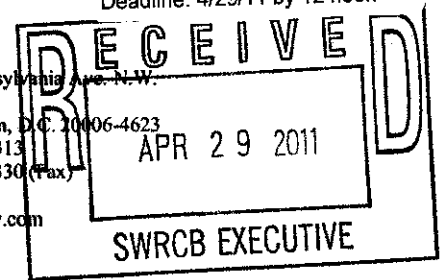


BARNES & THORNBURG LLP

Jeffrey S. Longworth
Partner
(202) 408-6918
jeffrey.longworth@btlaw.com

1717 Pennsylvania Ave. N.W.
Suite 500
Washington, D.C. 20006-4623
202-289-1313
202-289-1330 (Fax)
www.btlaw.com

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



April 29, 2011

Via Electronic Mail

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

Re: Airport California Monitoring Group Comments on California's Draft Industrial General Permit

Dear Ms. Townsend and Members of the SWRCB:

On behalf of the Airport California Monitoring Group, for which I serve as group leader and regulatory consultant, please consider the following comments regarding the draft industrial general stormwater permit that the SWRCB released on January 28, 2011.

I. INTRODUCTION

AAAE/ARDF¹ started the California Monitoring Group in 1992, the inaugural year of the California General Industrial Stormwater Permit. The original AAAE/ARDF group now refers to itself as the Airport California Monitoring Group (ACMG). ACMG has evolved in the past 19 years and credits the State's Group Monitoring Program with fostering an efficient way for the aviation industry to develop an effective stormwater compliance program through shared resources and industry leadership.

In addition to the ACMG's focus on shared knowledge, training, and compliance programs, it also has been an active participant in the State's evolving stormwater permitting program. ACMG has submitted written comments or provided oral testimony regarding every industrial permit development since the SWRCB promulgated its first permit in the early 1990s. This includes testimony and comments to the SWRCB's Blue Ribbon Panel and on each of the

¹ The American Association of Airport Executives (AAAE) is a not-for-profit professional organization representing airport management personnel around the world. Founded in 1928, AAAE represents airport executives and personnel at U.S. airports, including most airports in the State of California. A separate, not-for-profit technical organization, the Airport Research and Development Foundation (ARDF), provides research, technical and data support for AAAE/ARDF projects.

State's request for comments on various proposed versions of a new industrial general permit. Two ACMG members provided testimony at the SWRCB's March 29, 2011 hearing regarding the draft Industrial General Permit.

ACMG is deeply concerned with a number of the provisions in the new draft Industrial General Permit and it offers several significant comments that will improve the existing stormwater industrial general permit for California to increase its environmental protection, achieve the SWRCB's goals efficiently and effectively, and enhance the benefits from the group monitoring program while maintaining the original mission of group monitoring – improved overall environmental protection through a systematic review and analysis of industry-specific practices under the leadership of a central organizing, information-disseminating body.

II. COMMENTS

A. Group Monitoring is a Valuable State Program That the SWRCB Should Retain, If Not Encourage Expanded Participation.

For roughly 70 participating airports across California, ACMG has been providing significant benefits that would be impossible but for the "group monitoring" provisions in the current industrial stormwater general permit. In addition, many of those benefits also translate into benefits to the SWRCB and Regional Boards by ACMG's ongoing participation in the State's evolving permit development processes, shared exchange of information that both improves the ACMG's compliance strategies and the State's understanding regarding airport stormwater discharges, and through real environmental protection resulting NOT from collecting samples, but from implementing appropriate Best Management Practices (BMPs) and conducting visual inspections that help to improve the performance of those BMPs.

Airports – even the smallest general aviation airports – are complex entities. Not many of the other "industrial" facilities subject to the State's Industrial Stormwater General Permit have "tenants" that come onto their property, generate stormwater discharges "associated with industrial activities" and then expect the landlord (airport) to accept all of the liabilities and responsibilities for those pollutant discharges. But that, in a nutshell, is what airports must face under the State's existing permitting scheme.

Arguably, airports maintain some limited powers through their lease agreements with these tenants that allow airport managers to require that those tenants implement BMPs and conduct their businesses in ways that allows the airport to limit pollutants in stormwater discharges. In addition, ACMG has technical experts to assist with BMP selection and implementation, AND legal/regulatory assistance to help guide airports in working through their lease agreements and other potential obstacles that might otherwise inhibit appropriate environmental protections. Airport members benefit greatly from participating in ACMG, and we encourage the SWRCB to work with existing groups to fit these benefits into any final permit.

Group members subject themselves to additional scrutiny through inspections, additional training and additional reporting in order to produce better quality data and to have some additional control in the selection of BMPs for their industry. One of the significant problems cited in the State Water Board's workshops and the in Blue Ribbon Panel Report was stormwater sample data quality. The increased QA/QC from the existing group monitoring programs has resulted in data quality far superior to the State Water Board's existing database and this improvement in data quality is expected to continue into the new permit. The increase in data quality at group member sites can be attributed to intense training oversight and involvement by the group leader.

Group members have received a sampling reduction in exchange for these benefits that accrue to the State Water Board and the Regional Water Boards, e.g., professional data collection and control and more stringent oversight. The decision to discontinue group monitoring focuses only on the benefits group members receive without taking into account balancing these benefits with the additional benefits the State Water Board receives by using monitoring groups to generate higher quality AND industry-specific data and to reduce the inspection burden currently placed on resource-stained Regional Water Boards and MS4s. Such data could serve as a precursor to the State adopting a more industry-specific permitting approach in the future. As demonstrated in Section II.F. below, airports would welcome a more "airport-specific" permit in the future because they are such unique "industrial" sites for which the State's current "industry-wide" mandates are not always appropriate.

B. ACMG Opposes Numeric Action Levels and Numeric Effluent Limits Until the State Provides Independent Technical, Cost-Benefit and Legal Justifications.

The draft Industrial General Permit proposes a permitting scheme based on a list of numeric values (benchmarks) from US Environmental Protection Agency's (EPA) *Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity* (MSGP)² and an unsupported declaration that such values should be adopted as both Numeric Actions Levels (NALs) and technology-based Numeric Effluent Limits (NELs). Use of EPA's benchmark values as NELs or NALs is inconsistent with EPA's intended use of the benchmarks and the draft Industrial General Permit fails to provide independent or other justification that would support numeric effluent limitations. In fact, EPA's 2008 MSGP states clearly that it currently is infeasible to establish effluent limitations for industrial stormwater discharges. Additionally, the approach taken in the draft Industrial General Permit is inconsistent with the recommendations of the state-convened Blue Ribbon Panel that evaluated the feasibility of NELs.

EPA states unequivocally that the MSGP benchmarks are not effluent limits. In fact, benchmarks are designed as an evaluation tool to use in monitoring the effectiveness of a site's SWPPP.

² 73 Fed. Reg. 56,572 (Sept. 29, 2008).

EPA notes that Part 6.2.1 emphasizes that the benchmark thresholds used for monitoring are not effluent limits, but rather information that is primarily for the use of the industrial facility to determine the overall effectiveness of the control measures and to assist in understanding when corrective action(s) may be necessary.³

Under EPA's permitting approach, if average annual values (not counting natural background contributions) are higher than benchmarks, then additional monitoring, reporting, and corrective actions are required, but only for particular constituents selected for particular industry sectors that are risk-based. EPA's position is clear—the only use of benchmarks it would support is one based on the MSGP 2008 permitting scheme. States that expand or modify EPA's benchmark monitoring approach must defend their approach independently.

EPA regulations allow non-numeric limits, when developing numeric limits is infeasible. 40 CFR § 122.44(k). Since the last time the State Water Board considered reissuing the Industrial General Permit, EPA itself has exhaustively reviewed the question of whether numeric limits are feasible in an Industrial MSGP. In 2008, after thousands of pages of administrative record review, several *Federal Register* notices, and extensive public comment, EPA concluded it was not feasible to establish NELs.

ACMG does not believe that the State has conducted any new or contrary studies that have added to the current knowledge base for regulating industrial stormwater that would justify the use of the EPA benchmark values as NELs or NALs. ACMG does not support the inclusion of EPA's benchmarks as either NALs or NELs in the draft Industrial General Permit because this use would be inconsistent with EPA's stated intended use of the benchmark values.

C. Proposed Increased Inspections and Monitoring Requirements Are Overly Burdensome, Represent Unfunded Mandates for Public Airports, and the SWRCB has Not Identified Any Commensurate Benefits.

The technical challenges and errors in the permit language, as well as the complexity and dispersed nature of inspection and monitoring requirements, are likely to cause significant confusion and difficulty demonstrating compliance for dischargers. The draft Industrial General Permit appears to require approximately 400 more documented inspections annually than what is currently required. ACMG notes that EPA's 2008 MSGP maintained a quarterly inspection regime, but noted that in certain circumstances monthly inspections could be warranted. The draft Industrial General Permit does not identify the rationale for the number of increased inspections. Absent such a rationale, ACMG cannot propose an alternate program that would more be more practical.

The draft Industrial General Permit similarly proposes significant increases in stormwater sampling requirements. Baseline sampling has doubled the number of storm events that need to

³ 73 Fed. Reg. at 56,574 (Sept. 29, 2008).

be sampled. The elimination of the option for dischargers to sample representative discharge locations, however, will result in a significant increase the baseline sampling by increasing the number of locations many dischargers must sample, as well as increased staff efforts and analytical costs, without any identifiable increase in protectiveness of water quality. The increased sampling efforts and frequency escalate for facilities with land disturbing activities (sampling each day of the qualifying event), and daily sampling for every storm for facilities in Tier 3.

Eliminating the option to reduce the number of locations sampled based on representative substantially identical drainage areas poses many potential challenges. Airports have used this representative sampling approach to work around structural and safety issues with specific outfalls. Representative sampling provides a cost effective method to sample substantially similar drainages; elimination of which increases costs without increasing water quality protection.

Increased inspections and sampling pose significant challenges to airport managers and environmental staff (which often serve many other onsite staffing needs in conjunction with environmental responsibilities). In many cases, a single staff person oversees more than one airport. Humboldt County staff testified at the SWRCB hearing regarding their consistently admirable environmental performance overseeing two airports under the current permitting scheme. However, the increased sampling and inspection requirements in the permit would overwhelm that staff person and create a significant financial impact for little or no environmental benefit. Many other ACMG members have provided similar information and concerns.

As the State Water Board proceeds with modifications to the draft Industrial General Permit pursuant to the comments that it receives, the ACMG also would like the SWRCB to consider the potential unfunded mandate within the meaning of California's Government Code. ACMG has not had sufficient time to research and comment on all aspects of previous Commission on State Mandates decisions regarding all aspects of the SWRCB's implementation of the federal and state stormwater permitting programs. We believe that many of the new mandates, including inspection and sampling increased frequencies and related costs, may represent unfunded mandates.

D. Any New Permit Must Begin to Recognize the Impacts of Background and Non-Industrial Pollutants on Monitoring and Inspection Reports.

Natural background should be added to the list of sources of pollutants in stormwater discharges that would not trigger corrective action. Setting aside NALs or NELs and the nightmare that background pollutants would create under any such scheme, the State should make sure it focuses its industrial permitting program on "stormwater associated with industrial activity" and the pollutants generated there from; not pollutants from other unregulated activities either at an airport or neighboring properties.

The January 28, 2011, draft Industrial General Permit ignores the lessons learned by EPA and excludes any discussion of natural background conditions. EPA's 2008 MSGP recognizes that permittees should not be held responsible for pollutants generated by the natural background conditions. Monitoring for a particular pollutant discharged from an industrial site may be waived if the permittee documents that the presence of a pollutant of concern in its discharge is attributable to natural background pollutant levels and not to the activities of the permittee. The MSGP also contains provisions allowing dischargers to eliminate corrective actions and subsequent monitoring requirements if the exceedance of benchmarks is attributable solely to natural background levels of that pollutant. In addition, the MSGP provides for a determination that a discharge of pollutants, although not solely due to natural background, cannot be further reduced using control measures that are technologically and economically practicable.

EPA had not allowed for a consideration of natural background in the 2000 version of the MSGP, but through experience came to recognize that there could be circumstances when their benchmark values reasonably might not be able to be achieved because of high natural background levels certain constituents in soils or groundwater, or from vegetation and wildlife sources. Similar provisions should be included in the Industrial General Permit.

This is an important issue of many airports. For example, Sulphur Creek runs directly through Hayward Executive Airport. The airport has a total of eight outfalls to the creek. Past sampling has shown that water flowing to the airport has more pollutants than flowing from it. In other words, samples show that water is cleaner exiting our airport than entering. Hence, while the airport is clearly providing environmental benefits to Sulphur Creek, it may still face significant liability for pollutants out of its controls IF the State were to adopt a NAL or NEL approach and certain of those "upstream" pollutants still exceeded a benchmark value. Such a scenario points out the need to recognize and account for background pollutant levels as well as the illogical result that would manifest itself under any corrective action mandate that did not account for such pollutants.

E. Conditional Exclusions for No Discharge Should More Closely Reflect the Underlying Framework of the NPDES Permitting Scheme.

ACMG applauds the SWRCB in recognizing that sites (or, in our case, airports) that have virtually no discharge should not have to expend a disproportionate cost on inspections, documenting the lack of discharge, and lamenting how to collect samples from discharges that do not occur absent highly unusual circumstances.

However, the SWRCB proposal to rely on the 100-year 24-hour storm event is, in our opinion, completely missing the mark for providing the exclusion in the first place. Quite literally, the SWRCB is telling small public airports that might not discharge but for, say, the 50-year 24-hour storm event that it is okay to invest scarce local public monies on an annual basis for the likelihood of, say two discharges per century.

Truckee Tahoe, Mojave, and other airports in the ACMG group rarely if ever create stormwater discharges to waters of the State. Even if they discharged stormwater ONCE over a

5-year permit term, the SWRCB should ask itself whether it is reasonable to expend significant public resources on permit compliance for the sake of compliance, risk citizen suit liability, and also require the State and Regional Boards to invest in reviewing their compliance, when such resources would be better directed towards other ongoing needs in their communities and at the airports?

Therefore, ACMG suggests that, based on the fact that the NPDES permit term is five years, those airports that statistically are not likely to discharge during 5-yr/24 hr. storm event (therefore, not likely to discharge at all under any given NPDES permit) should be excluded from the State's NPDES stormwater permit program. No fees or administrative hurdles are necessary other than, perhaps, a certification regarding the discharge conditions at the airport.

F. Mandating Minimum Best Management Practices May be Highly Problematic for Airports.

The language of the introduction to Section VIII is overly restrictive, as written, allowing a discharger to vary from a specific BMP only if it is "inappropriate". ACMG notes that many of the listed minimum BMPs may be needed for many "typical" facilities, but not all facilities (or airports). Attention to these BMPs can be achieved while still retaining some flexibility to allow the necessary application of appropriate standards in tailoring site-specific BMPs to each regulated site.

To make BMPs truly mandatory would require findings by the State Water Board that the BMPs actually represent BCT for conventional pollutants and BAT for other pollutants. Each of these standards requires specific consideration, in varying respects, of costs and technological feasibility. Because the State Water Board has not performed or provided such a detailed analysis, leeway must be provided in the selection of BMPs to allow appropriate implementation of the BAT and BCT standards. ACMG also notes that there is no legal requirement under the Clean Water Act that a zero pollutant load be achieved, and because some mandatory BMPs, such as covering storage areas, are designed to completely eliminate discharges from a particular areas, it is impossible to state an alternative that provides strictly "equivalent reduction" of pollutants.

As demonstrated through the following airport-specific examples, airports cannot be expected to operate as required by the Federal Aviation Administration (FAA) and other agencies with jurisdiction over airport operations within a rigid BMP scheme that the SWRCB would apply across all industrial sectors.

Airports are unique industrial facilities on many levels that differ from traditional industrial, commercial or municipal facilities. For example, the safest airports are those designed with flat impervious surfaces with little to no landscaping, fast draining concrete drainage and no physical obstructions or bird attractants. In fact, FAA regulations prohibit many common BMPs used by the industrial dischargers such as; raised curb, gutters, ditches, open basins (water storage devices), debris creation areas and any non-frangible objects having nothing to do with

airfield navigation on operational areas. Any BMP mandates that conflict with FAA regulation will create public safety concerns and liabilities for airports and their tenants.

The following examples may help to illustrate these concerns:

AIRPORTS AND DETENTION BASINS

Detention basins may be excellent stormwater BMPs, but they are often incompatible with airport operations. FAA has strictly prohibited golf courses (with related ponds/basins) and other detention basins within 2 - 5 miles of a runway due to their tendency to create bird hazards and wildlife attractants. Golf courses and detention basins are mentioned here because these tend to be some of the BMPs often suggested to airports by municipal and/or stormwater regulators as valid BMPs.

FAA Federal Aviation Regulations AC 150/5200-33B, 2-7(a) states the following:

2-7. GOLF COURSES, LANDSCAPING AND OTHER LAND-USE CONSIDERATIONS.

- a. Golf courses. The large grassy areas and open water found on most golf courses are attractive to hazardous wildlife, particularly the Canada geese and some species of gulls. These species can pose a threat to aviation safety.*

FAA Regulation section 1-4 also states:

1-4. PROTECTION OF APPROACH, DEPARTURE, AND CIRCLING AIRSPACE.
For all airports, the FAA recommends a distance of 5 statute miles between the farthest edge of the airport's Airport Operational Area (AOA) and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace.

The situation that everyone wants to avoid is depicted by this picture⁴:

⁴ All pictures were provided by ACMG members and are used with their permission.



AIRPORTS AND CONFLICTING DRAINAGE PREFERENCES

Another example of environmental drainage preferences that conflict with FAA regulations are open drainage channels. Open drainage is incompatible with airfield operational areas. However, this type of development is often emphasized by stormwater and/or environmental regulators when reviewing airport airfield projects.

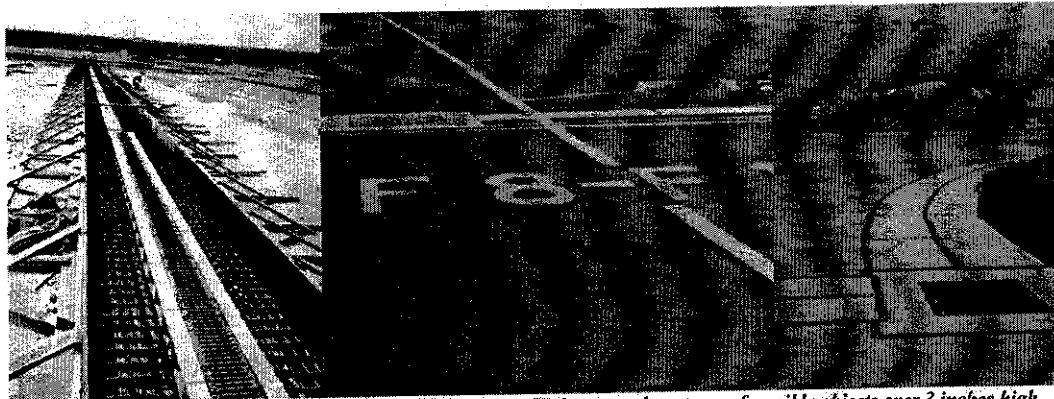


Installing or preserving open drainage channels on airports are emphasized by stormwater regulators when reviewing airfield projects. Natural or open channels are often not compatible with the airfield or FAA regulations.

FAA AC 150/5300-13, Paragraph 403 states:

The safety area shall be:

“(1)...cleared of potentially hazardous ruts, humps, depressions, or other surface variations... (4) free of objects, except for objects that need to be located in the...safety area because of their function.”



Safe airfield drainage per FAA Regulations excludes open ditches, trenches or non-frangible objects over 3 inches high.

The FAA AC 150/5200-33B, Section 2-3(a) states:

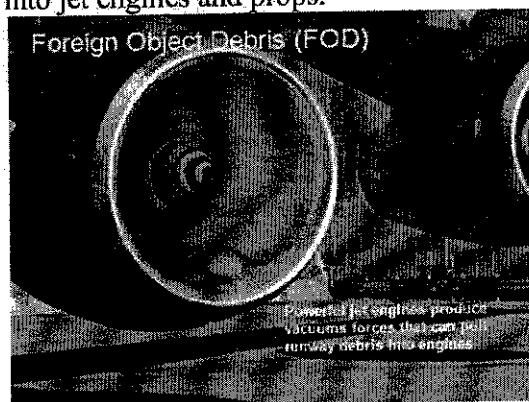
“...Where constant flow of water is anticipated ...the detention facility should include a concrete or paved pad and/or ditch/swale in the bottom to prevent vegetation that may provide nesting habitat.”

AIRPORTS, JET BLAST AND JET SUCTION EFFECTS

FAA AC 150/5300-13, Paragraph 801, states:

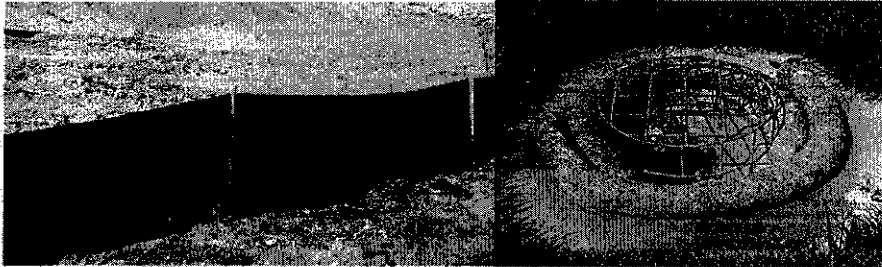
“Jet blast affects all operational areas of the airport...Blast velocities greater than 30 M.P.H. can cause loose objects ...to become missiles capable of causing injury to personnel...”

Typical BMPs can produce very dangerous Foreign Object Debris (FOD) which can be scattered over the airfield or sucked into jet engines and props.



Debris from certain fiber rolls, silt fences, straw waddles, turf mat, landscaping, etc, may be incompatible with airfield operations.

Paved surfaces on airports not only provide overrun protection, but also provide the best surfaces to minimize FOD exposure. Fiber rolls, silt fences, straw waddles, turf matting, landscaping etc, are incompatible uses with many airfield operations.



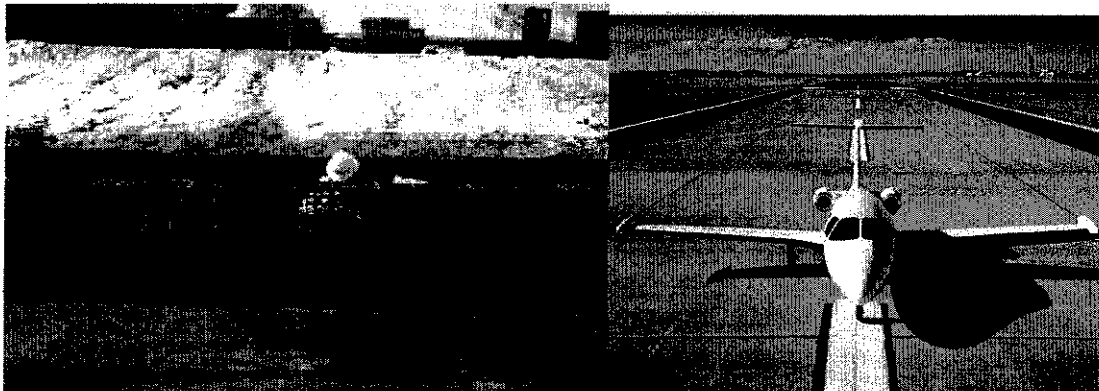
The typical BMP systems above work well for non-airport industrial, commercial and municipal applications, but can be incompatible on an airfield.

FAA AC 150/5300-13, Paragraph 303, states:

“...A natural surface, e.g., turf, normally reduces the possibility of soil erosion and engine ingestion of foreign objects. Soil with turf not suitable for this purpose requires a stabilized or low cost paved surface”

UNDERGROUND DETENTION BASINS

One BMP that's compatible with airport use is the underground detention basin. It allows both storage and treatment of stormwater on airports. However, although underground detention basins are compatible with airport operations, they are often financially impractical due to the extremely “flat” nature of airport design. Because underground detention basins are by definition below ground level, and they would require a certain degree of slope (or falling terrain) in order to maintain a proper flow velocity and ability to “daylight” back into a discharge channel, this option is problematic. Due to strict FAA grade requirements, meaning, regulations maintaining “flat” airfield design requirements, underground detention basins on airports must be kept extremely shallow and, therefore, the expense can quickly outweigh the practicality of the original benefit.



Underground detention basins require significant slope (or "fall") for proper function. Airports are very flat which make these basins difficult or often impractical to utilize.

FAA AC 150/5300-13 states the following:

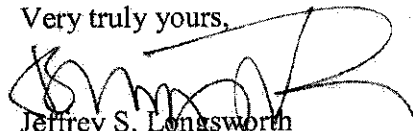
"The maximum longitudinal grade is 2 percent for Aircraft Approach Categories A and B... Minimum longitudinal grades are desirable."

III. CONCLUSION

The ACMG appreciates the opportunity to comment on the draft Industrial General Permit. As the SWRCB moves forward with redrafting the permit, the ACMG volunteers its insight and participation in any workgroups or other information exchanges with staff that might provide further insight and perspective from airports regarding the unique challenges that airport staff face in complying with the States NPDES stormwater permitting program.

Please call with questions.

Very truly yours,



Jeffrey S. Longworth
ACMG Group Leader

Cc: Matt Lentz, AMEC
Sarah Hoffman, Environmental Compliance Options