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# LATHAM & WATKINS LLP

February 14, 2018

## VIA EMAIL

Ms. Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

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Re: Comment Letter – Industrial General Permit Amendment



Dear Ms. Townsend:

On behalf of Toyota Motor Engineering & Manufacturing N.A., and specifically its facility located in Long Beach, California, (“TABC”), we are providing comments on the above-referenced matter. TABC is committed to environmental stewardship and protection of waterways. In fact, a key aspect of TABC’s environmental strategy is a commitment to water stewardship that focuses on conserving water, protecting water resources and sharing our know-how with others. In that spirit, we have concerns that the draft permit amendment may frustrate implementation of effective stormwater controls by potentially failing to recognize adequately the burden of non-industrial and even natural background pollutant load.

TABC appreciates the revised definition of TNAL and understands that exceedances of a proposed TNAL do not effect a permit violation, and that the TNALs are not NELs. This is critically important in watersheds where certain constituents such as zinc are ubiquitous, and where the facilities subject to the IGP are comparatively minor sources of loadings of such constituents to impaired water bodies. There are multiple sources of any subject constituent that contribute to its concentration in a watershed: the subject constituent may be part of the naturally occurring background, it may literally fall out of the sky in aerial deposition, it may be present due to other industrial sources, and/or it may be present from nonpoint source pollution.

These are not academic concerns. The IGP itself recognizes that, “Background/ambient conditions in some hydrogeologic zones may contribute pollutant loadings that would significantly contribute to, if not exceed, the NEL values.” (IGP Section II.D.4.) This statement is equally true of TNALs. In our view, this recognition is critically important when it comes to ensuring achievable standards and availability of reasonable compliance plans and options for regulated entities, as more fully outlined below.

While the agency plainly appreciates the difficulty of meeting stringent water quality standards where regulated constituents are ubiquitous, we are concerned that the proposed amendments to the IGP do not adequately recognize those burdens on industry. A Natural Background Pollutant Source Demonstration should not be available exclusively when a TNAL exceedance is “attributable solely” to natural background (Proposed IGP Section XII.D.2.b.i), which could be read to mean that the permittee cannot make such a demonstration if the permittee’s on-site activities made *any* contribution. To address this, we urge the agency to acknowledge that industry should be responsible for reasonable control of that constituent load which its industrial process generates, and is not responsible for natural background concentrations or contributions to the load outside of its control. Such recognition is critical to ensure standards that are achievable for the regulated community.

Similarly, the industrial permit program does not require industry to clean up pollutant load in run-on from adjacent properties or from aerial deposition (each of which may contain off-site non-industrial pollutant load), or from on-site, non-industrial sources. We are concerned that while the proposed amended IGP recognizes that permittees should not be responsible for loads from these other sources, it allows for a Non-Industrial Pollutant Source Demonstration only when an exceedance is “attributable solely” to these other sources. (Proposed IGP Section XII.D.2.c.i.) Again, this is an unrealistic and inappropriate standard if interpreted to make the demonstration available only if the permittee’s on-site activities make no contribution to the exceedance. We urge the agency to revise and clarify this provision to ensure it is not read to be relevant only when there is zero contribution from the regulated point source. To fail to do so risks eliminating this critical compliance option.

In addition, the proposed amendments to the IGP helpfully recognize that additional BMPs are not required if the permittee can demonstrate that BMPs to eliminate a NAL or TNAL exceedance are not technically available or not economically practicable or achievable. (IGP Proposed Amendment Fact Sheet at 6.) This is an important element to help ensure that permittees can demonstrate where NALs or TNALs cannot be achieved on-site, or where the costs of doing so would be unduly burdensome to the facility or would be disproportionate to the environmental benefits. The permit fact sheet should further clarify that this demonstration is intended to be based on a broad and flexible standard that can be satisfied through a variety of factors and information.

Finally, we question whether the TNALs and the underlying water quality standards are consistent with natural background. The standards may not reflect natural constituent levels to which the aquatic ecosystem has acclimated over time. Such levels may be discernible, for example, from sediment core data which can show the presence or absence of any number of constituents over time, going back many decades. Such data could be used to evaluate whether the subject TMDLs include the right level of natural background. We suspect the levels are underestimated, resulting in a TMDL that is too small, once again, potentially shifting inappropriate burdens onto industry. More fundamentally, we question whether the TNALs and TMDLs reflect an appropriate allocation of responsibility to industrial permittees, given these permittees’ relatively small contribution to watershed loadings. Additional work is required to ensure that any additional regulatory requirements imposed on industrial permittees are both

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fairly allocated with regard to comparative contributions to impairments, and fully justified with regard to the environmental benefits to be achieved.

We appreciate the opportunity to comment on this important agency action. Please place this letter into the administrative record for the IGP amendment proceeding. We look forward to engaging with the agency and other stakeholders to help keep our waters clean while also fairly assigning respective responsibilities.

Very truly yours,

A handwritten signature in blue ink, appearing to read "P. Singarella", written in a cursive style.

Paul N. Singarella  
of LATHAM & WATKINS LLP

cc: Kelley Kline, Esq., Toyota Motor North America, Inc.  
David Cooper, TABC  
Thomas Lui, TABC

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bc: Kimberly Farbota