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September 19, 2013

Via Electronic Mail
Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Airport California Monitoring Group Comments on California's Draft Industrial General Permit; NPDES No. CAS000001 (July 19, 2013 draft)

Dear Ms. Townsend and Members of the SWRCB:

On behalf of the only airport monitoring group in California, for which I serve as group leader and regulatory consultant, please consider the following comments regarding the draft California industrial general stormwater permit (draft CA IGP) that the SWRCB released on July 19, 2013.

AAAE/ARDF[1] started the California Monitoring Group in 1992, the inaugural year of the California General Industrial Stormwater Permit. The original AAAE/ARDF group now refers to itself as the Airport California Monitoring Group (ACMG). ACMG has evolved in the past 20 years and credits the State's Group Monitoring Program with fostering an efficient way for the aviation industry to develop an effective stormwater compliance program through shared resources and industry leadership.

In addition to the ACMG's focus on shared knowledge, training, and compliance programs, it also has been an active participant in the State's evolving stormwater permitting program. ACMG has submitted written comments or provided oral testimony regarding every industrial permit development since the SWRCB promulgated its first permit in the early 1990s. This includes testimony and comments to the SWRCB's Blue Ribbon Panel and on each of the State's request for comments on various proposed versions of a new industrial general permit. Two ACMG members provided testimony at the SWRCB's March 29, 2011 hearing regarding the previous draft CA IGP.

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[1] The American Association of Airport Executives (AAAE) is a not-for-profit professional organization representing airport management personnel around the world. Founded in 1928, AAAE represents airport executives and personnel at U.S. airports, including most airports in the State of California. A separate, not-for-profit technical organization, the Airport Research and Development Foundation (ARDF), provides research, technical and data support for AAAE/ARDF projects.

Airports are Unique in the Industrial Stormwater Permit Program

For roughly 70 participating airports across California, ACMG has been providing significant benefits that would be impossible but for the "group monitoring" provisions in the current industrial stormwater general permit. In addition, many of those benefits also translate into benefits to the SWRCB and Regional Boards by ACMG's ongoing participation in the State's evolving permit development processes, shared exchange of information that both improves the ACMG's compliance strategies and the State's understanding regarding airport stormwater discharges, and through real environmental protection resulting NOT from collecting samples, but from implementing appropriate Best Management Practices (BMPs) and conducting visual inspections that help to improve the performance of those BMPs.

Airports – even the smallest general aviation airports – are complex entities and different from all of the other "industrial" sources within the definition of "associated with industrial activity" at 40 CRF § 122.26(b)(14). Not many of the other "industrial" facilities subject to the State's Industrial Stormwater General Permit have "tenants" that come onto their property, generate stormwater discharges "associated with industrial activities" and then expect the landlord (airport) to accept all of the liabilities and responsibilities for those pollutant discharges. But that, in a nutshell, is what airports must face under the State's existing permitting scheme.

Arguably, airports maintain some limited powers through their lease agreements with these tenants that allow airport managers to require that those tenants implement BMPs and conduct their businesses in ways that allows the airport to limit pollutants in stormwater discharges. In addition, ACMG has technical experts to assist with BMP selection and implementation, AND legal/regulatory assistance to help guide airports in working through their lease agreements and other potential obstacles that might otherwise inhibit appropriate environmental protections. Airport members benefit greatly from participating in ACMG, and we encourage the SWRCB to work with existing groups to fit these benefits into any final permit.

But the challenges associated with the unique structural and economic realities at airports and the methods that EPA and the SWRCB have relied upon to provide NPDES permit coverage for these unique entities mandates a certain level of flexibility that likely exceeds all other industries potentially subject to the industrial general permit. The ACMG has been able to work closely with highly varied airport scenarios to develop a group with a very strong and robust compliance history that would not be possible without the monitoring group provisions in the existing permit, and we seek similar flexibility and opportunity in the next permit.

Overview of Comments and Key Issues of Focus

To keep these comments more concise and to the extent that prior ACMG comments do not conflict with or are superseded by these comments, ACMG requests that its prior comments dated April 29, 2011 and October 22, 2012 be incorporated by reference. *See* attached for your convenience.

ACMG is deeply concerned with a number of the provisions in the draft CA IGP and it offers several significant comments that will improve the existing stormwater industrial general permit for California to increase its environmental protection, achieve the SWRCB's goals efficiently and effectively, and enhance the benefits from the group monitoring program while maintaining the original mission of group monitoring – improved overall environmental protection through a systematic review and analysis of industry-specific practices under the leadership of a central organizing, information-disseminating body.

The SWRCB's recent draft CA IGP more closely reflects the U.S. Environmental Protection Agency's (EPA) *Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity* (MSGP).[2] The MSGP provides an effective approach to industrial stormwater general permitting, relying extensively on non-numeric technology-based effluent limits, compliance with water quality-based effluent requirements, corrective actions, documentation, and reporting. The MSGP also provides industry-specific requirements in its 29 different "sectors." EPA's comprehensive, multi-tiered approach represents a well-considered balance of regulatory mandates and permitting authority oversight with site-specific flexibility, and rightfully represents the leading model for industrial stormwater general permitting across the country.

The Board needs not only to review the general provisions of EPA's MSGP, but it has missed at least one critical issue associated with the aviation industry. The aviation industry-specific permit requirements are contained in EPA's MSGP Section S. In merely adopting the MSGPs benchmark monitoring provisions in the new draft CA IGP, the Board missed the fact that the aviation industry is only required to conduct benchmark sampling (of any kind) if the airlines at the airport use more than 100,000 gallons (neat) of deicing fluid in any calendar year or the airport uses more than 100 tons of urea for pavement deicing. The recent Aircraft Deicing ELG rulemaking essentially outlawed the use of urea as a pavement deicer and none of the airports in California have aircraft deicing operations sufficient to exceed the 100,000 gallon threshold for deicing fluids. Hence, none of the airports in California (if regulated by EPA's MSGP) would have to conduct any analytical monitoring. Therefore, the proposed requirements that airports monitor for BOD, COD, or NH3 must be removed from Table 2. Additional comments on the monitoring provisions are provided below.

[2] 73 Fed. Reg. 56,572 (Sept. 29, 2008). The SWRCB should note that EPA is preparing to propose a new draft MSGP "any day now."

The following comments also provide other insight into other critical aspects of the draft CA IGP that are important and often unique to airports. All of these suggestions are intended to help the SWRCB achieve the level of consistency and clarity represented by EPA's MSGP and not interfere with the unique nature of airport operations or the significant economic benefits they generate. As discussed below, one way to help ensure airports are provided appropriate flexibility without seeking their own general permit is to allow the ACMG (and other groups as appropriate) to submit "alternative group compliance programs" under the IGP.

Compliance Groups (Section XIV)

1 In the attached comments from 2012, the ACMG requests that the current group monitoring program be retained – at least for airports – in the upcoming new IGP, or in the alternative that the SWRCB provide flexibility for groups to proposed consistent but varied compliance programs to the State for approval. ACMG stands behind those comments and we encourage you to continue to review that section of the attachment.

In addition, ACMG appreciates that the new draft CA IGP recognizes the benefits and offers a new alternative to compliance groups. The following comments address these newly proposed requirements, but ACMG prefers the approach suggested in its prior comments.

Section XIV.B.1. requires the group leader to be trained as a QISP (*see* comments on training below) and to personally assist each group member with compliance. While I have no objection to being certified as a QISP and often provide legal compliance assistance to all ACMG members, the key to the ACMG is to retain qualified environmental consultants, as we have, to provide such training and support to the group. Hence, ACMG recommends changing this requirement to ensuring that the group leader should retain a QISP if the group leader does not need such training to run the group or takes the hands-on responsibility for individual group member compliance. The bottom line is that groups must have access to and be supported by a
2 QISP trained individual, which is retained by the group leader but may not actually be the group leader by name. Hence, the use of the term "Compliance Group Leader" throughout the section should be revised by adding the parenthetical "(or Compliance Group QISP)."

3 Section XIV.C.1. must also be modified to remove the group participant's responsibility for group leader compliance. This section should state only, "Each Compliance Group Participant is responsible for permit compliance at its own permitted facility."

Receiving Water Limitations (Section VI) and TMDLs (Section VI)

ACMG recognizes that fully complying with the Clean Water Act's water quality based effluent limitations (WQBELs) mandates in a stormwater *general permit* is a significant challenge for permitting authorities. WQBELs, by design, are applied on a site-specific basis, typically (or traditionally) through individual NPDES permits. ACMG believes that the SWRCB has eloquently described the complexity of the challenges created by stormwater general permits in its Finding No. 37. There should be no doubt that any effort to apply in-stream, ambient, low-

flow water quality standards to a "point of discharge" of stormwater that does not directly and immediately flow into a regulated waterbody is entirely inappropriate.

Testimony by certain NGOs at the Board hearing on August 21 that WQS must be applied at the point of discharge without any recognition of mixing zones, fate-and-transport, the bases for how water quality standards are established, or other realities associated with industrial stormwater discharges – some of which may travel for miles from the point of discharge to the receiving waterbody – is unrealistic. The draft CA IGP is a "general permit," not an individual permit in which site-specific water quality standards can more readily be applied. Certain NGOs want to ignore that critical fact, which is fatal to their overall comments in this area.

But while ACMG applauds the SWRCB's description of its challenges in this area, airports believes there is a better way to meet those challenges than the draft CA IGP. ACMG refers the SWRCB to its prior comments on WQBELs and TMDL compliance contained in the attached document. EPA's MSGP approach to compliance with WQBELs and TMDLs is an efficient and fair "burden-shifting" process between the permitting authority and permittee. Conversely, ACMG asserts that the notion that the SWRCB will reopen the IGP at a future date to include interpretive TMDL mandates is inconsistent with the NPDES permit program or at least providing permittees with any reassurance against significant permit modifications, which the SWRCB has planned to attempt at about the same time that airports' new SWPPPs, as well as related facility improvements to meet initial permit requirements, will be fully implemented and tested.

Training Requirements (Section IX)

ACMG believes that the QISP training provisions can be simplified. Appropriately designed training courses can add value and help facility's understand and achieve permit compliance. However, training programs should not be used as a means for any group to profit
4 from conducting or mandating certain training. Instead, the SWRCB should develop an internet-based training module that allows appropriate facility personnel to take the course and pass a test without having to travel or attend a state-run or commercial training seminar. This training should be free, with the costs of developing and maintaining the training course paid for from permit fees. If done correctly, no prior degree should be necessary and one's ability to pass the final exam should be all that is required by the course.

5 If the SWRCB develops an appropriate training course (or perhaps a "standard" as well as "advanced" training courses), then the Board should eliminate many of the permit mandates requiring PE certifications. The training course can identify when a facility is best advised to retain a PE, recognizing that many PEs are not entirely qualified for advising industrial sites regarding stormwater compliance. In any event, mandating training for facility personnel, and then mandating additional PE certifications, could be interpreted as admitting that the training program is either unnecessary or ineffectual. If the State decides to mandate training as proposed, it should remove unnecessary PE certifications and trust the judgment of well-trained individuals to retain PEs as appropriate, but not both.

ACMG also addressed the proposal that group leaders must be QISP trained. Please see section on Compliance Groups above for reasons why some group leaders may not need to be QISP trained.

SWPPP Requirements (Section X)

6 Section X.D.2.a. implies that a facility must amend its SWPPP to conform to any modified federal, state, or local requirements. This is a virtually impossible task to monitor any legal developments after the adoption of this permit and ensure the SWPPP is appropriately modified. Instead, the State and Regional Boards should identify any applicable requirement upon the adoption of the final IGP and require appropriate compliance during SWPPP development. Future requirements could then be required either during adoption of the next IGP or through direct communication from the State or Regional Boards that indicate the additional requirements are recommended in the interim. In addition, the final IGP could be formally amended to include particularly relevant and important revisions, but the bottom line is that facilities should not be tasked with having to monitor every new federal, state, or local ordinance to determine if its SWPPP must be amended.[3]

7 Section X.F. and X.G. require listing significant materials and describing processes involving significant materials, respectively. The SWRCB should make clear that these requirements should be applied only to those materials or processes with a reasonable likelihood that any related pollutants are both "associated with industrial activity" and likely to result in related stormwater discharges. In fact, these concepts are better explained by the draft CA IGP and set forth in Section X.G.2., describing potential pollutant sources. Hence, the broad language in Section X.F. and the start of X.G. should be cut back, eliminated, or should reference Section X.G.2. for more specific requirements.

8 Similarly, Section X.G.1.d. (Significant Spills and Leaks) should be restricted solely to those "reportable quantity" requirements identified at 40 CFR §§ 110, 117, and 302. Not all industries subject to the IGP are subject to Form R reporting, making that provision confusing at best, while other requirements create the type of subjective determinations that create unnecessary challenges for regulated parties. The "reportable quantity" regulations were designed specifically for this type of purpose and need (including to protect receiving waters), and nothing more should be required to be reported or documented. The terms "significant" and "reportable" should be synonymous with regard to documentation in the SWPPP.

9 Footnote 11 appears to be an attempt to define the term "feasible" for purposes of determining best management practice implementation and, for lack of a better term, proficiency. The SWRCB should recognize that EPA has proposed a definition of the term "infeasible" in a recent stormwater-related rulemaking. On April 1, 2013, EPA published a *Federal Register*

[3] By reference, even new effluent limitations guidelines that may directly apply to stormwater discharges do not require that state permitting authorities implement them through new permits or permit renewals for up to three years from the date of promulgation of the standards. 33 U.S.C.A. § 1311(b)(2)(C).

Notice soliciting comments on proposed modifications to the effluent limitations guidelines for the Construction and Development Point Source Category (C&D ELG). 78 *Fed. Reg.* 19,434. EPA's proposal is the result of litigation over the Agency's 2009 C&D ELG rulemaking and subsequent settlement with the industry petitioners. *Id.* at 19,436. EPA must take final action on the proposed revisions to the C&D ELG by February 28, 2014.

In its *Federal Register* Notice, EPA has proposed a definition of the term "infeasible" as follows:

> *Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.*

EPA's proposed definition is at least some recognition that more precision and clarity are better than unfettered subjective interpretation. In this case, ACMG supports EPA's efforts to ensure that a permittee can reasonably assess whether a given BMP is technologically possible to implement, and if so, whether it makes reasonable economic sense in light of comparable industry practices to do so. Obviously, the permittee must reasonably apply its knowledge of the site and industry practices to initially conclude whether something is "feasible" or not.

10 The SWRCB should follow EPA's example and recognize that site-specific factors must be considered in assessing BMPs and that it should avoid making any broad or universally-applicable feasibility pronouncements. ACMG believes it is appropriate to tie the concept of "feasibility" specifically to industry economic practicability (affordability) within the concept of a technology-based effluent limitation.

11 Sections X.G.1.f. and H.1.f. both address "erodible" surfaces or erosion generally. Both provisions appear to exceed the Board's legal authority to regulate stormwater "associated with industrial activity" by requiring controls for impacts from non-industrial stormwater, including "run-on." The SWRCB lacks Clean Water Act authority to regulate non-industrial stormwater discharges or run-on to the extent that such stormwater discharges do not otherwise commingle with industrial stormwater. Hence, the Board can require BMPs to reduce erosion caused by industrial stormwater discharges, but it cannot control or mandate BMPs for other unregulated stormwater flows.

12 Finally, ACMG does not believe that the SWRCB should require uploading SWPPP documents onto SMARTS. There is no justification for modifying the existing "publicly available" procedures for SWPPP documents. SWPPPs are meant to be modified as needed, sometimes quite frequently. In the alternative, the SWRCB should give facilities the option of uploading a SWPPP summary onto SMARTS, and not require the entire document. The complete SWPPP upload will act as a deterrent to SWPPP modification or as a means of playing "gotcha" with paperwork violations/inconsistencies between SMARTS and the facility.

In sum, the SWPPP development and BMP implementation requirements are the key provisions of the draft CA IGP for protecting against pollutants associated with industrial activity. Section X needs to be clear, concise, consistent, and provide the appropriate methods for achieving permit compliance. It also must be limited to the activities and materials that are defined as "associated with industrial activity" and not stray into other areas not intended to be included in that program or otherwise addressed by other environmental programs (*i.e.* Spill Prevention Control and Countermeasure regulations).

Monitoring (Section XI) and
Exceedance Response Actions (Section XII) Requirements

The draft CA IGP continues to rely upon EPA's benchmark monitoring methods, but with additional requirements that are not fully justified or appropriate. Please review ACMG's prior comments (attached) for discussions regarding reliance upon EPA's benchmark monitoring scheme. ACMG believes that such a scheme is an inefficient and inappropriate waste of resources and generates far too much confusion and debates about a facility's compliance, when the real focus should remain on BMP implementation and visual inspection.

If, however, the Board continues to embrace EPA's benchmark monitoring scheme, the following concerns with the draft CA IGP must be addressed.[4] First, the SWRCB has not provided any justification or basis for changing the current analytical sampling requirements in the existing CA IGP. Without appropriate justification (missing), the Board should not arbitrarily increase the amount of analytical sampling required by the permit. Next, permittees should not have to upload any sampling results into SMARTS until all samples for a year have been collected. Facilities may choose to monitor more than required by the permit or have other reasons to confirm prior results before uploading into a public database. This could easily occur with an annual report to reduce the overall burden. Further, the SMARTS data base should not assign values to "non-detect" sample results or prematurely "average" the results being uploaded for the same reasons. 13 14 15

In addition, the SWRCB should eliminate the concept of "Instantaneous Maximum NALs" for TSS, O&G or pH. These parameters should be treated in the same manner as EPA's benchmark or the proposed Annual NALs in the draft CA IGP. The values created by the SWRCB for these parameters are unjustified. ACMG's prior comments explain that EPA's TSS benchmark of 100 mg/l was derived from composite sampling and the "appropriate" comparable grab sample benchmark should be 500 mg/l, or 25 percent higher than the proposed instantaneous NAL for TSS of 400 mg/l. In addition, the pH NAL also is artificially restrictive for stormwater monitoring and also impacted by numerous sources other than a facility's "industrial activity." Not only do results in excess of pH 9 not present any environmental risk, but they are permitted, for example, by various national technology standards.[5] 16

[4] The SWRCB should note that EPA has indicated that it will be proposing a new MSGP very soon, which also may propose changes to or additional insight into EPA's benchmark monitoring approach.

[5] For example, the Aluminum Forming ELG contains a pH range of 7.0-10.0.

17 The 25 mg/l O&G NAL is unjustified. In fact, API's standards for oil/water separators typically have a design range of 15 mg/l to 30 mg/l. The instantaneous maximum NALs should be eliminated or, in the alternative, raised to appropriate levels that recognize the high degree of variability associated with stormwater BMPs and discharges. Finally, it remains unclear how the instantaneous maximum and annual average would interact for the three basic parameters. In certain circumstances, instantaneous NALs could be unnecessarily punitive, resulting in one outlying sample triggering the instantaneous NAL and unfairly skewing the annual average. An airport might exceed the instantaneous maximum for one outfall, which also then raises the annual average, resulting in two exceedances and pushing the airport straight to Level 2, but for one bad sample result that may not be the fault of the airport itself. This creates essentially a double jeopardy compliance nightmare. Hence, the instantaneous NAL concept should be dropped.

18 With regard to the proposed "Baseline, Level 1 and Level 2" ERA status hierarchy and mandates, ACMG respectfully asserts that the SWRCB is creating an administrative and compliance nightmare for itself and the regulated community. Again, ACMG directs the SWRCB to EPA's corrective action program under the MSGP. Despite the Board's apparent desire to add-on to EPA's program, there is no need and the Board only creates more problems than it believes it solves. EPA's program embodies the same objectives sought by the SWRCB by requiring continued corrective actions when monitoring results exceed benchmark values. The Board should be applauded for identifying appropriate concepts that allow for identifying and gaining credits for non-industrial pollutant sources, including natural background sources, much like EPA has in its MSGP. However, taking the additional steps to require PE-certified technical reports or other "punitive" actions across the board through the proposed general permit is unnecessary. 19

In the alternative, the SWRCB should recognize that analytical results will continue to be reported to the State and Regional Boards. Corrective actions will be mandated for any benchmark exceedances. Facilities also can report non-industrial and background pollutant sources and their interference with assessing "industrial" sources. But in lieu of the draft CA IGP's proposal to create extra hoops for facilities to jump through the SWRCB should recognize that it (and Regional Boards for that matter) retain specific "designation authority" pursuant to CWA Section 402(p)(2)(E) – in addition to the powers the SWRCB reserves within the draft permit – to individually designate a facility that continue to discharge significant quantities of pollutants despite corrective actions for individual permitting. 20

That threat, as well as 21 the ability to mandate a host of facility-specific tests, reports, and who knows what else, is the appropriate deterrent to facilities "slacking off" in their BMP implementation. A general permit is not the appropriate tool for addressing those types of facilities, but rather is an administrative convenience to provide an efficient and workable permit for the vast majority of industrial sites that can reasonably control their industrial pollutant discharges, while reducing the administrative burdens on the SWRCB. An efficient general permit should be a privilege for responsible industrial dischargers. Facilities that abuse that privilege should be weeded out for more stringent oversight though individual permitting.

23 ACMG respectfully requests that the SWRCB simplify its multi-level and (arguably) punitive ERA program into a simpler program fashioned after the logic and simplicity of EPA's MSGP. The State retains significant authority to "require more" from facilities that consistently submit monitoring results well in excess of benchmarks.

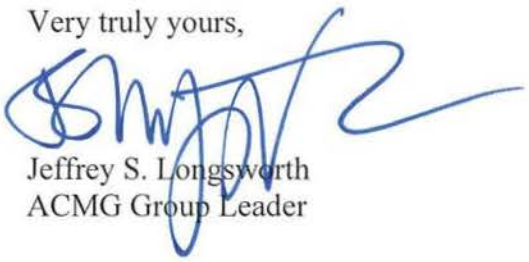
Cost Analyses and Recently Released Documents

On September 11, the SWRCB released a "response to comments" for its 2012 draft permit and a revised cost analysis, allowing only a few days to attempt to analyze and develop appropriate comments. ACMG has not been able to fully analyze these recent releases in the insufficient time allotted for review and respectfully reserves the right to challenge any faulty or unjustified conclusions contained in those documents. Generally, ACMG can conclude that the 24 cost analyses are far too general and not appropriate for representing real world costs of compliance at airports, which we have already demonstrated are the most complex and unique entities under the industrial stormwater program. Hence, we encourage the SWRCB to maintain appropriate flexibility and to work with the airport group to ensure a fair and appropriate compliance program under the permit, recognizing the unique benefits to the State's transportation needs that airports represent and the fact that they are run by municipalities with limited resources.

Conclusion

ACMG appreciates the opportunity to provide these comments on the draft CA IGP. Please call or email with questions.

Very truly yours,



Jeffrey S. Longsworth
ACMG Group Leader

cc: Matt Lentz, AMEC
Sarah Hoffman, Environmental Compliance Options

Enclosures