



COALITION FOR PRACTICAL REGULATION

"It's about saving jobs"

February 3, 2005

Via Fax and U.S. Mail

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

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

**Subject: Comments on Reissuance of the NPDES System
General Permit for Discharges of Stormwater
Associated with Industrial Activities**

Dear Ms. Irvin and Members of the Board

On behalf of the Coalition for Practical Regulation (CPR), an adhoc group of 43 cities within Los Angeles County that have come together to address water quality issues, I would like to submit the following comments regarding the *Reissuance of the NPDES General Permit for Discharges of Stormwater Associated with Industrial Activities* (General Permit). CPR is taking the opportunity to comment on this permit, even though most activities of our member cities do not come under it, because there are a number of problems in this General Permit that could be inappropriately taken as precedent for municipal permits and other general permits.

CPR supports the continued use of a BMP-based iterative approach in the General Industrial Permit. We agree with USEPA that numeric effluent limits are inappropriate to apply to stormwater due to the unique and variable nature of stormwater discharges. An iterative BMP-based approach, consistent with USEPA guidance, is the most appropriate and effective way to improve the quality of stormwater discharged from industrial facilities.

Use of EPA Benchmarks

In its Multi-Sector General Permit for Industrial Activities, USEPA established "benchmark" concentrations, which it defined as "the pollutant concentrations above which EPA determined represent a level of concern." They were established by EPA to be indicators used to evaluate the effectiveness of BMPs and SWPPPs. In the Draft Final Industrial Permit, the State Board has adopted benchmarks, which it notes are "derived from USEPA's multi-sector permit."

However, there are a number of differences between USEPA's approach to benchmarks and the approach proposed by the State Board.

- ARCADIA
- ARTESIA
- BALDWIN PARK
- BELL
- BELLFLOWER
- BELL GARDENS
- BRADBURY
- CEBRITOS
- COMMERCE
- COMPTON
- COVINA
- DIAMOND BAR
- DOWNY
- GARDENA
- HAWAIIAN GARDENS
- INDUSTRY
- IRVINDALE
- LA CAÑADA FLINTCREEK
- LA MIRADA
- LAKELWOOD
- LAWDALE
- MONROVIA
- MONTEBELLO
- MONTEREY PARK
- NORWALK
- PALOS VERDES ESTATES
- PARAMOUNT
- PICO RIVERA
- POMONA
- RANCHO PALOS VERDES
- ROSEMEAD
- SANTA FE SPRINGS
- SAN GABRIEL
- SIERRA MADRE
- SIGNAL HILL
- SOUTH EL MONTE
- SOUTH GATE
- SOUTH PASADENA
- TEMPLE CITY
- VERNON
- WALNUT
- WEST COVINA
- WHITTIER

Ms. Debbie Irvin, Clerk to the Board
February 3, 2005
Page 2 of 5

In the response to comments regarding the Monitoring and Reporting Requirements of the Multi-Sector General Permit (MSGP), USEPA states:

"When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that his pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job. EPA believes there is presently no alternative that provides stakeholders with an equivalent indicator of program effectiveness." (Fed. Reg., Volume 65, No. 210. p. 64796.)

However, the State Board's approach to concentration benchmarks includes that "if the discharges are above one or more of the benchmarks, the discharger must revise its SWPPP to improve BMPs and must sample the next two consecutive qualified storm events." (Fact Sheet, IV) This is quite a leap from EPA's comment that levels "below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job." EPA clearly views benchmarks as indicators, and acknowledges the variable nature of stormwater. The draft General Industrial Permit is significantly more stringent, and appears to be the first step in a process designed to use the benchmarks as numeric effluent limits.

EPA states that the Agency "has not, and does not, intend for pollutant levels above the benchmark values to mean a facility is out of compliance" with the permit. Benchmarks are not water quality standards and should not be used as such. EPA established them to be indicators of program effectiveness. The State should restrict its use of benchmarks to the same use. The preface to the MSGP states, "In many cases, operators can, upon receipt of analytic monitoring results above benchmarks, still conclude their present SWPPPs/BMPs are adequately protective of water quality, or that other situations such as discharging to low-quality, ephemeral streams may obviate the need for SWPPP/BMP revisions." This further clarifies EPA's position, that, even upon a monitoring result that indicates a concentration level "above benchmarks," it is still possible "in many cases" for industrial facilities to conclude that their BMP efforts are "adequately protective."

Impacts of Atmospheric Deposition

CPR urges the State Board to recognize and address the very real problem of atmospheric deposition in this general permit. USEPA published a handbook on the subject -- *Frequently Asked Questions About Atmospheric Deposition: A*

Ms. Debbie Irvin, Clerk to the Board
February 3, 2005
Page 3 of 5

Handbook for Watershed Managers. In it, the Agency notes, "Atmospheric deposition is now recognized in many areas as a significant cause of water quality problems..." By not addressing atmospheric deposition, the State Board would be ignoring a potentially significant contributor to water quality problems. Industrial facilities have no control over atmospheric deposition; they should not be held responsible for its contributions to water quality problems.

As EPA notes in the Handbook, "traditionally there has been a separation of air and water legislation and programs in all levels of government." This problem extends to permitting programs. The State Board would be well advised to initiate a collaborative effort between the water boards and the air boards to begin to tackle the problem of atmospheric deposition. Otherwise, adoption of strict new permit requirements would turn the industrial permit program into a cycle of futile testing for compliance with unachievable goals.

Adoption of Numeric Effluent Limits Should Be Delayed

The State Board, as stated in the Fact Sheet, intends to develop numeric effluent limitations. Before attempting to move forward on that intention, the Board should first commit to a thorough study of the full complement of background contaminants that are outside the control of industrial permittees. This includes atmospheric deposition, which, as noted above, is a recognized transport mechanism of pollutants. Zinc is another particularly troublesome background contaminant; it is ubiquitous. Zinc is present in many urban sources that are beyond the control of permittees, ranging from automobile tires and brake pads to galvanized metal roofing, fencing, and storm drain pipes. The extent of the zinc problem in Southern California was the subject of many comments at the January 31st State Board hearing.

The fact that it is "difficult to apply objective criteria to various sites and to ensure compliance with technology-based and water quality-based requirements in the absence of numeric effluent limitations," does not render the establishment of such limitations equitable, or even achievable. Neither the Board nor the industrial permittees can will numeric effluent limitations into practicability. It may appear to the environmental community and to the Board that establishment of numeric effluent limitations is an efficacious step. However, if the limitations are not based on the reality of the discharges from industrial permittees, which includes any impacts from background contamination, they will not bring about the desired improvements to water quality. Imposition of inappropriate numeric effluent limitations will ensure that most permittees will be out of compliance with permit requirements and subject them to third party lawsuits.

Stating, as staff does in the Fact Sheet, that industrial permits are "not required to include numeric effluent limitations" does not capture the EPA comments regarding effluent limitations and benchmarks in the MSGP. USEPA stated explicitly, "The benchmark concentrations are not effluent limitations and should not be interpreted or

Ms. Debbie Irvin, Clerk to the Board
February 3, 2005
Page 4 of 5

adopted as such. These values are merely levels which EPA has used to determine if a stormwater discharge from any given facility merits further monitoring to ensure that the facility has been successful in implementing a SWPPP." (Fed. Reg., Volume 65, No. 210. p. 64797.)

The State Board acknowledges the inappropriateness of attempting to apply numeric effluent limits to stormwater. The Fact Sheet states, "SWRCB is mindful that USEPA has recommended throughout its guidance documents the use of BMPs in lieu of effluent limitations and the limited use of sampling and analysis in stormwater permits." It further states that the Board seeks "to determine whether numeric effluent limitations can be scientifically supported in the next general permit." (p. IV) However, in a preceding paragraph, the Fact Sheet states that the purpose for the required metals, COD, and SVOC screening is for a database that the Board "intends to use" to "develop numeric effluent limitations." With this statement, it appears that the decision has already been made to proceed with numeric effluent limitations, whether or not they can be "scientifically supported."

The Need for a "Safe Harbor" Clause

In the earlier General Pesticide Permit, your Board specified that:

"A discharger will not be in violation of Receiving Water Limitation F.2, as long as the discharger has implemented the BMPs required by this General Permit and the following procedure is followed:"

The absence of a Safe Harbor clause in this general permit creates a problem for industrial permittees. If industrial facilities have a valid SWPPP and have implemented the appropriate BMPs, they are demonstrating a commitment to improving water quality. The lack of Safe Harbor language makes them vulnerable to third party litigation -- while they are in the process of trying to address the problem. No solution to water quality problems is instantaneous; the iterative BMP process includes unavoidable periods of time between testing and implementation of further BMPs, if necessary. There should be a Safe Harbor clause in this and all stormwater permits. This would allow permittees to proceed in their efforts to improve the quality of their stormwater discharges, while being protected from third party lawsuits that would, ultimately, divert time and money away from dealing with water quality issues.

Bring Non-Fileers into the Industrial Permit Program

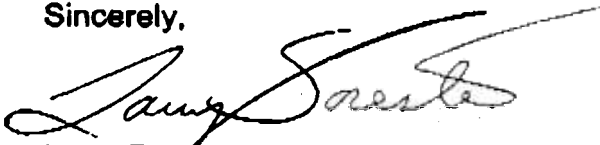
This general permit seems to be punitive, in that through the proposed imposition of onerous new requirements, it is punishing those who have filed their notices of intent (NOIs) and are trying to comply. Before the State adopts overly stringent, and in some cases unachievable, new requirements, it should go after those industrial facilities that have not filed NOIs and are, therefore, not under the permit. This constitutes a large percentage of the total industrial facilities in the State. Most of the facilities that have filed NOIs and have implemented BMPs are doing their part to responsibly handle the activities at their respective facilities. To achieve a significant improvement in industrial

Ms. Debbie Irvin, Clerk to the Board
February 3, 2005
Page 5 of 5

stormwater discharges throughout the State, it is incumbent upon the Board to address the problem of non-filers. Getting them to participate in the industrial permit program would also benefit the municipal NPDES program; having a higher percentage of industrial facilities doing their part to improve stormwater discharges would help budget-strained municipalities comply with the requirements of their own NPDES permits.

Thank you for the opportunity to comment on the *Reissuance of the NPDES General Permit for Discharges of Stormwater Associated with Industrial Activities*. CPR and its member municipalities remain committed to continuing to work with the State Board to improve water quality management policies in California.

Sincerely,



Larry Forster
CPR Steering Committee
City Council Member, City of Signal Hill