

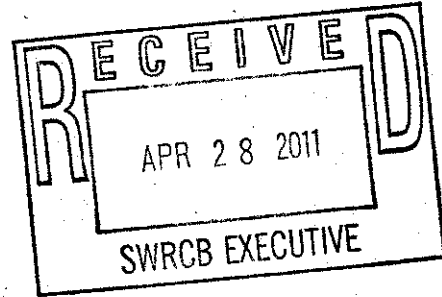


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

File 510.1312

April 28, 2011

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend,

Draft General Industrial Permit

Thank you for the opportunity to comment on the Draft California Industrial General Permit. We understand that protection of receiving water quality and beneficial uses is the ultimate objective of the permit. The Fresno Metropolitan Flood Control District and its Co-permittees (City of Fresno, City of Clovis, County of Fresno, and California State University, Fresno) support that objective. Collectively, these agencies will be responsible for ensuring the compliance of industries covered under the draft Permit that are located within our NPDES permit boundary.

The Fresno/Clovis regional stormwater control system is characterized by a unique set of conditions including flat topography, low rainfall, a comprehensive system of engineered multiple-use detention basins, deliberate interconnectivity with municipal and irrigation district conveyance systems, and minimal and intermittent hydrologic connection to receiving waters. This system is owned and operated by the Fresno Metropolitan Flood Control District, and comprises 145 operational stormwater treatment basins and five large flood control dams and reservoirs. Each treatment basin is an engineered feature between 10 and 40-acres in size, situated at the lowest elevation within its drainage area. Each drainage area is a small watershed that collects runoff from about one square mile of urbanized land. The stormwater retention basins act as effective stormwater pollutant collection and treatment facilities.

We have reviewed the Draft Industrial General Permit with respect to its effects on regional receiving water quality, the protection of local water resources, the impact on permit holders, and the impact on oversight agencies. We provide the following comments:

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1. The "No Exposure Certification" should be filed electronically just once during the term of the Permit, at no cost to the applicant.
2. Revenues generated by the Permit should be used to provide local compliance assistance and permit oversight specifically targeting non-filers.
3. The draft permit expands industrial stormwater inspection and reporting requirements on site operators. The permit should recognize compliance requirements of established spill prevention, materials handling, and waste management regulations.
4. The list of professionals qualified as QSDs should be expanded to include a wide range of trained and experienced individuals presently working in industrial and commercial settings.
5. Numeric Effluent Limits should not be used in the permit. The data used to establish the numeric effluent limits was found to be lacking economic analysis and scientific evaluation to determine the environmental benefits.

These issues are discussed in more detail below.

The "No Exposure Certification" should be filed electronically just once during the term of the Permit, at no cost to the applicant.

Many of the businesses in our area will be eligible for a No Exposure Certification because they have very low potential to impact stormwater. We conclude it inappropriate to require a business with no stormwater pollution exposure to pay each year to re-state their eligibility and confirm what has already been established. There should be no charge to file a No Exposure Certification. Regulations should not be written in such a way as to require individuals or companies to pay to file a statement that such regulations do not apply to their circumstances.

While using SIC codes to conduct initial inventories of potential industrial discharges to determine their stormwater risks is one of the few screening tools available to regulators and municipal oversight agencies, it is not a valid tool for automatic inclusion under the Industrial General Permit for all the industries within a specific SIC classification code.

~~The existing practice of industrial operators establishing their exposure status, per the current permit's provisions for Category 10 operations, can, with minor modifications, adequately serve the permitting process. Specifically, we recommend that the existing method be retained, with the addition of requiring that each operator certify their no exposure status once, using the SMARTS system, during each permit term. This would put the entire regulated community into~~

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the database, allowing MS4s, Regional Water Boards and the public to grasp which businesses are within the realm of the permit. Public agencies charged with enforcement of the permit could then use this information to prioritize their workloads by type, scale, location or composition of potential discharges.

Revenues generated by the Permit should be used to provide local compliance assistance and permit oversight specifically targeting non-filers.

Fresno Metropolitan Flood Control District conducted a focus group of current industrial permittees in the Fresno-Clovis area. The proposed permit was discussed in some detail among experienced dischargers already covered by the Industrial General Permit. Aside from the increased administrative burden of the permit, the most common concern we heard was the lack of a level playing field. That is, similar industries not filing for coverage. The focus group relayed the concern that adding more bureaucracy to the current process will drive up costs for the businesses trying to comply while creating a disincentive for the rest to bother trying to do anything.

The expansion of industry-types subject to the draft Permit will raise substantial new revenues for the State NPDES program (ranging from \$360,000 to 1 million dollars, depending on the eligibility of industries for the No Exposure Exemption). The draft Permit does not address how these fees will be used; whether the revenue will go to local compliance assistance, enforcement or merely to cover administrative costs of the State's water quality related programs. What is known is that the Industrial General Permit will require significant expenditures by numerous industrial operators to bring their sites into compliance with the complex requirements of the new Industrial General Permit and will place extraordinary demands on local agencies charged with oversight and enforcement of the draft permit.

We recommend that fees from the draft permit, to the maximum extent possible, be applied directly to the solution of industrial impacted water problems within the region and the funding of an appropriate level of oversight by those agencies charged with ensuring and documenting operator compliance. Unless the State directs permit revenues back to Regional Water Boards and their affiliated Municipal Permit holders to fund local business compliance assistance efforts, the permit will become another unfunded State mandate without meaningful enforcement and permit compliance at the local level. The predictable results include: limited understanding of the regulation by operators, poor compliance, minimal improvements in stormwater quality, and plenty of legal exposure.

The draft permit expands industrial stormwater inspection and reporting requirements on site operators. The permit should recognize compliance requirements of established spill prevention, materials handling, and waste management regulations.

The draft permit imposes on the permit holder a variety of inspection and documentation responsibilities that are duplicative of efforts already required by State law. At the local level commercial and industrial operators are subject of site inspections by Department of Toxic Substances Control, CUPA, Fire Departments, County Health Department, the wastewater pretreatment authority and Regional Water Board staff. These agencies check site conditions to ensure they meet spill prevention and response requirements, hazardous materials regulations, and materials handling and waste management rules that are already on the books. This large body of regulation undoubtedly serves to control many if not most potential stormwater problems at most sites.

We recommend that the Permit allow incorporation by reference of existing materials handling and control procedures established by other applicable statutes. The permit should credit any industrial operator who is in compliance with these requirements as having met core goals of the permit, and the permit should otherwise limit its scope to the control of whatever unresolved stormwater quality protection issues arise after compliance with all existing regulations is achieved.

The list of professionals qualified as QSDs should be expanded to include trained and experienced individuals presently working in industrial and commercial settings.

In order to comply with existing regulations unrelated to stormwater, almost any industrial operation of any size will have at least one designated, trained staff person whose mission it is to make sure the facility stays in compliance with existing safety and materials handling regulations. These employees are intimately familiar with the operation and layout of their plant and responsible for responding to spills and other unintended discharges. Frequently, these same employees undergo regular training to stay current on proper practices and retain professional certifications that bear directly on the responsibilities to their specific site.

The draft permit requires that the Industrial SWPPP be developed and amended by a QSD in the style of the Construction General Permit. This fails to take advantage of the expertise and experience already present in the industrial community. Existing regulations already require operators to plan ahead for emergencies, map out the locations of materials, establish materials handling protocols, retain on-site capability to respond to accidents, and modify their plans and processes in response to deficiencies that might come to light during accidental discharges or inspections by other agencies. To place one of the permits proposed authorized QSDs in the middle of this process is expensive and superfluous. Certainly, a civil engineer or hydrologist is

required for the narrow purpose of establishing a site's flow paths and sampling points to be mapped in the SWPPP.

We recommend that the Permit recognize a wide range of trained and certificated professionals whose training and site-specific experience will encourage the development of well-thought out site and process-specific SWPPPs. The Permit should still specify that, for sites that have more than one drainage area or are at risk of receiving run-on from other properties, the operator must retain the services of a qualified engineer to establish the correct flow paths and discharge points to enable accurate sampling of stormwater.

Examples of professional certifications whose training and standards make them good candidates as QSDs include: Industrial Engineer, Registered Environmental Health Specialist (REHS), Registered Environmental Assessor (REA), Certified Hazardous Materials Manager (CHMM), Registered Environmental Manager (REM), Registered Environmental Professional (REP), and Qualified Environmental Professional. Other professional certifications could be readily identified through a review of the types of trained professionals already working in industrial settings.

Numeric Effluent Limits should not be used in the permit. The data used to establish the numeric effluent limits was found to be lacking economic analysis and scientific evaluation to determine the environmental benefits.

Since inception of the Industrial General Permit biannual sampling of stormwater runoff from facilities has been required. The data collected has always been questioned due to diverse sampling conditions, contribution of atmosphere deposition, pollutant contribution from adjacent facilities, and other factors.

The proposed permit increases the sampling frequency to four times each year and applies specific regulatory actions in the event of detection of a pollutant above published levels called Numeric Action Limits (NALs) or Numeric Effluent Limits (NELs).

The NALs and NELs in the draft Permit were drawn from the USEPAs Multi-Sector General Permit and incorporated into the new Industrial General Permit without the economic analysis or scientific evaluation necessary to establish the cost effectiveness or environmental benefit of applying these limits to a broad range of industrial operations. The State Water Board's own Blue Ribbon Panel of experts, in its 2005-06 review of the feasibility of establishing Numeric Effluent Limits, stated that currently available monitoring data was inadequate to the task of setting numeric limits and recommended improved, industry-specific monitoring be done to establish NALs or NELs. The State Water Board, in its wholesale incorporation of pre-existing and generalized numeric limits, appears to have ignored their Panel's recommendation. The original intent of the EPA

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benchmark levels was to create an iterative process that addressed pollutant levels above the EPA benchmarks by implementing additional stormwater control practices.

We recommend that the current system of using established EPA benchmarks as part of the iterative process to evaluate and improve BMP performance be retained.

We thank you again for the opportunity to review the draft Industrial General Permit and to provide our thoughts in developing a more proactive and constructive stormwater management program. If you have any questions regarding our comments, please feel free to contact Daniel Rourke or David Pomaville of my staff at (559) 456-3292.

Sincerely,



Bob Van Wyk
General Manager-Secretary

BVW/sy