



October 22, 2012

Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Comments on the Draft Industrial General Storm Water Permit

Dear Chair Hoppin:

On behalf of the California State Association of Counties (CSAC) and the Regional Council of Rural Counties (RCRC, we thank you for the opportunity to comment on the Draft Industrial Storm Water Permit (Draft Permit). Collectively, our organizations represent all of California's 58 counties. We appreciate the efforts of the Water Board to redraft the unworkable permit released in 2011 to come up with something far more tenable for the industrial facilities forced to comply with its requirements.

Our organizations are proud of what they have accomplished to help reduce runoff through their storm water programs. Counties across the state are finding cost efficient, innovative solutions to accommodate the unique characteristics of their communities and over a number of years have developed strong relationships with the regulated community.

As is always the case with the Industrial General Permit, counties are in the somewhat unique position of viewing the proposed Draft Permit from two perspectives--first, as an enforcer of local water quality objectives and, secondly, as a regulated discharger. As regulators of water quality under the Water Board's Municipal Storm Water Permitting Program, counties remain committed to working closely with the Water Board to improve existing control requirements for industrial sites and to develop the tools necessary for meaningful and effective enforcement.

On the other hand, most local governments are also considered to be industrial dischargers. Our regulated industrial activities include such things as county-owned

landfill sites, recycling centers and material recovery facilities, water and wastewater treatment plants, vehicle maintenance yards, airports, and other transportation-related facilities. Counties currently expend tremendous resources in an effort to control storm water discharges from these activities and to comply with existing permit monitoring and reporting requirements.

While the redrafted Permit is much more workable than the 2011 draft, CSAC and RCRC still have the following concerns about some major components of the Draft Permit:

Receiving water limitations are inappropriate and infeasible for a general storm water permit

We appreciate the Water Board's efforts to ensure that pollution levels in receiving waters do not exceed applicable water quality standards (WQS). However, we feel that the receiving water limitations contained in the Draft Permit are vague, unjustifiable, and inappropriately hold individual facilities accountable for WQS exceedances.

The notion of holding individual facilities responsible for receiving water quality is flawed and impractical at its very core. There is no discernible way to verify an industrial facility's culpability in a receiving water exceedance, especially in areas containing many facilities subject to the Permit. Furthermore, this provision of the Permit fails to account for nearby facilities that may not have filed for coverage, and are completely out of compliance without any consequence. The language is also vague, and gives permitted facilities no guidance on how they should go about ensuring they do not contribute to pollution levels, placing them in the peril of never being able to demonstrate compliance. In short, the receiving water limitations language should be removed from the Draft Permit.

Pre-storm inspection requirements are excessive and impractical

The pre-storm inspection requirements mandate that a Qualified Industrial Storm Water Practitioner (QISP) track and review weather forecast information from the National Weather Service Forecast Office for weather patterns that have a 50% or greater probability of producing precipitation in the facility's weather zone. However, weather patterns can change dramatically within a few hours, and early forecasts can often become obsolete within the same business day. This means that, in order to effectively track weather patterns in a given zone, a QISP may be required to check the NOAA website several times on any given day during the rainy season. Given the staffing challenges already facing many counties, it will be extremely difficult to dedicate a staff person as a QISP if they are constantly required to monitor changing weather patterns. CSAC and RCRC feel that the Draft Permit needs to contain guidelines on the frequency with which a QISP needs to track weather patterns to eliminate uncertainty

and give facilities cover if a pre-storm inspection is missed due to a drastically changing weather pattern.

We also feel that requiring pre-storm inspections for a rolling 14-day period is excessive and impractical, particularly for facilities in areas with little rainfall. The requirement places permittees in the position of devoting staff time to unnecessary inspections simply to comply with the provisions in the Permit. This provision needs to be made more flexible to account for the wide range of climates and rainfall patterns throughout the state.

Mandatory use of the SMARTS system could prove problematic, particularly in rural areas

Our organizations appreciate the Water Board's attempt to consolidate the data collected from this Permit. However, requiring submittal via SMARTS alienates the rural population because many rural areas do not have broadband access, increasing the uncertainty of using a system like SMARTS. We are concerned that many facilities will experience connection issues and will not be able to submit their Annual Reports in a timely fashion. Before the Water Board mandates the use of SMARTS, there should be a phase-in period that allows the more remote facilities some flexibility to account for technological shortcomings.

In addition, the SMARTS is still undergoing modifications to include the industrial permit reporting requirements and will not be complete and ready to test for some time. It is premature to require reporting into a system that is not complete. Since the system is not ready, paper reporting should still be allowed until the SMARTS system is proven to be functional for the industrial permit reporting.

Furthermore, we are greatly concerned about the amount of information readily available to the public through the SMARTS system. We are living in tough economic times. Counties are scaling back staff and struggling with budgeting issues. The last issue on the minds of our city managers and county administrators should be the distinct possibility of lawsuits filed against them by NGOs due to information available via SMARTS.

The mandatory use of pH meters is infeasible for facilities with infrequent discharges

The Draft Permit mandates that all facilities utilize a pH meter to measure pH in storm water discharges. This requirement is infeasible for facilities located in areas with little rainfall where discharges are infrequent. The Permit should be modified to allow such facilities to use pH papers to measure pH in storm water discharges. The accuracy range of short range pH paper is within the acceptable limits for field testing especially

since exceedances of the pH value are rare or non-existent for the regulated activities of our members. One brand of pH paper that covers the range of 5.0 to 9.0 (the proposed Numeric Action Level range is 6.0 to 9.0) is rated at an accuracy of ± 0.25 pH units.

The Draft Permit should more clearly address issues unique to landfills

Landfills are constantly in the throes of construction activity out of sheer necessity. Some activities at landfills fall under the Construction General Permit, while others are considered industrial activities covered under this Permit. However, the Draft Permit does not provide the clarity necessary for a landfill operator to determine which activities fall under which permit, and leaves too much discretion to the Regional Boards.

The Draft Permit should be amended to include specific, statewide guidance on landfills to remove the uncertainty and carve out a clear path to compliance, especially regarding the minimum required best management practices (BMPs). A number of the proposed minimum BMPs are contrary to standard waste management practice where piles and containers of recyclables are commonly placed outdoors. Solid waste facilities should have a different set of minimum BMPs rather than having each facility requesting similar BMPs

The Draft Permit lacks a clear path to compliance sufficient to minimize lawsuits

Many of the provisions in the Draft Permit don't provide a definitive way for facilities to demonstrate compliance. Receiving water limitations and Exceedance Response Actions (ERAs) have the potential to place certain facilities in a never-ending cycle of sampling and analysis without the ability to clearly demonstrate compliance. In such instances, these sites will be left wide open for lawsuits by NGOs, regardless of the facilities' efforts to fully comply. The Permit should include a ceiling for actions a permitted site must undertake in order to demonstrate compliance, without fear of penalty or legal actions from NGOs.

The Draft Permit still presents cost issues that will be difficult for counties to address

Finally, we are still concerned that the additional costs associated with the Draft Permit's implementation will have profound adverse financial impacts on our members, especially in light of current budget shortages at the State and local level. Complying with provisions contained in the Draft Permit will require a lot more staff time due to increases in sampling frequency, stricter training requirements, and increased time spent on performing visual inspections and reviewing BMPs. Recent cuts in the state budget ensured that many local governments will continue to struggle to provide essential services to their citizens, which will only be exacerbated by costly new permit

requirements and which equate to another unfunded mandate. Raising fees to cover these costs will be nearly impossible in our already-overtaxed communities.

An additional unknown cost of compliance is the requirement for QISP classification. Each site will need staff or access to outside consultants that are trained as QISP I's, II's, and III's. The training program for QISPs has not been developed yet so the cost of training staff or retaining consultants is unknown. Even the allowance to include registered engineers, land surveyors, and geologists does not eliminate the need to provide training to those professionals on the new storm water requirements. This training effort will be a significant expense that cannot even be budgeted until the criteria is established.

For this reason, we would ask that the Permit be effective no earlier than January 1, 2014 in order to allow counties at least a year to budget accordingly and train staff to ensure full compliance with the new Permit.

Thank you again for the opportunity to comment. Your positive consideration of our input is very much appreciated, and we would be happy to work with staff in the future to resolve our continued concerns about the Draft Permit. Please feel free to contact us regarding our comments and concerns.

Sincerely,



Staci Heaton, RCRC
Regulatory Affairs Advocate



Karen Keene, CSAC
Legislative Representative

CC: Matthew Rodriguez, Secretary, California Environmental Protection Agency
Members of the State Water Resources Control Board
Tom Howard, Executive Director, State Water Resources Control Board
Senator Roderick Wright
Senator Sam Blakeslee
Assembly Member Luis Alejo