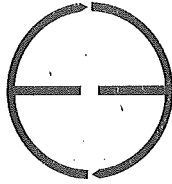


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May 14, 2012

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VIA E-MAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

## RE: Proposed Amendments to Construction General Permit

Dear State Water Resources Control Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the Proposed Amendments to Order No. 2009-0009-DWQ as Modified by 2010-0014-DWQ General Permit for Discharges of Storm Water Associated with Construction and Land Disturbance Activities (CGP).

CCEEB's recommendations for revisions to the Proposed Amendments to the Construction General Permit in response to the Superior Court's Writ of Mandate dated 12/5/2011 are provided below.

### Failure to Justify the Receiving Water Monitoring Triggers

CCEEB urges the SWRCB to not adopt receiving water monitoring triggers until SWRCB has conducted the appropriate analysis to establish the triggers. As the draft Order states on Page 3, "the receiving water monitoring triggers were established at the same levels as the previous numeric effluent limitations (NELs)," being proposed as outside of the range of 6.0 and 9.0 pH units or when the effluent turbidity exceeds 500 NTU for Risk Level 3 and Risk Type 3 construction sites. Per the CGP, an effluent is defined as "any discharge of water by a discharger either to the receiving water or beyond the property boundary controlled by the discharger." As amended, the draft Order would require Risk Level 3 and Risk Type 3 construction sites with direct discharges to surface water to conduct receiving water monitoring whenever their effluent exceeds specified receiving water monitoring.

*Per the California Building Industry Association, et al. v. State Water Resources Control Board (Sacramento County Superior Court Case No. 34-2009-80000338) and the basis on why this draft amendment is drafted, the Sacramento County Superior Court characterized the studies as limited or inconclusive in defining the NELs and concluded that the NELs lacked substantial evidentiary support.*

There is no difference between the proposed receiving water monitoring triggers and the CGP's NELs as the same threshold concentrations for the direct discharge

of storm water to surface water exists. The only distinction between the terms is that the proposed amendment states on Page 3 that an “an exceedance of receiving water monitoring trigger does not constitute a violation of this General Permit.” Although an exceedance of receiving water monitoring trigger does not constitute a violation, an exceedance will give an impression to the general public that an environmental injustice has been committed, which will be highly scrutinized and damage an entity’s image.

The proposed receiving water monitoring triggers are effluent limits and as such, the technical capabilities and cost benefit of using the applicable measures and practices have not been assessed pursuant to 33 U.S.C 1314(b)(4) and 40 C.F.R. 125.3(d)(3). In addition, there is no scientific support or regulatory rationale on why the threshold concentrations for the receiving water monitoring triggers were chosen, which is why the Sacramento County Superior Court invalidated the NELs. CCEEB therefore objects to adoption of the proposed receiving water monitoring triggers until such time that the SWRCB has conducted the appropriate analysis to establish the triggers.

### **Implementation of Receiving Water Monitoring Triggers**

CCEEB believes that at such time that appropriate receiving water monitoring triggers are established, that the following revisions need to be made to the CGP:

- **Receiving Water Monitoring**

**The Proposed Amendments need to retain the exceptions to receiving water monitoring that currently exist in the permit.** The Proposed Amendments eliminate the receiving water monitoring that is required due to the exceedance of an NEL and includes a new requirement for receiving water monitoring that is triggered by “Receiving Water Monitoring Triggers.” Page 3 (2<sup>nd</sup> full paragraph) of the Proposed Amendments states:

“...the State Water Board determined that it was appropriate to require receiving water monitoring for these types of sites with direct discharges to surface waters that exceeded the receiving water monitoring triggers under any storm event scenarios, because these sites represent the highest threat to receiving water quality.”

The existing permit requires receiving water monitoring for Risk Level 3 and Risk Type 3 projects when an effluent monitoring result exceeds the turbidity NEL or is outside the NEL range for pH. Further, it provides exceptions to this requirement when the exceedance occurs during a “Compliance Storm Event” or if the exceedance results from run-on that is caused by a forest fire or any other natural disaster. If receiving water monitoring would not have been triggered by these events under the current permit, it should not be triggered by these events by the new Receiving Water Monitoring Trigger.

The Proposed Amendments should include the same receiving water monitoring exceptions for large storms and run-on that is caused by a forest fire or any other natural disaster.

To address this issue, we recommend the following revisions:

Fact Sheet

- On Page 3 (2<sup>nd</sup> full paragraph) of the Proposed Amendments, revise the sentence cited above to state:

“The State Water Board determined that it was appropriate to require receiving water monitoring for these types of sites with direct discharges to surface waters that exceeded the receiving water monitoring triggers, except when the exceedance is a Receiving Water Monitoring Trigger Exception (*i.e.*, the exceedance is from a storm equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall) or from run-on from a forest fire or any other natural disaster)”.

- On Page 10 of the Proposed Amendments, after the revised paragraph in “Fact Sheet, Section II.I.3, Receiving Water Monitoring, Page 26-27”, add the following paragraph:

“Receiving Water Monitoring Trigger Exception – the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:  
<http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif><http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif>; or

Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster.”

#### Order

- On page 13 of the Proposed Amendments (Order, Section I.H, Findings – Effluent Standards, Page 9-10), retain Finding 55 and revise it as follows:

“This General Permit establishes a 5-year, 24-hour (expressed in inches of rainfall) exception from the Receiving Water Monitoring Trigger for Risk Level 3 and Risk Type 3 dischargers.”

- On page 13 of the Proposed Amendments (Order, Section I.H, Findings – Effluent Standards, Page 9-10) retain Finding 58 and revise it as follows:

“If run-on is caused by a forest fire or any other natural disaster, then the Receiving Water Monitoring Trigger does not apply.”

- On page 16 of the Proposed Amendments (Order, Section V, Effluent Standards & Receiving Water Monitoring, Page 28-29) add the following paragraphs to the new Section C-Receiving Water Monitoring:

“3. Receiving Water Monitoring Trigger Exception – the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:  
<http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif>  
<http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif>; or

Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster.”

#### Attachment A

- On page 19 of the Proposed Amendments (Attachment A, Section F, Effluent Standards & Receiving Water Monitoring, Page 14-15), add the following paragraphs to the new Section 3-Receiving Water Monitoring Triggers:

“c. Receiving Water Monitoring Trigger Exception – the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:

<http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif>  
<http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif>; or

Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster.”

- On page 20 of the Proposed Amendments (Attachment A, Section M.4, LUP Type 2 & 3 Storm Water Effluent Monitoring and Reporting Requirements, Page 36-38), add the following paragraphs to Section d. LUP Type 3 Receiving Water Monitoring Requirements:

“iv. Receiving Water Monitoring Trigger Exception – the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:

<http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif><http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif>; or

Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster.”

#### Attachment E

- On page 26 of the Proposed Amendments (Attachment E, Section I.4.f, Risk Level 3 Water Quality Sampling and Analysis, Page 13) add the following paragraphs to Receiving Water Monitoring Requirements:

“j. Receiving Water Monitoring Trigger Exception – the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:

<http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif>  
<http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif>; or

Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster.”

**The Proposed Amendments need to be clear that the Receiving Water Monitoring Triggers are based on daily averages.** Since the existing permit expresses the NELs as daily average limits, it is important to ensure that it is clear in the Proposed Amendments that the receiving water monitoring triggers are also expressed as daily average limits. This

clarification should be made in all of the places in the Proposed Amendments where the receiving water monitoring triggers are stated. For example:

Attachment A

- On page 18 of the Proposed Amendments, Section 3.a in Attachment A, Section F, Effluent Standards & Receiving Water Monitoring, P 14-15 should be revised to state:

“a. The receiving water monitoring triggers for LUP Type 3 dischargers with direct discharges to surface waters are triggered when daily average effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when daily average effluent turbidity exceeds 500 NTU.

Attachment E

- On page 26 of the Proposed Amendments, the revisions to “Receiving Water Monitoring Requirements g.” in Attachment E, Section I.4.f, Risk Level 3 –Water Quality Sampling and Analysis, Page. 13 should be revised to state:

“g. In the event that a Risk Level 3 discharger’s effluent exceeds the daily average receiving water monitoring trigger of 500 NTU turbidity or the daily average receiving water monitoring trigger of pH range 6.0-9.0 during any site phase when there is a high risk of pH discharge contained in this General Permit and has a direct discharge into receiving waters, the ...”

**The Proposed Amendments need to be clear that the Receiving Water Monitoring Triggers are to be compared to daily averages of monitoring results.** Since the existing permit expresses the NELs as daily average limits and it determined compliance with the NELs based on the average of each day’s monitoring results, it is important to ensure that it is clear in the Proposed Amendments that the effluent monitoring data is to be compared in the same manner. This clarification should be made in all of the places in the Proposed Amendments where the determination of compliance with the receiving water monitoring triggers is stated.

**The Proposed Amendments need to be clear that only the specific parameter (pH or turbidity) that exceeded the Receiving Water Monitoring Trigger needs to be monitored in the receiving water.** The Proposed Amendments should be clear that if the pH monitoring results is outside of the receiving water monitoring trigger range for pH, only pH is required to be monitored in the receiving water. Similarly, if the turbidity monitoring results exceeds the receiving water monitoring trigger for turbidity, only turbidity and SSC is required to be monitored in the receiving water. This clarification should be made in all of the places in the Proposed Amendments where receiving water monitoring requirements are stated.

- **ATS NEL Exceedance Trigger**

The existing permit only requires receiving water monitoring in the event the ATS turbidity effluent limit is exceeded on a Risk Level or Risk Type 3 project. Specifically, it does not require receiving water monitoring when an ATS exceeds its turbidity limits on a Risk Level or Risk Type 1 or 2 project. However, the Proposed Amendments include a new trigger in Attachment F that would require receiving water monitoring when an ATS effluent limit is exceeded for all Risk Level or Risk Type projects. This new requirement goes beyond the

limited scope of revising the permit in accordance with the Superior Court's Writ of Mandate and it should be revised to only apply to Risk Level or Risk Type 3 projects.

o **Clean-up Edits**

General

- o In sections where the whole section or whole subsections are deleted, replace the section and subsection titles with "Reserved" and retain the numbering system. This will eliminate the need to renumber and revise numerous references throughout the permit and Fact Sheet

Fact Sheet

- o On Page 10 of the Proposed Amendments, revise the first paragraph in "Fact Sheet, Section II.I.3, Receiving Water Monitoring, Page 26-27" to clarify that this requirement applies to each of these discharge types when they have a direct discharge to a receiving water, to state:  
"In order to ensure that receiving water limitations are met, discharges subject to ~~numeric effluent limitations~~ receiving water monitoring triggers or numeric effluent limitations (i.e., Risk Level 3, LUP Type 3, and ATS with direct discharges into receiving waters) must ...."
- o On Page 11 of the Proposed Amendments in "Fact Sheet, Section II.I.3, Receiving Water Monitoring, Page 26-27", revise "~~b. NEL Violation Report~~" to "~~a. NEL Violation Report.~~"

Order

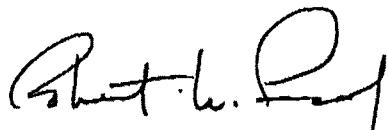
- o On Page 15 of the Proposed Amendments in "Order, Section V, Effluent standards and Receiving Water Monitoring, Page 28-29", revise "Table 7" to "Table 1."

Attachment A


- o On Page 17 of the Proposed Amendments in "Attachment A, Section F, Effluent standards and Receiving Water Monitoring, Page 14-15" revise "Table 8" to "Table 1."
- o On Page 18 of the Proposed Amendments in "Attachment A, Section F, Effluent standards and Receiving Water Monitoring, Page 14-15" revise "3. Receiving Water Monitoring Triggers" to "2. Receiving Water Monitoring Triggers."
- o On Page 20 of the Proposed Amendments in "Attachment A, Section M.4, LUP Type 2&3 Monitoring and Reporting Requirements, Page 36-38" revise the reference in "Section d.iii.3. from "Section M.4.d" to "Section M.4.c."
- o On Page 21 of the Proposed Amendments in "Attachment A, Section M.4, LUP Type 2&3 Monitoring and Reporting Requirements, Page 42-43", revise the upper pH Receiving Water Monitoring Trigger from "9.0a" to "9.0."

CCEEB welcomes the opportunity to provide SWRCB with these comments. If you wish to discuss this matter further, please contact Bob Lucas at 916-444-7337.

Sincerely,



Robert W. Lucas  
Waste & Water Quality Project Manager



Gerald D. Secundy  
President

cc: Matt Rodriguez, Secretary, California Environmental Protection Agency  
Jackson Gualco, The Gualco Group, Inc.