ORANGE COUNTY
OC Waste&Recycling
Our Community. Our Commitment.

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

Subject: Comment Letter – Draft Industrial General Permit

Dear Ms. Townsend and Members of the Board:

Thank you for allowing us the opportunity to provide comments on the draft Industrial General Permit (IGP). OC Waste & Recycling recognizes the importance of protecting water quality in the State of California and has been committed over the last two decades to reducing our facilities' potential contribution to stormwater pollution by significantly upgrading the Best Management Practices (BMPs) at our facilities and providing our employees with the resources and training to take steps to minimize stormwater pollution in their daily jobs.

INTRODUCTION

OC Waste & Recycling manages one of the nation's premiere solid waste disposal systems serving residents and businesses in the Southern California area. On behalf of the 34 Orange County cities and over three million residents, OC Waste & Recycling operates a network of three active landfills and four household hazardous waste collection centers.

The Orange County community and surrounding counties generate millions of tons of waste each year—approximately 3.5 million tons of waste was disposed of in Orange County landfills in fiscal year 2009-10. Careful disposal of the County's waste is fundamental to preserving public health and safety and is regulated at the federal, state and local levels. OC Waste & Recycling is the entity charged with providing waste disposal services for the County.

California statutes governing solid waste handling and disposal are some of the most stringent standards in the nation. OC Waste & Recycling is responsible for complying with regulations that are enforced by such agencies as CalRecycle, the Solid Waste Local Enforcement Agency, South Coast Air Quality Management District, Regional Water Quality Control Boards, Army Corps of Engineers, United States Fish and Wildlife Service, the California Department of Fish and Game, local fire authorities and other County departments.

These regulations often overlap with one another, which makes compliance challenging. Even though regulators may have the same goals and purposes, each agency requires that their issues be addressed separately. In addition, the level of regulatory scrutiny has greatly increased with

the heightened awareness and growing demand for environmental protection. Nevertheless, OC Waste & Recycling has always been committed to working with regulators and stakeholders to develop reasonable regulations that provide protection to the environment while balancing the cost of compliance.

Working on this principle, we believe the current draft IGP imposes standards that are unachievable, will be very costly to implement, and will not yield a measurable water quality benefit.

As written, the draft IGP will divert precious resources from OC Waste & Recycling's core waste disposal functions and/or result in the need to increase solid waste handling fees for our customers, primarily the residents and business owners of Orange County. The following sections provide both specific comments on the language within the draft IGP, as well as a description of general impacts to the County that may result if certain draft IGP provisions are not modified.

USE OF EPA BENCHMARK VALUES AS NUMERIC ACTION AND EFFLUENT LEVELS

The draft IGP proposes to use EPA benchmark values as enforceable effluent limits when EPA specifically states in section 6.2.1 of the EPA Industrial General Permit,

> *"The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the (non-numeric) effluent limitations in Part 2."*

During several of the public meetings and on-line seminars related to the draft IGP, the State Board stated that they did not have the time or resources to develop California specific numeric action levels (NALs) and numeric effluent limits (NELs) so the State Board chose to use EPA benchmarks. It is recommended that the State Board undertake an evaluation of storm water data (both existing, and yet-to-be collected) to establish an appropriate basis for action levels or effluent standards to be used in the permit.

OC Waste & Recycling has two concerns related to the use of EPA benchmarks as NALs/NELs:

1) The applicability of EPA benchmark values to California, and more importantly, protection of individual waterways.

2) The use of EPA benchmark values as enforceable numbers in the draft IGP is inappropriate and not the intention of development of the benchmark values. The misuse of these values as enforceable numbers will likely expose industrial facilities who are attempting to comply with the permit to third party lawsuits.

EPA Benchmark Applicability to California

In accordance with the draft IGP, OC Waste & Recycling is required to sample and analyze stormwater effluent samples from their landfill facilities for pH, total suspended solids (TSS), specific conductance (SC), total oil & grease, and total iron. OC Waste & Recycling is specifically concerned about the use of EPA benchmark values as NALs for TSS (NAL of 100 mg/L) and total iron (NAL of 1.0 mg/L). Specific conductivity is not an EPA benchmark but has been proposed to be included in the draft IGP as an NAL at a value of 200 umhos/cm. Stormwater analytical data collected in the Southern California area indicate that the EPA benchmark values are not appropriate for use in California due to the unique and natural variation of geology in California.

In a study conducted by Los Angeles County Department of Public Works (LACDPW) between 1994 and 2000, stormwater discharge from industrial facilities was analyzed for TSS (among other constituents). The results of this study indicated that the TSS concentrations in stormwater runoff from industrial facilities exceeded the NAL value of 100 mg/L at 75% of the industrial facilities included in the study [LACDPW, 1994-2000]. Even with well-designed BMPs, it is estimated that approximately 25% of industrial facilities will not be able to achieve the proposed TSS NAL [BMP Database, 2011].

This same study conducted by LACDPW evaluated total iron concentrations (among other constituents) in stormwater runoff from vacant and open (i.e., undisturbed) land in LA County. The mean total iron concentration detected in the stormwater samples collected from vacant/open land was 3.0 mg/L [LACDPW, 1994-2000]. The total iron data collected as part of this study indicate that on undisturbed and vacant land the background iron concentration in stormwater exceeds the NAL of 1.0 mg/L, therefore, it is unreasonable to assume that the proposed total iron NAL is achievable for facilities in Southern California.

At landfills and other facilities with significant land disturbance, high specific conductance in stormwater run-off is often related to the site geology. In California, geologic conditions naturally contribute to high concentrations of dissolved solids (e.g., salts and very fine colloidal soil particles) to groundwater and stormwater run-off. At a large facility like a landfill, stormwater may contact undisturbed geologic formations, resulting in high specific conductance without contacting any industrial process or landfilling activities. As an example, groundwater from a natural spring located in an area that is undisturbed and upgradient of industrial and landfilling activities at the Prima Deshecha Landfill (one of OC Waste & Recycling's active landfills) has a specific conductance of approximately 5,000 umhos/cm. The naturally occurring specific conductance in groundwater/spring water far exceeds the proposed specific conductance of 200 umhos/cm in the draft IGP. Specific conductance measurements in stormwater effluent from a landfill or other industrial facility with significant land disturbance in California is not an appropriate indication of poor BMP implementation at these facilities because specific conductance is expected to naturally occur at levels exceeding the proposed NAL in stormwater run-off. For this reason, OC Waste & Recycling proposes that the State Board remove specific

conductance as a monitoring parameter for facilities with significant native geologic-contact area simply because the result does not provide useful information on BMP performance.

Secondly, the EPA benchmark values are not specific to individual waterways or reaches within California, and stormwater data collected from undisturbed areas in several watersheds in California indicates that background concentrations would result in exceedances of the NALs proposed in the draft permit. As indicated previously, the State Board did not have the time or resources to develop California specific NALs. Stormwater data for California exists but it is obvious that more information is needed to develop NALs that are applicable and achievable for California industry.

OC Waste & Recycling proposes that the State Board use the 2011 IGP revision to require industry to gather California-specific stormwater data following prescribed and auditable sampling frequencies and monitoring requirements so valid, representative data are collected. A data-gathering permit period would provide the State Board with California-specific stormwater data (background and discharge) which will allow for a California- and industry-specific evaluation of the data. The data gathered can then be used to determine NALs which are more appropriate for California and specific industries. There will likely be opportunities to productively utilize the data gleaned from this effort, along with other total maximum daily load (TMDL) and regulatory data-generating exercises, to develop watershed-specific numbers, as well as industry-specific limits. Subsequently, the State Board could incorporate the California area-specific NALs in the next revision of the IGP.

High Exposure for Third Party Lawsuits

The proposed NALs are likely unachievable for a number of industrial facilities for the reasons presented above. If these unachievable NALs are adopted in the 2011 IGP the door will be opened to third party lawsuits from people and lawyers whose motives may include those other than resource protection. The industries that have spoken out about the practicality of implementing the draft IGP in its current format, specifically regarding the use of EPA benchmark values as NALs, have a vested interest in conducting business in California. These vested industries have devoted significant economic and personnel resources into maintaining compliance with California laws so that they can conduct business in California. The adoption of NALs which are not appropriate for California and/or specific industrial sectors and likely unachievable by a large majority of industry exposes these industries to third party lawsuits. The consequence of third party lawsuits would include a diversion of already-strained resources needed for stormwater compliance.

Cost Prohibitive

Related to the above NAL discussion, the cost to implement the BMPs required to reduce effluent TSS and total iron concentrations (and related constituents) to the proposed NAL values are enormous when considering the peak stormwater flows coming from a large site like a landfill. Existing water quality data suggests that on smaller industrial facilities that are

primarily impervious, active treatment systems were often unable to consistently achieve the effluent standards proposed in the draft IGP. The current draft IGP fails to consider the cost to implement the requirements of the proposed permit. As written, the draft IGP further penalizes large facilities with significant land disturbance (e.g., landfills and mines) by requiring additional sampling (on top of the already increased amount of sampling required over the existing permit) during storm events. The SWRCB has not prepared a cost/benefit analysis for the draft IGP and a cost/benefit analysis is critical in order to evaluate if the requirements are cost effective and environmentally beneficial.

SPECIFIC DRAFT INDUSTRIAL GENERAL PERMIT PROPOSED MODIFICATIONS

Corrective Action

Because solid waste landfills are heavily regulated, we understand the need for clear regulations that are understood by the regulator and the permittee. OC Waste & Recycling also understands the reasons for consequences for non-compliance with the regulations and we are strongly committed to complying with all solid waste facility regulations. As understood by OC Waste & Recycling, the SWRCB has incorporated corrective action levels into this draft IGP to require dischargers to take specific actions at their facilities to reduce their facility's impact on stormwater should one of the corrective action triggers be exceeded. The draft IGP defines the corrective actions a discharger is responsible for, should the permitted stormwater effluents not meet the NAL(s). However, there is no mechanism in the current draft for the discharger to return to baseline monitoring once the discharger has shown that their stormwater effluents are no longer exceeding the applicable NAL(s).

OC Waste & Recycling proposes the following mechanism to return to the baseline compliance level following activation of one of the NAL triggers described in the IGP:

Section XVII.E.

12. *Following activation of one of the NAL Corrective Action Triggers (as described in Section E.1 above), the discharger shall determine the source of the pollutant, implement additional BMPs as applicable to reduce the pollutant impact to stormwater, and file the required reports as described above. Stormwater effluent sampling shall continue in accordance with the Corrective Action Level the discharger is currently complying with. The discharger can return to the baseline monitoring level after the requirements of the applicable Corrective Action Level (as described in Sections XVII.B, C, and D) have been met and two consecutive stormwater effluent sampling events indicate that the stormwater effluent is no longer exceeding the NAL which triggered the corrective action.*

BMP and Equipment Inspection Frequency

The draft IGP requires an inordinate number of inspections be conducted and documented to be in compliance with the permit. Depending on the type of facility and the number of operating days, the number of required inspections can easily exceed 400 inspections at each facility every year. For a large facility like a landfill (up to 1,500 acres for our facility operations), compliance

with the draft IGP inspection requirements amounts to a full time job for at least one employee. OC Waste & Recycling proposes that the State Board allow the discharger to determine the inspection frequency required to maintain BMPs and equipment as applicable to each discharger's facility. The discharger is responsible for maintaining their facilities as necessary to reduce stormwater pollution. It is reasonable to assume that the discharger will conduct BMP and equipment maintenance as required at their facility to meet the NALs and avoid corrective action. Should the discharger underestimate the BMP and equipment maintenance requirements at their facility, their stormwater effluent samples will likely indicate that the discharger would need to enhance stormwater pollution prevention measures or face implementation of corrective actions in accordance with the draft IGP.

OC Waste & Recycling proposes the following changes to the draft IGP:

Section VIII.H.

1.a.i Inspect ~~weekly~~ at a frequency determined appropriate and documented in the site SWPPP, all outdoor areas associated with industrial activity, storm water discharge locations, drainage areas, conveyance systems, waste handling/disposal areas, and perimeter areas impacted by off-facility materials or storm water run-on to determine housekeeping needs...~~Weekly~~ Routine inspections may be suspended during periods when there is no outdoor exposure...

1.b.ii Inspect ~~weekly~~ at a frequency determined appropriate and documented in the site SWPPP, each of the identified equipment and systems to detect leaks or identify conditions that may result in the development of leaks. ~~Weekly~~ Routine inspections may be suspended during periods when there is no outdoor exposure...

1.d.v Inspect and clean ~~daily~~ at a frequency determined appropriate and documented in the site SWPPP, any outdoor material/waste handling equipment or containers that can be contaminated by contact with industrial materials or wastes.

CONCLUSION

OC Waste & Recycling acknowledges the State Board's desire to institute some form of numerical threshold for regulated sites. However, it is prudent to use a step-wise approach for establishing and enforcing NALs/NELs. The current IGP (97-03-DWQ) does not contain numeric limits and the draft IGP has very low limits which are not specific to California and are likely unachievable by the majority of industry located in California. OC Waste & Recycling is in support of a data gathering permit period which would assist with the development of California-specific NALs/NELs. Thank you for considering our comments, and those of others within our industry sector, on this very important draft permit. By reference, we endorse the comments put forth in correspondence from the Solid Waste Industrial Stormwater Partnership (SWISP).

If you have any questions on our letter, please contact David Tieu at (714) 834-4064 or by e-mail at david.tieu@ocwr.ocgov.com.

Sincerely,

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Government & Community Relations

cc: Charles R. Hoppin, Chair, SWRCB
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