

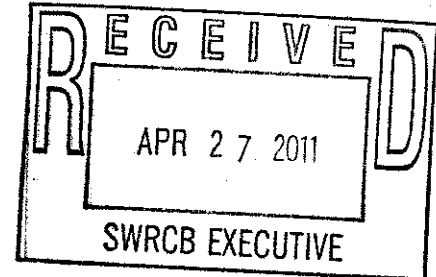


THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

April 26, 2011

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



Subject: Comment Letter – Draft Industrial General Permit

Dear Ms. Townsend:

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to provide comments on the State Water Resources Control Board's (SWRCB) proposed Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit). Metropolitan is comprised of 26 cities and water districts that provide drinking water to nearly 19 million people in parts of Los Angeles, Orange, San Diego, San Bernardino, Riverside, and Ventura counties. The mission of Metropolitan is to provide its service area with adequate and reliable supplies of high quality water to meet present and future needs in an environmentally and economically responsible way. Metropolitan currently delivers an average of 1.7 billion gallons of water per day to a 5,200 square-mile service area.

Metropolitan identified storm water as an additional potential water resource to counteract future water supply uncertainties, as part of an adaptive water management strategy in its October 2010 update to its Integrated Water Resources Plan (IRP). Reducing potable water demands by capture and use of rainwater will assist Metropolitan and its member agencies meet the mandate for statewide reduction in per capita urban water use by 20% by the year 2020 as set forth in the Water Conservation Act of 2009 (referred to as "20x2020"). Additionally, during the collaborative process for updating Metropolitan's 2010 IRP, a Storm Water Technical Workgroup identified various new opportunities for storm water projects in Metropolitan's service area to provide for recharge and replenishment of groundwater basins.

Metropolitan supports cooperative source water quality protection programs and as needed, implementation of regulatory-based source water protection programs. Additionally, Metropolitan supports existing water quality control requirements for point source and nonpoint source dischargers in order to facilitate resolution of source water quality problems. However, after reviewing the Draft Industrial General Permit (IGP), Metropolitan staff is troubled that

SWRCB staff is proceeding with significant and costly regulatory policy and permit changes that will have wide-spread impacts on both the private and public sector without commensurate water quality benefits. SWRCB released the Draft IGP prior to first conducting a thorough analysis of the water quality benefits and costs, and performing an assessment of less costly alternatives to achieve the desired goals. Additionally, SWRCB staff did not resolve the critical issues associated with the previous Draft IGP proposed in 2005 nor did staff address the numerous written comments received at that time.

Metropolitan acknowledges the time and effort of SWRCB staff in development of the Draft IGP and its communication of the proposed provisions at several state-wide workshops. Metropolitan has several significant issues and concerns regarding the Draft IGP which are summarized in this letter. Many of the concerns that Metropolitan staff has identified are the same as those that multiple presenters described to the Board during oral testimony at the public hearing held on March 29, 2011, particularly the detailed comments provided by California Association of Storm Water Quality Agencies (CASQA), as well as those of the California Council for Environmental and Economic Balance (CCEEB). Additionally, as a member of both CASQA and CCEEB, Metropolitan supports the comments that these organizations have provided to you in their comment letters.

Key Concerns

1. Process Utilized for Receipt of Comments

Along with release of the Draft IGP on January 28th, SWRCB released a Notice of Public Hearing for the Draft IGP to be held on March 29th. This Draft IGP stated that the IGP was currently not complete, and when final substantive changes are made, it will be re-circulated to the public for review. SWRCB staff did not indicate that the January 28th document was actually a Preliminary Draft IGP until the middle of the public hearing on March 29th. While Metropolitan appreciates that SWRCB staff held informational workshops on the Draft IGP, SWRCB still moved forward with formal public hearing proceedings on an incomplete Draft IGP rather than providing for an open public process for stakeholders.

2. Comments Ignored on 2005 Proposed Draft IGP

In 2005, SWRCB released a proposed Draft IGP that included many provisions that parallel those in the 2011 Draft IGP, yet it appears that SWRCB staff did not take these comments into consideration in writing the latest draft. SWRCB received over 100 comment letters on the 2005 Draft IGP, yet SWRCB staff did not prepare a formal response to these comments, nor were the comments and associated recommendations from stakeholders incorporated into the latest Draft IGP. Although many of the same

provisions from 2005 are incorporated into the Draft IGP, SWRCB staff failed to resolve the previous technical and legal concerns.

3. Blue Ribbon Storm Water Panel Recommendations

In 2006, SWRCB appointed a Blue Ribbon Storm Water Panel (Panel) of experts to make specific recommendations regarding the applicability and viability of establishing numeric limits for storm water. The 2011 Draft IGP fails to address the recommendations of this Panel. The Panel recognized the need to make progress in monitoring and reducing storm water discharges from industrial facilities, but urged SWRCB's Board (Board) to consider the overall economic impact and not unfairly burden California industries as compared to their counterparts outside of the state. The Panel suggested that before even considering the imposition of numeric limits, SWRCB needed to re-visit the existing data sources, and collect new data.

Metropolitan was concerned that SWRCB staff in 2005 promoted numeric limits for storm water that were not supported by scientific research and data. It is even more troubling that SWRCB continues to proceed down this path in 2011 in light of the current economic situation in California, and despite the high costs of sampling, analytical testing and mitigation, and the lack of cost benefit analyses to justify these additional costs.

4. Use of Environmental Protection Agency (EPA) Benchmarks as Numeric Action Levels (NALs) Numeric Effluent Limits (NELs)

Metropolitan disagrees with SWRCB's use of EPA benchmarks in the Draft IGP in a way that essentially employs them as numeric limits and as a rigid measure of a discharger's compliance. The existing Best Management Practice (BMP) based approach and iterative process for demonstrating permit compliance already provides this mechanism. Metropolitan believes that SWRCB's use of EPA benchmarks to trigger mandatory revisions to Storm Water Pollution Prevention Plans (SWPPPs) and increased sampling requirements, and as an enforcement tool, is contrary to EPA's intended and current use of these benchmarks. As established in the EPA Multi-Sector General Permits (MSGPs), the EPA benchmarks only represent a level of concern which the EPA has used to evaluate SWPPP effectiveness. According to EPA, the appropriate roles of the benchmarks are as an indicator or flag to operators that a SWPPP may need to be reevaluated and revised, as warranted. EPA acknowledges that the benchmarks are not effluent limitations and do not mean a facility is out of compliance. The benchmarks are generic in nature and are not intended to be numeric limits or protective of any particular receiving water.

5. Exceeding NALs and NELs

Because of the variability of storm water events, numeric limits are not feasible for storm water permits and should not be included in the IGP. Establishment of numeric limits or NELs in the IGP places a potentially unattainable and expensive compliance burden on many facilities, without corresponding environmental benefits. Storm water samples are very difficult to monitor, and grab samples of storm water discharges can vary an order of magnitude in concentrations of constituents. In many instances, background concentrations and aerial deposition surrounding and coming onto facilities may be the primary source of metals and other constituents in storm water runoff, and these background sources are beyond the discharger's control.

6. Corrective Action Process

The Draft IGP abandons the iterative process in the current permit for a new, corrective action loop triggered by exceeding EPA benchmarks. Metropolitan feels that without additional research it is premature, inappropriate, and costly to establish NELs and triggers for corrective actions. The triggers and actions that are required in the Draft IGP are different than those in the EPA MSGP in two ways. The MSGP uses long-term averages and considers natural background levels as reasons that the benchmarks cannot be met, and the MSGP does not mandate facilities to meet benchmarks.

According to CASQA's testimony at the March hearing, many dischargers will exceed NALs for the basic parameters (pH, Total Suspended Solids, Electrical Conductivity, Oil and Grease), and many more will exceed NALs for metals. Those exceeding the NALs may be forced into treating storm water runoff. Treatment requires major retrofits at a facility, is very expensive, and after implementation of treatment, there is still no guarantee that the discharger will be able to meet the NALs/NELs.

7. Prerequisite Requirements for Qualified Storm Water Developer (QSD) and Qualified Storm Water Practitioner (QSP)

Metropolitan challenges SWRCB's limiting of the prerequisite requirements for QSDs to specific professions and registrations (e.g. geologists, landscape architects, hydrologists, or engineers). Because an individual is registered in one of these fields is no guarantee that they are experienced in and versed on preparing and implementing SWPPPs. Amount of experience in developing and implementing SWPPPs is a more critical and valid background criterion than a professional prerequisite. The Construction General Permit (CGP) provides more flexibility as to the acceptable registration and certification prerequisites and includes hydrologists and professionals in erosion, sediment control and

storm water quality. Metropolitan requests SWRCB staff to reconsider the limited prerequisites outlined in the Draft IGP.

8. Increased Frequency and Types of Inspections and Monitoring

Metropolitan questions the rationale for the increased types and frequencies of inspections, and monitoring that are called out in the Draft Permit. These additional requirements are very labor intensive and place an undue burden on permittees, particularly on small businesses and public agencies. Additionally, the Draft IGP removes the ability for private and public sector entities to conduct group monitoring, essentially pooling of their resources for effectiveness and efficiency. Removing this option does not provide for economies of scale and will increase costs of compliance for additional monitoring.

9. Compliance Storm Event Considerations

The IGP establishes a 10-year, 24 hour compliance storm event for total Suspended Solids and treatment BMPs. The design storm considerations laid out in the Draft IGP become increasingly significant as SWRCB moves towards NALs/NELs and treatment, and establishes the basis for design, compliance, treatment feasibility, and costs to comply. The Draft IGP requirement of a 10-year, 24-hour compliance storm event may be too high depending on the particular constituents, and the selected treatment technology. In some instances, a smaller design capacity may be more appropriate and cost effective.

10. Conditional Exclusions

Under the three conditional exclusions, the Draft IGP requires filing and regulatory oversight of facilities not subject to NPDES permitting due to absence of discharges to waters of the U.S. Additionally, this section contains a limitation on certifications of such exclusions only to civil engineers and contains a requirement for annual repetitive certifications by engineers. Metropolitan questions the appropriateness of such regulatory oversight and annual certifications for non-covered facilities. To minimize the costs of obtaining these exclusions, Metropolitan suggests that SWRCB allow for a self-certification process by the facility owner every five years rather than annually with certification by a civil engineer.

Recommendation

Many elements of the Draft IGP represent a storm water policy that is not appropriate for the protection of California's water quality. As numerous stakeholders and the Panel of experts have previously pointed out, the continued attempt to develop numeric effluent limits for storm water

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at the point of discharge as a measure of receiving water quality is flawed, and that an end-of-pipe compliance and enforcement approach is not workable. Nevertheless, both the 2005 and 2011 Draft IGPs proposed to use an end-of-pipe command and control approach to compliance, by assigning numeric limits to storm water discharges. This is technically inappropriate, and inherently unfair to dischargers. In order to effectively manage and enforce storm water management, SWRCB must conduct a thorough supportable scientific and regulatory analysis, subject to public review and comments, rather than simply selecting to use the EPA benchmarks.

Metropolitan urges SWRCB to abandon any further work on the 2011 Draft IGP, perform a comprehensive cost benefit analysis, and go back to the drawing board with respect to management of storm water discharges. Before revising the 1997 IGP, SWRCB needs to resolve many underlying and critical issues related to storm water management and numeric limits. Metropolitan recommends that SWRCB initiate the development of a statewide storm water policy that cuts across the various SWRCB programs and helps to ensure that storm water will be managed in a consistent and scientifically sound, and cost effective manner across the state.

Metropolitan looks forward to working with SWRCB staff and the Board on development of this state-wide policy. Please contact Janet Bell at (213) 217-5516 with any questions or comments.

Sincerely,



Bart Koch
Environmental, Health and Safety Section Manager

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