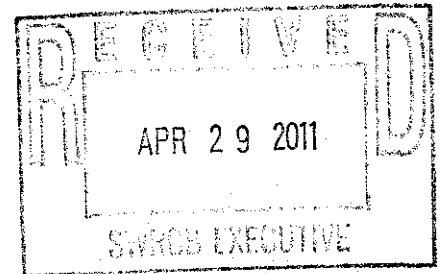


**INDUSTRIAL
ENVIRONMENTAL
ASSOCIATION**

April 29, 2011

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

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

Dear Chair Hoppin, and Members of the Board:

Thank you for the opportunity to provide comments on the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities (Draft Industrial General Permit or Draft Permit), dated January 28, 2011. The Industrial Environmental Association (IEA) is a consortium of commercial and industrial members, many of whom are regulated industrial dischargers. Our members strive to achieve a balanced relationship between environmental protection, public health, and economically sustainable growth.

IEA is greatly concerned over the potential impact the Draft Industrial General Permit will have on its members. IEA understands that this is a preliminary draft that will likely be revised before being proposed for adoption. We appreciate the open communication and the public involvement that State Water Resources Control Board (State Board) staff has fostered related to the development of the Draft Permit. Accordingly, IEA looks forward to working with the State Board to develop a sound and scientifically-based Draft Permit. We believe the requirements set forth in the current draft essentially create a permit that will be impossible for most industrial dischargers to comply with. IEA strongly recommends that the State Board "go back to the drawing board" in regard to a number of technical and policy issues, since these issues have a significant potential to impact the business community and subsequently affect job growth in the State, without achieving any real benefit to water quality.

IEA's primary concerns related to the Draft Industrial General Permit are summarized below:

- **Numeric Action Levels (NALs) and Numeric Effluent Limits (NELs)**

IEA opposes inclusion of the NALs in the Draft Permit for several reasons. The incorporation of the United States Environmental Protection Agency (USEPA) Multi-Sector General Permit (MSGP) benchmarks as NALs is contrary to the recommendations of the Blue Ribbon Panel. The Blue Ribbon Panel recognized the inadequacy of current monitoring data sets for establishing Numeric Limits and Action Levels, and

recommended improved monitoring to collect data that would be useful for establishing NALs. The Panel also recommended that California data be used. Furthermore, during development of the MSGP, the USEPA received substantial public comment on the value of benchmark monitoring. USEPA responded to those comments, in part, by indicating that "considering the small number of samples required per monitoring year (four), and the vagaries of stormwater discharges, it may be difficult to determine or confirm the existence of a discharge problem"¹ USEPA also recognizes that there may be circumstances where benchmark values may not be reasonably achieved. IEA has received feedback from several members that have reviewed their facilities' existing data, compared it to the proposed NALs, and determined that they will exceed the benchmarks, despite the fact that appropriate BMPs have already been implemented.

The State Board, however, has made the determination that "The NALs are appropriate numeric thresholds" (Draft Permit Section I.E.41) that should be used to trigger corrective action, and eventually become effluent limits. Properly developed technology-based effluent limits establish performance-based levels of pollutant controls to achieve applicable technology-based standards (Best Conventional Technology for conventional pollutants (BCT), Best Available Technology Economically Achievable (BAT-EA)) established by the Clean Water Act (CWA) and provide equity among dischargers within industry categories or sub-categories. The permit states that, "The State Board finds that the USEPA benchmarks serve as an appropriate set of technology based effluent limitations that demonstrate compliance with BAT/BCT", (Draft Permit Section I.E. 42). In fact, USEPA has stated that benchmarks are not effluent limitations. In its 2008 MSGP (Part 6.2.1), EPA confirms, "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 effluent limitations in Part 2."

It should also be noted that the Draft Permit fails to establish the legally required basis for imposing numeric technology-based effluent limits. The Draft Permit does not contain any evidence or analysis to support the adoption of NELs as technology-based numeric effluent limitations. The State Board has not set forth specific data, other technical basis or legal authority imposing numeric technology-based effluent limits in the Draft Permit, nor has it specifically considered any of the required factors set forth in CWA Section 304 or implementing regulations pursuant to 40 C.F.R. 122.44(a)(1) and 125.3. In addition, USEPA has not promulgated comparable effluent limitations guidelines.

Given the lack of legal basis, USEPA's own position on benchmarks, and considering the recommendations of the Blue Ribbon Panel, IEA does not support the inclusion of NALs and NELs in the Draft Permit.

IEA does support the logical next step to collect useful and reliable California data during the first permit cycle, which could then be used to establish appropriate and meaningful

¹ 2008 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) - Fact Sheet

NALs for future permit cycles. The established NALs should be technology-based and rely on sector- or group-specific data, that is, be based on BMPs that are BCT or BAT that are economically feasible (EA) for that group. This approach would be consistent with that recommended by the Blue Ribbon Panel.

In addition, the process to establish appropriate NALs could be a potential opportunity to re-introduce group monitoring to collect sector-specific data. The State Board should consider a provision to allow industry- or sector-specific groups to gather data and propose sector-specific NALs. These groups can assist regulators in identifying sites that are representative of dischargers that are complying with the BCT/BAT-EA standard and for those sites, collect discharge data sufficient for establishing NALs and accompanying BMPs.

IEA further believes that exceedance of any applicable NAL, if any are adopted, should result in a site-specific assessment of BMP practices to determine if corrective action is necessary and if so, what the corrective action should be (as in Section XVII.B.2.b). When NALs are consistently exceeded after follow-up action by the discharger, the permit should allow for the Regional Board to verify that BCT/BAT-EA is being properly implemented and allow for non-attainment of NALs such that subsequent triggers do not elevate the site to higher levels of corrective action. When NALs are adopted, the permit should state that an exceedance of a NAL is not a permit violation as long as the discharger is engaged in the corrective action process.

- **Natural Background/Aerial Deposition/Offsite Run-on Contributions and Effects**

Consistent with the State Board staff's position that the Draft Permit applies only to industrial activities at the facility, it is prudent that contributions from background, aerial deposition, on-site runoff from non-industrial activities, and offsite run-on contributions and effects be factored when evaluating monitoring data, as these sources are not considered to be part of the industrial activity.

Natural background conditions in soils and water, atmospheric pollution, dry deposition, and offsite run-on, have the potential to affect the quality and composition of stormwater discharges from an industrial facility. All of these conditions are beyond the control of individual facilities and make it difficult to distinguish between the quality of the stormwater discharge as a result of industrial activity or some other anthropogenic or natural effects. For example, the City of San Diego potable water supply frequently exceeds 900 umhos/cm, and the natural pH of rainwater is about 5.5. Contribution of either of these sources to stormwater could potentially cause an exceedance of the proposed NALs for conductivity and pH (200 umhos/cm, and 6.0-9.0 pH units, respectively).

The MSGP recognized a "background" pollutant allowance system to use with the benchmark monitoring and related technology-based controls to ensure that individual facilities were only required to control those "discharges associated with industrial

activity" at the site, as intended by Congress when it added CWA Section 402(p) to the Act.

Currently, the only opportunity provided in the Draft Permit to address issues such as natural background or other uncontrollable source is when the discharger reaches Corrective Action Level 3- Imposition of Numeric Effluent Limits. It is not until this point in the corrective action process that a discharger has the ability to "state their case" related to uncontrollable sources, by using the Suspension of Numeric Effluent Limitations (SNEI) request (Draft Permit Section XVII.D). At this point, the discharger is already likely to have invested significant effort and expenditure in the implementation of BMPs under Corrective Action Levels 1 and 2, all to address an issue not related to their industrial activity.

The Draft Permit should acknowledge natural background, aerial deposition and sources of run-on/runoff, and industries should not be subject to corrective actions or monitoring for exceedances of NALs or NELs caused by contributions of pollutants which they cannot control. IEA recommends that the current language in the permit be modified to address background and offsite sources. Finding 46 of the Draft Permit should be replaced with the following language: *"Pollutants in stormwater discharges caused by atmospheric deposition, natural background sources, or by run-on, or by any natural disaster, including forest fires, do not apply toward any corrective action trigger determination."*

- **Qualified SWPPP Developer (QSD)/Qualified SWPPP Practitioner (QSP), Certification Requirements and Responsibilities**

IEA agrees that the people responsible for preparing Stormwater Pollution Prevention Plans (SWPPPs) should be qualified to perform the work, however we disagree that the QSD must be a Registered Civil Engineer or possess any of the other registrations listed in the Draft Permit (Section VII.A and B). In review of the Professional Engineer's Act, civil engineering embraces studies or activities with fixed works for irrigation, drainage, flood control, etc. These fixed works do not include developing SWPPPs to include the minimum BMPs such as:

- Good Housekeeping
- Preventative Maintenance
- Employee Training Programs
- Record Keeping and Quality Assurance
- Visual Inspections

Provided the SWPPP does not involve the design of structures that could affect public health or safety, it should be able to be prepared by the facility operator. The proposed list of registrations and certifications in the Draft Permit is very limiting, and will not necessarily ensure that SWPPPs are developed correctly or result in programs that adequately address stormwater discharges. In fact, the facility operator will likely have more direct experience and knowledge of the site and its operations than a hired Civil

Engineer, who may spend only a handful of hours conducting a site visit and interviewing the facility operator.

IEA is supportive of the requirement for State Board-sponsored or approved QSD and QSP training courses, and completion of a State Board-sponsored exam. The exam should include practical applications such that candidates will need to combine practical experience with knowledge gained from the training course in order to pass.

The Draft Permit requires the QSD to have completed the State Board-sponsored training course within one year of the effective date of the permit (Section VII.B.2). IEA is concerned that this will likely be an insufficient amount of time to complete the training, given the time that will be required to develop the training programs once the permit has been adopted (it is assumed that a large part of the training program will focus on the requirements of the permit as adopted). The permit should be revised so that training will need to be completed within two years after the establishment of the training programs.

IEA also has concerns regarding the proposed responsibilities for a Registered Civil Engineer (presumed to likely be the QSD), specifically related to certification of Level 2 and Level 3 Corrective Action reports (Section XVII.E.5). These requirements may be interpreted as a certification of commitment by the facility to implement or install BMPs as prescribed in the report, or a certification that the BMPs described were developed in accordance with standard practice. If the intent is to certify that commitment, then the Legally Responsible Party (LRP) is the appropriate entity to certify the report. It does not seem appropriate for the Engineer to certify the commitment of the facility to adhere to a schedule for completion of required structural and/or treatment controls.

- **Monitoring and Inspection Complexity and Frequency**

The proposed monitoring and inspection requirements in the Draft Permit have increased dramatically compared to the current permit. By some IEA member's estimates, the permit now potentially requires more than 450 documented inspections per year. This represents an increase of over 3,300% from the current permit. Along with the increased number of inspections, comes the increased level of documentation and reporting that will be required. Some IEA members have indicated that the inspection and monitoring requirements in the Draft Permit are so onerous, that they will no longer be able to use existing staff to keep pace. Additional expenditures will be required for outside support to implement the monitoring and reporting provisions in the Draft Permit, and will divert valuable resources from other areas of business operations. Some small businesses may not be able to absorb the additional cost required to comply.

The State Board should recognize that increased monitoring is not the same as improved monitoring. IEA highly recommends that the inspection and monitoring program be revised and simplified to reduce its complexity and frequency, while still achieving the State Board's goal to develop a performance-based monitoring and inspection program that is protective of water quality.

In their comments, the California Stormwater Quality Association (CASQA) has proposed several options for streamlining the program. IEA recommends that the State Board consider CASQA's proposed alternatives, and work with industry partners, perhaps through the establishment of an inspection and monitoring program working group, to develop a sensible program that collects meaningful information.

For example, one way to simplify inspection requirements and reduce effort related to pre-storm inspections would be to establish storm event criteria triggers for inspections. Basing pre-storm inspection triggers on a reliable predictor, such as the National Oceanic Atmospheric Administration (NOAA) forecast, would reduce facility staff time related to mobilizing for a storm event that may or may not become a Qualified Storm Event (QSE). The NOAA forecast provides both the probability of rainfall and predicted amount of rain, and both of these factors may be used as pre-storm inspection criteria. CASQA has recommended a 50% probability of 0.25 inch of rainfall as reasonable criteria for conducting pre-storm inspections.

- **Minimum BMP Requirements**

IEA believes that the Minimum BMP requirements contained in the Draft Permit (Section VIII.H.1) are too prescriptive, and essentially penalize industrial dischargers that are already responsibly managing stormwater discharges at their sites. The "burden of proof" to justify whether a particular BMP required by the permit is not applicable to an industrial site rests with the discharger; instead of determining whether a particular BMP is appropriate for a site, the discharger must justify why a required minimum BMP is not appropriate for a site. The prescription by the State Board for specific minimum BMPs precludes the ability of an industrial discharger to determine what is best for their site. Unnecessary time and resources will likely be expended to justify why the BMP mandated by the permit is not appropriate or applicable.

IEA recommends that the requirement for the prescribed minimum BMPs be removed from the Draft Permit, and that the language regarding consideration of minimum BMPs that appears in the current permit be retained.

- **Compliance Storm Event/Design Storm**

IEA appreciates the inclusion of a Compliance Storm Event (CSE) and a Design Storm Event (DSE) for the design of BMPs in the Draft Permit. The establishment of the CSE and DSE brings needed specificity related to compliance and design targets, and results in decreased emphasis on extreme storm events. Notwithstanding our support for the establishment of the CSE and the DSE, the storm events selected are too large. IEA recommends the 85th percentile storm event, due to its application in MS4 permits for the sizing of post-construction BMPs for new developments and significant redevelopments. In addition, IEA strongly recommends that the CSE event apply to all constituents for which NALs or NELs (notwithstanding IEA's objection to the incorporation of NALs and NELs in the Draft Permit) have been established. Exceedance of either NALs or NELs should not be determined for storm events larger than the CSE.

Furthermore, BMPs at industrial sites are not similar to the active treatment systems (ATS) contained in the Construction General Permit, which uses the 10-year, 24-hour storm event (it is assumed that this was the rationale for inclusion of this storm event in the Draft Permit). Over-designed BMPs may actually reduce the pollutant removal capability of some BMPs, because more frequent, smaller storm events that produce the majority of the runoff throughout the year can pass quickly through the BMP, and therefore receive less treatment.

- **Corrective Action Implementation Schedule**

IEA believes that the Corrective Action implementation schedule for all Corrective Action Levels does not allow sufficient time for implementation of BMPs. Level 1 and Level 2 corrective actions (Section XVII.B.6 and C.3, respectively) require SWPPP revisions and implementation of additional BMPs by October 1 of the next reporting period. IEA members are concerned that funding to implement the additional BMPs required to comply with the corrective actions will take longer to secure. Level 2 corrective action allows for the discharger to file a BMP Implementation Extension Request (BIER), however it is unclear on what basis the BIER may be approved or denied by a Regional Board. Level 1 corrective action allows no such time extension.

Instead of establishing specific timeframes for BMP implementation, IEA suggests that the State Board require discharger submittal of an implementation plan and schedule to the Regional Board, documenting the required additional BMPs and SWPPP implementation measures.

- **Total Maximum Daily Loads (TMDLs)**

Finding 1.F.49 of the Draft Permit indicates that "This General Permit requires dischargers operating facilities that discharge to a 303(d) listed impaired water to evaluate potential industrial pollutants that are related to the impaired receiving waters and to analyze for additional sampling parameters." The Draft Permit also states in Finding 1.I.54 that "Dischargers located within the watershed of a 303(d) impaired water body for which a TMDL has been adopted by the Regional Water Board or USEPA, may be required by a separate Regional Water Board action to implement additional BMPs, conduct additional monitoring activities, and/or comply with an applicable waste load allocation and implementation schedule." IEA strongly believes that the Draft Permit language should be revised to state that for stormwater discharges to waters for which there is a TMDL adopted by the Regional Board and approved by the Office of Administrative Law and USEPA, industry is not required to monitor for the pollutant for which the TMDL was written, unless the Regional Board informs the industry, upon examination of the TMDL and/or the Waste Load Allocation (WLA), that the facility is subject to such a requirement consistent with the assumptions of the applicable TMDL and/or WLA. Monitoring requirements should be based on adopted, approved TMDLs only, and it must be determined that the industrial discharger is in fact subject to the TMDL. This comment also applies to the list of sampling parameters included under Section X.H.4.

- **SMARTS Reporting System**

The Draft Permit requires data to be submitted via the Storm Water Multi-Application and Report Tracking System (SMARTS). IEA members believe the SMARTS needs to be improved significantly. Currently, electronic reporting through SMARTS is not user-friendly; analytical results are not able to be uploaded in the electronic format received from laboratories, but rather results must be entered manually, one-at-a-time, into the system. Many IEA members operate facilities that have multiple discharge locations, and the amount of time it will take to manually enter all the data into SMARTS will be burdensome. This reporting effort is significantly more than required by the Construction General Permit because of the number of constituents to be analyzed. The State Board should make every effort to streamline the reporting process in SMARTS, and work to make the system more effective.

- **Daily Average and Qualified Combined Samples**

IEA supports the inclusion of provisions for Daily Average (Section XI) and Qualified Combined Samples (Section XII.B) in the Draft Permit. These provisions allow for collection of samples that are more representative of the discharge from a site throughout a storm event. However, IEA does not agree that only laboratories should combine samples. Some dischargers have laboratories with qualified staff, and may prefer to combine samples in-house. With proper training (i.e., attending State Board-sponsored training), a QSP should be qualified and capable of combining samples as well.

IEA also believes that additional specificity in regards to sampling protocols for Daily Average and Qualified Combined Samples should be provided. The permit should specify that all Daily Average Sample(s) are to be collected only during facility operating hours. A set of protocols and a Standard Operating Procedure should be developed to maximize consistency in sampling techniques. This sampling consistency will provide the basis for collection of reliable sector- or group-specific data required to develop appropriate NALs.

Although IEA has several significant concerns regarding the Draft Permit as currently proposed, we are pleased with some improvements that were made to the current permit.

IEA supports the concept of the Sampling and Analysis Reduction provisions contained in Section XVI of the Draft Permit. This will result in the appropriate conservation of monitoring resources for dischargers who can demonstrate consistent compliance with the permit. IEA also supports the provisions for the Conditional Exclusions (No Discharge, No Exposure, and the Green Storm Water Impact Reduction Technology (G-SIRT)) in the Draft Permit. Although the G-SIRT is largely undefined at this time, IEA looks forward to working with the State Board to further develop this concept and the related criteria for the conditional exclusion. The G-SIRT will likely be difficult for dischargers with existing facilities to achieve due to site constraints, however this provision will likely provide a good opportunity to incorporate Low Impact Development (LID) principles for new facilities.

Thank you for your consideration of these comments. We look forward to working with the State Board and its staff on future revisions to the Draft Industrial General Permit.

Sincerely,



Patti Krebs

Excutive Director