UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 08 2011

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

Re: Draft Industrial General Stormwater Permit (Permit No. CAS000001)

Dear Ms. Townsend:

The following are EPA Region 9's comments on the draft NPDES general permit (Permit No. CAS000001) for facilities which discharge stormwater associated with industrial activity in the State of California. On January 28, 2011, the State Water Board provided public notice that it was soliciting public comment on this draft permit.

As pointed out in previous letters commenting on draft stormwater permits in California, Region 9 is encouraging the use of more prescriptive, quantitative requirements in these permits. This recommendation stems primarily from the results of our audits of municipal separate storm sewer system (MS4) programs over the last ten years which have repeatedly shown the need for such requirements to ensure an effective and enforceable permit program. However, experiences with the industrial stormwater permit program have also shown the need for such requirements, and we are pleased to see numerous new requirements of this nature included in the draft permit. Following below we also provide certain additional comments on specific provisions of the draft permit.

A. Numeric Effluent Limits (NELs)

In principle, Region 9 supports the inclusion of the NELs in the permit (section XVII.D, Corrective Actions, Level 3) since this would be consistent with our objective noted above of issuing permits with effluent limits that are more measurable and enforceable. However, the fact sheet for the permit also notes that the rationale for the NELs is still under development - in particular consideration of the factors in Clean Water Act (CWA) section 304(b) which must be evaluated in the development of effluent limits consistent with the Best Available Treatment Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements of the CWA. As such, we believe it is best to reserve final judgment on the NELs until the State's rationale has been prepared.

The NELs would be based on benchmark values which EPA first derived for the 1995 multi-sector general permit (MSGP) (60 FR 50804, September 29, 1995). EPA explained that the benchmarks were basically levels below which stormwater discharges

would not likely pose water quality concerns. EPA also indicated that the benchmarks were believed to be values which could realistically be met by industrial facilities employing best management practices (BMPs) such as those which constitute the BAT/BCT effluent limits of the MSGP. This indicates that the benchmarks could also be considered at least reasonable candidates for NELs based on the BAT/BCT requirements of the CWA.

EPA did not conduct a full evaluation of the benchmarks in relation to the CWA section 304(b) factors which must be considered in developing BAT/BCT effluent limits. Hence, the benchmarks in EPA's MSGP are not enforceable effluent limits, but rather are triggers for certain corrective actions. Nevertheless, based on the discussion of the benchmarks for the MSGP, we would encourage the State to continue evaluating them as potential NELs.

B. Benchmark Values

Table 4 of the draft permit provides the MSGP benchmark values, along with certain other information. However, it appears the State Board obtained the values for the benchmarks from EPA's 2000 MSGP rather than the 2008 MSGP, in which the benchmarks were updated. We recommend the State use the updated benchmarks from the 2008 MSGP which are available in Table 2 of the fact sheet accompanying the 2008 MSGP and available at: http://cfpub.epa.gov/npdes/stormwater/msgp.cfm.

C. Total Maximum Daily Load (TMDL) Requirements

As with all other aspects of the draft permit, Region 9 is seeking to ensure that the TMDL-related requirements are clear, measurable and enforceable and will ensure consistency with applicable wasteload allocations (WLAs).

On November 12, 2010, EPA issued an updated guidance memorandum concerning the incorporation of WLAs into NPDES stormwater permits. The updated guidance encourages the use of numeric effluent limits when feasible to improve the clarity and enforceability of stormwater permits. BMPs may also be used as the effluent limits provided the administrative record for the permit demonstrates the BMPs would be sufficient to comply with the WLAs. Since this would be a difficult demonstration for the many permittees covered by the industrial permit, we would encourage the inclusion of numeric effluent limitations (where available) to ensure consistency with applicable WLAs.

Part VI.D of the draft permit would require compliance with approved TMDLs, and Attachment G would provide a list of potentially applicable WLAs. This appears to be an appropriate approach for incorporating WLAs into the permit, but since Attachment G is currently far from complete, we can only comment on the Board's general approach at this time.

So far, Attachment G only addresses certain TMDLs within the jurisdiction of the North Coast Regional Board. There are many other TMDLs which have been approved in other Regional Board jurisdictions (e.g., Ballona Creek Metals TMDL in the Los Angeles Regional Board) which include detailed requirements for industrial stormwater permittees. We believe the Board's approach for ensuring consistency with such requirements, i.e., incorporating them into Attachment G, would work as long as all the applicable requirements including the WLAs, compliance deadlines, monitoring requirements and any other deliverables such as special studies are included. And for the reason noted above, we also recommend that where numeric WLAs exist that they be incorporated directly into Attachment G.

D. Monitoring Requirements

The 2008 National Research Council (NRC) report entitled "Urban Stormwater Management in the United States" includes certain recommendations for industrial stormwater monitoring which we recommend be incorporated into the draft permit. First, the report recommends that grab sampling should be replaced with flow-weighted composite sampling for most applications. This recommendation stems from the wide variability found in existing industrial stormwater monitoring datasets (including data specifically from California) which has resulted from the widespread use of grab sampling in the past, and the difficulty in drawing meaningful conclusions from such data.

The NRC report also recommends that monitoring requirements be targeted toward industrial facilities presenting the highest risk to stormwater quality, and the report suggests some protocols for selecting such facilities. Based on this and the other NRC recommendation noted above, we would suggest the State Board include flow-weighted composite sampling requirements in the permit, at least for a subset of facilities thought to present the highest risk in California.

We recognize that flow-weighted composite sampling is more complex than grab sampling, but we also note that the draft permit includes requirements for the use of a qualified SWPPP practitioner (QSP) in the implementation of the BMP and monitoring requirements of the permit. The training requirements for a QSP found in the permit should ensure that such sampling could be conducted successfully.

E. BMP Categories

The fact sheet (page 15) for the draft permit indicates that the State Board has selected six categories of BMPs (from a list of 12) from EPA's MSGP upon which to base the requirements of the State's permit and that the other categories are included more indirectly. We are nevertheless concerned that structural BMPs (a category which was omitted from the State's draft permit) may not receive due consideration under the State's draft permit, and circumstances may arise where they would be needed. As such,

we recommend the new State permit retain requirements for the use of such controls similar to the provisions in section A.8.b of the SWPPP requirements for the State's 1997 permit.

We also recommend replacing the word "reduce" with the word "minimize" in describing the required level of performance for a given BMP; the word "reduce" used in section VIII.H.1.a.ii of the draft permit (and elsewhere) could refer to any level of pollutant reduction whereas "minimize" implies a maximum effort more consistent with the BAT/BCT requirements of the CWA.

F. Facilities Subject to EPA Effluent Limitations Guidelines (ELGs)

Attachment H includes excerpts from 40 CFR Subchapter N for the 11 categories of industries for which EPA has promulgated ELGs for stormwater discharges. As is, however, Attachment H includes requirements for stormwater discharges and also process wastewater discharges and pretreatment requirements which are outside the scope of the industrial stormwater permit. For additional clarity and ease of use, we suggest the permit also include a summary table of just the stormwater ELGs for these industrial categories extracted from Subchapter N. Several years ago, Region 9 provided a summary table of this nature to the State Board which could be considered for this purpose.

G. Oil and Gas Construction Activity

We recommend that Finding #19 for the permit (and Attachment A) clarify that construction activity at oil and gas exploration, production, processing, treatment and transmission facilities is covered by the State's industrial general permit. This is necessary for consistency with the 2005 Energy Policy Act which amended section 502 of the CWA to include construction activity at these oil and gas facilities as a routine industrial activity covered by the State's industrial general permit.

H. Conditional Exclusions

Sections XXII and XXIII of the draft permit would provide an exemption from certain permit requirements for facilities with "no discharge" as defined by the permit, and for facilities which implement certain green stormwater impact reduction technologies (G-SIRT). These conditions provide an incentive for facilities to implement controls which are likely to reduce pollutant discharges and we would concur with the inclusion of such incentives in the permit. However, section XXII of the permit, and its fact sheet discussion, suggest that discharges of pollutants from facilities designed to contain the 100-year, 24-hour storm would not be subject to stormwater permitting under the CWA. Such discharges would still be regulated and authorized under the CWA, and this point should be clarified in the permit and fact sheet.

Section XXIII of the permit indicates that the G-SIRT standards remain to be developed, and as such, we cannot provide comments at this time. We may provide comments on the standards when they become available in a future version of the draft permit.

We appreciate the opportunity to provide our views on the draft permit. If you have any questions regarding these comments, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

Robyn A. Stuby for

David Smith, Manager
NPDES Permits Office (WTR-5)

cc: Greg Gearheart, Stormwater Section Supervisor