

#73

October 19, 2012

By e-mail: commentletters@waterboards.ca.gov

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



Re: Comment Letter – Industrial General Permit

Dear Ms. Townsend and Members of the Board:

The following comments on the Draft General Permit for the Discharge of Storm Water Associated with Industrial Activities are submitted on behalf of Rio Tinto Minerals, Inc., the owner of U.S. Borax's ("USB") industrial facilities in California.

Comment No. 1: Level 1 Exceedance Response Actions – Sections XII.C and XII.D

USB requests two modest changes to the language pertaining to Exceedance Response Actions (ERAs). Under the Draft Permit, once a Level 1 ERA is triggered by a Numeric Action Level (NAL) exceedance, a discharger will have only one year to demonstrate that the NAL has been attained through the use of Level 1 BMPs and SWPPP measures. However, in some cases, BMPs will need to be in place for longer than one year before effectiveness can be fully evaluated. **USB has reviewed the comments prepared by the California Stormwater Quality Association (CASQA) on the Draft Permit, and concurs that Section XII.D should be revised to provide for extensions.** This process would be similar to the BMP Implementation Extension Report (BIER) process established for Level 2 implementation.

Specifically, USB requests that the Board accept CASQA's proposal to revise Section XII.D.1 as follows:

1. A Discharger's Level 1 status for any parameter(s) immediately and automatically changes to Level 2 status for the same parameter(s) if sampling results indicate an NAL exceedance in any subsequent reporting year for the same parameter(s).

a. Dischargers may document the need for a delay in triggering Level 1 for up to one year if additional time is needed to evaluate the effectiveness of implemented BMPs required under Level 1 by certifying and submitting a Level 1 BMP Effectiveness Assessment Extension request through SMARTS.

The extension request shall be prepared by a QISP I and include the following items, as applicable:

- i. Reasons for the time extension, and
- ii. A description of the new BMPs and schedule for completing the effectiveness assessment.

Comment No. 2: Level 2 Exceedance Response Actions – Section XII.D

2

Additionally, once a Level 2 ERA has been triggered, the Draft Permit does not clearly allow for further consideration and implementation of operational source control BMPs prior to implementing structural and/or treatment control BMPs. Although the Draft Permit can be read to allow for such consideration, the Board should remove any ambiguity and make this explicit. Again, USB concurs with CASQA's comments on this point, and requests that Section XII.D.2 be revised per CASQA's suggestion as follows:

2. Within 120 days of obtaining Level 2 status, the Discharger shall:
 - a. Complete an evaluation of the facility's SWPPP and all the pollutant sources that may have contributed to the NAL exceedance(s) and identify whether additional BMPs, including structural and/or treatment control BMPs, are necessary to prevent or reduce the industrial pollutants that exceeded the NALs in industrial storm water discharges. The Discharger may limit this evaluation to the parameter(s) exceeding the NAL(s); and,
 - b. Certify and submit via SMARTS a Level 2 ERA Technical Report prepared by a QISP II that includes the following:
 - i. Results of the Level 2 ERA evaluation;
 - ii. A detailed description of any additional BMPs, including structural and/or treatment control BMPs and SWPPP revisions for each parameter that exceeded an NAL;
 - iii. The implementation schedule for the additional BMPs and, where necessary, for the design and construction of the identified treatment and/or structural source control BMPs; and,
 - iv. If the Discharger intends to certify and submit a Demonstration Technical Report in lieu of additional ~~structural and/or treatment control~~ BMPs and SWPPP revisions for each parameter that exceeded an NAL, the Discharger shall certify and submit a schedule and a detailed description of the tasks required to complete the Demonstration Technical Report.
3. Based upon the above evaluation and Level 2 ERA Technical Report, the Discharger shall, as soon as practicable, but no later than one year from obtaining Level 2 status:
 - a. Implement any additional ~~structural and/or treatment control~~ BMPs and SWPPP implementation measures;

- b. Revise the SWPPP if applicable; and,
- c. Complete the Demonstration Technical Report, if applicable.

Comment No. 3: Conditions for Notice of Non-Applicability – Findings, B.22

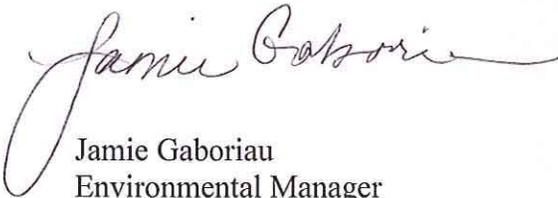
The Draft Permit provides in Finding B.22 that a facility otherwise subject to the General Permit will be excluded from coverage if it is “engineered and constructed so as to never discharge industrial storm water to waters of the United States,” and subject to submittal of a Notice of Non-Applicability (NONA) and a NONA Technical Report via SMARTS. The Draft General Permit Fact Sheet currently further states: “Discharges that do not enter waters of the United States” (Section II.2.d), and includes Footnote 7, which states: “To avoid discharging without a permit, violating the CWA, and facing possible enforcement action, Dischargers should be certain that no discharge of storm water to waters of the United States could occur under any circumstances.”

3 USB supports the proposed language of the General Permit on this issue but believes that the “any circumstances” language in Footnote 7 in the Fact Sheet should be qualified to make clear that a NONA is not invalidated due to an act of God (including a significant earthquake or storm of a size exceeding a 100-year, 24-hour storm), act of war, or other unforeseeable condition.

Conclusion

USB appreciates the opportunity to offer these comments and applauds the State Board staff for its efforts to date. USB requests that the staff further revise the General Permit and Fact Sheet as described above prior to its adoption by the State Board.

Sincerely yours,



Jamie Gaboriau
Environmental Manager
Rio Tinto Minerals/U.S. Borax

cc: Robert L. Falk, Morrison Foerster
Brent Rush, Rio Tinto Minerals