

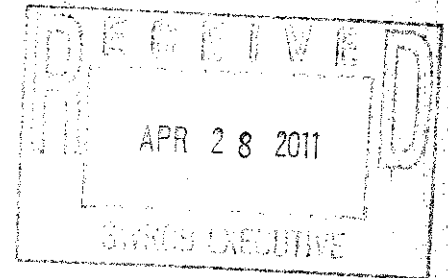
25201 Paseo De Alicia, Suite 200
Laguna Hills, CA 92653

April 28, 2011

VIA: EMAIL (commentletters@waterboards.ca.gov) AND FACSIMILE (916-341-5620)

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

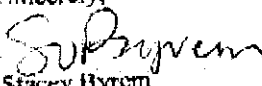
RE: Comment Letter – Draft Storm Water Industrial General Permit



Dear Ms. Townsend,

UPS files the enclosed comments in relation to the Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the discharge of storm water associated with industrial activities (Industrial General Permit) proposed on January 28, 2011 for adoption by the California State Water Resources Control Board.

Should there be any questions about this filing, please feel free to contact the undersigned or our Director of Public Affairs for the West Region, Bruce Mac Rae at (949) 452-2082.

Sincerely,

Stacey Hyrem
Environmental Manager
UPS West Region

Before the
California State Water Resources Control Board
Sacramento, CA

Comments to Draft Statewide General National Pollutant Discharge Elimination System
(NPDES) Permit for the Discharge of Storm Water Associated With Industrial Activities
(Industrial General Permit)

Submitted by:

UPS
Atlanta, GA

Communications with respect to these comments should be directed to:

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April 28, 2011

Before the
California State Water Resources Control Board
Sacramento, CA

Comments to Draft Statewide General National Pollutant Discharge Elimination System
(NPDES) Permit for the Discharge of Storm Water Associated With Industrial Activities
(Industrial General Permit)

UPS submits the following comments to the Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated With Industrial Activities proposed on January 28, 2011 for adoption by the California State Water Resources Control Board (the "SWRCB") (hereinafter referred to as the "Draft Industrial General Permit"). UPS also hereby incorporates by reference as if set forth fully herein the comments submitted by the Air Transport Association.

INTRODUCTION

UPS is a multi-modal, international carrier of small packages and documents.¹ UPS also transports freight by all modes in its U.S. less-than-truckload (LTL) network, in its global air network, and in its capacity as an air freight forwarder and ocean non-vessel operating common carrier. It also provides logistics and distribution services through UPS Supply Chain Services.

Sixty-six (66) UPS small package facilities and seventeen (17) UPS ground freight facilities operate under the current California NPDES General Permit for Stormwater Discharges Associated with Industrial Activities (the "1997 General Permit"). UPS is strongly committed to environmental compliance at its facilities, and it generally supports performance-based approaches to stormwater permitting. However, the Draft Industrial General Permit is a significant departure from the 1997 General Permit, and proposes, among other things, monitoring, sampling, analysis, and SWPPP-related provisions that do not have any administrative record support and that would

¹ UPS picks up approximately 2.2 million air packages and documents as part of the 15.6 million small packages and documents it carries daily for its 1.1 million regular pick-up customers. To service this volume, UPS operates one of the world's largest airlines - with 227 aircraft - and maintains a motor vehicle fleet that includes over 92,000 vehicles servicing its small package operations alone. UPS LTL freight operations within the U.S. are serviced by over 6,000 tractors and almost 22,000 trailers. UPS's global logistics, air and ocean freight services operate in over 120 countries.

impose significant adverse financial and operational impacts on UPS. In particular, UPS strongly objects to the following proposed revisions:

- the elimination of the Group Monitoring Program;
- a significant increase in BMP inspection, visual monitoring, and sampling and analysis requirements;
- the complete alteration of the 1997 General Permit's sampling and analysis reduction provisions; and
- the requirement that a facility operator retain a "Qualified SWPPP Developer" to prepare or revise a SWPPP.

As described in detail below, SWB Staff has not developed an administrative record to justify the significant revisions to current industrial stormwater management proposed in the Draft Industrial General Permit. Nor has SWB Staff developed any administrative record to support the elimination, rather than reissuance, of the 1997 General Permit. UPS urges the SWB to reconsider the need for a new Industrial General Permit, particularly given the current economic climate in California, and to reissue the 1997 General Permit without modification.

Finally, UPS objects to SWB Staff's approach to the notice and comment required in connection with the proposed Draft Industrial General Permit. SWB Staff has stated that the Draft Industrial General Permit is incomplete. (See Notice of Public Hearing at 1-2 (Jan. 28, 2011) ("The draft Industrial General Permit is currently not in its complete form."). Upon completion, SWB Staff intends to recirculate the draft for another round of public comment. (See *id.* at 2) ("When the final substantive changes are made, it will be recirculated to the public for review and another public hearing will be held."). Nevertheless, SWB Staff seek public comment on the incomplete Draft on or before April 29, 2011.

SWB Staff's approach to notice-and-comment places affected entities in the impossible position of commenting on a moving target. An affected entity who comments on a provision cannot ascertain whether the provision is "complete," or whether the provision is slated for revision or elimination in a subsequent draft. Further, as described below, nearly all of the significant changes proposed in the Draft Industrial General Permit, have no administrative record support. To the extent SWB Staff intends to develop an administrative record to justify provisions already proposed in their January 28, 2011 draft, it would do so on an *ad hoc* basis and, therefore, contrary to law.

COMMENTS

1. The proposed elimination of Group Monitoring will impose significant adverse financial and operational impacts on UPS.

As noted in the Introduction, eighty-three (83) UPS facilities operate under the 1997 General Permit. These facilities operate under a Group Monitoring Plan in accordance with the 1997 General Permit. The rationale for Group Monitoring in the 1997 General Permit is self-evident, but was aptly stated in a recommendation of the Blue Ribbon Panel of Experts and acknowledged by SWB Staff in the Draft Fact Sheet for the Draft Industrial General Permit: "economies of scale exist for large facilities and large groups of single facilities." (Draft Fact Sheet at 3). For a company like UPS that operates a large group of similarly-situated facilities, the economies of scale afforded by Group Monitoring cannot be overstated. For nearly twenty years, UPS has successfully administered a Group Monitoring Plan for its California facilities, including the development and implementation of a Monitoring Methods Manual. And the company maintains an established record of stormwater compliance across all facilities as demonstrated in its Annual Group Evaluation Reports.

In contravention of the Blue Ribbon Panel's recommendation, the Draft Industrial General Permit proposes to eliminate the existing Group Monitoring Program. In doing so, it would usher in a sea change in how a permittee with numerous, similarly-situated facilities would implement its stormwater monitoring, sampling and analysis program. Without Group Monitoring, UPS estimates that the additional sampling costs alone would represent an increase of \$70,415.00 in annual costs to implement the sampling, data management and analysis program proposed by the Draft Industrial General Permit. Such estimated costs would represent over a 400% increase in the company's annual sampling expenditures under the existing Group Monitoring Program.

There is nothing in the administrative record to support the elimination of the Group Monitoring Program, particularly given the significant adverse financial and operational impacts that would result from such elimination. Indeed, SWB Staff's only explanation for the elimination of the Group Monitoring Program occurs in two sentences in the Draft Fact Sheet: "This permit emphasizes sampling and analysis as a means to determine compliance with BAT/BCT. Reduced sampling of the magnitude provided to group participants interferes with that goal." (Draft Fact Sheet at 6).

SWB Staff's articulated rationale for eliminating the Group Monitoring Program is insufficient and lacks any basis in fact or science. It is self-evident that sampling and analysis is a means of determining BAT/BCT compliance; however, it does not follow that the sampling and analysis performed under the Group Monitoring Program is insufficient for determining such compliance. SWB Staff point to no support for the sweeping and conclusory assertion that the current Group Monitoring Program would interfere with the sampling and analysis proposed in the Draft Industrial General Permit. The Draft Fact Sheet does not point to a single deficiency. There is no evidence that group monitoring does not allow a participant to evaluate BMP effectiveness and General Permit compliance. The Board cannot eliminate the program without establishing that it fails to satisfy such goals.

This is particularly the case when SWB Staff did not propose to eliminate the Group Monitoring Program in the proposed 2005 Draft Permit. Like the Draft Industrial

General Permit, it is important to note that SWB Staff proposed benchmark criteria in the 2005 Draft Permit for indicator parameters and facility-specific pollutants that, if exceeded, would have required dischargers to identify and implement additional controls. SWB Staff cannot now contend, therefore, that group monitoring somehow impedes implementation of a benchmark criteria approach.

In fact the Group Monitoring Program requires an Annual Group Evaluation Report (AGER) be submitted. In each annual report UPS has compared the analytical data results against benchmark to evaluate site BMPs and make changes and improvements based on those comparisons. BMP evaluations are then incorporated into training presentations and discussions at least annually so that site managers are aware of the analytical goals for the group and how to achieve them. On the contrary, sites complying as individuals have not been required to review and present data, other than the annual report, which does not provide a reporting means or obligation to compare with benchmarks. Benchmarks have been used by the UPS Group consistent with the vision of the Federal EPA's use of them.

UPS urges the SWB to reject the proposed elimination of the Group Monitoring Program, and to retain the program as currently set forth in the 1997 General Permit. Retention of the program is the only legally sustainable decision that can be reached on the administrative record developed for the Draft Industrial General Permit.

2. The Draft Industrial General Permit proposes unduly burdensome BMP inspection requirements and monitoring, sampling and analysis requirements without any rationale basis and without any stated benefit to the environment.

Proposed Sections IX-XII of the Draft Industrial General Permit proposes an enormous expansion in the monitoring, sampling and analysis that must be performed by the operator of a covered facility. Among other things, the Draft Industrial General Permit would require covered operators to:

- visually monitor and record fifty percent (50%) more "qualified storm events" than required under the 1997 General Permit. (See Proposed § IX.C.1);
- perform sampling in connection with fifty percent (50%) more "qualified storm events" than required under the 1997 General Permit. (See Proposed § X.A);
- perform visual monitoring before any "anticipated storm event." (See Proposed § IX.C.4 and IX.C.6); and
- visually monitor and record nearly any storm event that did not produce a discharge. (See Proposed § IX.C.5).

Similarly, Section VIII.H.1 of the Draft Industrial General Permit proposes minimum BMP inspection requirements that, among other things, would impose the following requirements:

- Inspect weekly all outdoor areas associated with industrial activity, stormwater discharge locations, drainage areas, conveyance systems, waste handling/disposal areas, and perimeter areas impacted by off facility materials or storm water run-on to determine housekeeping needs. (See Proposed § VIII.H.1.a.i);
- Inspect weekly all equipment and systems used outdoors that may spill or leak pollutants to detect leaks or identify conditions that may result in the development of leaks. (See Proposed § VIII.H.1.b.i); and
- Inspect and clean daily any outdoor material/waste handling equipment or containers that can be contaminated by contact with industrial materials or wastes. (See Proposed § VIII.H.1.d.v).

As applied to the operator of a single covered facility, the cumulative impact of the above-described requirements would impose significant, undue burdens, requiring an operator to dedicate significant personnel, time, and monetary resources to ensure that each inspection, monitoring, sampling, and analysis obligation is timely and correctly performed.

As applied to an operator of multiple covered facilities, such as UPS, the effect of this cumulative impact is exponentially more severe, particularly when the Draft Industrial General Permit proposes the elimination of the Group Monitoring Program. At UPS proposed increase in inspection requirements would represent an average of 400 inspections per site per year would be required. Further, UPS's preliminary estimates show that the company would incur nearly \$640,000 in annual compliance costs under the proposed monitoring, inspection, reporting and sampling regime. Such costs represent a staggering 200% increase in its current stormwater compliance costs for the eighty-three (83) covered California facilities.

There is simply no administrative record to support the imposition of such undue burdens on affected entities. Nothing in the Draft Fact Sheet or elsewhere remotely justifies the magnitude of the revisions to the 1997 General Permit's monitoring, sampling, and analysis program. Further, nothing in the administrative record supports the imposition of daily and weekly BMP inspections, particularly when there is no evidence that quarterly inspections are insufficient. Revisions of the magnitude proposed in the Draft Industrial General Permit could only be driven by a complete breakdown in stormwater compliance under the current General Permit's regime. However, there is no administrative record to support such a concern, much less a single rationale forwarded by SWB Staff for the enormous increase in inspection, monitoring, sampling, and analysis obligations proposed in the Draft Industrial General Permit. Without such support, SWB Staff asks the Board to adopt a legally indefensible General Permit that imposes arbitrary and capricious obligations that could not withstand judicial challenge.

UPS provides the following, additional comments to specific provisions proposed in Sections IX-XII of the Draft Industrial General Permit:

a. **Proposed Section IX.C.1:** The Draft Industrial General Permit proposes to require visual monitoring of the first "qualifying storm event of each month." This represents a fifty percent (50%) increase in the visual monitoring of storm events required under the 1997 General Permit, which mandates such visual monitoring only during the eight month wet season. As discussed above, this increase in visual monitoring will impose undue burdens on permittees without any support in the administrative record.

b. **Proposed Sections IX.C.1, IX.C.4, IX.C.5 and IX.C.6:** Proposed Sections IX.C.1, IX.C.4, IX.C.5 and IX.C.6 impose burdensome visual monitoring and recordkeeping obligations that would have the effect of converting a permittee's stormwater personnel into meteorologists. These proposed Sections would require a permittee to perform precise on-site rainfall measurements to determine whether the first storm event in any month constitutes a "qualifying storm event." Specifically, a permittee would be required to determine whether the first storm event in any month (i) was preceded by two consecutive days during which combined rainfall was less than 1/8 inch; (ii) produced at least 1/4 inch of rain; and, (iii) whether such rainfall resulted in a stormwater discharge. See Proposed § IX.C.1.

In the event that a storm event produced any amount of rainfall, but did not result in a stormwater discharge, the Draft Industrial General Permit would nevertheless require the permittee to record the event until it completes monthly visual monitoring of a qualifying storm event. See Proposed § IX.C.5. Thus, until a qualifying storm event is visually observed, facility personnel would be required to monitor and record every episode of rainfall that did not cause a discharge.²

In addition, the Draft Industrial General Permit would further require a permittee to perform visual monitoring of stormwater storage, containment, and drainage areas each and every time the permittee anticipates an occurrence of rainfall, regardless of the amount. See Proposed §§ IX.C.4 and IX.C.6. Visual monitoring associated with anticipated rainfall is indistinguishable from the multitude of good housekeeping and preventative maintenance BMPs already imposed on a permittee, and is wholly duplicative of such efforts. Proposed Sections IX.C.4 and IX.C.6 should be eliminated for this reason alone.

Taken together, Sections IX.C.1, IX.C.4, IX.C.5 and IX.C.6 would result in permittees expending an enormous amount of time, energy, and money to perform visual monitoring that serves no stated environmental purpose. In essence, the provisions require a permittee to monitor and record nearly every occurrence in a month that precedes a "qualifying storm event" and to perform visual monitoring of all stormwater storage, containment, and drainage areas each time any occurrence of rainfall - regardless of the amount - is anticipated. The Draft Industrial General Permit assumes that facility personnel have no other operational responsibilities except for storm water compliance. The reality is that the site operator has a primary business to run - at IUPS that means

² IUPS notes that, as drafted, proposed Section IX.C.1 would not require a record to be kept of an occurrence of rainfall of less than 1/4 inch that did produce a discharge.

timely delivery of customer packages. Increasing monitoring and recording of weather patterns does nothing to support improved water quality and detracts valuable resources away from meaningful BMP evaluations and necessary follow up activities. There is simply no administrative record to support the imposition of such extensive visual monitoring.

c. **Definition of "Qualifying Storm Event":** The definitions of "qualifying storm event" set forth in proposed Sections IX.C.1. and X.E. are inconsistent with the definition provided in the Glossary to the Draft Industrial General Permit (Attachment K). Specifically, the definition in the Glossary provides that a qualifying storm event be preceded by five consecutive days of dry weather rather than two consecutive days as set forth in Sections IX.C.1. and X.E. Further, the Glossary's definition makes clear that a "qualifying storm event" must occur during "facility operating hours." Any subsequent draft of the Draft Industrial General Permit should include revised definitions of "qualifying storm event" as follows:

Section IX.C.1: As related to visual monitoring, a qualifying storm event is one that:

a. Occurs during facility operating and daylight hours:

- b. Has produced a minimum of 1/4 inch of rainfall as measured by an on-site rainfall measurement device, and;
- c. Was preceded by two consecutive days of dry weather. Dry Weather shall be defined as two consecutive days of combined rainfall that did not produce discharge off-site.

Section X.E: A qualifying storm event is a discharge of storm water that occurs

1. During facility operating and daylight hours:

- 2. From a storm event that has produced a minimum of 1/4 inch of rainfall as measured by an on-site rainfall measurement device, and
- 3. From a storm event that was preceded by two consecutive days (48 hours) of dry weather. Dry Weather shall be defined as two consecutive days (48 hours) of combined rainfall that did not produce a discharge off-site.

d. **Proposed Section IX.H.6:** Consistent with Proposed Section XIV, any subsequent draft of the Draft Industrial General Permit should make clear that facilities that are not subject to Federal Stormwater Effluent Guidelines and are not required to analyze stormwater samples for pollutants regulated under such guidelines.

e. **Proposed Section XII.B:** Proposed Section XII.B revises Section B.7 in the 1997 General Permit to eliminate the ability of permittees to collect samples from a reduced number of drainage areas when the industrial activities and BMPs within two or

more such areas are substantially identical. In the Draft Fact Sheet, SWB Staff explain that they proposed this revision because of the "complexity associated with determining 'substantially equivalent' drainage areas." (Draft Fact Sheet at 28). However, like Section B.7 in the 1997 General Permit, proposed Section XII.B nevertheless authorizes a permittee to combine samples from up to four "substantially similar" drainage areas.

Eliminating reduced sampling for substantially similar drainage areas while authorizing combined samples for such areas is arbitrary and capricious. Nothing in the administrative record supports distinguishing between reduced sampling and combined sampling under such circumstances: if a substantial similarity determination is sufficiently simple as to authorize combined sampling, SWB Staff cannot take the position that such a certification is too complex to authorize reduced sampling. To the extent SWB Staff is concerned with the number of drainage areas that might be subject to reduced sampling, it can propose a limit just as it has done for Proposed Section XII.B's provision governing combined samples. Consequently, any subsequent draft of the Draft Industrial General Permit should authorize reduced sampling for substantially similar drainage areas like that afforded in Section B.7 of the 1997 General Permit. For a number of UPS sites, the permit -- as written -- would require sampling at between 19 and 24 outfalls. The increased cost estimates did not include analysis at each and every outfall on all 83 UPS sites.

3. The Draft Industrial General Permit should provide for more flexible sampling and analysis reduction.

Proposed Section XVI of the Draft Industrial General Permit authorizes a permittee to perform reduced sampling if samples from ten consecutive quarters have not met an NAL Corrective Action Trigger and certain other criteria are satisfied; provided, however, that the relevant Regional Water Board must first approve the permittee's "Sampling Frequency Reduction Request" (SFR). In contrast, the sampling and analysis reduction provisions in the 1997 General Permit do not require Regional Water Board approval. Rather, the existing permit's Section B.12.b authorizes a permittee to self-certify satisfaction of the prerequisites for reduced sampling.

Notably, proposed Section XVI does not provide any criteria whatsoever that a Regional Water Board must follow when making an approval determination for an SFR. Instead, a Regional Water Board can exercise unfettered discretion in approving or denying an SFR: proposed Section XVI.D simply states that "Regional Boards may reject SFRs and may request additional supporting documentation." The SWB cannot lawfully adopt an SFR review process that lacks any objective criteria governing a Regional Water Board's approval or rejection of an SFR. Authorizing such limitless discretion in the Draft Industrial General Permit runs afoul of cardinal principles of due process and is contrary to law.

Further, the 1997 General Permit does not temporarily restrict when a permittee may seek reduced sampling and analysis so long as the permittee has analyzed samples from at least six storm events. Under proposed Section XVI.A.1 of the Draft Industrial

General Permit, however, a permittee would be required to sample at least ten consecutive quarters of qualifying storm events. Therefore, the earliest time at which a permittee could submit an SFR would be at the end of the permit's third year - more than half-way through the term of the permit. With the permit conditions lacking any objective approval or rejection process or time period, it is plausible that a permittee could submit an SFR and not receive approval or rejection of said SFR until the end of the permit term. Under such circumstances, the SFR process is deemed worthless to the permittee.

There is no administrative record to support the significant modifications to the sampling and analysis reduction provisions of the 1997 General Permit. There is no justification for proposing a lengthy, ten quarter demonstration period before a permittee may submit an SFR, nor is there any justification for requiring Regional Water Board approval of an SFR. Indeed, there is absolutely no discussion concerning these revisions in SWB Staff's discussion of "Sampling and Analysis Reduction" in the Draft Fact Sheet. (See Draft Fact Sheet at 28-29).

Any General Permit should authorize a permittee to self-certify qualification for reduced sampling and analysis after sampling a sufficient number of storm events. Consequently, UPS requests that SWB Staff revise proposed Section XVI, as follows to reconcile it with Section B.12 of the 1997 General Permit.

A. Other than dischargers subject to Level 3 corrective actions, any discharger is eligible for reduced sampling and analysis if the facility operator provides certification that the following conditions have been met:

1. The discharger must have sampled a minimum of six (6) qualifying storm events;
2. Sampling results from the six storm events sampled did not meet any of the NAL Corrective Action Triggers in Section XVII.E, and;

B. The discharger has been in full compliance (sampled a qualifying storm event of each quarter, submitted annual reports by the deadlines, updated the SWPPP and submitted it electronically, etc.) with all other requirements of this General Permit during the time period in which samples were collected from qualifying storm events.

C. Dischargers who seek reduced sampling and satisfy the previous requirements shall electronically submit the appropriate certification into SMARTS. The certification shall include documentation that the above conditions have been satisfied.

D. Facility operators who provide certifications in accordance with this Section shall obtain samples from a qualifying storm event occurring on or after October 1 of the next reporting year. Should a Regional Board

determine that a certification does not meet the conditions set forth above, facility operators must immediately comply with the Section X sampling and analysis requirements.

4. There is no rational basis for requiring permittees to retain a "Qualified SWPPP Developer,"

Proposed Section VII of the Draft Industrial General Permit would require a permittee to "appoint" a Qualified SWPPP Developer (QSD) to prepare and/or revise the facility's SWPPP. The permittee would further be required to "ensure" that the QSD is appropriately trained and maintains a certification and appropriate experience for (i) a California registered professional engineer; (ii) a California registered professional geologist or engineering geologist; (iii) a California registered landscape architect; (iv) a professional hydrologist registered through the American Institute of Hydrology.³

The Draft permit's QSD-retention requirements are a complete departure from the 1997 General Permit, which did not require the retention of a certified professional to prepare or revise a SWPPP. Despite the obvious and significant burden on permittees, there is no administrative record to justify this requirement, including absolutely no discussion in the Draft Fact Sheet or elsewhere to explain SWB Staff's rationale for proposing retention of a QSD holding a professional certification. Further, there is no description in the Draft Industrial General Permit of the training that will be required for either a QSD or Qualified SWPPP Practitioner (QSP), or whether such training can be provided by the permittee or must be obtained from a third party.

Finally, the Draft Industrial General Permit is ambiguous as to whether a QSD may be a third-party independent contractor or must be an employee of the permittee. Proposed Section VII is drafted in terms of "appointing" a QSD, and the Draft Fact Sheet states that a permittee must "hire" a QSD. (See Proposed § VII A.1; Draft Fact Sheet at 15). If the requirement to utilize a QSD is retained in any final Industrial General Permit, a permittee must be provided the flexibility to retain a third-party independent contractor as its QSD. The SWB lacks authority under existing law to require that a permittee hire an employee having the qualifications proposed in the Draft Industrial General Permit to serve as a QSD.

CONCLUSION

As stated above, UPS is in favor of a performance based approach to storm water permitting. However, conditions proposed in the Draft Industrial Permit have little to no administrative support.

³ UPS notes that the Draft Industrial General Permit's four QSD certification requirements are drafted without a conjunction between items (iii) and (iv). (See Proposed § VII.B.1 b). UPS assumes that SWB Staff intended to draft such requirements in the disjunctive. A contrary interpretation would require SWPPP preparation by a QSD certified to all four listed professional designations, which would impose an absurd burden on a permittee.