



February 14, 2018

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Submitted electronically – commentletters@waterboards.ca.gov

Re: Comments on the Proposed Industrial General Permit (IGP) Amendment

Dear Ms. Townsend:

Ashworth Leininger Group (ALG) writes this letter to provide comments on the proposed amendment to the Industrial General Permit (IGP), which incorporates new requirements including Total Maximum Daily Load (TMDL) provisions and EPA sufficiently sensitive methods (SSM) analytical testing requirements, and provides two compliance options allowing alternative pathways to compliance for facilities subject to TMDLs.

ALG represents a broad range of industrial businesses in California in a multitude of industries and economic circumstances that will be affected by this amendment. Stormwater, as a potential pollutant source, can have significant impacts on the ecological health of receiving water bodies, so measures to reduce pollution and maintain healthy freshwater and saltwater ecosystems throughout California are important. It is also important to ensure that regulatory measures such as the IGP are written and implemented in such a way that facilities can practicably and reasonably comply with their provisions. ALG appreciates the extended comment deadline for the proposed amendment, as the changes to the IGP are extensive and additional time to review the proposed language was much needed. We provide our comments to assist the California Water Resources Control Board (Board) in the development of TMDL requirements that can be reasonably complied with, and also to reduce or eliminate confusion so that facilities can properly interpret and understand the requirements to which they are subject.

Comment No. 1 – TNALs and NELs Are Too Stringent

Generally, the new limitations (e.g., TMDL Numeric Action Level (TNAL) and Numeric Effluent Limits (NELs)) in the IGP Amendment are very low and in many cases, facilities will not be able to practicably comply with them. Compliance with the new TNALs or NELs would require advanced stages of treatment that will carry substantial costs and may perform inconsistently. For example, in Southern California, rainfall is infrequent and treatment systems will therefore remain inactive except during occasional rain events. For many treatment technologies that are best suited to treat TMDL parameters (e.g., ion-exchange resins designed to remove metals such as copper and zinc), remaining inactive for large portions of the year will cause inconsistent performance and higher operating costs. Stricter regulatory provisions that require escalating and costly treatments that might not be effective could pose an insurmountable economic burden and legal liability to California businesses. In addition, industrial sites unable to meet existing NELs have started the practice of collecting and hauling away storm water as waste. If such measures are implemented on a larger scale due to economic practicability (as may be expected with this IGP amendment), area storm water recharge patterns will be affected.

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As such results are undesirable, we provide the following suggestions:

- Allow for facilities subject to NELs to conduct an analysis demonstrating that the current best management practices (BMPs) and technology being implemented at a given site are the most practicable and achievable given available practices and technologies, their effectiveness, and their costs. This demonstration would allow for facilities to be in compliance with the IGP even if the new TNALs or NELs are not achieved. A similar option is currently provided in the Industrial Activities BMP demonstration in Section XII.D.2.iv of the IGP.
- Provide an option for facilities to demonstrate that the mass of pollutants discharged from the site is below the mass equivalent of applicable TNALs or NELs. This would be most applicable in dry areas, which often have only one or two Qualifying Storm Events (QSEs) per year that are high in concentration due to “first flush” circumstances. In such cases the total mass of a pollutant discharged will be lower if total volume of stormwater discharged within a compliance year is small. This provision would promote low-impact development practices and volume reduction measures. The Oregon Department of Environmental Quality (DEQ) 1200-Z General Permit allows a similar option under their Tier II reporting provisions; see Schedule A.11.k of the Oregon DEQ 1200-Z permit.
- Allow the Natural Background Demonstration and Non-Industrial Pollutant Source demonstrations to apply to both TNALs and NELs and clearly state as such in the IGP Amendment. As TNALs and NELs were developed from industrial waste load allocations under the applicable TMDL, facilities should be able to demonstrate that pollutants in their discharge are not due to their industrial activities. This will be especially important in urban areas, where aerial deposition of tire and brake dust can travel for miles and cause NAL/TNAL/NEL exceedances. The impact of aerial deposition has been studied extensively by the Southern California Coastal Research Project – see *Atmospheric Deposition of Trace Metals*¹, which performed multiple published studies of the impact of atmospheric deposition on storm water runoff in urban areas. These studies demonstrate that aerial deposition can contribute to storm water exceedances, which may be considered non-industrial under the IGP.
- In addition to the proposed compliance alternatives, allow for facilities subject to numeric action levels (NALs)/TNALS to demonstrate compliance by achieving a minimum level or set percentage of pollutant reductions. For example, facilities that achieve a substantial (e. g., 85 percent) reduction of pollutants discharged would have a mechanism to derive a measure of regulatory benefit.
- Develop public funding options, such as grants, for projects that will help facilities meet TNALs and NELs. This will help facilities without sufficient economic resources to research and implement the most effective advanced systems and BMPs that can meet these new TNALs and NELs.

Comment No. 2 – Delayed Implementation

Because meeting the new TNAL and NEL standards in the permit will require time for facilities to research options and implement projects and other systems, additional time

¹ See: <http://www.sccwrp.org/ResearchAreas/Contaminants/TraceMetalsDeposition.aspx>



should be allowed before these IGP amendment changes take effect. We suggest allowing at least one year between the adoption date and effective date of the amended IGP.

Comment No. 3 – NEL Applicability

The currently defined scope of NEL applicability does not allow facilities to attribute exceedances to non-industrial pollutant sources or natural background, or demonstrate equivalent mass loading of pollutants. Applicability of NELs should be redefined to account for these sources of pollutants.

Comment No. 4 – TSO Applicability & Procedures

The permit should be more explicit on the options and procedures for pursuing a time schedule order (TSO) with the various regional water boards. Among these should be a timeline for submitting requests for a TSO and uniform qualifying criteria so that these procedures can be easily followed. The Fact Sheet should provide more detail on what a TSO is and how it can be used to meet TMDL requirements. Currently, the IGP Order does not discuss a TSO, and the Fact Sheet discusses TSOs only briefly in Section II.E.2 and II.E.3. We suggest expanding Fact Sheet section II.E.3 significantly to provide more detailed background on how a TSO may be used by industrial facilities, processes for applying for a TSO, processes for regional board review and approval, and guidance on how interim effluent limitations are to be established.

Comment No. 5 – Definitive Watershed Mapping & TMDL Applicability

Because facilities may be in watersheds subject to multiple TMDLs, there must be a tool for determining applicable TMDLs. Further, the Board should clarify how the tributary rule applies to TMDL applicability. In cases where multiple TMDLs may apply, the IGP should clearly state which TMDL requirement is to be followed. In the Los Angeles workshop, it was stated that the Board will publish a watershed mapping tool to assist with this determination. Any such tool must be available well in advance of the effective date of the IGP Amendment to allow facilities adequate time to review, and guidance should be published on how to properly use the tool for TMDL applicability.

Comment No. 6 – NEL Demonstrations

The permit should allow for facilities that are subject to NELs to demonstrate that they are not causing or contributing to the exceedance of a water quality standard. Because many of the pollutant sources at industrial sites are non-industrial (e.g., runoff from employee parking lots) or from natural background sources, and the IGP regulates storm water discharges and non-storm water discharges (NSWDs) associated with industrial activity, facilities should be given an opportunity to demonstrate that storm water discharges from their site are non-industrial and therefore not subject to enforcement under the IGP. We suggest an approach similar to the Level 2 Exceedance Response Action (ERA) that allows facilities to demonstrate that exceedances are due to non-industrial or natural background sources.

Comment No. 7 – TMDL & Sample Frequency Reduction

The permit should be more explicit on how the new TMDL requirements affect the Sample Frequency Reduction (SFR) certification. It is unclear if sites subject to TMDLs have to begin sampling again at the regular frequency of 4 times per year again, or only if a TNAL or NEL is exceeded after the effective date of the IGP amendment. We suggest adding language to clarify this requirement in Section XI.C.7 of the IGP.



Comment No. 8 – Compliance Assurance

The permit should provide a permit shield provision for facilities that are complying with ERA and/or TNAL/NEL requirements. While Sections VII.F and VII.G of the IGP Amendment state that compliance with/ meeting NELs and TNALs are “in compliance with the receiving water limitations for the water body-pollutant combination addressed by the TMDL”, the IGP does not provide a clear statement that compliance with its provisions equates to compliance with the Clean Water Act. This leaves open the opportunity for the public to review information submitted in the Storm Water Multiple Application and Report Tracking System and erroneously interpreting the submitted information as demonstrating non-compliance with the Clean Water Act, even though the facility is in compliance with the provisions of the IGP. A common example of this is exceedances of NALs, which are allowed under the IGP but are commonly interpreted as violations of Basin Plans and other water quality standards. This has caused a number of our clients to undergo costly litigation, which takes money and resources away from projects and other improvements that can benefit storm water. Because TMDLs only apply to discharges to certain water bodies, the IGP Amendment leaves compliance with water quality-based effluent limitations unaddressed for all other facilities that do not discharge to a TMDL waterbody. Compliance with the IGP therefore remains open to misinterpretation for many industrial dischargers.

An analogous concept is provided in Section 504(f) of the Clean Air Act, which states that compliance with a permit issued under the Title V program is deemed compliance with the Clean Air Act, provided that the permit includes those requirements or the permit states that other provisions are not applicable to the source. We suggest that a similar approach in this amendment of the IGP, as this ambiguity is highly burdensome for industrial facilities and in many cases contributes to unnecessary and costly litigation.

Comment No. 9 – Public Outreach

ALG staff were present at the December 2017 Board workshop in Los Angeles and found the workshop to be very informative. As written comments are considered and the adoption process progresses, the State and/or Regional Boards should hold additional workshops to maintain effective communication with the regulated community. We would be receptive to additional IGP Amendment drafts and subsequent comment periods and public workshops in order to ensure this regulation is clear, effective, and appropriately communicated to the public.

Conclusion

ALG thanks the Board for the opportunity to comment on the proposed IGP Amendment. We appreciate the Board’s commitment to protecting our waterways and public participation in the development of the IGP Amendment. We suggest in our comments clarifications and provisions intended to strengthen the practicability of the proposed IGP amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Ripley'.

Elliott Ripley
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