WATER RECLAMATION
SOLID WASTE MANAGEMENT

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OF LOS ANGELES COUNTY

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SPECIAL HEARING
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cc: BD, DI, DWQ
e-cys: BD, CC, HMS, TH, CMW

Ms. Debbie Irvin
State Water Resources Control Board
1001 I Street, 24th Floor (95814)
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Irvin

Los Angeles County Sanitation Districts' Comments
Relating to Solid Waste Management Facilities on the Reissuance of the
National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water
Associated with Industrial Activities Draft dated December 15, 2004 (Draft Permit)

The purpose of this letter is to provide the State Water Resources Control Board ("State Board") the Los Angeles Country Sanitation District's (Sanitation Districts) comments on the Draft Permit circulated for public comment by the State Board on December 15, 2004. The Sanitation Districts' comments consist of this letter, a letter from Mr. Eric Smalstig of Geosyntec Consultants enclosed as Attachment A, and a supplemental legal comment letter by Ms. Katharine Wagner of Downey Brand LLP, enclosed as Attachment B. The Sanitation Districts would like to thank the State Board for the tremendous effort its Staff put forth in creating the Draft Permit and providing the opportunity to comment on the Draft Permit. The Sanitation Districts support many provisions of the Draft Permit, such as clarification and enhancement of SWPPP requirements and certain monitoring provisions. However, the Sanitation Districts have significant concerns in a number of areas, which need revision to allow an appropriate permit for industrial dischargers and particularly for solid waste operations such as those conducted by the Sanitation Districts.

The Sanitation Districts recognize the State Board's desire to consider moving towards numerical limits for storm water discharges. The Sanitation Districts must disagree with the State Board's use of the Environmental Protection Agency ("EPA") benchmarks in the Draft Permit in a way that essentially employs them as numeric limits, as a rigid measure of a discharger's compliance. The Sanitation Districts agree that the State Board must evaluate a mechanism for evaluating Best Management Practices ("BMPs"). As the State Board has recognized, the existing BMP-based approach and iterative process for demonstrating permit compliance provides this mechanism. Nonetheless, the draft Industrial General Permit abandons this iterative process for a new, potentially never-ending corrective action loop triggered by exceeding EPA benchmarks. We strongly feel that without additional research it is premature and inappropriate to establish numeric discharge limits.

This aspect of the Draft Permit represents a storm water policy which, by the State Board's own admission, is inappropriate for the protection of California's water quality. The Fact Sheet and Draft Permit concede that the continued attempt to develop numeric effluent limits for storm water at the point of discharge as a measure of receiving water quality is flawed, and that an end-of-pipe command and control approach is inappropriate. Nonetheless, the Draft Permit proposes to employ an end of the pipe command and control approach to compliance, by assigning numeric compliance standards to storm water discharges. This is technically and legally inappropriate, and inherently unfair to dischargers. In order to effectively manage and enforce storm water management, the State Board must develop standards through a supportable scientific and regulatory analysis, subject to public review and comment, rather than by selecting numeric standards which, by EPA's and the State Board's admission, are "generic and not intended to be numeric limits or protective of any particular receiving water."

The benchmarks will be impossible to meet in many situations, which the Draft Permit appears not to have considered. For example, in many cases, natural sediment loading in streams would far exceed the 100 mg/l benchmark for total suspended solids. This would be true in both ephemeral streams during "flash flood" events and relatively undisturbed watersheds.

The Sanitation Districts provide the following additional, specific comments:

1. RECEIVING WATER LIMITATIONS

Section III of the Draft Permit states:

> Storm water discharges and authorized non-storm water discharges to any surface or ground water *shall not contain* pollutants that cause a nuisance.
>
> 2. Storm water discharges and authorized non-storm water discharges *shall not contain* pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable RWQCB's Water Quality Control Plans (Basin Plan). (Emphasis added).

This language changes the current permit and previous draft permit language that the storm water discharge itself cannot "cause or contribute" to a nuisance or exceedance of water quality standards. The new phrase is unclear and appears to imply that discharging any level of pollutants may be a violation of the permit if that type of pollutant from multiple, other sources is at a level exceeding standards or causing nuisance. If so interpreted, this phrasing places an excessive and unwarranted burden on industrial discharges. This burden would not only be disproportionate to the burden on other sources, such as residential communities, recreational sources, and construction sites, but it is also legally inappropriate. We request that the State Board retain the current permit's phrasing of receiving water limits, that the discharge may not "cause or contribute" to nuisance or exceedance of water quality standards.

2. DRAFT PERMIT'S USE OF EPA BENCHMARKS

a. Inappropriate Selection of Benchmarks as a Compliance Measure

The Sanitation Districts agree that the EPA benchmarks may be useful as an indicator that a discharger has implemented effective BMPs. However, the Sanitation Districts completely disagree with the State Board's use of the benchmarks as a numeric measure of permit compliance. The Fact Sheet page VII describes benchmarks as "representative of what is minimally achievable through a properly developed and implemented SWPPP designed to BAT/BCT." There is no evidence provided that this is actually true for all industries covered by the permit, and in particular for solid waste facilities. Setting

numerical limits that are merely "representative" of inapplicable control technologies is inherently arbitrary and places an undue burden on categories of industrial dischargers.

To assess the infrastructure required by the Draft Permit to achieve the EPA benchmarks, the Sanitation Districts retained GeoSyntec Consultants. As described in Attachment A, GeoSyntec determined that the Sanitation Districts would need to expend approximately $381 million dollars in an unsuccessful attempt to achieve the EPA benchmarks. Many solid waste facilities, including those operated by the Sanitation Districts, have inadequate property to construct these treatment facilities, and would typically need to condemn private property and destroy precious native habitat. Some sites abut freeway and road right-of-ways making construction of such facilities nearly impossible. This one example emphasizes the State Board's inappropriate use of the benchmarks.

Section II.3 of the General Industrial Permit, Effluent Limitations, states that development and implementation of "...a SWPPP that complies with the requirements in Section VII (SWPPP Requirements) and that includes BMP's that achieve BAT/BCT constitutes compliance..." with the permit's effluent limitations. The Fact Sheet page VII equates the EPA benchmarks to a measure of BAT/BCT, implying that comparison to the benchmarks determines effluent limit compliance. Even though the permit states that benchmarks are not intended to be effluent limits and that exceeding benchmarks is not a permit violation, the permit and Fact Sheet fail to clarify that exceeding a benchmark does not mean the discharger has failed to BAT/BCT requirements. The State Board must clarify this point to prevent environmental enforcement from being inappropriately based on this unclear language.

As noted in detail below, the permit imposes punitive measures where the benchmarks are exceeded, despite the fact they were not intended to be numeric limits. Finally, the Draft Permit fails to consider background pollutant levels or offsite pollutant sources that impact onsite discharges. By failing to consider these other sources of pollutants, the discharger becomes responsible for pollutant sources over which it has no control. Requiring dischargers to achieve EPA benchmarks, while not considering background and offsite sources, is infeasible and is an economic burden, which will create an incentive for businesses to leave the state.

b. Requirements Triggered by Benchmark Exceedance

The Fact Sheet and the Draft Permit section V.7. are in conflict. The Fact Sheet states that benchmarks will not be used as numeric limits. Permit section V.7. states that when analytical results exceed the benchmarks, the discharger will implement corrective actions. The State Board must remove "corrective actions" from the permit language to support the State Board's assertion in the Fact Sheet that the benchmarks are not numeric limits.

The Draft Permit does not consider the potential for false positives. Dischargers should be given the opportunity to confirm an exceedance by sampling the next qualified storm event. Only after exceedance of an appropriate standard is confirmed, should the corrective actions be required.

Under Section V.7.c.v of the Draft Permit, even if the discharger determines that no additional BMPs or SWPPP implementation measures are necessary in response to the exceedance of the benchmarks to meet the BAT/BCT standards, the discharger is still required to certify why the exceedance occurred and why it will not occur again under similar circumstances. In this circumstance, it is entirely inappropriate to require that the exceedance not be repeated, by requiring that the discharger "certify that it will not happen again." In addition, as detailed in Attachment A, no available technologies can guarantee that EPA benchmarks will be achieved. Consequently, it is also inherently impossible to provide the proposed certification. Critically, also, impacts from offsite pollutants sources and background pollutant levels make this certification impossible.

Section V.7.c also requires the discharger to certify that there are "no sources" of the pollutant for which a benchmark is exceeded in discharges from the facility, to avoid an automatic requirement to revise its SWPPP or to make an impossible certification. Again, it is not possible for the discharger to do so, especially with respect to natural minerals present in soil or ubiquitous ambient constituents, or watercourses with naturally unstable soil. The discharger must control pollutants derived from defined industrial activities, over which the discharger has control, to standards tied to receiving water standards and BAT/BCT standards which incorporate consideration of economic and practical feasibility. If the State Board requires the discharger to certify that BMP's meet BAT/BCT, the certification requirement should apply only to the specifically-covered pollutants from industrial activities, and should take into account industry-specific BAT/BCT.

Section V.7.e-g requires that following an exceedance of a benchmark, a discharger must implement corrective BMP's within 90 days, submit a written report to the Regional Board within 30 days, and update the SWPPP within 14 days of the Regional Board's approval. These requirements are clearly excessive, going well beyond the use of the benchmarks to simply trigger consideration of whether improvements are actually needed. They present two other serious problems. First, a discharger may not be able to implement certain corrective actions within 90 days. Second, there is no time limit placed on the Regional Board's response to the written report, such that a discharger cannot be assured the opportunity to meet the 90-day deadline with even a slight delay in Regional Board review. The State Board must revise the permit language to address these two issues. If retained at all, the 90-day compliance period (or, preferably, a period allowing for reasonable extension where 90-day implementation is impracticable) should be triggered only after the Regional Board has approved the correction action report.

Likewise, the additional sampling requirements following an exceedance should be triggered only after any new BMP's have been implemented; otherwise, sampling is a moot point. Logically, if the State Board chooses to require sampling prior to new BMP's being implemented, and the samples meet the discharge standards, then BMP's and the SWPPP should be deemed adequate and corrective actions not required. This only emphasizes the need for a verification sampling process, to ensure that there is a meaningful exceedance of an appropriate standard before actions are required.

The requirement to sample incessantly following exceedance of a benchmark, until two samples show no exceedance of the benchmark, is inappropriate and overly burdensome. As described above, certain EPA benchmarks cannot be achieved using BAT/BCT for certain industries. Therefore, the Draft Permit would needlessly require continued sampling indefinitely. Further, it may well be that the exceedance has nothing to do with the discharger's industrial operations. Yet the discharger will be required to sample every storm into the indefinite future, with no end in sight. This is an inappropriate, punitive measure as written, and can be remedied by simply deleting it.

Finally, permit section V.7.h. states that "nothing in this section shall prevent the appropriate Regional Water Quality Control Board ("RWQCB") from enforcing any provisions of this General Permit while dischargers prepare and implement the above report." The Draft Permit removes the "safe harbor" for dischargers formerly available to dischargers under the current permit, such that section V.7 and section III together propose to throw out entirely the BMP iterative process approach. As we outlined in the introduction, the Draft Permit's use of benchmarks as numeric limits is inappropriate. Without additional research to develop industry-specific numeric limits that can be achieved using BAT/BCT, setting the benchmarks as numeric limits is premature and unsupported by appropriate technical analysis and regulatory findings.

3. SAMPLING

The Draft Permit requires that dischargers sample for "parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a Water Quality Standard in

the facility's receiving waters." As written, this requirement is unjustifiably burdensome. Read literally, it appears to require that dischargers sample for an unlimited set of parameters each wet season, costing thousands of dollars. The State Board admits that there is no standardized process for assessing impacts on receiving waters from industrial storm water discharges at the point of discharge. This coupled with the fact that representative surface water sampling is inherently difficult, therefore, makes this requirement unreasonable. The State Board must either remove this requirement or modify it so that dischargers are obligated to sample only those site and industry specific pollutants under the discharger's direct control that can reasonably be expected to cause or contribute to an exceedance.

The current permit contains provisions allowing reduced sampling under appropriate conditions. The draft permit eliminates these provisions. Consistent with EPA policy and past permits, when a site demonstrates over a specified time period that the BMP's are effective in meeting and maintaining BAT/BCT, there must be an opportunity for relief. The Draft Permit gives no consideration or incentive to dischargers who are proactive and achieve and maintain permit compliance. The State Board must insert a reduced sampling provision.

The Draft Permit requires the discharger to sample the next two qualified storm events following an exceedance, regardless of the cause. This is punitive and excessive. There is nothing in the corrective action process that suggests that sampling the next two storm events will improve water quality. This requirement conflicts with the Ninth Circuit's ruling that the purpose of storm water sampling is to assess the effectiveness of BMP's. A reasonable time period between rain events must pass to demonstrate BMP performance.

Section VIII.7. states that "dischargers shall visually observe and collect samples of storm water discharges from all drainage areas associated with industrial activity." Landfills, in particular, are heavily burdened by this requirement. Landfill properties are vast, often these facilities are greater than five hundred (500) acres. Because of the typical size, landfills, typically have multiple storm water discharge locations. To visually observe and sample each location within the first hour of discharge, landfills operators would be required to hire additional staff. Due to the burdensome nature of this requirement, the Sanitation Districts request that the permit be revised to allow sampling and visually observation of representative discharge locations at facilities with more than three discharge locations.

4. CONFLICT WITH LAWS REGULATING LANDFILL OPERATIONS

The proposed permit conflicts with California Code of Regulation, Title 27, governing landfills

Section 20653 specifies that: "...drainage structures shall be designed and constructed to limit, to the greatest extent possible, ponding, infiltration, inundation, erosion, slope failure, washout, and overtopping."

Section 20260 requires that landfills be "...designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return period."

Section 20950 states that the "goal of closure, including but not limited to the installation of a final cover, is to minimize the infiltration of water into the waste, thereby minimizing the production of leachate and gas."

Section 20650 provides that "...covered surfaces of the disposal area shall be graded to promote lateral runoff of precipitation and to prevent ponding. Grades shall be established of sufficient slopes to account for future settlement of fill surface."

These regulations illustrate that landfills are and have historically been required to avoid ponding of storm water and restrict infiltration. The BMP's that would be necessary to attempt benchmark

achievement, afforded to other industries, would increase the potential for infiltration and ponding, in direct contradiction of Title 27. In addition, state and federal regulations have encouraged the use of silty and clayey soils for cover materials over refuse. The difficulty of removing such fine-grained solids from storm water illustrates the burdensome nature of the total suspended solids (TSS) benchmark limit of 100 mg/l proposed in the Draft Permit. These regulations combined with the typical construction features of a modern sanitary landfill, typically large open unpaved areas with significant topographic relief, create unique regulatory conflicts. Consequently, maintaining required landfill drainage to accommodate the 100-year storm and simultaneously achieving the benchmarks is not feasible. In addition, as noted above, the TSS benchmark is unattainable due to natural background sediment load during storm events. The State Board should remove the benchmarks from the permit to avoid these regulatory conflicts.

The Sanitation Districts appreciate the opportunity to provide these comments on the Draft Permit and look forward to working with the State Board to achieve our mutual goal of improving storm water quality. If you have any questions regarding this transmittal, please do not hesitate to contact me at the above listed telephone number, extension 2412.

Very truly yours,

James F. Stahl

David L. Rothbart
Supervising Engineer
Technical Services Department

DLR:dhs
Attachments