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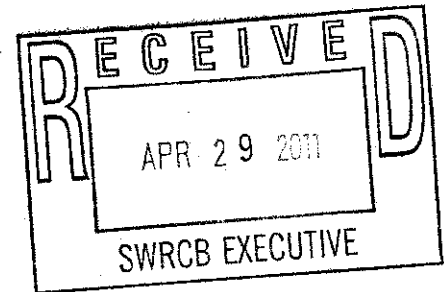
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April 29, 2011

**BY ELECTRONIC MAIL**

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



**Re: Comments of the Utility Water Act Group on California State Water Resources Control Board NPDES General Permit for Stormwater Discharges Associated with Industrial Activities**

Dear Ms. Townsend:

Attached are Comments of the Utility Water Act Group on California's State Water Resources Control Board NPDES General Permit for Stormwater Discharges Associated with Industrial Activities.

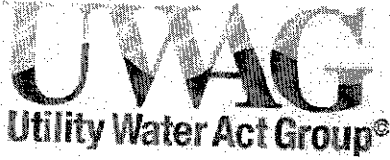
Please call me if you should have any questions.

Very truly yours,

/s/

Brooks M. Smith

bms/sam  
Attachment



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**COMMENTS OF  
THE UTILITY WATER ACT GROUP ON  
CALIFORNIA STATE WATER RESOURCES CONTROL  
BOARD NPDES GENERAL PERMIT FOR STORMWATER  
DISCHARGES ASSOCIATED WITH INDUSTRIAL  
ACTIVITIES**

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**April 29, 2011**

The Utility Water Act Group (UWAG)<sup>1</sup> appreciates this opportunity to comment on the draft NPDES general permit issued by the California State Water Resources Control Board (Board) for stormwater discharges associated with industrial activities (IGP). Several UWAG members with operations in California will be directly impacted by the IGP. Other members are interested in how this proceeding will influence related proceedings in other states and at the federal level.

We are particularly focused on ways in which state permits, like the IGP, deviate from the federal model. We strongly support EPA's determination in the MSGP-2008 that non-numeric limits (i.e., BMPs) are adequate to achieve both technology- and water quality-based goals, and we expect states to conform with this determination, absent compelling data and information to the contrary.

In this proceeding, we support several elements of the draft IGP:

- The Board's decision not to impose numeric effluent limitations (NELs) up-front or across-the-board. (Fact Sheet at p. 8)
- The opportunity to certify that new BMPs are not necessary because the pollutants are not related to the facility's industrial activities or can be eliminated without revising the facility's stormwater pollution prevention plan. (IGP XVII.B.2.c; Fact Sheet at p. 9)
- The opportunity to demonstrate that a minimum BMP is not applicable to facility operations. (Fact Sheet at p. 18)
- The opportunity for reduced sampling and analysis based on performance data over a consecutive period of time. (Fact Sheet at p. 28)
- The BMP implementation extension process, which may become absolutely necessary in order to design and install appropriate controls given site-specific needs and constraints. (Fact Sheet at p. 32)

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<sup>1</sup> UWAG is an ad hoc group of 208 individual energy companies and three national trade associations of energy companies, the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. The individual energy companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. The Edison Electric Institute is the association of U.S. shareholder-owned energy companies, international affiliates, and industry associates. The National Rural Electric Cooperative Association is the association of nonprofit energy cooperatives supplying central station service through generation, transmission, and distribution of electricity to rural areas of the United States. The American Public Power Association is the national trade association that represents publicly owned (municipal and state) energy utilities in 49 states representing 16 percent of the market. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the CWA and in litigation arising from those rulemakings.

- The Board's acknowledgement and understanding that "there should be an end-point with a result of achieving permit compliance, the initiation of enforcement actions or the waiver from implementing any further BMPs that *may be unreasonably expensive either because of their cost, effectiveness or benefit.*"<sup>2</sup> (Fact Sheet at p. 33)(emphasis added).
- The conditional exclusion for dischargers that implement Green Stormwater Impact Reduction Technology. (Fact Sheet at p. 35)

Our support is qualified by the following questions and concerns, which highlight areas of the draft IGP that appear to deviate from the federal model in ways that are ill-defined, unnecessary or otherwise inappropriate.

**1. UWAG seeks confirmation from the Board that the minimum BMPs are designed to achieve compliance with applicable water quality standards.**

Over the past decade, the adequacy of EPA's general stormwater permitting program to achieve water quality standards has been a central issue raised by environmental groups. In EPA's most recent model permit proceeding -- MSGP-2008 -- the Agency took pains to demonstrate that its general permit, and the BMP-approach on which it was based, was adequate to achieve those standards. EPA made this explicit in the permit itself. See Section 2.2.1 ("EPA expects that compliance with the other conditions in this permit will control discharges as necessary to meet applicable water quality standards."). EPA then went on to provide a process for corrective action in the event that a permittee became aware, or EPA determined, that a discharge causes or contributes to an exceedance of such standards.

EPA's approach in the model federal permit is an important marker for compliance, and we urge the Board to follow this same approach in the IGP. In particular, we ask that the Board specify that it expects compliance with the other conditions in the permit to control discharges as necessary to meet applicable water quality standards.

**2. UWAG seeks clarification on the Board's proposed tiered corrective action approach.**

The Board proposes a three-tiered approach to corrective action, all of which are predicated on stormwater sampling and Numeric Action Levels (NALs). As described above, we strongly support the Board's decision to frame the IGP with a BMP-approach measured by NALs, as opposed to up-front and across-the-board imposition of Numeric Effluent Limits (NELs). However, we have a number of fundamental questions about the Board's approach that will need to be addressed before the IGP is finalized.

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<sup>2</sup> This is an extremely important point, but one that does not appear to translate from the fact sheet to the permit itself. We urge the Board to be more explicit in the IGP about how this demonstration of "unreasonableness" will be made.

First, the NALs are derived from benchmarks used by EPA in MSGP-2008. As the Board acknowledges, these benchmarks are not effluent limits, and benchmark exceedances are not automatically considered permit violations. Rather, the benchmarks are used to evaluate the relative effectiveness of a facility's BMPs and to highlight areas for focus or improvement in those BMPs, as appropriate. EPA's benchmarks were derived mainly from national datasets and more rarely from specific, non-California, state sources. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000); *see also* 2008 MSGP Fact Sheet p. 106. Thus, the benchmarks may not be representative of conditions in California.<sup>3</sup> As acknowledged by EPA, these benchmarks are merely rough indicators of stormwater quality and BMP effectiveness. 65 Fed. Reg. at 64767 ("The benchmark concentrations are not effluent limitations and should not be interpreted or adopted as such. These values are merely levels which EPA has used to determine if a storm water discharge from any given facility merits further monitoring to ensure that the facility has been successful in implementing a SWPPP. As such, these levels represent a target concentration for a facility to achieve through implementation of pollution prevention measures at the facility.") The Board does not appear to have considered the representativeness or appropriateness of using these benchmarks as NALs applicable to IGP dischargers *in California*, but we urge the Board to do so before proceeding further with this proceeding.

Second, if a permittee ends up in the third tier of corrective action, as proposed by the Board, the NALs would suddenly become technology-based NELs. Nothing in the record from EPA's MSGP-2008 supports the conversion of its benchmarks into effluent limits. And nothing in the record from the Board's draft IGP supports it either. NALs are fundamentally different than NELs. They are derived for entirely different purposes using entirely different data, assumptions and endpoints. As a result, it is simply inappropriate for the Board to convert NALs to NELs without first going through a reasoned analysis of technology-based factors set forth in federal and state law, and then developing sector-specific NELs based on the results of this analysis. The Board has not done so here. In fact, the fact sheet provides that "additional rationale is forthcoming" regarding the Board's technology-based decision. To promote a fair process and meaningful public involvement, we urge the Board to make this additional rationale available for comment before taking action to finalize the IGP.

Third, the Board's tiered approach appears to go in only direction -- downward from first to third. We believe that permittees should have the ability (and incentive) to tier upward, as well. The Board should clarify the circumstances under which this is possible.

Fourth, in developing the IGP, the Board appears to have reached the conclusion that implementation of the minimum BMPs will typically result in compliance with the NALs (if the conclusion were otherwise, then the NALs would not be well-tailored for their intended purpose). However, the record does not reflect this conclusion.<sup>4</sup> We believe that it is important

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<sup>3</sup> In fact, the Blue Ribbon Panel convened to explore the feasibility of NELs in California in 2005-2006 cautioned against the use of national data in setting NALs or NELs unless/until shown to be applicable to California.

<sup>4</sup> Rather, the record only reflects conclusory statements that "[i]t is the best professional judgment (BPJ) of [staff] that dischargers employing BAT and BCT can reduce the pollutants in  
(continued...)

for the Board to demonstrate and provide examples -- along the spectrum of industries covered by the permit -- of the correlation between the minimum BMPs and NALs prescribed by the Board. Absent this demonstration, permittees will be left to wonder (and worry about) what is required to avoid the tiered corrective action process. Worse, they may incur extra expense, and risk, chasing compliance down the tiered path that could have been avoided had they simply had fair notice of their regulatory obligations up front.

Thank you for the opportunity to provide these comments. We look forward to receiving your responses. Please feel free to contact our counsel, Brooks Smith (804-787-8086 / [bsmith@hunton.com](mailto:bsmith@hunton.com)), with questions or for additional information.

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their storm water effluent to achieve concentrations at or below the NALs" (Fact Sheet at p. 8) and that "[d]ischargers that have designed and properly implemented all required structural source controls and/or treatment BMPs should not have additional exceedances of NALs" (Fact Sheet at p. 33). If these statements are accurate, then we absolutely support them. However, we urge the Board to justify them in the record so that permittees have both fair notice and comfort of what is required to achieve consistent compliance.