

Dear Members of the California State Water Resources Control Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the Draft Industrial Storm Water General Permit (Draft IGP).

CCEEB supports the re-issuance of this general permit and a robust public process to thoughtfully develop this permit regardless of timelines. CCEEB continues to have concerns that this draft still contains overly prescriptive and economically unsound requirements and concepts that were previously determined to lack the necessary scientific and legal justification. Additionally, while a cost of compliance analysis was performed, no cost-benefit analysis has been performed to substantiate such an increase in compliance requirements for this permit.

Substantial Expansion Beyond US EPA's Multi-Sector General Permit (MSGP)

The Draft IGP contains a substantial increase in sampling, standards, certifications, responses, and monitoring from the MSGP. California may need to include additional requirements in the IGP, yet the proceedings up to this point have failed to demonstrate the need for requirements that are four times more stringent. During the two staff workshops in Southern California (February 23, 2011 in Irvine and August 8, 2012 in Diamond Bar), SWRCB management stated that "the MSGP requires X, and so we decided that 4X was a good baseline for this permit." As such, CCEEB believes the Draft IGP requirements are overly ambitious and will cause a financial and operational burden on permit holders.

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The following table provides a list of concepts that exist in both the Draft IGP and the MSGP, plus a comparison of the relative requirements of the two permits.¹

Concept	MSGP	Draft IGP
Routine sampling of storm events	1/year	4/year
Number of samples required to demonstrate compliance	Quarterly monitoring until within compliance levels. Minimum of one sample.	8 consecutive samples
No Exposure Certification filing	1/five years	1/year
Requirement for No Exposure Certification	Form	Form plus site map
Exceedance Response Actions process	Simple	Complex, and heavy on administration tasks
Compliance with BAT/BCT/BPT standards	Compliance is satisfied through enrollment in the permit as a whole	Compliance must be demonstrated on a site by site basis; this is a new approach for BAT/BCT/BPT standards
Receiving water limitations	“discharge shall not cause a violation of an applicable WQS”	“discharge shall not cause or contribute to a violation of an applicable WQS”
Inspection triggers	Periodic inspections	Must track weather constantly, and storm event inspections are easily triggered by small storm events

1 Based on the of the research and public review that have gone into the development of the MSGP, the demonstrated improvement in water quality resulting from the MSGP’s implementation, and the dire condition of California’s economy, CCEEB recommends that this iteration of the Draft IGP closely follow the requirements of the MSGP. This reduction in administrative burdens will allow California’s industries to apply the new requirements and concepts of the Draft IGP while still operating their business efficiently, economically, and in a way that is protective of the environment. Furthermore, this will allow the State Water Board staff to evaluate the effectiveness of the new regulations during the permit term, and re-address the frequency during the next permit development process.

¹ Southern California Edison’s October 19, 2012 Comments Regarding the 2012 Draft National Pollution Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Industrial Activities

Numeric Action Levels (NALs) and Exceedance Response Actions (ERAs)

CCEEB supports the removal of Numeric Effluent Limitations (NELs) from the Permit. However, we caution that the Numeric Action Levels (NALs) listed in the Draft IGP cannot be converted into NELs in the future, as this was not the U.S. Environmental Protection's (EPA) intent in providing "benchmarks." EPA guidance clearly states that benchmarks are but one of many tools for assessing the effectiveness of Best Management Practices (BMPs). CCEEB concurs with the Board's position that it is infeasible to establish NELs at this time and that significant additional data and assessments are needed before such limits can be established.

- 2 We find that the Exceedance Response Actions (ERA) process is overly complex and difficult to understand. Most dischargers have been collecting data for years and as such, should be provided the opportunity to submit a Demonstration Technical Report (DTR) at Level 1 status when exceedances are known to be caused by natural background or non-industrial sources. In addition to the inclusion of a design storm for treatment control BMPs, CCEEB recommends specifying the same storm event in the ERA section of the Permit, which does not appear to reference a design storm event. 3 In the interest of consistency (and to avoid confusion), we would recommend that the Section XII. also specify the same design storm event. The Permit should explicitly limit data used in assessing NAL exceedances to data collected from storm events that do not exceed the Design Storm event specified in the permit (i.e. the 85th percentile storm, or the initial portion (up to and equal to the volume of the 85th percentile storm) of larger storms). Without this clarifying language, there could be a mismatch between the event magnitude required for treatment controls, and that required to assess the need for additional controls in the ERA process.
- 4 Further, Level 1 status should be extended to a two year period in order to evaluate the effectiveness of the changes in operational BMPs prescribed by the DTR. There is no process defined in the Draft IGP for Regional Water Quality Control Boards to concur or approve significant and costly structural BMPs prior to the discharger installing said BMPs. CCEEB 2 supports the use of a process similar to that described in EPA's Multi-Sector General Permit (MSGP), which is less prescriptive yet still benefits water quality.

Background/Ambient Conditions

- 2 CCEEB recommends that the SWRCB add language to clarify background/ambient conditions and the Natural Background DTR. The new draft permit states "natural background pollutants include those substances that are naturally occurring in soils or groundwater." This should be broadened to include sediments, atmospheric depositions, and ocean waters. For example, windblown salts and sediments from coastal areas have a significant effect on storm water analysis. In addition, the Natural Background DTR process should be simplified and examples of expected or typical demonstration reports should be provided.
- 5 The administrative burden of the tasks, particularly ERA level 2, is laborious and should be reduced to a less punitive level. The language contained in the permit states that in some cases treatment or structural BMPs must be installed. However, in many cases, a new BMP may not be

the best solution. The permit needs to provide flexibility for evaluating sources, identifying solutions, and meeting the requirements that do not automatically require capital investments.

No Discharge Exemption

6 No Discharge Exemption was removed between the 2011 Draft and the 2012 draft. A large storm size should be defined for meeting this exemption, because it is infeasible to say that a facility will never discharge. A specific storm event (e.g. 50-year 24-hour or 100-year, 24-hour) should be provided to give dischargers a benchmark for designing their sites. The removal of the No Discharge Exemption is expected to have the unintended effect of discouraging dischargers from keeping their discharge onsite, and could result in increased flows leaving sites in general.

A discharger that has built a basin to contain the 100-year storm has a vanishingly small chance of discharging in any given year, and is unlikely to discharge during the permit term. Additionally, the cost incurred to design and build a large basin should be considered when comparing the risk to water quality, and requiring this discharger to seek permit coverage does not consider the protection provided by the large basin. As an example, for a 50-acre facility, a 100-year flood basin may cost \$50,000 to design and an additional \$500,000 install, but the requirement to seek permit coverage would remove the incentive to construct a facility like this.

Total Maximum Daily Loads (“TMDLs”)

7 CCEEB recommends that industrial stormwater-related TMDL-specific requirements first be incorporated into the permit before those requirements become enforceable against Dischargers. Language contained in Section V.C. exposes Dischargers to premature and inappropriate administrative or third party actions to enforce TMDL requirements before the TMDLs are clarified for application to specific industrial stormwater dischargers, and before those refined requirements are incorporated into the Permit.

Qualified Industrial Storm Water Practitioner (“QISP”) Requirements

CCEEB believes that the three levels of QISP personnel included in the Draft IGP are overly burdensome. The three levels have substantial room for interpretation, and create a complex system that is unlikely to improve water quality. We suggest eliminating one of the QISP levels, and using the Developer/Practitioner concept from the Construction General Permit (CGP), which has worked out well and is now a familiar approach.

8 The timeline for implementing the QISP requirements for training and certification is overly ambitious. SWRCB staff has indicated that there may not be sufficient time between when training becomes available and the Permit’s effective date. The time required to partner with CASQA to create training, conduct classes and certify trainers will exceed the one-year timeframe allotted for the process in the Draft IGP. The IGP should allow for the development of training and the certification process for QISPs and set a separate effective date for the QISP requirements.

8

The underlying certifications for the QISP are overly exclusive. We suggest including the Certified Professional in Storm Water Quality, Chemical Professional Engineer (PE) and Industrial PE in the list of approved certifications. The permit should be revised to state that California State certified lab personnel that conduct stormwater sampling for facilities covered by the Draft IGP are not required to obtain QISP training.

Confidential and Proprietary Information

10

CCEEB members have expressed some concerns that information required in the SWPPP, which will be submitted electronically through SMARTS, may result in the release of confidential information that needs to be protected. The primary concern stems from the electronic filing of the SWPPP. In comparison, the MSGP requires only that the discharger have the SWPPP available at its facility upon request. Electronic filing of maps of specifics on chemicals at a facility covered under an IGP is not desirable. CCEEB recommends that the IGP not require the detailed SWPPP to be filed electronically.

Qualifying Storm Event

This Draft IGP defines a qualifying storm event as one that occurs “from a storm event that has produced a minimum of 1/10th inch of rainfall within the preceding 24 hours as measured by an on-site rainfall measurement device, and from a storm event that was preceded by three consecutive days of dry weather.” Also, dry weather is defined as “72 consecutive hours of less than 1/10th inch of rainfall as measured by an on-site rainfall measurement device.”

11

The qualifying storm event from the CGP is 1/2 inch. This storm size is sufficient to trigger inspections for storms that have a possibility of producing runoff. The 1/10 inch storm event will almost never produce runoff, and time spent conducting storm-event triggered inspections will cost dischargers time and labor, with minimal corresponding improvement in water quality. Please provide justification for selection of 1/10 inch as the qualifying storm event.

Design Storms

12

CCEEB agrees with the Draft IGP’s use of an 85th percentile, 24-hour storm event as a design storm for treatment control BMPs (Section X.H.7.a), given that this definition is consistent with guidance found in CASQA’s BMP handbook. We also concur with the inclusion of the option to use local historical rainfall records to calculate the maximum water flow needed to be treated for flow-based treatment control BMPs (Section X.H.7.a). However, this option does not appear to be available for volume-based BMPs in the Section X.H.7.b. CCEEB requests that the use of local historical rainfall records also be allowed as a basis to calculate water volume for volume-based BMPs.

Receiving Water Limitations

Section VI.A regarding receiving water limitations states that:

“Dischargers shall ensure that industrial storm water discharges and authorized non-storm water discharges (“NSWDs”) do not cause or contribute to an exceedance of any applicable water quality standard (“WQS”) in any affected receiving water.”

13 In the interest of consistency, CCEEB requests that the phrase “or contribute” be removed from Section VI.A. since this language is not found in the current version of EPA’s MSGP and the CWA provisions related to receiving waters. As with other NPDES permits, we believe that full compliance with the Draft IGP and related provisions and BMPs implies that a Discharger will not be contributing to (or responsible for) violations in WQS of receiving waters.

The Water Quality Based Corrective Actions section of the Draft IGP (Section XX.B.1.) outlines the measures that have to be taken when a determination is made by the Discharger or a written notification is provided by the Regional Board that industrial storm water discharges and/or authorized NSWDs contain pollutants that are “in violation” of a Receiving Water Limitation.

13 CCEEB requests that the phrase “in violation” be removed from Section XX.B.1. and replaced with “may otherwise exceed.” Violations of receiving water limits are difficult to substantiate and/or attribute to a particular Discharger. The term “in violation” is an absolute term and gives the impression that an exceedance of receiving water limits is definitive and attributable to a sole Discharger. We believe the phrase “may otherwise exceed” is a more appropriate term.

Pre-Storm Inspections

CCEEB understands the Draft IGP’s use of the National Oceanic and Atmospheric Administration (NOAA) forecast for rain event predictions, as noted in Section X1.A.2. The Permit requires that visual observations of all storm water drainage and containment areas be conducted prior to an anticipated precipitation event to identify any spills, leaks, or improperly controlled pollutant sources, and to ensure implementation of appropriate BMPs prior to rainfall.

14 CCEEB is, concerned about the personnel resources and efforts that will be needed to constantly monitor NOAA weather reports and document rain events. CCEEB recommends the removal of predicted rain event visual observations from the Permit and replacing them with regular monthly inspection. We believe a routine monthly inspection regimen will be a more efficient and productive use of onsite personnel (instead of constant tracking of predicted rain events).

Section X1.A.1. of the Draft IGP also requires quarterly visual observations of NSWDs at each drainage area (for presence or indication of prior, current, or potential unauthorized NSWDs and their sources). In the interest of consistency, CCEEB recommends changing the quarterly inspection regimen for NSWDs to monthly as well.

Facility Operating Hours/Sampling Responsibilities

11

CCEEB recognizes improvement and flexibility in the new draft permit's sample collection requirements. However, we would like the SWRCB to add language which clarifies sampling protocols for 24 hour facilities. Many industrial sites operate 24 hours a day, but do not have staff to implement SWPPP 24 hours a day.

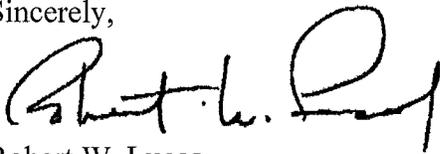
Flexibility should be given in such cases to allow sampling to occur when SWPPP qualified staff are present or allow delegation of SWPPP sampling responsibility to other personnel who are on-site outside of normal work hours.

Summary

CCEEB urges the Board to adopt a General Permit for Industrial Activities based on the approach of iterative BMPs and benchmarks, only when applied in a manner consistent with USEPA's and the State's own guidelines.

Thank you for considering our comments. If you wish to discuss this matter further, please contact Bob Lucas at 916-444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President

- cc: Nancy McFadden, Executive Secretary to Governor Brown
- Cliff Rechtschaffen, Senior Advisor to Governor Brown
- Matthew Rodriguez, Secretary, California Environmental Protection Agency
- Gordon Burns, Undersecretary, California Environmental Protection Agency
- Jackson Gualco, The Gualco Group, Inc.