



April 28, 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 Port of San Diego Ship Repair Association (PSDSRA) represents more than 100 San Diego-area companies engaged in ship repair, conversion, overhaul, and modernization. Approximately 70 percent of the work performed is on United States Navy and Defense Contracts. Association members add more than 10,000 jobs to the San Diego economy, both directly and through subcontractors and suppliers. These well-paying jobs go to a diverse cross section of the region's population and contribute hundreds of millions of dollars in revenue to the local economy each year.

PSDSRA is greatly concerned over the potential impact the Draft Industrial General Permit will have on its members. PSDSRA 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, PSDSRA 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. PSDSRA 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 shipbuilding and repair community in the San Diego Region and specifically the significant number of small businesses represented by the PSDSRA.

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

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

PSDSRA 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. PSDSRA 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

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

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, PSDSRA does not support the inclusion of NALs and NELs in the Draft Permit.

PSDSRA 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 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.

PSDSRA 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 Runoff 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 and offsite runoff (i.e., 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 runoff, 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 (SNEL) 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 uncontrollable sources of run-on, 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. PSDSRA 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 NAL corrective action trigger determination.*"

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

PSDSRA 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 or Landscape Architect, who may spend only a handful of hours conducting a site visit and interviewing the facility operator. Typically within our industry SWPPPs are written and amended in-house by environmental engineers or via environmental engineering consulting firms that are knowledgeable and experienced in mitigating the environmental impacts of our unique business sector.

• 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 PSDSRA 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 PSDSRA 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. PSDSRA 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. PSDSRA 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 a reasonable criteria for conducting pre-storm inspections.

- **SMARTS Reporting System**

The Draft Permit requires data to be submitted via the Storm Water Multi-Application and Report Tracking System (SMARTS). PSDSRA 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 PSDSRA 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, especially for small businesses. 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.

- **No Exposure Certification (NEC)**

Many smaller shipbuilding and repair companies in the San Diego Region do not conduct any industrial activity at their facility as they operate solely as subcontractors to the large Naval and commercial shipyards. However, per this Draft permit, they may not be eligible for *No Exposure Certification* (NEC) due to their SIC Code (3713, 3732 - Ship and Boat Building or Repairing Yards). Therefore, these facilities will be required to pay an annual fee, conduct unnecessary and expensive storm water monitoring, and pay to have consultants develop and maintain a SWPPP for a facility that is essentially a parking lot. The PSDSRA recommends taking this into consideration when determining who may be eligible for an NEC.

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,



Derry Pence
Chief Executive Officer