



February 14, 2018

Ms. 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

Subject: Industrial General Permit Amendment Comment Letter – PMSA

Dear Ms. Townsend:

On behalf of the member companies of the Pacific Merchant Shipping Association (PMSA), thank you for the opportunity to provide public comment to the proposed amendments to the General Permit for Stormwater Discharges Associated with Industrial Activities (IGP). PMSA is a regional maritime trade association representing companies that operate marine terminal facilities in the commercial ports of California; facilitating California's international trade demands. Those terminals currently operate under the prevailing IGP, which entered into effect on July 1, 2015.

The proposed amendments seek to incorporate into the IGP regionally developed Total Maximum Daily Load (TMDL) requirements, the new U.S. EPA Sufficiently Sensitive Methods (SSM) requirements for analytical testing and add additional compliance options.

Of the three major proposed changes, the incorporation of the TMDL requirements into the IGP will have significant impacts on marine terminal facilities from economic, legal and logistical perspectives. It is a very complex topic and new to the regulated community, so it is critical that all aspects and impacts of the proposal receive sufficient attention and are well integrated into the IGP. This would include extensive outreach, discussion and education to the regulated community, and tools and compliance pathways incorporated and well documented in the IGP. Based on existing discharge data, the proposed levels for several pollutants, most notably zinc and copper, will be unachievable for marine terminal facilities operating in Los Angeles and Long Beach harbors. For all of these reasons trying to meet the TMDL amendments will require significant time beyond what is proposed.

We appreciate the proposed adoption of alternative compliance options, on-site and off-site, which provide new pathways to compliance. The off-site option opens the door to further discussion for establishing offsets within the larger universe of dischargers that could provide for greater overall watershed benefits.

That being said, preliminary investigation indicate that off-site treatment options will not be available in the foreseeable future for marine terminal facilities in California and further underscores the need for additional time to determine whether such an option is feasible for our industry.

On a more general topic, we have reviewed draft comments from the California Stormwater Quality Association (CASQA). While they broadly address aspects of the proposed amendments that apply to all industrial facilities, the core of their comments are applicable to our industry's concerns and we concur and support their submission.

Our general and specific comments are listed below:

1) Pollutant Source Reduction

Although not addressed in the proposed amendments, we would like to take the opportunity to encourage the Water Board to work with state and federal agencies, the Governor and the Legislature to pursue targeted pollutant source reductions, rather than focusing only on minimizing pollutant entry into state water bodies in stormwater events.

Two of the main sources of metal pollutants found at marine terminal facilities arise from non-industrial activities, generated by the brake pads and tires of third party vehicles visiting the terminals that are not under the control of the discharger (marine terminal operator). The number of third party vehicles entering a marine terminal facility numbers in the thousands on a daily basis! The elimination or reduction of copper from brake pads and zinc from tires will solve a universal problem for the state's water bodies well beyond the scope of marine terminals. Legislation passed in California calls for reduced copper levels in brake pads by 2021 and elimination (if feasible) by 2025. Legislation to reduce or eliminate zinc from tires has also been proposed in California but has not yet been successful. Hopefully these efforts will eventually provide necessary benefits needed to meet the proposed requirements, but for the time being marine terminal facilities are in the position of facing unachievable limits in the near term for pollutants generated by third party vehicles.

2) TMDL Monitoring Must Reflect Goals of Each TMDL

Using end-of-pipe monitoring during infrequent, transient storm water events is a blunt surrogate for determination of chronic water quality standards that are reflected in TMDL assignment. Many TMDLs have objectives specific to impaired locations in the waterbody (such as sediment contamination) that are not comparable to end-of-pipe discharge effluent and thus the translation of the TMDL into the IGP may not accurately reflect the Regional TMDL.

In the case of the TMDLs for Dominguez Channel and Los Angeles and Long Beach Harbor Waters, these TMDLs are for toxic sediments with a goal of controlling the sediment load to the system. Translating those goals to end-of-pipe dissolved pollutant discharge levels is not appropriate. Compliance is predicated on achieving sediment targets or through bio accumulative assays which is more appropriately achieved through monitoring in receiving water bodies, not end-of-pipe. The Port Authorities of Los Angeles and Long Beach participate in a regional monitoring coalition and facilities operating under the IGP should have similar flexibility to satisfy the TMDL for each water body that they discharge into.

3) TMDL NAL and NEL Compliance should be based on BMP Process

Marine terminals operate on some of the most costly industrial real estate in California. Consequently, available space for treatment options at marine terminal facilities is severely limited and makes compliance options, such as infiltration or retention and treatment problematic and in many cases economically infeasible. We therefore suggest that IGP TMDL TNAL and NEL compliance be available through Regional Board approved BMPs based on BACT as is the practice under the existing IGP for NALs; allowing each facility to pursue an economically achievable BMP and maintain compliance with the IGP.

Current technology either does not exist or is infeasible for use on marine terminal facilities to meet many of the proposed TNAL/NEL limits. Forcing marine terminal facilities to repeatedly install the best available treatment systems that will still fail to reach TNAL and NEL levels leaves them in an untenable situation and needless exposure to lawsuits with no remedy available. TNAL and NEL levels must be achievable with current BAT suitable for use on marine terminal facilities.

4) Additional Outreach, Discussion and Education – Adoption & Enforcement Delay

The proposed adoption of TMDLs, including TNAL and NEL limits is a new paradigm for the IGP and the regulated community. Furthermore, the marine terminal facilities in California only fell under the IGP provisions in 2015 and are struggling to comply with those provisions.

The translation and incorporation of the regional TMDLs into the statewide IGP is complex, especially considering the different methodologies used in the various regional TMDLs, and we believe not appropriately translated in the proposed amendments. We would encourage the Water Board to hold additional workshops and meetings with stakeholders to ensure that the methodologies for TMDL translations are more accurate, better explained, consistent and understood.

Also, the new alternative compliances, which are welcome by our industry, are not well understood in terms of requirements and ramifications. Additional time and outreach should be provided to better flesh out these potential options.

Furthermore, under the proposal the TMDL provisions would enter into force upon adoption of the amendment, as would the specific TNAL and NEL pollutant limits for the majority of the TMDLs in Attachment E. Due to the space limitation mentioned above for on-site treatment, and the lack of off-site treatment in the foreseeable future, there are few if any viable options for compliance available, and regardless it will take time for dischargers to update SWPPPs, MIPs and develop supporting evidence if a Time Schedule Order (TSO) is to be pursued, and the immediate enforcement of those parameters will be difficult to comply with.

For these reasons, we would ask that the Water Board delay adoption of the amendments until further outreach and discussion can occur, and schedule the effective date of any new provisions to align with the adoption and effective date of the renewed IGP on July 1, 2020.

5) Incorporate an Outline of Exceedance and Corrective Requirements Scenarios

Because of the incorporation of TNAL and NEL in addition to NAL, each of which may require different responses, the IGP should include flow chart tools to illustrate steps that should be taken in response to exceedances under each potential scenario. For example, would the corrective action for exceedance of a pollutant NEL also require Exceedance Response Actions (ERA) for the same pollutant?

A flow chart incorporating the multitude of scenarios, such as the flow chart for NAL exceedance in the current IGP Fact Sheet (page 128) would assist in compliance and should be a tool incorporated into the amendments for TMDL requirements.

6) TMDL Requirements Should Only Apply to Facility ID'd Pollutants Discharged Directly into TMDL Impaired Waterbodies

Consistent with the IGP provisions, the TMDL amendments should state that they only apply to dischargers who have identified that the TMDL identified pollutant is an industrial pollutant present at the facility, and who discharge stormwater derived from industrial activities directly to the impaired waterbody.

7) Regulatory Certainty

The amendment should also explicitly state that the discharger is in compliance under whichever provision is applicable and pursued.

For example, under the General Permit Required Actions, the language should state that the Responsible Discharger is in compliance if there is appropriate implementation of the IGP requirements, and in the case of the new compliance options, that the Responsible Discharger is in compliance if there is an approved implementation of an on-site or off-site compliance option, including the design, development and construction of such compliance strategies.

For the TMDL requirements, the language should state that the Responsible Discharger is in compliance if one or more compliance (or attainment) options available, as outlined in the amendments, and approved by the Regional Water Board, are met. Or by adhering to the requirements for TNAL exceedance as outlined in Section XII, or by adhering to requirements for NEL exceedance outlined in Section XX.B.

8) Better Development of Site Specific Tools for Determining Applicable TMDL

The listing of the TMDLs and Impaired Waterways in Attachment E has raised questions as to which Impaired Waterway NAL and NEL limits apply to a facility, since there is potential overlap between neighboring and downstream waterbodies. Whether a discharger is only responsible to meet the limits for the specific waterbody that they are discharging into, or also be responsible for adjoining or downstream waterbodies is unclear. And since there may be different TNAL/NEL limits between those waterbodies for the same pollutants it is unclear as to which limits apply. For example, in the Los Angeles Harbor it is unclear where the demarcations are between the Consolidated Slip, Fish Harbor, Dominguez Channel and receiving waters for the harbor in general.

Because of this, the proposed amendments should make it clear that the Responsible Discharger is only responsible for meeting TMDL limits for the impaired waterbody that they discharge directly into. To help facilitate this, a robust mapping tool should be available for dischargers to easily determine the applicable waterbody for TMDL purposes.

9) Improve SMARTS Capabilities to Assist Tracking of TMDL Related Exceedances

SMARTS should be modified to assist dischargers in determining when an exceedance of a TNAL or NEL has occurred to more easily take follow up actions in a timely manner. SMARTS should also assist dischargers in determining the appropriate control requirements, such as whether a TMDL limit applies versus a limit from Table 2 of the IGP, and ideally which TMDL is applicable to which water body.

We would hope that the adoption of such changes could be incorporated into SMARTS and be available for use prior to the effective date of this proposal.

10) The IGP Should Not Require Duplicative Compliance for the Same Pollutant and Water Body

Under the current proposal, dischargers must comply with existing IGP NAL provisions for particular pollutants even if they must comply with water body specific TNAL and NEL provisions. Since TNALs and NELs are applicable to the specific water body TMDL Waste Load Allocations (WLA), as opposed to the more generalized IGP requirements for NALs, and are typically more stringent than the NALs, dischargers should not be burdened with compliance under both regimes for the same pollutants. Any TMDL based requirements should supplant the IGP NAL requirements for the same pollutant.

Thank you for your consideration of our comments and recommendations. We look forward to continued productive dialogue with the Water Board. Please do not hesitate to contact us if you have any questions.

Sincerely,



John Berge
Vice President