



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

#40

File 510.1312



October 15, 2012

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

Dear Ms. Townsend,

Comment Letter - 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 154 existing 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.

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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:

1. The “No Exposure Certification” should be filed electronically just once during the term of the Permit, at no cost to the applicant. The burden should be on the business operator to truthfully report the nature of their operations (with appropriate penalties for misrepresentation) and the burden to find noncompliance should remain with the lead regulatory agency (State and Regional Water Quality Control Boards).
2. Revenues generated by the Permit should be used to provide local compliance assistance and permit oversight specifically targeting non-filers. Such activities have the potential to improve water quality.
3. Regional Water Boards are primarily responsible for enforcement of this General Permit (Order P. 13, Section R.79) and RWQCBs should take the lead on identifying non-filers and following up on sites filing No Exposure Certifications. Given the proliferation of Permittees under the new Permit and the retention of all Permit revenues by the State and Regional Boards, it follows that these agencies should assume the primary burden of monitoring and enforcement.

These issues are discussed in more detail below.

1 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. It is inappropriate to require a business with no stormwater pollution exposure to pay each year to hire a QISP II in order to re-state their eligibility and confirm what has already been established. CASQA estimates that initial filing and preparation costs will range from \$2,000-\$4,400 dollars. 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. If there is a charge for the repeated electronic filing of NECs, the State should specify to what purpose these fees will be applied, since it’s unclear how the discharger’s cost of annual re-certification relates to the State’s cost to automatically and passively receive these documents.

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 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.

2 Revenues generated by the Permit should be used to provide local compliance assistance and permit oversight for affected industries.

Fresno Metropolitan Flood Control District conducted a workshop with 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, a 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; up to \$500,000 from the Fresno-Clovis area, depending on the eligibility of industries for the No Exposure Exemption.

3 The New Industrial General Permit specifies that Regional Water Boards are primarily responsible for enforcement of the Permit (Order P. 13, Section R.79). This General Permit recognizes that Regional Water Boards have the authority to protect the beneficial uses of receiving waters and prevent degradation of water quality. As such, Regional Water Boards may modify monitoring requirements and review, comment, approve or disapprove any Discharger reports required under this General Permit. Further, Permit revenues accrue to the Regional Water Boards and the State, providing the means by which Permit monitoring and enforcement may be implemented. Given the proliferation of Permittees under the new Permit and the retention of all Permit revenues by the State and Regional Boards, it follows that those agencies should assume the primary burden of monitoring and enforcement, including the identification of non-filers and following up on sites filing No Exposure Certifications.

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The State Water Resources Control Board claim that the permit fees will be expended on State and Regional Board costs and staffing provides no assurance that the monies generated by the Industrial General Permit program will actually be applied to resolving problems caused by industrial stormwater discharges. The Permit should include a specific business plan that describes how the State's Industrial General Permit revenues will be spent, what performance measures will be used to evaluate the effectiveness of the State and Regional programs, and what outcomes will be achieved during the permit term.

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 of my staff at (559) 456-3292.

Sincerely,



Bob Van Wyk
General Manager-Secretary

BVW/jt

cc: Congressman, Jeff Denham, US Congress
Congressman, Devin Nunes, US Congress
Congressman, Jim Costa, US Congress
Senator Tom Berryhill, California State Senate
Senator Michael J. Rubio, California State Senate
Assemblymember Linda Halderman, M.D., California State Assembly
Assemblymember Henry T. Perea, California State Assembly