Public Comment
Draft IGP
Deadline: 4/29/11 by 12 noon

Public Works Department

April 25, 2011

Via Electronic Mail

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

E-mail: commentletters@waterboards.ca.gov

Subject: Comment Letter – Draft Industrial General Permit

Dear Ms. Townsend and Members of the Board:

I am writing on behalf of the City of the City of West Covina Public Works Department to provide comments on the Draft Industrial General Permit (IGP). Our City is concerned about the Draft Industrial General Permit from three perspectives. First, we need the Permit to be workable so that industries will be encouraged to and be able to reduce or eliminate pollutants from stormwater discharges to our municipal stormdrain system and to the receiving waters to which we discharge. Secondly, we do not want the regulations to be so onerous that industries that pay taxes and employ our residents flee California. Third, we do not want the Permit to encourage our Regional Water Board to impose increased industrial inspections upon municipalities when our municipal permits are re-adopted.

The State Water Board has three admirable goals in re-issuing this Permit: 1) to improve data quality, 2) to make the permit performance-based, and 3) to provide incentives and flexibility. However, we are concerned that because renewal of the Permit is nine years overdue, staff is proposing a quantum leap in permit requirements to compensate for missing two permit cycles. It is neither wise nor appropriate to add additional steep regulatory hurdles during a fragile economic recovery from a deep recession. Furthermore, our City is especially concerned about potential faulty precedents that could be established by adoption of the January 28 Draft Permit.

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The Permit Should Encourage Cooperation with Municipalities

Many industries discharge into municipal storm drains and impact the quality of stormwater discharges from our storm drain systems. We recognize that industries need to do a better job of removing pollutants from their stormwater discharges. However, we also recognize that, like municipalities, industrial facilities are being asked to control pollutants that they do not generate. These pollutants can be divided into two broad categories – atmospheric deposition and natural background. Neither municipalities nor industries should be held accountable for pollutants from these sources.

The Draft Permit contains a finding that appears to provide some relief from responsibility for pollutants in stormwater discharges caused by atmospheric deposition from forest fires or other natural disasters. Finding 46 states that pollutants in stormwater discharges caused by atmospheric deposition and/or run-on from forest fires, or any other natural disasters, do not apply toward numeric action level (NAL) corrective action trigger determinations.

However, Finding 46 is too limited. It appears to mean that only atmospheric deposition from natural disasters would not be counted toward exceedance of a NAL corrective action trigger. This limitation is reflected in existing provision XVII.D.2, which states of numeric effluent limits (NELs), "NELs do not apply if the industrial facility receives run-on or atmospheric deposition from a forest fire or any other natural disaster." This language is not appropriate in areas of the state with significant air pollution problems. In these areas – such as the metropolitan area in which our City lies – atmospheric deposition is a major source of metals and other pollutants over which industries and municipalities have no control.

We understand that during a staff workshop held in Irvine on February 23, 2011, several individuals expressed concern about atmospheric deposition of zinc. This concern is shared by the cities in our area because we are subject to metals TMDLs that require large reductions in the amount of zinc in the discharges from our stormdrain systems. Finding 46 and Provision XVII.D.2 should be rewritten to clarify that the industrial dischargers who are subject to the Draft IGP are responsible only for discharges of pollutants associated with their industrial discharges – not atmospheric deposition, background conditions, or the results of a natural disaster. The Regional Water Boards should be asked to include similar findings in municipal NPDES permits.

Industry, municipalities, and other permittees need the help and support of the Water Boards to deal with the constituents not under their control, such as natural background and atmospheric deposition. The State Board should seek ways to help permittees address true source control - the only way to cost-effectively deal with the constituents found in atmospheric deposition. As with all components of the State's stormwater quality program, your Board should

consider whether or not the goals and objectives of this permit are reasonably and economically achievable. In the current economic climate, it would be irresponsible to mandate control efforts that will not produce meaningful results. Local governments are experiencing severe budget problems – it is likely that the industrial permittees are also facing budgetary issues in this economy. It is vital that all permits be written to recognize that true source control is needed to address some pollutants and to accurately reflect what is under permittees' control, and what is not.

The Permit Should Not Contain Onerous Requirements

The City is concerned that the January 28, 2011 Draft Permit reviewed at the staff workshop in Irvine in late February is so complex and burdensome that it could drive some industries out of California. Our review of the Power Point presentation made by staff at the February workshop indicates that staff is proposing 24 major categories of changes in permit requirements. Some of these requirements could make the Industrial General Permit easier to administer, but most appear to be adding complexity and greatly increased compliance costs.

The Problems with Numeric Limits

The most egregious mistake in the Draft Permit is the method used to implement the Blue Ribbon Panel's recommendation to use Numeric Action Levels (NALs) as upset values that would trigger a corrective action to be taken. Staff has proposed using USEPA benchmarks as the NALs for industry in California. However, staff has transformed numbers that were not intended to be requirements into NELs through a "Corrective Action Process" that will result in many NALs becoming NELs in three years. Such an onerous requirement could drive local industries to other states that are regulated under USEPA's Multi-Sector General Permit or state permits that are less onerous and more affordable.

Unaffordable and Unnecessary Monitoring/Inspections

Our City is also concerned about the burdensome monitoring and inspection requirements in the draft IGP. We note that the California Stormwater Quality Association (CASQA) has compiled a list of these requirements, and the Draft Permit appears to contain approximately 400 more documented inspections per year than what is currently required. An increase of this magnitude is unnecessary; it creates a financial burden for permittees without providing a likely water quality benefit. Daily and weekly inspections, as required in this Draft Permit, are not necessary, and Staff does not explain the reasoning behind the increased monitoring requirements.

As noted by CASQA in its comments, EPA maintained quarterly inspections in its 2008 update of the Multi-Sector General Permit, with the caveat that monthly inspections could be warranted in certain circumstances. The inspection requirement should be changed, and the extra costs eliminated, by changing the proposed daily and weekly inspections to monthly inspections, with the additional requirement that inspections also be conducted whenever there is a 40% or higher forecast chance of precipitation.

Inappropriate Design Storm

The City is pleased to see that the State Water Board is considering a compliance storm event for the new Industrial General Permit. The absence of a design storm has long been a problem in stormwater permits. However, the January 28, 2011 draft permit specifies a 10-year, 24-hour storm as the compliance storm for total suspended solids (TSS), as well as for all treatment best management practices (BMPs) for other pollutants. Staff has indicated that the 10-year, 24-hour storm was "borrowed" from the Construction General Permit. This design storm is inappropriate for existing development, whether an industrial site or any other developed urban landscape. There simply is not adequate space available to capture and treat such a large storm in a built-out urban environment. Further, the design storm that staff suggests using is a very restrictive requirement that would result in twice the expected exceedances of the 5-year, 24-hour general compliance storm in the Construction General Permit and five times the expected exceedances as the 2-year, 24-hour storm specified by USEPA in its Effluent Guidelines for the Construction and Development Industry. The 10-year, 24-hour compliance storm in the Construction General Permit applies only to the use of advanced treatment systems (ATS) that vendors claimed were capable of handling such a storm.

Research has been conducted in Southern California that indicates that a much smaller and more manageable design storm would be a more appropriate compliance storm than the 10-year, 24-hour storm proposed in the Draft Permit. On October 1, 2007, the Southern California Coastal Water Research Project (SCCWRP) published a Technical Report entitled, "Concept Development: Design Storm for Water Quality in the Los Angeles Region," a project that was partially funded by the Los Angeles Regional Water Quality Control Board. The research was undertaken in conjunction with a Design Storm Working Group comprised of municipal agencies, consultants, BMP manufacturers, and environmental advocates. Two conceptual modeling approaches applied to copper in the highly urbanized Ballona Creek Watershed indicated the following:

- Capturing and treating storms of approximately one-inch precipitation volume would treat approximately 80% of the runoff-volume and 80% of the total copper load over a 30-year period; and
- At a design storm of 0.75-inch of rainfall (0.25-inch per hour intensity), assuming a consistent, medium level of BMP effectiveness, any one of

three modeled BMPs could effectively reduce the average annual frequency of storms exceeding the dissolved copper water quality standard to less than 5% average annual frequency.

The SCCWRP study demonstrates that integrating cost-effective strategies into design standards for determining TMDL implementation policies and permits is possible. To do so would be much more appropriate than "borrowing" an inappropriate design storm from the Construction General Permit.

The IGP Should Not Be Structured to Encourage the Regional Water Boards to Shift Additional Industrial Monitoring/Inspections to the New MS4 Permits

Based on experience with adoption of the current Los Angeles MS4 permit, (where the State charges a permit fee, but does not provide inspections; and where our Cities were asked to conduct industrial inspections without receiving even a part of the State's fee), the City is also concerned that the requirements in the Draft IGP will trigger the need for more Regional Water Board inspections - in the absence of funds to pay for these inspections. Therefore, the Regional Boards may be tempted to add more industrial inspection requirements to MS4 permits while not transferring industrial permit fees to the municipalities tasked with the responsibility of performing these inspections. Such unfunded mandates at a time fiscal stress on municipal budgets could lead to reductions in municipal services to local taxpayers.

Proposition 26 was adopted by California's electorate in November of 2010 and the State Board should carefully consider its consequences on the State and local governments. Proposition 26 does allow for charges imposed for the reasonable costs of issuing licenses, permits and for inspections. However, the fees cannot exceed the reasonable cost of the service provided. We have always questioned how the State can charge for industrial inspections and then not provide the service, then turn around and order the Cities to inspect the same industry, without passing the fee revenue to the City. This places the Cities in the awkward position of having to "double fee" the industry in order to complete the Board required inspections. It is just one more in the dozens of State regulatory barbs that cause industries to leave California. The Draft IGP will only worsen this situation.

Conclusions and Recommendations

We understand that the California Stormwater Quality Association (CASQA) has had widespread participation in its review of the Draft Industrial General Permit and will be making detailed comments on the Permit. We are aware of CASQA's testimony at the State Water Board's webcast hearing of March 29, 2011 and support its questions and comments. The City urges the State Water Board to carefully consider the comments of the regulated community concerning the Draft

Industrial General Permit and to reconsider its approach to reissuing the Permit. We request that a completed, revised draft be prepared for circulation and public comment. This revised draft should eliminate the onerous requirements of the current draft, especially the "Corrective Action Process" that rapidly converts numeric action levels into numeric effluent limits, and the excessive inspection requirements.

Thank you for the opportunity to provide these comments.

Sincerely,

Shannon A. Yauchzee
Public Works Director/City Engineer