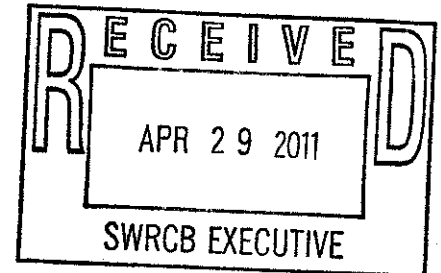




April 28, 2011

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



**Re: Comment Letter -- Draft Industrial General Permit**

To Whom It May Concern:

The following comments are being submitted in regards to the State Water Resource Control Board's (SWRCB) proposed 2011 Draft Industrial General Permit for storm water discharges. The California Trucking Association (CTA) has several concerns with the new proposal and hopes that the SWRCB will take our comments into consideration before they move forward with any revisions prior to adoption.

CTA is the second largest trucking organization in the United States, providing comprehensive policy, regulatory and legislative support to our member companies. Our members range from one-truck operators to large international companies providing safe and efficient goods movement. In California, trucking provides 1 out of every 12 jobs in the state.

CTA is a member of the WATER coalition, and we share common concerns about the inclusion of numeric limits/action levels in the Industrial General Permit, process and procedures, the potential for litigation, duplicative regulations, and exclusion of the group monitoring provision.

**Elimination of Group Monitoring:**

Among the many concerns CTA has regarding the various changes to the Industrial General Permit, the elimination of Group Monitoring is of grave concern. Since its inception, the California Trucking Association Monitoring Group (CTAMG) has consistently helped its participants meet all requirements outlined within the current permit and has largely been successful in accomplishing this goal.

According to the SWRCB, the three objectives of revising the Industrial General Permit were to: (1) improve data quality, (2) improve compliance consistently and (3) provide incentives to reduce compliance burden. Group Monitoring under the existing permit meets those objectives by: (1) sampling data, BMPs, an additional layer of quality review of reports for accuracy and completion, and representation by the Group Leader and Group Environmental Consultant, (2) an additional level of compliance overview and required corrective actions is completed by the Group Leader in a much more consistent, effective and efficient manner than the nine local RWQCBs provide, and (3) incentives to reduce compliance burden is provided by reducing costs associated with storm water compliance, allowing facilities to invest in BMPs, training programs, etc., as well as investing in existing operations, market/product growth, stimulating

the economy, and job creation. While CTA understands that the SWRCB is required to review the Industrial General Permit every five years, the SWRCB failed to conduct an Economic Impact Analysis and has not drawn any scientifically supported conclusions to justify the need to revise the permit.

Within the new permit, the SWRCB states that the new "permit emphasizes sampling and analysis as a means to determine compliance with BAT/BCT" and that "Reduced sampling of the magnitude provided to group participants interferes with that goal." CTA is troubled by the notion that the SWRCB would justify the extermination of group monitoring in California because of the associated sampling requirements within the current permit. To base a decision of this magnitude solely on sampling requirements utterly fails to acknowledge the numerous positive aspects associated with group monitoring. If the Board can justify the need to increase sample requirements within monitoring groups and/or increase the responsibilities of Group Leaders without jeopardizing the aforementioned incentives associated with group monitoring, CTA would be willing to offer input and assistance wherever feasible.

#### **Regulatory Burden and Increased Costs:**

A related concern CTA has regarding the new requirements is the regulatory burden and sizeable increase in costs that all permitted facilities will inevitably face. Sample kits, analyses and the frequency by which facilities will need to purchase them will be quadrupled at the very least. CTA members who choose to participate in our monitoring group will also be met with increased costs for the utility of environmental consultants, training, and an overall increase in work hours not to mention the extravagant costs they will be forced to pay should they trigger any of the Numeric Action Levels (NALs). CTA estimates that our facilities will face at least a 1000% increase in annual costs to comply with the current draft of the proposed permit. In California, the Truck and Bus Rule alone will cost the trucking industry roughly \$6 billion. Additional regulatory expenses will only increase the existing regulatory burdens and may effectively run many California based businesses out-of-state or force them to shut down permanently.

#### **Numeric Action Levels & Numeric Effluent Limits:**

The potentially high costs associated with the NALs and NELs are alarming. This is especially relevant if facilities are required to build structural BMPs, install water treatment systems, and/or sample all qualifying storm events year-round. The draft permit requires permittees to implement structural source control BMPs and/or treatment BMPs when the NAL corrective action trigger is for one or more constituents addressed in a Level 1 NAL exceedance evaluation report. Such controls should be economically and practically feasible, so that costs of implementing the controls do not exceed any resulting benefit. For the trucking industry, corrective actions limited to operational source controls should be sufficient to address pollutants.

Requiring a facility to sample every qualifying event throughout every year in which they have an active permit is excessive, expensive, and Draconian by nature. This requirement is estimated to cost an additional \$8,000 per year for each facility subject to a Level 3 Corrective Action and fails to be supported by corresponding environmental benefits. Furthermore, the new permit provides no means by which facilities can escape the third and final tier.

On page 16 of the Blue Ribbon Panel's report, they state that "*Whether the use of Numeric Limits is prudent, practical or necessary to more effectively achieve nonpoint pollution control is a separate question that needs to be answered, but is outside the scope of this Panel.*" Until the SWRCB conducts an Economic Impact Analysis and obtains conclusive scientific data that

qualifies the need to implement the use of NALs/NELs, the current EPA benchmarks should remain intact.

Additionally, the establishment of arbitrary numeric limits will also place permitted facilities under strict liability and will subject them to costly lawsuits in addition to the proposed Corrective Action penalties.

#### **The Draft Permit Unreasonably Seeks to Regulate Facilities Having No Storm Water Discharges:**

The draft permit places onerous requirements on those facilities that do not even discharge storm water into a water body of the United States. Such requirements are not only unreasonable, but they also arguably exceed the authority the state maintains to regulate storm water discharges. For example, the draft permit requires facilities wanting a conditional exclusion on the grounds of no exposure to file a "No Exposure Certification" (NEC) each year, and pay the corresponding filing fees. The United States Environmental Protection Agency's storm water permit and most state permits require NEC renewals every five years. The draft permit's annual NEC requirement is excessive and unnecessary.

Furthermore, the draft permit further requires facilities to have a California registered PE make the "No Discharge Certification" (NDC). Facilities that do not discharge storm water should not be required to retain a California registered PE annually to complete the NDC. The SWRCB has not identified environmental benefits that would exceed the added costs.

#### **Qualified SWPPP Developer & Qualified SWPPP Practitioner:**

The new mandate that each complying facility utilize a credentialed Qualified SWPPP Developer (QSD) for the development, implementation of, and any subsequent amendments to the SWPPP is unclear. This requirement does not clarify how frequently the QSD must review and amend the SWPPP nor does it take into account the costs associated with contracting qualified consultants. Likewise, the current list of qualified professionals should be broadened to include additional specialists, including Environmental Health & Safety experts.

The draft permit's requirement that personnel attend specific, state-run training seminars will further increase costs and the Qualified SWPPP Practitioner (QSP) design also fails to address employee turnover, how often the training is required, whether or not newly designated QSPs have an allotted time frame in which they must complete the training, and if the training be offered in Spanish. It would be prudent for the SWRCB to evaluate the training seminar curriculum offered by monitoring groups and CTA believes these seminars should fulfill all QSP training requirements.

#### **The Draft Permit Places Requirements on Permittees that are Impractical and Not Feasible:**

The draft permit places onerous obligations on permittees, but fails to identify environmental benefits that outweigh the significant costs of these onerous obligations. For example, the draft permit requires the permittee to conduct visual inspections prior to any anticipated storm event. This requirement would seem to require facility personnel to scour the latest weather reports, although it is not clear what percentage chance of rain would trigger the requirement. Notwithstanding the increased man-hours that would be needed at each facility to determine an anticipated storm event, this requirement simply is not realistic and any potential environmental

benefit resulting from the requirement is clearly outweighed by the corresponding additional costs, man-hours, etc.

The draft permit requires the permittee to identify locations where soil erosion *may* occur. This is not practical because any landscaped area could potentially become an erosion area at any time due to heavy rains or changes in run-on characteristics. It is not practical, nor necessary, for the permittee to identify areas of potential erosion.

The draft permit requires the permittee to minimize the flow or volume of non-storm water discharges, and prevent or reduce the contact of non-storm water discharges with significant materials or equipment. The permit also requires storm water or non-storm water flows from non-industrial areas to be diverted so as to avoid contact with industrial areas. These requirements are not practical. For example, a facility that relies on sheet flow to manage water flow would not be able to divert water from industrial areas.

The draft permit requires the sampling of four qualifying storm events, without considering arid climates in which four samples may not be practical. Further, the requirement that two samples be collected within the same quarter if no sample is collected in a previous quarter appears to provide no environmental benefit.

**Public Access to SWPPPs:**

The proposed public access to the Storm Water Pollution Prevention Plan (SWPPP) at all permitted facilities is concerning. Facilities who comply with this requirement will be placed at risk if information such as the location(s) of hazardous materials/wastes is readily available to anyone who requests it. While we appreciate the SWRCB's desire to implement a transparent permit, providing the public with some of the information common to SWPPPs may present a serious security risk to the facility and the public.

**The Draft Permit Places Many Onerous and Costly Requirements on Permittees, Which Result in Little or No Known Environmental Benefit:**

The draft permit provides that samples must be collected from all outfalls, even if they are "substantially similar", and then permits only a lab to combine the samples from the substantially similar outfalls. These provisions clash with those in typical storm water permits, which allow the permittee to collect one sample from substantially similar outfalls. There is little or no environmental benefit to these requirements that would justify the time and cost of sampling all substantially similar outfalls.

The draft permit requires weekly inspections of all outdoor areas exposed to storm water. Further, the draft permit requires the daily inspection and cleaning of outdoor material/waste handling equipment. These requirements are not well defined and place substantial burdens on facility personnel to conduct such weekly and daily inspections, without demonstrating the resulting environmental benefit, if any.

The draft permit requires increased sampling due to exceedances. The rationale supporting this atypical requirement is not clear, as it is not known how additional sampling will help a facility

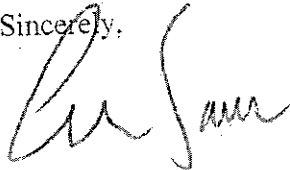
come into compliance. It appears this requirement will only increase costs associated with sampling with no known environmental benefit.

The draft permit requirements relating to erosion and sediment controls appear to relate to construction activities (e.g., effective stabilization of slopes, designing sediment basins, etc.). Such requirements should reside in the General Construction Storm Water Permit rather than in the draft Industrial General Permit.

CTA and its members understand the importance of programs in California that are designed to keep our waterways clean and safe. Many of our members will be unable to sustain their businesses if the state continues to increase the regulatory burden that the trucking industry has faced over the past several years. Imposing stringent regulations similar to this new permit sends the wrong message to industry, especially with respect to the economic challenges and unemployment issues California has endured in recent years. Before the SWRCB adopts a new permit, CTA believes it would be prudent to conduct an Economic Impact Analysis to determine the extent to which all industries covered under the new permit will be affected, regardless of whether or not the board is required to do so. CTA recommends that the SWRCB also conduct the conclusive scientific research that is necessary in determining whether any benefits to human health, public safety, public welfare, or the environment exist. Finally, CTA recommends that the Board suspend the proceedings so that stakeholders can have a frank and open discussion with them about the issues. CTA is ready and willing to assist the SWRCB in any way possible as it continues to revise the proposed permit and it is our hope that these comments are received with the intent of helping the Board in its efforts to construct a reasonable permit that continues to promote storm water pollution prevention in California.

Please feel free to contact Jacob Settlemeyer at (916)373-3524 or by email at [jsettlemeyer@caltrux.org](mailto:jsettlemeyer@caltrux.org) should you have any questions or require any additional information.

Sincerely,



Eric Sauer  
Vice President Policy Development  
California Trucking Association