Municipal Services Agency

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SPECIAL HEARING
2/3/05
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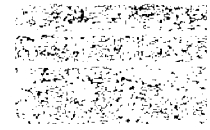
County of Sacramento



February 3, 2005

Ms. Debbie Irvin, Clerk To The Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, California 95812-0100

SUBJECT: Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Stormwater Associated with Industrial Activities

Dear Ms. Irvin

I am writing on behalf of the County of Sacramento Stormwater Program (County) to provide comments on the *National Pollutant Discharge Elimination System General Permit for Discharges of Stormwater Associated with Industrial Activities* that was reissued in December 2004 (2004 Draft Permit). The 2004 Draft Permit will have a direct impact on the County of Sacramento since there are a number of County owned/operated facilities, including landfills, airports and corporation yards, which currently have coverage under the existing Industrial General Permit.

We appreciate staff's efforts to provide a balanced approach when regulating stormwater and strongly concur that industrial stormwater discharges should continue to be regulated in a manner that is based upon an iterative BMP based approach and that is consistent with USEPA guidance. This is fundamentally important since stormwater is highly variable, intermittent, and difficult to monitor.

Further, we believe that the regulatory approach within the permit [use of the iterative BMP-based approach, combined with minimum BMPs and the USEPA benchmarks (as EPA intended)] will assist industrial dischargers and the regulators in implementing and evaluating the effectiveness of the stormwater pollution prevention plans and in making progress in improving water quality during the next permit term.

However, we do have several substantive comments as well as suggested revisions. Our main issues of concern, which are provided in additional detail below, relate to the following:

- Potential development/incorporation of numeric effluent limits for the next permit term;
- Receiving Water Limitations language changes;
- Minimum Best Management Practices (BMPs) that all dischargers must include in their the Storm Water Pollution Prevention Plans (SWPPP);
- Inclusion of USEPA stormwater numeric benchmark values and corrective actions required whenever discharges exceed benchmark values; and

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General monitoring program modifications such as additional sampling requirements for indicator parameters.

Our primary comments and corresponding suggested revisions follow. It should be noted that our comments only address the significant issues that are likely to affect County facilities. For example, modifications to the Group Monitoring and Conditional Exclusion Requirements were not addressed within this review since the County facilities do not appear to be affected by these provisions.

Development/Incorporation of Numeric Effluent Limits

The 2004 Draft Permit states that, although numeric effluent limits can not be scientifically supported in this permit, the State Board is considering adopting numeric effluent limits for the next permit term. At the same time, the State Board recognizes that USEPA has recommended the use of BMPs in lieu of numeric effluent limits in stormwater permits. To support the stated need for additional, statistically valid data, the 2004 Draft Permit requires a more extensive stormwater monitoring program than currently being imposed including comprehensive conventional analytical monitoring as well as a one-time scan for metals, COD, semi-volatile organics (also see monitoring program discussion).

However, due to the variable nature of stormwater, the diversity between industrial categories and the lack of standardization throughout the state for data collection, QA/QC, evaluation and reporting, there will be inherent limitations within the dataset that will be collected under the proposed program. Recognizing this, the state acknowledges that a scientific study, which would be based on statewide facilities from a variety of industries, may produce more reliable (and statistically valid) data in a more cost effective manner. Nonetheless, the 2004 Draft Permit requires the dischargers to either develop the data themselves or propose an alternative statewide monitoring program.

Due to the regulatory approach that is being contemplated for the next permit term, the County offers the following recommendations:

Industrial stormwater discharges should continue to be regulated within the iterative/adaptive BMP based approach and utilize the USEPA benchmarks as a measure of program effectiveness.

- The regulatory approach proposed within the 2004 Draft Permit should allow for sufficient time to implement the program and monitor the results.

The State Board should clarify that the purpose of the additional monitoring is to determine if it is feasible to establish technology based effluent limits. As it is now, there is considerable confusion as to whether the State Board would examine the feasibility of establishing technology based limits or water quality based limits.

If the State Board evaluates the feasibility of establishing technology based numeric effluent limits, the County recommends the following:

- Clarify if the technology based effluent limits would be developed for all sub-categories of industry or a subset of those who are required to obtain coverage under the Industrial General Permit.
- Identify the criteria that would be used to determine which categories of industry warrant the development of technology based effluent limits
- Identify the criteria that would be used in evaluating/developing technology based effluent limits. For example, when USEPA develops national effluent guidelines, they evaluate a number of parameters including, but not limited to, existing data from previous data-collection efforts, general facility information, on-site BMPs and treatment technologies, industry-provided information, literature searches, economic information, and water quality monitoring data (see the Technical Development Documents for Final Effluent Limitations Guidelines and Standards that have been developed by USEPA[1]). This point is very critical for the successful development of technology based limits. Anything short of this effort may cast the limits in question and increase the possibility of litigation.
- The analytical monitoring program should be structured so that it is adequate and comprehensively captures the types of information necessary to develop statistically valid technology based effluent limits.
- Additional guidance should be provided to the dischargers regarding sampling collection and handling, standard methods for analysis, QA/QC, data validation, and reporting.

Receiving Water Limitations Language

The Industrial General Permit's Receiving Water Limitations language has been modified. Citing a clarification in federal law (Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159.), the Draft 2004 General Permit now has more stringent requirements to ensure that dischargers comply with water quality standards. The modifications primarily include the following:

- The safe harbor language has been eliminated. The language now requires the discharger to engage in the iterative process once the discharge contains pollutants in violation of the Receiving Water Limitations. The iterative process has essentially been removed as a proactive step to keep a discharger from being in violation of the permit to a reactive step in response to a permit violation.
- Language was added at the end of the section that notes that, even if the discharger is actively engaged in the iterative process, the Regional Board may still enforce any of the other provisions of the permit.

As a result, the County offers the following recommendations

- The previous Receiving Water Limitations (RWLs) Language should be carried forward in the 2004 Draft Permit for the following reasons:

[1] http://www.epa.gov/ost/guide/#plan

- Within the Fact Sheet, Board staff cites the Defenders of Wildlife v. Browner decision to support their statement that Federal law had been clarified that discharges of stormwater associated with industrial activity must achieve strict compliance with water quality standards. This is then used to support the revisions that were made to the Receiving Water Limitations Language. It should be clarified that, although the court drew parallels between the municipal and industrial provisions of the Clean Water Act, the court holding for Defenders v. Browner only applies to the municipal provisions.
- Since the iterative process is the primary mechanism for stormwater quality management and permit compliance, dischargers should not be found in violation of the RWLs as long as they implement BMPs that achieve BAT/BCT and actively follow the iterative process as outlined in the previous RWLs.
- There is no statewide or federal guidance that identifies how industrial dischargers or the regulators determine if an industrial stormwater discharge contains pollutants that are causing or contributing to an exceedance of any applicable water quality objectives or water quality standards. Therefore, there is no guidance to determine if one is clearly in violation of Receiving Water Limitations III.2. Absent clear guidance, the dischargers should continue the current RWL approach within the context of benchmarks and engage in the iterative process when triggered by the benchmarks.

- The Permit should clarify the application of the iterative process. The Draft 2004 Permit currently outlines two scenarios that require the discharger the initiate a series of corrective actions 1) upon determination that the discharger is in violation of Receiving Water Limitation III.2 (Section V.6); and/or 2) when analytical results exceed the USEPA benchmark values (Section V.7). The Permit language should clarify that, if the discharger has already initiated a series of corrective actions triggered by one of the two requirements, then they are covered until they are completed. In other words, they should not be required to re-start the process.

Minimum Best Management Practices

The 2004 Draft Permit specifies minimum BMPs that must be incorporated into Stormwater Pollution Prevention Plans (SWPPPs). As stated in the Fact Sheet, the purpose of the minimum BMPs is to ensure that facilities will have uniform practices and comply with a baseline level of BMP implementation which helps to achieve compliance with the BAT/BCT technology based standard.

Although the County supports the concept of establishing minimum BMP requirements and recognizes that the majority of minimum BMPs are practicable and should be promoted as common industry practices, we recommend the following:

- The BMP categories are inconsistent with terminology that is widely used throughout the state and promoted within the CASQA Industrial and Commercial BMP Handbook. In order to provide for consistency between the Permit and the industry specific guidance materials, the State should modify the categories as follows:

2004 Draft Permit Categories	Recommended Categories
• Good Housekeeping • Erosion/Sediment Control	• Building and Grounds Management
• Preventative Maintenance	• Vehicle and Equipment Management
• Spill Response Procedures	• Non-Stormwater Management
• Material Handling/Waste Management	• Material and Waste Management
• Employee Training • Record Keeping and Quality Assurance • Periodic Visual Inspections	• *Included as a component in each category listed above*

- The current list of minimum BMPs under each category is a mix of BMPs and performance standards. For example, under Spill Response Procedures one BMP states "develop and implement spill response procedures". However, under Preventative Maintenance it also states "inspect weekly each of the....." which is a specific performance standard. Instead of setting the performance standard at "daily", "weekly" or "monthly", we recommend that the performance standard be stated as "no less than monthly". This would allow for the necessary flexibility at each site and allow the industrial discharger to indicate if daily, weekly or monthly inspections are warranted based on the types of activities conducted on-site.

- Good Housekeeping – Delete the requirement to divert stormwater or authorized non-stormwater flows from non-industrial areas from contact with industrial areas of the facility [Section VII.8.a.i.(7)]. Although this may be promoted as a good practice, this may not be able to be achieved at many facilities during storm conditions without extensive structural modifications. To a great extent, facilities should be able to prevent the contamination of stormwater at their industrial/commercial facility through the implementation of the other minimum BMPs.

  Modify the language in the Fact Sheet, Page IX last paragraph under *Minimum BMPs* to read "The failure to implement facility-specific BMPs that are necessary to achieve compliance with BAT/BCT ~~and to meet applicable water quality standards~~ is a violation of this General Permit".

- Include a reference in the Permit to the CASQA *Industrial and Commercial California Stormwater BMP Handbook (2003)* for additional guidance on the types of BMPs that may be implemented at Industrial and Commercial facilities.

Incorporation of USEPA Benchmarks

One of the most significant changes in the 2004 Draft Permit is the inclusion of the USEPA benchmarks for various indicator parameters. As stated in the Fact Sheet, the benchmarks are generic and not intended to be numeric limits or protective of any particular receiving water. The limits can be viewed as representative of what is minimally achievable through a properly developed and implemented SWPPP to meet BAT/BCT. Although the State Board included the USEPA benchmarks within the 2004 Draft Permit, there are slight differences between how USEPA and the State apply them. The key differences are summarized below.

	USEPA	State
• Purpose of benchmark	• Indicator of program effectiveness – indicates if SWPPP is effective. • Benchmarks are not effluent limits and should not be used as the basis for issuing an enforcement violation.	• Indicator if SWPPP has been effectively developed and implemented to meet BAT/BCT. • Benchmarks are not intended to be numeric limits.
• Analytical results are < benchmark	• Reduce sampling as incentive – analytic levels below or equal to benchmarks can confirm that the SWPPP is effective	• No reduction in sampling
• Analytical results are > benchmark	• If results are "considerably" above - use as a flag for potential problems. Not used as a trigger to begin mandatory SWPPP or operational revisions (unless necessary) • Facilities encouraged to conduct more monitoring if appropriate to identify additional management measures for the SWPPP	• Initiate series of corrective actions (see above) • Sample next 2 consecutive, qualified storm events

While the County supports the concept of including the USEPA benchmarks within the Permit, we offer the following recommendations:

The application of the USEPA benchmarks within the permit should mirror USEPA approach. This would provide an incentive based program as well as additional clarification that the benchmarks are used to provide information in determining the effectiveness of the SWPPP and not as a compliance tool. The modifications should include:

- Reduction in sampling requirements if analytical results are < benchmark values. Facilities should be allowed to decrease monitoring as long as their programs are effective.

- Within the Multi-Sector General Permit, USEPA clearly recognizes that, given the small number of samples and the vagaries of stormwater discharges, it may be difficult to determine or confirm the existence of a discharge problem. As such, USEPA identifies that analytical results that are "considerably" above benchmark values can serve as a flag to the operator that the SWPPP needs to be evaluated and that pollutant loads may need to be reduced. Given USEPA's intent for the use of the benchmarks, the State should recognize a two-tiered system: 1) analytical levels at or near benchmarks should be considered as a potential need to revise the SWPPP; and 2) levels that are "considerably" above the benchmark should trigger the corrective actions that are outlined within the Permit.

- *Section VIII 4.f.ii* states that, if the analytical results exceed the benchmark values, that the dischargers must collect and analyze samples from the next two qualifying storm events. Given the number of factors that could influence the ability of the discharger to collect samples, it is recommended that language similar to *VIII.4.a* be added to this section *"Dischargers who do not collect samples from either or both of the next two qualifying storm events shall collect samples from the next qualifying storm events and shall explain in the Annual Report why either or both of the previous two qualifying storm events were not sampled."*

- As noted above dischargers are required to sample the next two qualified, consecutive storm events if their analytical results are greater than the benchmarks. However, the Permit also recognizes that an elevated constituent level could, in fact, be the result of influences outside the control or jurisdiction of the discharger (e.g. atmospheric deposition). If the latter is determined to be the case, the discharger should not have to conduct the increased monitoring for an indefinite period since the constituent may exceed the benchmark for an extended period of time.

- Although it does not appear that USEPA has established benchmarks for Specific Conductance or Total Organic Carbon (TOC), the 2004 Draft Permit identifies benchmarks for these constituents in Table VIII.2. The Board should clarify how the benchmarks for Specific Conductance and TOC were derived.

  The USEPA established a benchmark for Total Selenium for only oil and gas exploration and production facilities. This same footnote should be recognized within the 2004 Draft Permit table.

As stated previously, the Permit outlines two scenarios that require the discharger to initiate a series of corrective actions 1) upon determination that they are in violation of Receiving Water Limitation III.2 (Section V.6); and/or 2) when analytical results exceed the USEPA benchmark values (Section V.7). The Permit language should clarify that, if the discharger has already initiated a series of corrective actions triggered by one of the two requirements, then they are covered until they are completed. In other words, they should not be required to re-start the process if the other requirement subsequently triggers the corrective action process.

- In order to recognize that some sources of pollutants may be beyond the control of the discharger, it is recommended that the following modification be made to the Fact Sheet General Permit Conditions, Effluent Limitations #4 *"If pollutants can not be controlled through the implementation of source control BMPs, treatment BMPs ~~will~~ may be necessary"*.

Monitoring Program

The 2004 Draft Permit Monitoring Program and Reporting Requirements are similar to the previous requirements, but there are significant changes including additional visual observations, sampling and analysis for pollutants that may cause or contribute to an exceedance of water quality standards, the incorporation of USEPA benchmarks, additional guidance regarding sampling methodology, QA/QC, sample handling, etc. and the requirement to conduct a one time comprehensive scan.

While many of the modifications are positive, several warrant further clarification and/or should be revised so that they are not overly burdensome for the industrial discharger. As such, the County offers the following recommendations:

As stated above (see development/incorporation of numeric effluent limits discussion), if the State Board evaluates the feasibility of establishing technology based effluent limits, then the development should follow a similar process that is used by USEPA when developing national effluent guidelines and take a number of parameters into consideration including, but not limited to, existing data from previous data-collection efforts, site visits to assess discharge characteristics, general facility information, on-site BMPs and treatment technologies, industry-provided information, literature searches, economic information, and water quality monitoring data. Since this would be a significant undertaking and expenditure of resources for each industrial category and should be an effort conducted on a statewide level – not by individual dischargers.

The 2004 Draft Permit states that the RWQCBs would like to use the monitoring data to evaluate individual facility compliance and to assess the differences between the various industrial categories (*Fact Sheet pg. XIII*). However, there is still very little guidance that is provided to ensure that the data collected and reported over the next five years will allow for this type of comparison. In order to obtain statistically valid data, the General Permit must provide additional guidance for standardized methods for sample collection, analysis, validation, evaluation, minimum detection limits, standardized QA/QC protocols, and standardized reporting.

WDRs VIII.3.f · Dischargers are required to visually observe all stormwater drainage areas prior to anticipated storm events. It is recommended that in lieu of pre-storm observations, regularly scheduled visual observations occur throughout the wet season (Oct – April). The reasons for this modification include 1) the Board does not provide guidance on what constitutes an anticipated storm (such as predicted rainfalls > 0.25"); 2) there are many anticipated storms throughout the wet season that do not materialize; and 3) there are storms that may occur that are not predicted.

WDRs VIII.4.c.iv – In situations where the receiving water is experiencing an existing water quality standard exceedance, the Discharger is required to analyze samples for the constituent(s) causing the exceedance. This provision should be clarified so that the discharger only has to monitor for those constituents that would reasonably be expected to be discharged from their site as a result of their industrial activities.

- *WDRs VIII.6* – Although we understand that the intent of the one-time pollutant scan is to assist the State Board in determining whether numeric effluent limits can be scientifically supported for the next permit term, a one-time grab sample conducted during the last year of the permit will not yield statistically valid data. In fact, given the highly variable nature of stormwater, this type of approach will only yield data that is of limited or no value. We recommend that the Board delete this provision and, instead, focus on collecting statistically valid data for the baseline and facility specific constituents as a part of the overall sampling and analysis program (*VIII 4*).

  WDRs VIII.9 – This section makes no reference to collecting samples for trace metals determination using "clean techniques. Therefore, it is recommended that this section provide guidance consistent with EPA Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels, including the use of clean powder-free gloves for sample collection.

  WDRs VIII.9.c – This section states *"Use only the sample containers provided by the laboratory to collect and store samples."* Recommend revising to state: "Use only new and/or clean sample containers..."

Other Issues

- *Minor Edits* – There are a number of minor edits that should be made within the permit so that it reads better (i.e. modifying Table VIII.1, numbering in Section VII.8, description under VII.8.a.ii, etc.)

- *Language Modifications* - There are several places where absolutes such as "all" and "every" are used (i.e. VII.2.a.i – dischargers shall identify and evaluate all sources of pollutants.....). Since the use of absolutes within the permit provisions may unintentionally cause a discharger to be in violation, the Permit should be revised.

  Timeframes – Many of the timeframes within the permit appear to be unreasonable (e.g. V.6.g – Within 14 days following approval of the report...dischargers shall revise the SWPPP and monitoring program....). The Permit should be modified to allow for more reasonable timeframes. As an example, it is recommended that the discharger have 60 days instead of 14 in which to modify the SWPPP and monitoring program pursuant to V.6.g.

  Attachment 1 – Facilities Covered By This General Permit - It is recommended that Attachment 1, which identifies the types of facilities that are covered by the General Permit, be revised similar to the USEPA Fact Sheet "Who is Subject to Phase I the NPDES Storm Water Program and Needs a Permit" so that it is more user friendly. In addition, although the Fact Sheet identifies that the 1987 SIC manual was replaced by the 1997 North American Industrial Classification System (NAICS), Attachment 1 has not been updated to reflect which NAICS codes would fall under each of the categories.

Thank you for the opportunity to comment on the 2004 Draft Industrial General Permit. Please contact me at (916) 874-4681 if you have any questions about our comments.

Sincerely,

Kerry Schmitz
Stormwater Quality Program Manager

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