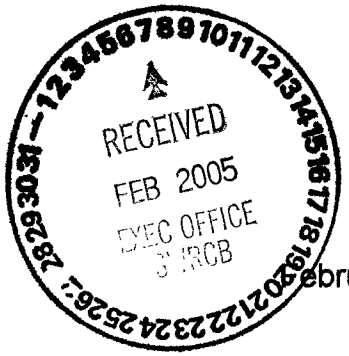

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February 3, 2005

SPECIAL HEARING
2/3/05
cc: BD, DI, DWQ
e-cys: BD, CC, HMS, TH, CMW

VIA FACSIMILE & US MAIL

State Water Resources Control Board
Attn: Debbie Irvin, Clerk to the Board
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Sacramento, California 95812-0100

Dear Members of the State Water Resources Control Board:

SUBJECT: Comments on Draft NPDES Industrial General Permit Review

Thank you for the opportunity to review and provide comment on the draft for the re-issuance of the State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities (Industrial General Permit).

The underlying premise for storm water regulations are worthy and we support the goals in general. However, many of the specific standards and provisions do not translate well to a landfill settings. It appears that the standards have been developed with urban environments in mind, and do not take into account the natural settings of industrial sites with large amounts of undeveloped properties.

The SWRCB has issued a Notice of Public Hearings to receive comments regarding the re-issuance of the Industrial General Permit by February 3, 2005 as presented in the draft permit package, which reflected the comments received pursuant to the June 2003 public hearings. In the Notice of Public Hearing, dated December 15, 2004, the SWRCB stated the most significant revisions as:

- Minimum Best Management Practices that all dischargers must include in the Storm Water Pollution Prevention Plan (SWPPP);
- Additional sampling requirements for indicator parameters;
- Corrective actions required whenever exceedances of the USEPA storm water numeric benchmark values occur; and
- A one-time comprehensive pollutant scan.

After review of the Draft Permit dated December 15, 2004, specific comments and recommendations have been compiled below using a comment/response format under topic headings.

GENERAL

***Comment 1:* The proposed permit conditions will conflict with the California Code of Regulation, Title 27 for landfills.**

Landfills have historically been required to avoid ponding of stormwater and to restrict infiltration. BMPs that are required as part of an attempt to achieve benchmarks would increase the potential for infiltration and ponding at landfills. Title 27 specifically states:

- *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 specifies that landfills shall be "designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return period".*
- *Section 20950 states 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 states "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 the fill surface".*

Landfills are currently regulated under Waste Discharge Requirements (WDRs) as issued by the Regional Water Quality Control Boards. The NPDES requirements are in some cases duplicative of existing requirements, and in other cases in potential conflict with existing requirements.

Landfills are typically large, open unpaved areas with significant topographic relief, as compared to the major California metropolitan areas which have greater levels of surface paving. Different settings may require different benchmarks.

Many landfills may need to acquire additional property to install or accommodate BMP management without violating existing California regulations.

It is infeasible to simultaneously achieve the proposed benchmarks and to maintain landfill drainage facilities to accommodate the 100-year storm (as required by current regulations).

Recommendation: To avoid this regulatory conflict, it is recommended that the benchmarks requirement be deleted for landfills. It is recommended that the existing WDR programs be used for compliance with storm water discharges. The WDRs could be written to incorporate the local storm water issues instead of having a "one size fits all approach".

Comment 2:

The requirements of the 1997 Permit 'Receiving Water Limitations' has been changed by deleting the wording "shall not adversely impact human health or the environment "with "shall not contain pollutants that cause a nuisance." The intent of the 'Receiving Water Limitations' was further altered by the addition of language which includes, 'contain pollutants that', 'any applicable water quality objectives', 'the California Toxics Rule', and 'the National Toxics Rule'. This will result in substantial changes to the original 1997 Permit intent and meaning and reads as such "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 standard (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)." Lastly, the 2004 Draft Permit deletes all "Receiving Water Limitations' language describing non-violation and violation status requirements.

These language changes result in a more stringent 'Receiving Water Limitations" requirements and establish a situation in which any contribution, even one molecule of a pollutant, could be considered a violation. Unless storm water discharge from all potential sources of pollution (construction sites, residential communities, recreational facilities, agricultural, etc.) is permitted in a similar fashion, these changes place a disproportionate burden upon industrial facilities.

> **Recommendation**: KCWMD recommends the 'Receiving Water Limitations' language remain the same as stated in the 1997 Permit.

TYPES OF DISCHARGES COVERED/NOT COVERED BY THE GENERAL PERMIT

Comment 3: Fact Sheet, Page V, 5th paragraph

The exclusion process as instructed, beginning on page 29, does not correlate with the comments in paragraph 5. The exclusion application requires physical structures and restraints yet guidance and instructions, including verbiage in paragraph 5 on page V of the Fact Sheet and Attachment 5, direct dischargers differently.

> **Recommendation:** The language on exclusions, in various parts of the proposed permit, needs to be made consistent so that the process of applying for an exclusion is clearly defined.

MINIMUM BEST MANAGEMENT PRACTICES THAT ALL DISCHARGERS MUST INCLUDE IN THE SWPPP.

Comment 4: Permit Page 12, 8

"Dischargers shall identify, describe and implement appropriate facility specific BMPs that will reduce or prevent pollutants in storm water discharges to achieve compliance with the

BAT/BCT standard and compliance with WQSs." The BMPs identified in VII.8.a (Minimum BMPs to include in the SWPPP) are:

1. *Good Housekeeping*
2. *Preventive Maintenance*
3. *Spill Response Procedures*
4. *Material Handling/Waste Management*
5. *Employee Training Program*
6. *Record Keeping and Quality Assurance*
7. *Erosion/Sediment Control*
8. *Periodic Visual Inspections*

There are eight minimum BMPs and five facility specific criteria for pollutant presence developed into BMPs. The explanation of each minimum BMP has expanded and includes a greater level of detail and requirements. The burden to prove implementation is on the discharger and translates to increased cost through personnel, monitoring, sampling and tracking.

Additionally the discharger must show improvement in pollutant levels which translates to additional monitoring and analytical costs.

If the discharger exceeds the benchmark associated with the BMP while using BAT/BCT, there is no clarification that the discharger has met compliance.

Recommendation: Modify language to indicate the use of BMPs as a process based compliance measure. There should be incentives to utilize BMPs, which then translate to reduced regulatory oversight.

Comment 5:

Provisions Section, Page 5, 6. If, after an inspection or exceedance occurs and corrective actions are deemed necessary, the permit requires corrective BMPs be implemented within 90 days. It also requires the discharger to submit a written report to the Regional Board within 30 days for approval.

Recommendation: There must be a time limit placed on the Regional Boards to respond. Clarify if approval is required prior to implementing corrective action. Dependant upon the complexity of a facility, evaluating the potential effectiveness of corrective BMPs within 30 days and implementing corrective BMPs within 90 days may not be feasible. The permit should be revised to address the potential for such a scenario.

Comment 6: VII.8.viii.1

Page X of the Fact Sheet says *"to conduct quarterly facility inspections to determine whether the SWPPP should be revised to address any facility physical or operational changes and to detect any obvious problems with the SWPPP's existing set of BMPs."*

The intent of this is to "assure that the SWPPP is updated throughout the year." The guidance on page 15 of the draft permit conflicts with the above. It requires an annual comprehensive facility compliance evaluation.

It is conceivable that each quarter the SWPPP will be updated. Each update requires a Professional Engineer (PE) review which is very costly and time consuming for the discharger.

As proposed, this will require substantially increased monitoring, reporting, tracking, and resource time.

In relatively arid environments, such as the Central Valley, it is unclear what purpose would be served by quarterly inspections.

> **Recommendation:** Allow a facility inspection annually (not quarterly) to coincide with the annual certification. Alternately, allow reduced inspection frequency (semi-annually) in arid environments.

Comment 7:

Section V, Page 6, 7.c. When analytical results exceed the USEPA benchmark values the discharger shall implement corrective actions that, in part, include a certification that states there are no sources of pollutants at the facility. The discharger cannot make this certification, as there will always be a source of a pollutant, (for example, suspended solids).

> **Recommendation:** Modify language on the certification. Certification should be limited to site specific pollutants which the discharger has control over and further should state that the discharger has implemented BMPs as related to the industry and outlined in the SWPPP.

NOTIFICATION REQUIREMENTS FACT SHEET, PAGE VI

Comment 8:

The guidance regarding the Notice of Intent (NOI) and the No Exposure Certification (NEC) are conflicting when compared to the Q&A pages. In the Q&A (question 10 on page 6), it states that secondary containment qualifies for sheltering yet the definition of sheltering does not include secondary containment.

> **Recommendation:** Include secondary containment as a definition in sheltering.

Comment 9:

On the No Exposure Certification (NEC) and on Attachment 5, the discharger must answer yes to 11 questions prefaced with "*...the industrial activities and materials described in the question and are certifying that they are not exposed to storm water, now or in the foreseeable future.*"

The verbiage leads the industry to believe that anything exposed to the elements would require a "no" answer, thus eliminating the use of the NEC. Yet the guidance and instructions show that items left out to the elements such as tanks, aboveground storage tanks, and vehicles do not require shelter.

Recommendation: The verbiage on the Section IV Exposure Checklist needs to be modified, so that it is not misleading and is consistent with the guidance and instructions.

SAMPLING

On Page VIII.7, the statement is made that "*dischargers shall visually observe and collect samples of storm water discharges from all drainage areas associated with industrial activity*".

Comment 10:

The requirement is burdensome for landfills where property can be vast, often greater than five hundred acres. There may be multiple storm water discharge locations (which often require compliance with Title 27), as described above. In order to visually observe and sample each location within the first hour of discharge, landfill operators would be required to retain additional staff.

Recommendation: It is recommended that the permit be revised to allow representative discharge locations designated for facilities with similar discharge characteristics.

Comment 11:

The reduced sampling provisions of the current permit have been eliminated from this permit. When a site can demonstrate, over a specified period of time, that the BMPs are effective in meeting and maintaining BAT/BCT then there must be an opportunity for relief. The draft permit is punitive, and provides no consideration or incentive for proactive efforts of dischargers in achieving and maintaining permit compliance.

Recommendation: It is recommended that the provisions from the current permit for reduced sampling be incorporated into the new permit.

ADDITIONAL SAMPLING REQUIREMENTS FOR INDICATOR PARAMETERS (SECTION VIII.4C, PAGE 19)

Dischargers shall analyze samples for:

- *Total Suspended Solids (TSS)*
- *pH*
- *Specific Conductance*
- *Total Organic Carbon (TOC) or Oil & Grease*

Additional Analytical Parameters:

- *Per SIC 4953 (Landfills & Land Application Facilities)--Total Iron (Fe);*
- *Any parameters determined by the Assessment of Potential Pollutant Sources;*
- *Any parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a Water Quality Standard (i.e., VOCs); and/or*
- *Any parameters required by the RWQCB.*

Comment 12:

The 2004 draft permit specifies Total Iron. The 1997 NPDES Industrial General Permit does not specify whether the analysis for Iron is dissolved or total. As such, landfills have been analyzing storm water samples for dissolved iron, which is required by the groundwater monitoring Waste Discharge Requirements. The EPA Method specified for the analysis of Total Iron is Method 200.8, which is an Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) method (Method 200.8, Revision 5.5: Determination of Trace Elements In Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry, EPA-821-R99-017). Method 200.8 requires the collection of a non-filtered storm water sample preserved with nitric acid.

The landfills encompass large areas of land and there may be some distance from the waste cell to the downstream sampling point. Since iron is an indigenous native element found in soil, the use of nitric acid prior to sample filtration and analysis will inherently skew the concentration of iron, that is actually a result of storm water that has come in contact with landfill waste, to also include the indigenous iron found in the soil.

Recommendation: The Total Iron analysis requirement should be modified to allow Dissolved Iron analysis as an option for those facilities (i.e. landfills) for which Total Iron is not an appropriate method of analysis.

CORRECTIVE ACTIONS REQUIRED WHENEVER EXCEEDANCES OCCUR OF THE USEPA STORM WATER NUMERIC BENCHMARK VALUES (VIII.4.F, PAGE 19).

"When analytical results exceed the USEPA benchmark values...dischargers shall comply with the following requirements:

i. Implement the procedures required in Section V.7.

ii. Collect and analyze samples in accordance with Section Viii.5.c from at least the next two consecutive qualifying storm events. Dischargers shall continue sample collection and analysis until two consecutive samples result in no further exceedance of the USEPA benchmarks."

The condensed version of V.7 found in the Fact Sheet, USEPA regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from facilities in ten industrial categories.

For storm water discharges from facilities not among the ten industrial categories listed in 40 CFR Subchapter N, USEPA has found that it is appropriate to require implementation of BMPs to meet BAT/BCT in lieu of numeric effluent limitations. However, USEPA also established "benchmarks" which are the pollutant concentrations above which USEPA determined could be an indicator that the discharger has not effectively developed and implemented a SWPPP to reduce or eliminate pollutants in storm water discharge to meet BAT/BCT. The benchmarks are generic and not intended to be numeric limits or protective of any particular receiving water. These limits can generally be viewed as representative of what is minimally achievable through a properly developed and implemented SWPPP designed to meet BAT/BCT.

Under the Industrial General Permit, if a discharger exceeds one of these benchmarks, it is required to take certain actions:

- Step 1 - complete a facility evaluation to determine the source of the exceedance.
  - Examine all industrial activities and all sources of pollutants
  - Examine the current BMPs to see if they are properly implemented and working correctly
  - Determine if the targeted BMPs are appropriate and effective at controlling the pollutants
  - Specify the additional BMPs that will be implemented and indicate how they will provide the necessary control
  - Determine if there are pollutants that cannot be linked to an industrial activity.
- Step 2 - Update the SWPPP to reflect the changes to be made to the BMPs.
- Step 3 - Implement the changes identified in the updated SWPPP.
- Regardless of the cause of an exceedance, the discharger is required to sample the next two qualified storm events.

Comment 13 A:

KCWMD believes the USEPA benchmarks are unreasonable, unattainable and should not be included in the permit for landfills. Even though landfills are considered an "industry", their construction and setting do not usually compare to the "concrete and asphalt" surfacing of most other industries. Many landfills throughout the State and most in Kern County have large areas of exposed soil and are, for the most part, surrounded by agriculture, range, undisturbed and/or fallow land. Due to the low benchmark concentrations TSS, specific conductance and Total Iron will be a problem. It would be cost prohibitive to construct facilities to comply with all of the necessary BMPs to comply with the 100 mg/l TSS, 200 umohs/cm and 1 mg/L Total Iron USEPA benchmarks.

The Fact Sheet states the *"benchmarks are generic and not intended to be numeric limits or protective of any particular receiving water."* However, the proposed permit utilizes the benchmark concentrations as a strict numeric limit. The consequence of exceeding a USEPA benchmark leads to specific and expensive corrective measures. An exceedance will require the discharger to "*collect and analyze samples from at least the next two consecutive qualifying storm events. Dischargers shall continue sample collection and analysis until two consecutive samples result in no further exceedances of the USEPA benchmarks*". If this is implemented, we will likely have to sample every qualifying storm event throughout the wet season at most of our landfills because of the low TSS, SC and Total Iron USEPA Benchmark values.

Comment 13 B:

There is no provision of relief if an upstream (i.e., background) sample concentration is greater than one or more of the USEPA Benchmarks. This is punitive to the discharger and makes the discharger responsible for sources of pollutants that the discharger has no control over. KCWMD requests that if the USEPA Benchmarks are to be used, then if one or more of the upstream sample constituents exceed the USEPA Benchmarks, the requirement of post sampling is not required even if one or more of the downstream sample constituents have exceeded the USEPA Benchmarks.

Comment 13 C:

Title 27 and our Waste Discharge Requirements are specific that drainage structures will be designed and constructed to limit ponding and infiltration. However, the BMPs needed to achieve the USEPA Benchmarks would increase the potential for infiltration and ponding of storm water.

Recommendations:

- Benchmarks should not be used at landfills as numerical limits that trigger corrective action.
- If benchmarks are used for landfills, there needs to be allowance for pollutants entering a site as background.
- Acceptable benchmark values should be adjusted for local conditions, not established as statewide concentration limits.

ONE-TIME POLLUTANT SCAN (VIII.6, PAGE 20)

"...dischargers shall each analyze at least one sample collected from the first storm event during 2008-2009 compliance year...analyzed for the following additional parameters: Chemical Oxygen Demand, Copper, Zinc, Lead, Aluminum, Iron, Magnesium, Arsenic, Cadmium, Nickel, Mercury, Selenium, Silver and SVOCs.

Comment 14:

KCWMD does not believe the analyses for the inorganic constituents are appropriate for storm water samples collected at a landfill. The additional inorganic parameters are to be analyzed using EPA Method 200.8 (ICP-MS), with the exception of Mercury which will be by EPA Method 245.1 (Cold Vapor Atomic Absorption). The analysis requirement for "total recoverable metal" is not appropriate since Method 200.8 and Method 245.1 requires the collection of a non-filtered storm water sample preserved with nitric acid.

The KCWMD landfills encompass large areas of land and there may be some distance from the waste cell to the downstream sampling point. The use of nitric acid will cause those natural indigenous inorganic elements collected in the storm water sample to become soluble. This will inherently cause an artificial increase in the measured concentrations of inorganics that are actually a result of storm water that has come in contact with landfill waste.

Recommendation: The "total recoverable metal" analysis requirement should be modified to allow the analysis of the dissolved constituent to be an option for those facilities (i.e., landfills) where "total recoverable metals" analysis is not appropriate.

SAMPLING AND ANALYSIS (VIII.4, PAGE 19)

Dischargers shall collect storm water samples during the first hour of discharge from the first two qualifying storm events of the wet season.

Comment 15:

The 1997 Industrial General Permit states that a storm water sample is to be collected during the first hour of discharge from the first qualifying storm event and one other sampling event during the wet season. Stacking the sample collection on the first two qualifying storm events does not allow a reasonable amount of time between rain events to demonstrate the effectiveness of the BMPs. This also greatly increases the cost of compliance. The increase in cost is not proportional to the benefit as required by section 13267(b)(1) of the California Water Code.

Recommendation: KCWMD requests that the sampling and analysis remain the same as stated in the 1997 Industrial General Permit.

We thank you for the opportunity to comment, and request that we be notified of any further proposals or actions regarding this subject.

Sincerely,
DAPHNE H. WASHINGTON, Director

Doug Landon

By: Doug Landon
Operations Manager

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