SVMG

SPECIAL HEARING
2/3/05
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Ms. Debbie Irvin, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

February 3, 2005

SUBJECT: Silicon Valley Manufacturing Group (SVMG)
Comments on the Draft General Permit for Industrial Storm Water Discharges

Dear Ms. Irvin and Honorable Members of the Board:

Thank you for the opportunity to provide comments on the permit language and requirements under the proposed Industrial General Permit for Storm Water Discharges.

The Silicon Valley Manufacturing Group (SVMG), founded in 1978 by David Packard of Hewlett-Packard, represents ~185 of the Valley's most respected employers. SVMG members collectively provide nearly 225,000 jobs, or one of every four jobs in Silicon Valley. SVMG member companies represent a wide variety of businesses and activities, impacted differently by these proposed requirements.

1) Section I. Discharge Prohibitions, item 2 states: "... shall not contain pollutants that cause or threaten to cause pollution, contamination or nuisance as defined in the California Water Code (CWC)."

This statement creates a 'zero tolerance' standard. Pollutants may be present in storm water – through atmospheric deposition, back-ground environmental or soil conditions, or through run-on from other properties. The phrase as it is creates a presumption of responsibility for all sources of pollutants, even those outside the control of the regulated facility.

A suggestion for alternate language: "... shall prevent to the extent possible through implementation of required minimum and facility-specific BMPs, discharges of pollutants that cause....."

2) Use of EPA Benchmarks. Performance benchmarks can be a 'broad brush' indicator of BMP effectiveness, or assist in identifying situations or facilities with unique circumstances. However, we are very concerned that these benchmarks NOT be used to strictly determine that a SWPPP is not protective, has not been properly developed or that additional sampling is necessary. Reasons for this include:
   a. The enormous variability in facility circumstances – paved vs. unpaved, soils with high background metals content, locations with high plant material impacts (wind-blown pollen, ash, dust, vehicle tire and exhaust particulate, etc.)
   b. The variability in sampling techniques
   c. The variability in storm events and wet seasons year-to-year.

Effluent limitations based on benchmarks do not take into consideration these and other variables which cannot be controlled. Facilities with waste water discharge permits can meet specific effluent limitations because all the factors which influence compliance are presumably within their control. Storm water discharges are not comparable. Benchmarks or effluent limits for storm water, if applied without consideration for site-specific and local environmental conditions, are irrational. It is simply not possible to control for all of the variables that may occur.

4) Section V. 7. c. asks that dischargers 'certify' several things in response to corrective actions following discharges deemed to be exceedences, including: "... and why it will not occur again under similar circumstances." Regulated facilities may not be able to do this as it sets up a potential 'catch 22'. If they do not certify as requested, they risk further 'non-compliance' However, certifying that some future thing will not happen puts them in legal jeopardy, as they will have attested to fault before the event occurs, should it ever occur.

Alternate language that asks the facility to certify that they have implemented any necessary and appropriate BMPs in order to prevent future exceedences should be sufficient.

5) Section XI. Inspections and Entry 8.a.e. "Photograph or videotape outdoor areas of the facility to document compliance or non-compliance with this General Permit".

For the vast majority of regulated facilities, this requirement will not pose a problem. However, certain secure facilities (DOE, DOD, various defense contractors) must adhere to very specific federal site security regulations which strictly prohibit photography or video on site. These facilities recognize the need to demonstrate compliance and are also compelled to comply with security regulations. We strongly urge you to clarify with this segment of your regulated community how they can meet the objectives of the "Inspections and Entry" provisions of this regulation, without compromising their other objectives.

Suggested language to address this issue may be: "Photograph or videotape outdoor areas of the facility to document compliance or non-compliance with this General Permit. In the case of facilities complying with national security requirements, alternative documentation shall be utlized".

6) Conditional Exclusion Requirements for No Exposure Certification (Attachment S) are unreasonable when expanded to include particulate matter from Roof Stacks and Vents. The discharger must somehow discern between air borne particulate from other sources and its own particulate. The actual affect of the expanded definition is that few companies with air intakes and exhaust would be able to qualify since the same air that they use is the ambient air with the same particulate fingerprint. There is no environmental improvement from this expansion since the particulate in the air contribution is the same.

7) Attachment S also now includes industrial waste bins. This also includes scrap metal bins which are bound for recycling at a scrap metal facility. It is unreasonable to eliminate a No Exposure Certification (NEC) at a facility with these sources when scrap metal recyclers have scrap metal piles that are exposed and they are not required to cover those materials. Those facilities can apply for a NEC with other mitigation methods, but a facility with a scrap metal recycling bin would not be able to apply for the same NEC without a covered and sealed bin.

We suggest that Attachment S be changed to read "from industrial sources" to the Roof Stacks and Vents" section. Additionally, Attachment S should be amended to specify that scrap metal bins bound for recycling are exempt.

8) General Comments.
   a. Best use of resources. SVMG appreciates the position the SWRCB is in regarding compliance with federal standards and guidelines. However, the State's trend away from iterative BMPs, and toward sampling and still more sampling, with the stated objective of effluent limits is not one we support as being an effective use of limited resources or one that will achieve real environmental benefits. Instead, it may be much more cost effective and achieve real environmental results, to apply more resources to enforcement of BMP implementation. This would mean more site inspections and more 'fix it' letters to facilities needing to improve their performance.

And, if facilities are paying hundreds of dollars (or more) for their storm water permits, then it is fair to expect site visits, and feedback on annual reports. Contrary to some notions, regulated facilities value inspections, especially when they are consistent across industry sectors. This enables a level economic playing field and prevents the 'good guys' from being disadvantaged because the 'bad eggs' never get caught.

b. Command and Control vs. Compliance and Improvement. SVMG recognizes the powerful simplicity behind the 'command and control' method of environmental regulations. It makes it easier to see who is a 'bad guy' and who is a 'good guy'. But, it sets in motion a framework for defining success as 'catching bad guys', not 'how much cleaner is the water'. Furthermore, existing 'command and control' strategies have only gotten us to partial success in cleaner air, water and land. The remaining sources of environmental degradation are mostly diffuse, highly variable, and small and do not lend themselves to command and control techniques.

As presented, the Draft General Permit for Industrial Storm Water Discharges, puts significant additional economic pressures on businesses. California businesses are already disproportionately burdened as compared to other states. The SWRCB has not provided any clear reasoning as to why these significant additional requirements for sampling have been included in this Draft General Permit, nor has the SWRCB has not provided cost vs. benefit analyses to explain how the additional compliance burdens and costs are justified by anticipated water quality improvements. SVMG believes we must be stewards of both our environmental and our economic resources and the costs of this proposed General Permit should be considered.

Thank you again for the opportunity to provide comments.

Sincerely,

Margaret Bruce
Director, Environmental Programs
Silicon Valley Manufacturing Group

CC:
Dr. Allan Lloyd, Secretary, CalEPA
David Crane, Special Advisor to Governor Schwarzenegger on Jobs and Economic Growth