Public Hearing
Draft Industrial General Permit
Deadline: 9/19/13 by 12 noon

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September 19, 2013

Submitted Via Email: commentletters@waterboards.ca.gov

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

RE: Airlines for America Comments on the California Water Resources Control Board's *2013 Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Discharge of Storm Water Associated with Industrial Activities*

To Whom It May Concern:

Airlines for America ("A4A") appreciates this opportunity to comment on the California State Water Resources Control Board ("Board") proposed 2013 Draft National Pollutant Discharge Elimination System ("NPDES") General Permit for the Discharge of Storm Water Associated with Industrial Activities ("Draft IGP").

A4A is the principal trade and service organization of the U.S. airline industry.[1] Its member airlines and their affiliates transport more than 90 percent of all U.S. airline passenger and cargo traffic. As such, A4A frequently comments on regulatory activities that affect the airline industry and air travel in the United States. A4A and its airline members take environmental protection seriously and, as set out in detail in our previous comments, have a strong record of advancing environmental goals.[2]

A4A shares the Board's interest in furthering such goals through the IGP, but has serious concerns regarding certain terms contained in the Draft IGP. ***These concerns pertain exclusively to Air Transportation Facilities and, as such, the Board can address them through narrow and targeted modifications of the Draft IGP***. A4A urges the Board to consider and adopt our suggested amendments to the Draft IGP, which are narrowly cast to address the circumstances unique to Air Transportation Facilities. A4A also continues to be deeply concerned about the fundamental transfer of the governmental function and the burden

[1] The members of A4A are: Alaska Airlines, Inc., American Airlines, Inc., Atlas Air, Inc., Delta Air Lines, Inc., Federal Express Corporation, Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Airlines, Inc., UPS Airlines, and US Airways, Inc. Air Canada is an associate member.

[2] "Airlines for America Comments on the California Water Resources Control Board's 2012 Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Discharge of Storm Water Associated with Industrial Activities" dated October 22, 2012. We incorporate these comments in full here by reference.

of standard setting from the State to the regulated community that is reflected by this Draft IGP. Especially given that our previous comments on this point elicited an inapt response, we ask the Board to consider and respond to our concern thoughtfully.[3]

I. Industry Overview

The air transportation industry has a decades-long record of lowering environmental impacts even as it drives increasing levels of economic activity and growth. Our achievement has largely been the result of a relentless commitment to innovation and efficiency improvement. This commitment extends to the stormwater arena, where, for example, airlines led the successful effort to incorporate environmental criteria into the certification standard for aircraft deicing fluids and the industry has made huge investments in programs and infrastructure to manage and treat stormwater. We are proud of our environmental record and refer you to the details of that record provided in our previous comments.

In our previous comments we also highlighted several factors that distinguish this industry from others. Because it is critical to consider these factors when assessing the structure and impacts of the Draft IGP, we reemphasize these factors here.

- ***Safety of Air Transportation is an Overriding Imperative***
  Consistent with Congressional policy, ensuring the safety of passengers, crew and the public is and always must be the overriding imperative for the air transportation industry.[4]

- ***Air Transportation is a National Priority***
  Congress also has provided that ensuring the National Airspace System accommodates demand for air transportation services to the maximum extent possible is a national priority.[5]

- ***Stormwater Management at Airports is Subject to FAA and Other Federal Stringent Requirements***

1

[3] In the *2012 Draft Industrial General Permit Response to Comments* staff responded to an A4A comment (denoted as A4A comment number 10) objecting to the transfer of the burden for standard setting from the State to the regulated community by noting that Section 308 of the federal Clean Water Act provides broad authority for information gathering. Without addressing the extent of information gathering authority conferred by Section 308 and without commenting on whether Section 308 of the federal statute confers any authority on delegated states, this response indicates that staff misunderstood the comment that A4A offered then and that it reiterates now. The comment relates the Draft IGP's failure to establish BAT- or BCT-based effluent limitations as required by statute. One manifestation of that failure is the unwarranted information gathering required under the Draft IGP. The most problematic result of that failure, as pointed out in our previous comments, is that the IGP effectively transfers the tasks of identifying and defending the appropriate levels for BAT and BCT control from the Board to the regulated community. The current Draft Permit suffers from the same infirmity in this regard as did the 2012 Draft IGP.

[4] *See* 49 U.S.C. § 47101(a)(1) ("safe operation of the airport and airway system is the highest aviation priority").

[5] *See generally,* 49 U.S.C. § 47101. As with all states, California's authority to regulate the air transportation industry is constrained by Federal aviation laws, including the Federal Aviation Act of 1958 and the Airline Deregulation Act. Courts have consistently held the Federal Aviation Act of 1958 creates a "uniform and exclusive system of federal regulation" of aircraft that preempts state and local regulation. *Burbank v. Lockheed Air Terminal, Inc.,* 411 U.S. 624, 639 (1973); *see also American Airlines v. Department of Transp*., 202 F.3d 788, 801 (5th Cir. 2000) (aviation regulation is an area where "[f]ederal control is intensive and exclusive") (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 3030 (1944)). This pervasive federal regulatory scheme extends not only to aircraft in flight, but also to aircraft-related operations on the ground. In addition, the Airline Deregulation Act precludes states from "enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route or service." 49 U.S.C. § 41713(b)(1).

Many activities that may be associated with stormwater impacts are required to ensure public safety and already subject to stringent regulation and oversight by the Federal Aviation Administration ("FAA") to ensure safety, maintenance of operations, as well as consider impacts to water. In addition, statutes such as the National Environmental Policy Act and the California Environmental Quality Act ensure that consideration of water quality is an integral part of the planning and design of major new airport projects.

2 • ***Management of Stormwater at Airports is Recognized by EPA to be Inherently Site-Specific***

As detailed in our previous comments, EPA recognized that management of stormwater at airports is subject to a multitude of complex factors and these factors vary widely across airports. As a result, in its final Effluent Limitation Guidelines and New Source Performance Standards for the Airport Deicing Category, 77 Fed. Reg. 29168 (May 16, 2012) (codified at 40 C.F.R. Parts 9 and 449 (2012)), the Agency concluded:[6]

> . . . that best available technology determinations ***should continue to be made on a site-specific basis because such determinations appropriately consider localized operational constraints (e.g., traffic patterns), land availability, safety considerations, and potential impacts to flight schedules***.
>
> Based on the information in its record, EPA cannot identify with precision the extent to which such limitations may preclude, at any particular airport, the use of the technologies that it considered for Best Available Technology (BAT) control of aircraft deicing fluid discharges for today's final rule.
>
> However, the record demonstrates that such limitations exist and are not isolated or insignificant. In light of this finding, ***EPA decided that it should not establish national Aircraft Deicing Fluid (ADF) collection (and associated discharge requirements) based on any one or more of the ADF collection technologies as the presumptive BAT-level control technology. Rather, site-specific proceedings are the appropriate forum for weighing all relevant considerations in establishing aircraft deicing discharge controls***.

3 • ***Airports Are Very Large Facilities, Typically Owned and Operated by Quasi-Governmental Entities***

Again, as detailed in our previous comments, the size and cost of the collection and treatment systems that must be utilized by airports render them qualitatively different than systems in other industries that would be covered by the Draft IGP.

II. Narrow Amendments to the Draft IGP Requested for Air Transportation Facilities

The Draft IGP imposes terms that, as applied to Air Transportation Facilities, are not reasonable. There are three primary issues which can be addressed through narrow amendments to the Draft IGP:

[6] 77 Fed. Reg. at 29178, cols. 1 and 2 (emphasis added).

4
- The Draft IGP fails to provide a mechanism for joint sampling at airports. At some airports multiple parties (including the airport, airlines, and other parties) are permitted to discharge through the same outfalls. At such facilities, the Board's interest in generating enhanced stormwater monitoring data is not served by requiring these multiple parties to produce redundant samples from the same outfalls during the same storm events.
  - A narrow amendment allowing multiple permitted parties that discharge through common airport outfalls to fulfill their monitoring obligations by submitting a single set of discharge data will address this issue.

5
- Application of Compliance Groups to this industry does not make sense, ***unless such groups are redefined and limited to parties permitted at individual airport facilities***. As EPA determined, in the air transportation industry, "[BAT] determinations should continue to be made on a site-specific basis because such determinations appropriately consider localized operational constraints (e.g., traffic patterns), land availability, safety considerations, and potential impacts to flight schedules."
  - A narrow amendment, clarifying that, for Air Transportation Facilities, Compliance Groups are to be defined as airport-specific entities and participation in such groups should include all parties required to comply with the IGP, whether directly as permittees or indirectly, through contracts or leases, will address this issue.

6
In addition, parties who are not themselves subject to the IGP should not be authorized to form Compliance Groups under the IGP.

Finally, we believe further development is required to properly describe the criteria for membership in a Compliance Group and the governance structure of such groups so that the regulated community can evaluate and comment meaningfully on this novel concept.

7
- The Draft IGP inadvertently fails to incorporate thresholds applicable Air Transportation Facilities in the 2008 MSGP. The 2008 MSGP limits application of monitoring for Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and Ammonia as Nitrogen (NH3-N) to airports that use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons of urea annually.
  - A narrow amendment, clarifying that these thresholds adopted by EPA in the 2008 MSGP also apply in the IGP will address this issue.

These issues are addressed and explained in more detail below.

1
A. The Final IGP Should Include a Provision to Avoid Redundant and Unnecessary Monitoring by Multiple IGP Permittees at a Single Airport

Airports are large and complex facilities where multiple parties may be permitted under the IGP. Stormwater flows from several dischargers may combine and discharge through a common outfall that is downstream of area-wide BMPs designed to manage those combined flows. In such cases the only sampling location reflective of the operation of BMPs would be the final outfall through which the combined discharges flow in common.

If the monitoring requirements currently proposed remain unchanged and there is no allowance for the unique physical configuration of airports, the effect at some Air Transportation Facilities will be that multiple parties will be standing in line to sample the same outfall following the same storm.[7] While we understand that one of the Board's reasons for eliminating the existing Group Monitoring program is to obtain a larger data set with which to evaluate the performance of pollution control technologies, that benefit will not be realized at such facilities. At best, the State will receive essentially identical analytical data derived from samples taken at the same time and place. At worst, it will receive data on the same discharge but with varying results that reflect nothing more than the analytical variability of the labs used by the various sampling entities. This redundancy will impose significant additional costs on the air transportation industry without realizing any of the benefits the Board hoped to secure by eliminating Group Monitoring. Thus, this comment is not a request to reduce the frequency of sampling that would be required to produce non-redundant data for any given airport. Rather, the comment merely requests a clarification that that sampling frequency need not be satisfied redundantly by every co-permittee at the airport that discharges through the same outfall.

The relief provided here can and should be carefully crafted to ensure the Board's interest in obtaining an enhanced data set is not compromised.[8] This can be achieved by providing that, where multiple entities are permitted at a given airport, they are authorized to satisfy their monitoring obligations by submitting a single set of discharge data where:

1. Those dischargers are located at a single facility;
2. Each entity is permitted by the IGP; and
3. Their discharges occur through a common outfall.

This will ensure that the Board receives data from each Air Transportation Facility while avoiding the unintended and wasteful circumstance of having multiple permit holders provide redundant or conflicting data on the same discharges from an airport's outfalls.

4-6

B. Compliance Group Approach Requires Further Refinement

In the abstract, A4A applauds the option to form Compliance Groups that would be provided under the Draft IGP. Allowing similarly situated entities to work together to develop shared pollution control practices and technologies makes sense in many circumstances. In the air transportation industry, however, that concept breaks down and should not be applied.

First, the diversity of operations and management practices from airport to airport as well as potential legal and fiscal responsibilities of airports make the implementation of Compliance Groups across multiple airports inappropriate. Second, if Compliance Groups are authorized in any form for Air Transportation Facilities, the final IGP must ensure that all relevant parties are afforded an opportunity to participate in those groups. Third, A4A believes that authorizing a QISP that is not itself a permit holder to form a Compliance Group is bad public policy and

[7] An additional concern is that lessees at Air Transportation Facilities (e.g., airlines) typically do not have access to the relevant outfalls because they are not within the leasehold areas. Consequently, permitted lessees would need to secure (and airports would have to manage) access rights to ensure they are able to comply with unnecessarily redundant monitoring requirements. This additional administrative complexity and economic burden is imposed in service of an absurd outcome: so that multiple parties at Air Transportation Facilities (airports and their lessees) can stand in line during storm events to sample common outfalls.

[8] Draft Fact Sheet at 39-40.

should be avoided. Finally, based on our reading of the Draft IGP, the Draft Fact Sheet, and statements made by Board staff, we believe that important underpinnings of the Compliance Group program – including the criteria for group membership and the governance structure to be employed by Compliance Groups – are not yet well enough developed to enable the public to evaluate this novel concept and comment intelligently on it.

1. Characteristics of the Air Transport Industry Make it Unsuitable for the Establishment of Multi-Facility Compliance Groups

Airports are as different from one another as are municipalities, with different infrastructure, different operations, different land availability, and different strategies to ensure the safe and timely dispatch of commercial aircraft. Indeed, when it sought to regulate the air transportation industry under nationwide standards pursuant to its Effluent Guidelines Program, EPA determined after years of study that this industry, unique among scores of industries it has studied and regulated under its ELG Program, is unsuited to a "one-size-fits-all" technology-based standard. Properly, EPA concluded that the diversity of operations and management practices from airport to airport makes the imposition of such a standard on existing airports inappropriate.

In addition, federal legal constraints preclude an airport from using its revenues for non-airport projects or activities. These "anti-diversion" requirements clearly prohibit airports from using funds for off-airport projects (including projects at other airports they do not own or operate). See 49 U.S.C. 47133. Similarly, as public entities airports often are financed through bonds. As the Board is aware, bond proceeds often are tied to projects on the issuer's site in order to assure a connection between the bonds and the revenue stream supporting them. For these reasons, it is questionable whether airports could join a Compliance Group without violating federal anti-diversion requirements and/or their fiscal and financial commitments.

For these reasons, A4A believes that it would be inappropriate to authorize Air Transportation Facilities to form Compliance Groups at the commercial airports that its members serve and with which we are familiar, and we respectfully request that the final IGP provide that multi-facility Compliance Groups may not be established at these facilities.

2. Any Compliance Group in the Air Transportation Industry Should Accommodate all Relevant Parties

If the Board determines to allow Compliance Groups to operate in any form in the air transportation industry, the final IGP should enable all entities with a stake in the manner and means of compliance with the IGP to participate in such groups.

Airports and airlines are partners in managing the runoff from airport facilities. Each has a role to play, with airlines and airports developing pollution prevention technologies for their respective activities and airports (with airline input) developing and operating the infrastructure that collects, conveys and manages runoff from these activities. Because airlines are the primary source of funding for such airport infrastructure projects (through, e.g., landing fees, lease payments, etc.), airlines have a keen economic interest in the solutions adopted. Airlines

have an equal interest in the potential impacts of those solutions on the efficiency of airport and airline operations. For these reasons, it is both necessary and wise to require that Compliance Groups in the air transportation industry accommodate membership by all interested parties operating at an airport in the group.

Participation clearly is already allowed by the Draft IGP where interested parties also are permit holders. Similar participatory rights should be afforded to an airport's airline partners in cases where the airport alone holds the permit because full participation in a Compliance Group will draw together all interested and cooperating parties and allow them to develop the best and most completely integrated stormwater solutions.

We note that such a grouping is already authorized by the federal MSGP in the form of the requirement at Section 8.S.4 of that permit for airports and tenants, including airlines, to work together to integrate their stormwater management programs. The suggestion here is merely an extension of that effective and accepted acknowledgement that all members of the compliance community at Air Transportation Facilities should be engaged in the development of stormwater solutions for their facilities.

Accordingly, for Air Transportation Facilities, participation in Compliance Groups should be expanded to allow any airport tenants who will have responsibility for implementing or funding BMPs at an airport to participate.

3. It is Inappropriate for the Permit to Authorize QISPs to Form Compliance Groups

The role QISPs as parties authorized to form Compliance Groups is highly problematic and should be eliminated.

As stated in the Draft Permit, "any QISP representing Dischargers . . . may form a Compliance Group." Order at XIV(A)(1). A QISP, however, need not be a regulated entity. Rather, a QISP is merely ". . . a person (either the Discharger or a person designated by the Discharger) who has completed a State Water Board- sponsored or approved QISP training course." Order at IX(A)(1). Thus, according to the Draft IGP, a QISP who is not a regulated entity and, in fact, may be no more than a contractor to a permitted party, is empowered to establish a Compliance Group for an entire group of similarly situated facilities.

There is no reason to allow third parties to form a Compliance Group, particularly where a Compliance Group is authorized by the Draft IGP to develop findings that have the potential to become binding obligations of the group members. Further, the Draft IGP provides no clear rules regarding the obligations of the QISP to Compliance Group members, making it possible that one or a limited number of group participants (likely those that have agreed to pay for the QISPs services), will hold *de facto* control over the QISP's decisions.

While a Compliance Group formed by regulated entities certainly should be free to hire a QISP to perform required analyses and to develop the required reports, allowing a mere vendor of services that has completed the requisite training to form a Compliance Group – either on behalf of one or more dominant group members or, worse, on the QISP's own behalf – is simply inappropriate. Unless the authorization of QISPs to form Compliance Groups is removed,

vendors of stormwater services are likely to rush to form groups purely for the purpose of securing business. Rather, only parties with a direct interest in permit compliance should be authorized to establish a Compliance Group. After such directly interested parties have formed a Compliance Group they will be able to identify and hire the assistance of a QISP suitable to their needs.

4. The Membership and Functioning of Compliance Groups is Not Sufficiently Well Described to Support Meaningful Public Comment

Finally, we believe that Compliance Groups and their functioning is not sufficiently thought out or described in the draft permit and supporting materials to support meaningful public comment.

For example, the criteria for membership in a Compliance Group remain ill-defined. During the informational workshops, for example, staff were unable to articulate these criteria beyond a vague notion of "similarness". The Draft IGP itself is no less vague, using the term "similar" in a sentence but providing only a single, unrevealing example to help explicate its meaning:

> A Compliance Group shall consist of Dischargers that operate facilities with similar types of industrial activities, pollutant sources, and pollutant characteristics (e.g., scrap metals recyclers would join a different group than paper recyclers, truck vehicle maintenance facilities would join a different group than airplane vehicle maintenance facilities, etc.).

Order, XIV(A)(1).

In addition, the Draft Permit is silent as to how decision-making within a Compliance Group is to be governed, apparently allowing the possibility that Compliance Groups could adopt different standards for approving various actions. As a result, dischargers invited to join a group will have no basis on which to decide whether the proposed group will make decisions in a way that is appropriate. Moreover, without a better definition of the governance structure of Compliance Groups, there will be no common basis upon which to judge the decisions of different Compliance Groups to adopt BMPs, cost-effectiveness analyses, etc., thus undermining rather than furthering the Board's stated goal of developing "a better understanding of the feasibility and benefits of sector-specific and watershed-based permitting approaches." Order, I.¶69.

Given the lack of clarity as to what "similar types of industrial activities means" and as to the way Compliance Groups are to be governed internally, we believe that the concept of Compliance Groups has not yet been formulated or described with sufficient clarity to support meaningful public comment. We understand through informal statements from staff that it plans to further develop and explain how the Compliance Group concept will be implemented through "guidance" to be issued at a later date. This promise of future clarity is not sufficient. The Board must take the time now to develop those clarifying statements so that the public can understand the formation and governance of Compliance Groups with clarity, and then comment intelligently on this novel concept.

2

C. Monitoring Obligations for the Air Transport Industry Should Apply Only to Airports that Use More Than 100,000 Gallons of Glycol-Based Deicing/Anti-

icing Chemicals and/or 100 Tons or More of Urea on an Average Annual Basis

The Draft IGP calls for all facilities to monitor for three so-called Indicator Parameters (Total Suspended Solids; Oil & Grease; pH). Air Transportation Facilities would also be required to monitor for sector-specific parameters BOD, COD and NH_3. Data from both forms of monitoring are to be compared to Numeric Action Levels ("NALs"), with Exceedance Response Actions ("ERAs") triggered when any of the NALs are exceeded.

In the Draft IGP, the NALs are drawn directly from EPA's 2008 Multi-Sector General Permit for Stormwater Associated with Industrial Activity (the "2008 MSGP"). No additional justification is provided for these values in either the Draft IGP or the Draft Fact Sheet provided to the public. Indeed, the Draft Fact Sheet states clearly that "[a]nnual NALs are equal to, and function similarly to, the benchmark monitoring values provided in the 2008 MSGP."[9]

Because the Draft IGP incorporates the 2008 MSGP benchmark values wholesale and relies completely upon the record that supported the 2008 MSGP to support their adoption here, its use of those benchmark values must be limited to the uses to which they are put under the 2008 MSGP. In the absence of an independent basis in the record here, there is no legal basis upon which either to alter the values or expand the uses of the NALs/benchmarks; there is no basis upon which to deviate from the values and uses to which those values were put in the federal permit in the Draft IGP.

The Draft IGP observes this limitation in some key respects. For example, 2008 MSGP benchmark values remain unchanged in their conversion to NALs.

In what we believe may have been an oversight, however, the Draft IGP fails to incorporate an important limitation on the use of benchmarks/NALs under the 2008 MSGP. In Table 8.S-1of that federal permit, EPA limits monitoring by airports and others covered under "Sector S – Air Transportation" section of its 20080 MSGP to

> ". . . airports where a single permittee, or a combination of permitted facilities use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis, ..."

We are not aware of any other industrial sector covered by the 2008 MSGP that similarly limits monitoring against that permit's benchmarks and it may be for this reason that the 100,000 gallon/100 ton limitation on monitoring at Air Transportation Facilities was not picked up in the Draft IGP. Regardless of the reason, however, the IGP should be modified to make clear that IGP permit holders in the Air Transportation Industry need only conduct monitoring if they or the facility of which they are a part use more than 100,000 gallons of glycol-based deicing chemical or 100 tons or more of urea on an average annual basis. Any other use of the NALs/benchmarks would be unsupported by the record here.[10]

[9] Draft Fact Sheet at 6.

[10] The *2012 Draft Industrial General Permit Response to Comments* that recently was made available to the public states, in response A4A comments (denoted as A4A comments number 7 and 8) concerning the use of MSGP benchmarks in the 2012 Draft IGP, that "[t]his draft permit contains some subtle differences when compared to the MSGP." To the extent it that it is the Board's

III. Additional Specific Comment[11]

A4A provides the following additional comment related to non-stormwater discharges that, while affecting Air Transportation Facilites, are not industry-specific.

Regional Boards within the State have misconstrued language in the current permit that prohibits the discharge of stormwater and non-stormwaters not expressly authorized to be discharged by the current permit. Identical language appears in the Draft IGP at Section III (B). Misuse of this subsection is of concern in the air transportation industry.

Section III (B) states:

> B. Except for non-stormwater discharges (NSWDs) authorized by Section IV, discharges of liquid or materials other than stormwater, either directly or indirectly to waters of the United Sates, are prohibited. These unauthorized NSWDs must be either eliminated or authorized by a separate NPDES permit.

Of concern are Regional Board interpretations of this language in the current permit holding that it is unlawful to discharge stormwater that entrains pollutants deposited during non-storm periods. For example, at least one Regional Board has concluded that the language requiring elimination of "discharges of liquid or materials other than stormwater" includes pollutants that are entrained by stormwater runoff but that, absent a storm event, would never become a discharge. Clearly, "stormwater associated with industrial activity" contemplates such entrainment in stormwater, and it is that stormwater combined with entrained pollutants whose discharge must be authorized by an NPDES permit. If stormwater runoff entrained no pollutants there would be no jurisdiction to regulate it under the Clean Water Act.[12]

This issue arises in the air transportation industry in several contexts, including the deposition of oil and grease on tarmac surfaces during the normal operation of aircraft ground service equipment. These incidental depositions do not reach facility drains or become discharges under dry weather conditions. It is only when entrained by stormwater that they become a constituent of a discharge. Authorization of the discharge of these stormwater entrained

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position that it is these unspecified "subtle differences" that justify the monitoring for these parameters at airports below the 100,000 gallon/100 ton federal threshold, neither the Response to Comments from 2012 nor any other material provided to the public in conjunction with the 2013 Draft IGP provides a sufficient basis on which to assess or comment on the legal sufficiency or the reasonableness of this provision of the Draft IGP.

[11] In addition to the comment stated below, A4A notes that the *2013 Update Of Report On The Compliance Costs For The Final (2013) Draft Industrial General Permit (IGP) (September 6, 2013)* recently added to the public record does not include a cost for either the development of a SWPPP or for training. A4A believes this may be an oversight that should be corrected and that the Draft IGP should be re-noticed with these costs accounted for. To the extent that these costs are intentionally omitted, A4A comments that SWPPP preparation and renewal costs are very real and must be estimated and considered. Training costs, as well are real, especially in the aviation industry where existing employees often will need to be trained instead of certifying pre-trained vendors to provide services in highly restricted and secure Aircraft Operations Areas of airports (although the cost of the vendors' training surely also is embedded in the cost of their service).

[12] The Act regulates only "discharges," and a discharge is defined as "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. §1362(12). If no pollutant is added to the receiving waters, there is no regulable discharge.

pollutants, controlled as required by BAT or BCT level BMPs, is exactly the purpose of an NPDES stormwater permit.

8 We ask that the Board clarify for its Regional Boards that the language in Section III (B) of the Draft IGP prohibits active discharges of pollutants during dry weather, but that it does not prohibit discharges during stormwater runoff of pollutants that have come to reside on outdoor surfaces during dry weather. This clarification can appear in the permit itself or in Section II(C) of the final Fact Sheet.

It is perfectly appropriate to require that dischargers employ BAT/BCT levels of control to manage and minimize the presence of such residues in order to reduce the potential for entrainment when a precipitation event occurs. What is not permissible is to prohibit, absolutely and in any amount, the wet weather transport of such pollutants. A4A greatly appreciates the Board's clarification of this distinction going forward.

IV. Comments Incorporated by Reference

As noted above, we refer to and incorporate by reference as if set forth here in full (and with respect to any re-numbered section(s) of the Draft IGP) our comments dated October 22, 2012 on the 2012 Draft IGP. We emphasize that A4A continues to believe that there are structural defects in the Draft IGP because it seeks to transfer the responsibility and burden of developing technology-based standards from the Board to the holders of the permit. This objection has both legal and policy components. Rather than reiterate our comments here, we specifically direct your attention to the following sections of our comments dated October 22, 2012 on the 2012 Draft IGP:

- **Section II(A) -- Draft IGP Fails to Implement 33 U.S.C. 1342(a)(1)**
- **Section II(B) -- Transfer to Permittees of Burdens and Risk of Standard is Unwarranted**
- **Section II(C) -- Permit Obligations Designed to Facilitate Development of Industry-Specific Effluent Limitations Are Inappropriate for Air Transportation Industry**
- **Section III(A) -- Elimination of Numeric Effluent Limits (NELs)**
- **Section III(B) -- Numeric Action Levels (NALs) Should be Eliminated**

Again, especially given that our previous comments on this point elicited an inapt response, we ask the Board to consider and respond to our concern thoughtfully.

V. Conclusion

We appreciate the challenges inherent in developing a general stormwater permit for a disparate host of industries. Through its multiple iterations, the Draft IGP has moved closer to a workable form.

There are still unmet issues, however. For the reasons stated above, A4A requests that the Board and its staff re-examine the Draft IGP with the unique features of Air Transportation Facilities in mind. We believe that these features in some cases mandate, and in others, argue persuasively for modifications of the Draft IGP as it is applied to airports and airlines.

Thank you for your consideration.

Sincerely yours,

Timothy A. Pohle
Senior Managing Director, Environmental Affairs