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

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SWRCB Clerk

State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Attention: Jeanine Townsend
Clerk to the Board

Subject: Comment Letter- Industrial General Permit

Dear Ms. Townsend, Board Members and Staff:

Lehigh Hanson (Hanson) appreciates this opportunity to provide comments to the July 19, 2013 Draft Industrial General Permit (IGP). Hanson operates more than 59 industrial facilities across California, and would be significantly impacted by this new permit. Our goal is to work collaboratively with the State Water Resources Control Board (Board) and Board staff to develop a permit that is both protective of water quality and economically and technically feasible to implement.

Firstly, we would like to acknowledge the hard work undertaken by staff, and their efforts to hold a transparent permit drafting process. We find this Draft IGP to be considerably less complicated and burdensome than previous drafts. The simplified QISP requirements and streamlined visual observation and monitoring requirements make this a much more effective permit to implement. We appreciate all of staff's efforts to communicate and educate throughout the process. While we find this Draft IGP to be a significant improvement from previous drafts, there are several issues that remain of concern and that require clarification. Verbiage in **bold and underline** represent recommended text addition; text ~~with strike-out~~ represent recommended text deletion.

1. ***Determination of exceedances***

Section XII.A.2, on page 46 of the IGP Order, states:

"The Discharger shall compare all sampling and analytical results from each distinct sample (individual or combined as authorized by XI.C.5) to the corresponding instantaneous maximum NAL values in Table 2. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum NAL range for pH."

Having a NAL exceedance triggered by two or more analytical result exceedances makes sense because multiple exceedances suggest there may be a trend; given the variability of storm events, one analytical result exceedance can be an outlier and may not provide a complete picture of the efficacy of a facility's BMPs.

However, as the IGP is currently written, a NAL exceedance would be triggered by two analytical report exceedances from anywhere in the facility, *regardless of the source or discharge location*. This would not provide adequate information to target facility BMP improvements and may instead waste resources as facilities try to identify a trend that may or may not exist. Some industrial facilities, such as a mine, can span tens or even hundreds of acres and have numerous drainages and discharge locations. In such a large facility, a TSS exceedance from one drainage area is rarely connected to a TSS exceedance in another drainage area. Each individual exceedance could be an outlier, for example caused by an abnormally large storm, and not reflect an actual deficiency in the BMP program at the facility.

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Hanson recommends the language in the permit be modified to state:

"An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter **from the same sample location** within a reporting year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum NAL range for pH."

2. Sampling safety

Section XI.C.6.a.ii, on page 44 of the IGP Order, notes sample collection is not required:

"i. During dangerous weather conditions such as flooding or electrical storms; or ii. Outside of scheduled facility operating hours. The Discharger is not precluded from collecting samples or conducting visual observations outside of scheduled facility operating hours."

Hanson has serious concerns about the safety of personnel attempting to conduct samples at night. While some facilities have areas with lighting that would make night sampling acceptably safe, the majority of our facilities do not have lighting at all discharge locations. In fact, many of our land use permits prohibit the installation of lights in

certain areas to avoid impact to neighboring communities. Further, larger facilities such as mines have discharge locations in remote areas that have wildlife (e.g. snakes), that would make nighttime sampling a significant risk. Even the use of flashlights does not provide sufficient lighting for safe access to sampling locations, some of which are along creek banks or in steep areas. For many of our sites, it is simply unsafe for personnel to attempt to collect samples at night.

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Hanson requests that the IGP language be modified in the following manner:

> "i. During dangerous weather conditions such as flooding or electrical storms **or other unsafe conditions, such as lack of lighting or dangerous wildlife.**"

3. Implementation Date

Hanson echoes the concerns raised by others about the January 1, 2014 implementation date for this IGP. January 1, 2014 is in the middle of the rainy period as defined in the current Industrial General Permit, and switching storm water monitoring and sampling protocols in the middle of the season would be overly complicated and difficult to implement. For example, it is unclear how to complete the annual report for the first year; would permittees be required to complete an annual report using the old format, the new format, or a combination of the two? It is also unclear how compliance with the NALs would be determined if the samples from the same rainy season were collected under different programs.

Because of the potential for errors and confusion, Hanson requests the effective date be moved to July 1, 2014.

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4. Annual Reporting timeline

Section XVI.A, on page 56 of the IGP Order, states

> *"The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th of each reporting year using the standardized format and checklists in SMARTS."*

Given that the monitoring period ends on June 30th of each year, a July 15th deadline for annual reports could be difficult to meet. A qualified storm event requiring sampling could occur in the later part of June, and laboratory results may not be received for at least a week. Based on our conversations with Board Staff, sampling results and risk level changes from later in the monitoring year would not be required to be considered as part of the Annual Reports. If this is the case, what is the cut-off date for considering sampling data in Annual Reports?

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If this is not the case, then the proposed timeframe could be difficult to meet. The July 4th holiday also occurs during this time, further making it difficult to complete. Hanson requests the Annual Report deadline be modified to August 1st.

5. Previous 12-hours unknown

Section XI.B.5, on page 48 of the IGP Order, states:

> *"Samples from each discharge location shall be collected within four (4) hours of:*
> *a. The start of the discharge; or*
> *b. The start of facility operations if the QSE occurs within the previous 12 hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours). Sample collection is required during scheduled facility operating hours and when sampling conditions are safe in accordance with Section XI.C.6.a.ii."*

There can be situations when the start of a Qualifying Storm Event (QSE) is unknown. For example, there could be a discharge on the first work day after a facility is closed when staff first comes back to work, such as Monday mornings or the first work day after a holiday. It may not be known whether the discharge occurred within the previous 12 hour period while the facility was closed. Based on discussion with Board staff, in such situations a sample should not be collected. Hanson requests this be clarified in the permit with the following language change:

> "The start of facility operations if the QSE occurs within the previous 12 hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours). **If a QSE cannot be reasonably determined to have started within the previous 12-hours, then a sample is not required."**

6. Eligibility to return to Baseline status

Section XII.D.4.a, on page 52 of the IGP Order, states:

> *"Dischargers with Level 2 status who submit an Industrial Activity BMPs Demonstration in accordance with subsection 2.a.i through iii above and have implemented BMPs to prevent future NAL exceedance(s) for the Level 2 parameter(s) shall return to baseline status for that parameter, if results from four (4) subsequent consecutive QSEs sampled indicate no additional NAL exceedance(s) for that parameter(s). If future NAL exceedances occur for the same parameter(s), the Discharger's Baseline status will return to Level 2 status on July 1 in the subsequent reporting year during which the NAL exceedance(s) occurred. These Dischargers shall update the Level 2 ERA Technical Report as required above in Section D.3.c".*

A discharger who successfully develops and implements improved BMPs that return their facility to Baseline status should be treated like other facilities in Baseline status: if an additional NAL exceedance occurs, the facility should enter Level 1 status and not jump immediately to a Level 2 status. Having a facility immediately enter Level 2 status does not account for the efforts already undertaken by the facility, and instead "punishes" the discharger for once having been a Level 2 facility in the past. The second NAL exceedance from the facility could be triggered by situations entirely different from previous exceedances, and it would be overly punitive to have a facility bypass Level 1 and immediately be labeled as Level 2.

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Hanson requests that a discharger move to Level 1, not Level 2, if there is an exceedance subsequent to returning to Baseline status.

7. Non-Industrial Source Pollutant Demonstration at Level 1

Section I.M.66, on page 11 of the IGP Order, states:

> *"Exceedances of the NALs that are attributable solely to pollutants originating from non-industrial pollutant sources (such as run-on from adjacent facilities, non-industrial portions of the Discharger's property, or aerial deposition) are not a violation of this General Permit because the NALs are designed to provide feedback on industrial sources of pollutants. Dischargers may submit a Non-Industrial Source Pollutant Demonstration as part of their Level 2 ERA Technical Report to demonstrate that the presence of a pollutant causing an NAL exceedance is attributable solely to pollutants originating from non-industrial pollutant sources."*

As written, it is unclear whether run-on from adjacent facilities includes adjacent *industrial* facilities, as the term "non-industrial" could be construed to mean no industrial sources, whether on-site or off-site. Based on discussions with Board staff, Hanson understands that the intent of this item is to include off-site industrial pollutants over which the discharger has no control (e.g. there is no technologically or economically practical means to divert or prevent run-on). If this is the case, Hanson requests clarification on the language.

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Also, as written the IGP does not allow for a Non-Industrial Source Pollutant Demonstration as part of a Level 1 ERA Technical Report. A discharger should have the ability to demonstrate that exceedances are attributable to solely to pollutants originating from off-site or non-industrial pollutant sources at Level 1, and not have to wait until reaching the higher Level 2 status. The ability to prepare this demonstration at Level 1 can help the discharger avoid wasting time and effort since the source of the exceedance is already known. It will also provide a mechanism for the discharger to communicate with the Regional Board about the site-specific situation.

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Hanson requests the following language change:

"Exceedances of the NALs that are attributable solely to pollutants originating from non-industrial **or off-site** pollutant sources (such as run-on from adjacent facilities, non-industrial portions of the Discharger's property, or aerial deposition) are not a violation of this General Permit because the NALs are designed to provide feedback on **on-site** industrial sources of pollutants. Dischargers may submit a Non-Industrial Source Pollutant Demonstration as part of their **Level 1 or** Level 2 ERA Technical Report to demonstrate that the presence of a pollutant causing an NAL exceedance is attributable solely to pollutants originating from non-industrial **or off-site** pollutant sources."

8. Covering Materials

Section X.H.1.b.vi, on page 30 of the IGP Order, states:

> *"Cover all stored industrial materials that can be readily mobilized by contact with storm water;"*

There can be large and numerous stockpiles at our operations that make covering them unsafe and infeasible. For example, some of our operations can have aggregate stockpiles with footprints almost an acre in size. Furthermore, material is constantly added and removed from these stockpiles based on fluctuating market demand. There are alternatives to covering stockpiles, such as providing containment or downstream BMPs (e.g. silt fence, dikes or berms), which would accomplish the goal of preventing these materials from discharging offsite. Since covering aggregate stockpiles is not an industry best practice, it is Hanson's understanding that these large and/or active stockpiles would not need to be covered per Footnote 11 on page 29. However, this condition should be clarified to avoid potential misinterpretations. Hanson recommends the following language change:

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> "Cover **or otherwise prevent from discharging off-site** all stored industrial materials that can be readily mobilized by contact with storm water;"

9. Sampling Frequency Reduction (SFR) Certification

Section XI. C.7.f, on page 45 of the IGP Order, states:

> *"Regional Water Boards may reject a SFR certification and/or request supporting documentation. In such instances, a Discharger is ineligible for the SFR until the Regional Water Board provides SFR certification approval. Revised SFR certifications shall be certified and submitted via SMARTS by the Discharger."*

As discussed in the workshops with Board Staff, it is Hanson's understanding that until a Regional Water Board rejects a SFR certification, the discharger may proceed with the

SFR without waiting for approval, and there would be no retroactive penalty against the discharger for having done so. If this is the case, Hanson requests the following language change to clarify this point:

> "Regional Water Boards may reject a SFR certification and/or request supporting documentation. **A Discharger may operate per the SFR certification until notified by the Regional Water Board of a rejection and/or request for supporting documentation.** In such instances, a Discharger is ineligible for the SFR until the Regional Water Board provides SFR certification approval. Revised SFR certifications shall be certified and submitted via SMARTS by the Discharger.

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10. Design Storm Exceedance and Industrial Activity BMPs Demonstration

Sections XII.D.2.a.iii and XII.D.2.a.iv, on page 49 of the IGP Order, states:

> *"iii. Where all of the Discharger's implemented BMPs, including additional BMPs identified in the Level 2 ERA Action Plan, achieve compliance with the effluent limitations of this General Permit and are expected to eliminate future NAL exceedance(s), the Discharger shall provide a description and analysis of all implemented BMPs.*
>
> *iv. In cases where all of the Discharger's implemented BMPs, including additional BMPs identified in the Level 2 ERA Action Plan, achieve compliance with the effluent limitations of this General Permit but are not expected to eliminate future NAL exceedance(s), the Discharger shall provide, in addition to a description and analysis of all implemented BMPs:"*

Section X.H.6 of the draft IGP defines design standards for treatment control BMPs, such as sizing requirements for detention basins. For example, a detention basin should be designed to hold and treat the volume of runoff from an 85th percentile 24-hour storm event. However it is possible that there could be a storm that exceeds these IGP defined design standards, and that a NAL exceedance occurs as a result of this unforeseen large storm. The IGP, as written, does not account for situations where a NAL exceedance is caused by a storm that exceeds the IGP design standards. In such a case, the cause of the exceedance is outside the control of the discharger and the facility is often unable to improve upon existing BMPs to account for these unusually large storms. Future large storm events that exceed the IGP design standards could again cause an NAL exceedance, and additional BMPs would likely not be able to reduce or prevent another exceedance.

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Hanson recommends the following language be added to Section XII.D.2.a, as condition vii:

In cases where the NAL exceedance and subsequent exceedances are solely due to an event that exceeded the design storm standards in the IGP, the Industrial Activity Demonstration report shall be used to document that the treatment control BMP meets or exceeds the IGP standards. Dischargers with Level 2 status caused by the design storm exceedance will be eligible to return to baseline status upon submittal of the Industrial Activity Demonstration report.

Hanson thanks the Board and Board staff for the opportunity to provide comments. We look forward to working with you to finalize an Industrial General Permit that balances water quality concerns with compliance feasibility. Please do not hesitate to contact me at Tina.Lau@HeidelbergCement.com or at (925) 244-6584 if further information or clarification is needed.

Sincerely,

Tina Lau
Environmental Manager
Lehigh Hanson West Region