

Department of Water and Power



the City of Los Angeles

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SPECIAL HEARING
2/3/05

cc: BD, DI, DWQ
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February 3, 2005

Confirmation by fax sent on February 3, 2005

Ms. Debbie Irvin
Clerk to the Board
State Water Resources Control Board
1001 I Street 24th Floor 95814
P.O. Box 100
Sacramento, California 95812-0100

Dear Ms. Irvin:

Subject: Comments on the draft for the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities.

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to comment on the draft for the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities (Permit). There have been some significant changes with regards to the sampling and monitoring program that are of concern to the LADWP. The following represents the comments by the LADWP:

1 Permit, Provision V.7 - pages 6-7; and Fact Sheet - Background and General Permit Conditions - Effluent Limitations - pages IV and VII.

LADWP believes that the State Water Resources Control Board's (SWRCB) use of the USEPA benchmarks to trigger mandatory Storm Water Pollution Prevention Plan (SWPPP) amendments and sampling requirements, and as an enforcement tool, is contrary to the USEPA's intended, and current, use of those benchmarks. As set out in both the 1995 and 2000 Multi-Sector General Permits (MSGP), the USEPA's benchmarks merely represent a level of concern which the USEPA "has used to determine if a storm water discharge from any given facility merits further monitoring to ensure that the facility has been successful in implementing a SWPPP." 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The appropriate roles of the benchmarks, according to the USEPA, are as an indicator, or flag to operators that a SWPPP needs to be reevaluated. *Id.* at 64769. The USEPA acknowledges, as it must, that the

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benchmarks are not effluent limitations and do not mean a facility is out of compliance. *Id.* at 64767-768. Indeed, USEPA specifically states that operators in receipt of monitoring results may "still conclude their present SWPPPs/BMPs are adequately protective of water quality, or that other situations such as discharging to low-quality, ephemeral streams may obviate the need for SWPPP/BMP revisions." *Id.* at 64769. USEPA's approach is appropriate given the MSGP's, like the SWRCB's proposed Industrial General Permit's, core reliance is on the operator's best professional judgment in the face of considerable variability in site conditions.

The SWRCB's proposed use of the benchmarks as effluent limitations or as a measure for when enforcement action is necessary is contrary to that of the USEPA. Once in receipt of monitoring results above the benchmarks, Provision V.7 requires operators to submit a report to the RWQCB that describes the new BMPS and other corrective actions "being implemented to assure compliance with the benchmarks." (emphasis added) Permit § V.7(e), page 7. This provision, in practice, sets the benchmarks as effluent limitations. This is particularly problematic because the Permit proposes to use the benchmarks as an enforcement tool to determine if the facility is out of compliance. Specifically, the Permit's Fact Sheet states that "[e]ven if a discharger follows [the Permit's procedures], the RWQCB may... take enforcement against the discharger." Permit Fact Sheet at VIII.

The use of the benchmarks as effluent limitations and as an enforcement tool is without merit. The Permit acknowledges that the benchmarks are generic and not intended to be numeric limits or protective of any particular receiving water, Permit Fact Sheet at VII. It further notes that the benchmarks are meant to generally reflect the outcome of BAT/BCT controls and are not intended to determine whether or not discharges are causing or contributing to water quality impairment. *Id.* at XIV. Yet, the Permit requires operators to assure "compliance" with the benchmarks and intends to use the benchmarks as enforcement tools.

LADWP supports the use of the benchmark as they were intended; the benchmarks are to be used as indicators, or flags, about the efficacy of SWPPPs/BMPs, not automatic violations or indicators of permit violations. The benchmarks should be as a tool to alert operators about possible short coming of their SWPPPs/BMPs, or to confirm an operator's SWPPPs/BMPs are likely doing their intended job. Should a monitoring report indicate a result above the benchmark level, LADWP urges SWRCB to use that result as an indicator that the operator should reevaluate its SWPPP/BMPs, in light of the facilities local conditions, best professional judgment, and BMPs currently being implemented, rather than a de facto effluent limitation and enforcement tool. Furthermore, any reference to the result being an "exceedance" or a

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"violation" of the benchmark elevates the benchmark to the standing of an effluent limit.

2. Monitoring Program and Reporting Requirements - Section 4 – Sampling and Analysis – Paragraph f, page 19.

LADWP does not believe that the EPA benchmarks were intended to be used as an enforcement tool (See comment no. 1 above); therefore, LADWP believes that this section should be deleted from the Permit.

3. Fact Sheet - Sampling Procedures and Test Methods - page XVIII.

The third paragraph states: "... these requirements have been revised Section VIII.8.d requires discharges to collect samples from all drainage areas". There is not a corresponding Section VIII.8.d. LADWP believes you meant to write Section VIII.7.a.

LADWP suggests the correction to state Section VIII.7.a.

4. Finding #7, page 2.

It is stated that the RWQCB or EPA can require additional monitoring, implement additional BMPs, or comply with an applicable waste load allocation and implementation schedule for an impaired water body on the 303 (d) list. While LADWP agrees with this, LADWP believes that any application of additional monitoring, BMPs, or waste load allocation and implementation schedule to a storm water discharge must be tied to the impaired pollutant for that receiving body.

LADWP recommends that wording be added to this finding to read: "... conduct additional monitoring activities, or comply with an applicable waste load allocation and implementation schedule for those pollutants causing the impairment.

5. Monitoring and Reporting Program – Section 10 – Monitoring Methods - Paragraph a (ii), page 21.

This section requires that sampling methodologies, handling procedures, storage, etc. be written into the monitoring and reporting program of the SWPPP.

This is overly burdensome and not necessary since the Permit already mandates adherence to proper sampling, handling, and preservation

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techniques as set forth in the 40 CFR Part 136. These are procedures that are required by the EPA and can be referenced.

LADWP suggests that if the SWRCB finds it necessary to have the monitoring methods included in the SWPPP's monitoring program and reporting program, that all methods be referenced. Otherwise, this requirement should be deleted from this Permit.

6. Standard Provisions - Section 8 – Paragraph e, page 32.

This section allows photographs and videotaping of outdoor areas in order to document compliance. LADWP understands the need to have pictures for the record. However, in today's climate, security is of utmost importance for the safety of the public.

LADWP strongly suggests that this paragraph be changed to include that only photographs may be taken of storm water BMPs and/or related areas to document compliance with this Permit.

7. Monitoring and Reporting Program – Section 3 – Storm Water Discharge Visual Observations – Paragraph e, page 18.

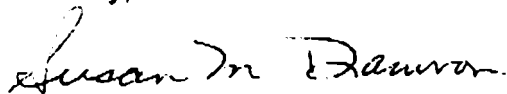
This paragraph requires that all storm events that did not produce a discharge, which have occurred within a month during daylight hours, be recorded. If the rain event was insufficient to generate a runoff then this information is not relevant. Rainfall amount information can be acquired via other sources (National Weather Service, etc.). It is overly burdensome for this information to be tracked and recorded.

LADWP suggests that this requirement be deleted since this extra information is of no real value to the application of the SWPPP.

LADWP appreciates the opportunity to comment and looks forward to working with the SWRCB in the renewal of this Permit.

If you have any further questions regarding these comments, please feel free to contact Ms. Katherine Rubin of my staff at 213-367-0436.

Sincerely,



Susan M. Damron
Manager of Wastewater Quality Compliance

KR: bdc