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#97

October 22, 2012

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

Re: Comment Letter, Draft General Permit for Storm Water Discharges Associated with Industrial Activities

Dear Ms. Townsend:

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the recent Draft General Permit for Storm Water Discharges Associated with Industrial Activities (Draft Permit).

The Western States Petroleum Association (WSPA) is a trade association that represents 27 companies that explore for, develop, refine, market and transport petroleum and petroleum products in the Western U.S. WSPA members have extensive operations in California and are directly affected by regulations that may govern the environmental management of storm water runoff from industrial sites in California.

WSPA concurs with the October 22, 2012 comments on the Draft Permit submitted by the California Stormwater Quality Association (CASQA). In particular, WSPA would like to emphasize the following points, which are particularly important for the industrial facilities WSPA represents:

1. Numeric Action Levels: CASQA rightly commented that the Numeric Action Levels (NALs) proposed in the Draft Permit are not Numeric Effluent Limitations (NELs), the exceedance of which constitutes a permit violation. Rather, the NALs are levels that, when exceeded, trigger certain prescribed Exceedance Response Actions (ERAs) (e.g., evaluation of the facility's SWPPP, stormwater management operations, and BMPs) aimed at reducing the concentrations of relevant pollutants in stormwater. It is crucial that NALs be defined carefully in NPDES permits for industrial facilities, and that they not be treated as NELs in those permits. WSPA also supports CASQA's comment that industry-specific NALs should be developed as adequate California industry-specific data are collected.

1

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2. Design Storm: Like CASQA, WSPA supports the use of 85th percentile, 24-hour storm as the design storm. We also support the CASQA's comment that: The Industrial General Permit should explicitly limit data used in assessing NAL exceedances to data collected from storm events that do not exceed the Design Storm event specified in the permit (i.e., the 85th percentile storm, or the initial portion (up to and equal to the volume of the 85th percentile storm) of larger storms). Without this clarifying language, there could be a mismatch between the event magnitude required for treatment controls, and that required to assess the need for additional controls in the ERA process. WSPA also supports CASQA's suggested edits to Section X.H.7.a. (pp 34) to clarify the calculations for flow-based BMPs.

2

3. Incorporation of Total Maximum Daily Loads (TMDLs): CASQA notes that, in general, it has not yet been made clear how TMDLs will apply to industrial storm water dischargers in California. In light of this uncertainty, CASQA comments that section V.C of the Draft Permit, as currently written, may subject industrial dischargers to unwarranted TMDL enforcement actions (either administrative or third-party) since it requires immediate compliance with TMDLs. WSPA agrees with CASQA that this language in the Draft Permit should be changed to account for the fact that TMDLs should not be applied to industrial storm water dischargers until such application is clarified in the TMDLs themselves.

3

4. NAL Off-ramps and Triggers: WSPA agrees with CASQA's comment that the process of ERAs currently envisioned in the Draft Permit is overly complicated and should be simplified to resemble EPA's MSGP process.

4

5. Water Board Response to Demonstration Technical Reports (DTRs): At one stage of the ERA process, the Draft Permit allows industrial storm water dischargers to submit DTRs that show, for example, that the facility is in compliance with BAT/BCT requirements, however as noted below, WSPA recommends that dischargers be allowed to demonstrated that the cause of an exceedance is a natural or non-industrial source and that dischargers should be able to prepare a DTR at ERA Level 1, if the source is not associated with industrial activities to prevent costly administrative BMP improvements that will not improve water quality. WSPA concurs with CASQA's comment that the ERA process should be modified such that industrial dischargers can receive approval of such DTRs before implementing costly structural treatment control BMPs. Otherwise, industrial dischargers could be required to construct expensive structural BMPs that do not meet with Board approval.

5

6. Confidential and Proprietary Information: WSPA concurs with CASQA's concern that electronic submission of required regulatory documentation via the SMARTS system—in particular, electronic filing of SWPPPs—could inadvertently lead to the dissemination of

6

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confidential and proprietary information associated with the industrial discharger's facility. CASQA recommends that the Draft Permit be modified such that SWPPPs need not be filed electronically and thus that the filing requirements more closely resemble EPA's MSGP process.

7. Implementation of QISP Requirements: WSPA agrees with CASQA's comment that the required training courses for Qualified Industrial Stormwater Professionals (QISPs) will likely not be available in time to meet the requirements of the Draft Permit, which is set to become effective in July 2013. In the event that QISP training courses are not available at that time, industrial facilities will be forced to employ or contract with professional engineers to carry out the reporting required by the Draft Permit, which could impose a considerable unwarranted burden on industrial dischargers. Thus, the Draft Permit should be changed to extend the deadline for QISP implementation to July 2015.

7

8. Cost of NEC Filing: With CASQA, WSPA is concerned that the proposed Draft Permit will impose unwarranted, burdensome costs on industrial businesses in California subject to the regulation. Specifically, CASQA estimates that each individual business could be subject to initial NEC filing costs ranging from $2,042 to $4,442, which seem too high.

8

In addition to these important CASQA comments, WSPA has further comments on the scientific basis of the NALs proposed in the Draft Permit. The Draft Permit proposes two kinds of NALs as follows:

> "One is an annual NAL, which is the 2008 MSGP benchmark value, and is applicable for all parameters listed in Table 5. The other NAL is an instantaneous maximum NAL, which has been calculated from a Water Board dataset to identify drainage areas of concern and is only applicable for Total Suspended Solids (TSS), Oil and Grease (O&G), and pH." (p.10, Draft Permit)

The proposed annual and instantaneous maximum NALs are summarized in Table 5 from the Draft Permit, which is reproduced below.

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Table 5 from the draft permit – Summary of NAL values and required test methods, detection limits, and reporting units

PARAMETER	TEST METHOD	METHOD DETECTION LIMIT***	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	field test with calibrated portable instrument, or lab sample in accordance with 40 CFR § 136.		pH units	6.0-9.0	6.0-9.0
Suspended Solids (TSS)*, Total	SM 2540-D	1.0	mg/L	100	400
Oil & Grease (TOG)*, Total	EPA 1664A	1.0	mg/L	15	25
Zinc, Total (H)	EPA 200.8	0.0005	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	0.0005	mg/L	0.0332**	
Cyanide, Total	EPA 3135.2I	0.003	mg/L	0.022	
Lead, Total (H)	EPA 200.8	0.0005	mg/L	0.262**	
Chemical Oxygen Demand	SM 5220C	1.0	mg/L	120	
Aluminum, Total	EPA 200.8	0.0005	mg/L	0.75	
Iron, Total	EPA 200.7	0.005	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	0.01	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	0.05	mg/L as P	2.0	
Ammonia	SM 4500-NH3 B+ C or E	0.1	mg/L	2.14	
Magnesium, total	EPA 200.7	0.0005	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	0.0005	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	0.0002	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	0.0005	mg/l	1.02**	
Mercury, Total	EPA 245.1	0.0001	mg/L	0.0014	
Selenium, Total	EPA 200.8	0.0005	mg/L	0.005	
Silver, Total (H)	EPA 200.8	0.0002	mg/L	0.0183**	
Biochemical Oxygen Demand	SM 5210B	3.0	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition
EPA – EPA test methods

* Minimum parameters required by this General Permit
**The NAL is the highest value used by EPA based on their hardness table in the 2008 MSGP.
***More stringent test methods with lower detection limits may be used.

9

The NALs proposed in the Draft Permit are inadequate for several reasons. First, there is no evidence that the Annual NALs can be met with current BMP technology. Neither USEPA nor the SWRCB have assessed whether or not available treatment and control technologies are capable of meeting these limits. In fact, available evidence suggests that even state-of-the-art treatment technologies cannot consistently meet the proposed NALs in the Draft IGP. For example, the Washington Department of Ecology adjusted an originally-proposed industrial permit benchmark value for copper of 14 ug/L upward to a seasonal average benchmark of 50 ug/L and a daily average benchmark of 147 ug/L based on field testing of various treatment technologies (Taylor Associates 2008). In effect, the State of Washington concluded that best available technologies could not meet copper concentrations lower than these adjusted values, both of which are significantly higher than the value proposed by the State of California for the IGP.

10

Second, while the technical basis for the instantaneous maximum NALs (IMNALs) for TSS and Oil & Grease seems clear (i.e., 7-8% of samples exceed these values) and reasonably defensible, the basis of the IMNAL for pH is not. The Draft Permit Fact Sheet states the following regarding the basis for the pH IMNAL:

> "Due to issues with the ranges of concentrations and the logarithmic nature of pH, statistical methods cannot be applied to pH in the same ways as other parameters. Therefore, Staff has decided to use a range of concentrations that has already been established for storm water discharges in California for the instantaneous NAL values. The State Water Board's Construction General Permit established an NEL range of 6.0 - 9.0 pH units. These NELs were challenged in court and do not currently apply to the Construction General Permit. These values are being used as NALs, not NELs. An exceedance of an NAL, in and of itself, is not a violation of this General Permit. The Construction General Permit established a more stringent NAL range of 6.5-8.5 pH units; accordingly, an exceedance outside the range of 6.0 - 9.0 pH units would be consistent with the idea of [*sic*] that the sampled drainage area represents an area of concern. Rain water generally has a pH close to neutral, and with proper BMP implementation the pH of industrial storm water discharges should be within the range of 6.0 - 9.0 pH units." (IGP Fact Sheet, p. 47)

WSPA has several concerns. First, the pH NEL associated with the Construction General Permit (CGP) was challenged and overturned, and the substitute NAL value that has been proposed cannot properly be characterized as a pH range that "has already been established for storm water discharges in California," and comparison to the CGP value does not provide a scientifically adequate basis for the Industrial IMNAL. In addition, no rationale is provided for having an instantaneous NAL that is identical to the annual NAL. Finally, rain water does not have a pH close to neutral; as shown in comments provided to the SWRCB during the adoption process for the CGP, the pH of rainwater is frequently outside the proposed NAL range for pH.[1] Thus, the scientific basis of the IMNAL for pH seems inadequate based on the language of the Draft Permit, and additional analysis is needed.

While the IMNALs for TSS and Oil and Grease seem to be based on a robust dataset, and to be set at levels that would lead to achievable improvements in industrial storm water quality, there does not appear to be enough California-specific data supporting either the pH IMNAL or the Annual NALs. Before establishing NALs the Board should collect additional data and be able to demonstrate that California industrial discharges would not exceed (or fall outside the range of) the NALs. Ultimately, these NALs must be set at levels that are demonstrably achievable and realistic for industrial dischargers in California.

11

Finally, WSPA believes that evidence showing that external sources (e.g., run-on from adjacent facilities or land uses, atmospheric deposition) are responsible for an exceedance of NALs should be allowed at any compliance level, including Level 1, and prior to the implementation of

[1] See Flow Science (June 24, 2009), Construction General Permit: Action Levels and Numeric Limits Analysis, Recommendation of Alternatives, at p. 9 and 23. This analysis read in part: "Data collected by the U.S. Geological Survey (USGS) indicate that rain in California has a long-term average pH that varies between 5.3 and 6.0, depending upon location (Figure 2). For individual storms, pH values as low as 4.5 have been observed (see, e.g., http://nadp.sws.uiuc.edu/ads/2003/CA45.pdf)."

additional control measures that would not be warranted in the absence of external sources of pollutants.

Thank you again for this opportunity to comment on the Draft Permit. We hope that these comments contribute to the best possible regulation of storm water from industrial sites in California.

Sincerely,

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