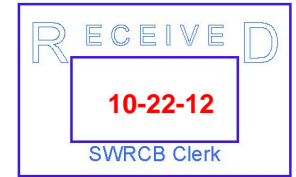




Reference: 012000.102

October 22, 2012

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



Subject: Comment Letter on the 2012 DRAFT Industrial General Permit

Dear Mrs. Townsend:

SHN Consulting Engineers & Geologists Inc. (SHN) appreciates the opportunity to comment on the July 2012 draft General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (draft Industrial General Permit).

SHN is a certified California small business consulting firm located in Eureka, California. We have been assisting clients situated in the wettest part of California with compliance issues since 1979. Some of our industrial clients include asphalt plants, creameries, harbor districts, landfills, lumber trucking facilities, municipalities, power generators, timber companies, and transit authorities. Some are small facilities with a single discharge point that rarely discharges and others are large multi-facility operations with many discharge points. Regardless, they all cope with an average of approximately 40 inches of precipitation per year.

As laws are promulgated and regulations arise, SHN has been keeping our clients and community abreast of how these changes may affect them. We recently hosted a presentation for our clients in which we summarized the draft 2012 Industrial General Permit and changes from the 1997 permit. We used this opportunity to talk to our clients and hear their concerns regarding the proposed changes. SHN has taken the time to compile their concerns, and we want to bring to your attention what some industries in the wettest part of California are concerned about.

Questions and Concerns

Below is a list of questions and concerns our clients have raised.

- 1. Section XI.B.2 defines a Qualifying Storm Event (QSE) as a discharge of storm water that occurs from a storm event that has produced a minimum of 1/10 inch of rainfall within the preceding 24 hour period as measured by an on-site rainfall measurement device.*

One tenth of an inch of precipitation can be accumulated by heavy fog drip in Humboldt County and Northern Coastal California. Although 0.10 inch of precipitation falling in an approximately 2-hour period will produce runoff, this quantity accumulated over a 24 hour period does not produce runoff. This is an unreasonable quantification of precipitation to look for discharge. During the wet season, observations may need to be conducted every day, due to the frequent precipitation we receive on the north coast. Calling 0.10-inch over 24 hours a QSE equates to industries on the north coast expending resources to monitor and keep records for observations of potential discharges that likely aren't occurring. This definition of a QSE is a tremendous financial burden to north coast industries.

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We recommend increasing the defined QSE to a half-inch (0.5-inch) of rainfall within the preceding 24 hour period. This is the QSE currently defined under the recently adopted construction general permit. This quantity has served the north coast well with regard to the construction general permit.

- 2. We do not see any mention of Alternative Monitoring in the new 2012 Draft Industrial General Permit. Specifically, in 2010, the Ninth Circuit Court of Appeals held that storm water runoff from roads used primarily for logging where water is collected in a system of ditches, culverts, and channels, then discharged into streams and rivers constitutes a point source discharge of pollutants subject to the National Pollutant Discharge Elimination System (NPDES) permitting requirements of the federal Clean Water Act (Northwest Environmental Defense Center v. Brown, 617 F.3d 1176 (9th Cir. 2010) (NEDC).*

In light of the NEDC decision, one of our clients has prepared a Notice of Intent to obtain coverage under California's General NPDES Permit for Discharges of Storm Water Associated with Industrial Activities. Also as required by the Industrial General Permit, a storm water pollution prevention plan (SWPPP) and a storm water monitoring program (SWMP) was prepared. In order to maintain continuity between their current practices, meet the Industrial General Permit's objectives for storm water monitoring programs, and maximize water quality protection, an alternative storm water monitoring program (ASWMP) has been proposed, which will be submitted to the California Regional Water Quality Control Board (RWQCB) for approval. Alternative monitoring programs are encouraged by the current Industrial General Permit, provided they meet applicable requirements.

We hope to see language similar to the current Industrial General Permit regarding alternative monitoring in the final Industrial General Permit.

- 3. The training qualifications for each Qualified Industrial Storm Water Practitioner (QISP) level are not well defined and are subjective. Specifically, the QISP I training is designed for an individual with little or no environmental background or experience, and a QISP III training is designed for environmental professionals.*

We request a QISP level qualification including the number of years experience, similar to professional licensing requirements, should be defined.

- 4. Assuming the level of effort to receive QISP training will be similar to that of the construction general permit, the cost to train a QISP I is prohibitive for north coast industries. Timber is a dying industry on the north coast; however, there are a lot of partially active timber-related facilities remaining with active notices of intent. Having a "bought and paid for" trained QISP I to monitor each discharge location for every QSE is not realistic. We understand that you are compiling the committee for the QISP training program.*

SHN recommends either more trainer of records for remote areas to minimize the cost to acquire QISP I level training or allowing QISP III to become trainers of QISP I.

5. *Humboldt Bay is section 303(d) listed as impaired for polychlorinated biphenyls and dioxins.*

We are concerned about the cost of the burden of proof that industries are not discharging these particular contaminants. These are extremely expensive tests to run. Further, the analytical reporting limits for dioxins are in parts per quadrillion. Octachlorodibenzodioxin (OCDD) is an environmentally prevalent congener in the dioxin family. Due to its stability and long half life, its presence is ubiquitous. However, its presence does not designate the discharger as a source of dioxin.

Sampling for 303(d) listed impairments should be associated with the potential for the facility to generate that impairment. Please make it clear that industries do not have to analyze for an impairment to prove the impairment is not a being discharged.

6. *An industrial client who currently uses the State Water Board's Stormwater Multiple Application and Report Tracking System (SMARTS) for their Industrial General Permit submittals has indicated the SMARTS system does not currently allow for submitting industrial storm water data collected over multiple days from different discharge locations. This will be a common occurrence for those facilities that have multiple discharge locations.*

Please update the system to account for multiple discharge locations collected over multiple days.

7. *Section XI.C.6 defines sample frequency reduction requirements.*

The permit language should suggest when that monitoring period starts. Will that be 2013? Also, language should indicate if industrial sites who can show eight (8) consecutive sampling events of no Numeric Action Levels exceedances, as defined in the draft Industrial General Permit, and having occurred just prior to the adoption date of this draft, are also eligible for a reduction of monitoring frequency. If statistical data already exists from a facility that shows compliance with the draft Industrial General Permit, the facility should not be burdened with an increase in monitoring requirements.

8. *Section XIII.C is unclear about when exactly the Level 1 ERA report is due.*

Specifically, section XIII.C. 2 states "Within 60 days of obtaining Level 1 status, Dischargers shall complete an evaluation of the facility's SWPPP and all the industrial pollutant sources at the facility." Yet it says nothing of a submittal.

Section XIII.C.3 confusingly goes on to say "as soon as practicable, but no later than October 1 of the following reporting year," the discharger shall implement new source controls (XIII.C.3.a), revise the SWPPP (XIII.C.3.b), and submit the Level 1 ERA report with "an implementation schedule and detailed description for additional operational and/or source control BMPs and SWPPP revisions" (XIII.C.3.c). It seems Section XIII.C.3 puts the cart before the horse in that Section XIII.C.3.a and XIII.C.3.b request implementation, and Section XIII.C.3.c wants a schedule for implementation.

Please clarify if the Level 1 ERA report is due within 60 days of obtaining Level 1 status, or before October 1 of the following reporting year.

9. *In line with the comment/request also being made by California Stormwater Quality Association, SHN requests that a process similar to the BMP Implementation Extension Request (BIER) allowed for Level 2 status, also be allowed for the implementation of operational source controls identified during the Level 1 evaluation process. There are circumstances where operational source controls BMPs reasonably must occur for an additional permit year before their effectiveness can be evaluated.*

10. *Section I.A.15 indicates that information provided to the RWQCB shall comply with the Homeland Security Act and any other federal law that concerns security in the United States.*

The submittal of certain industrial facility chemical storage locations as indentified on site maps required to be uploaded to the public access SMARTS may compromise the intents of the Homeland Security Act. Specifically, a malicious person could use the information of chemical storage facilities to create a threat to public health or safety.

We recommend that facilities that are not comfortable disseminating the information regarding their storage of chemicals have the option to submit hardcopies of site maps to their local Regional Water Quality Control Board, or are not required to note the specific chemicals on the site map uploaded to SMARTS.

11. *Section XI.A.2.a indicates that visual observations of storm water discharge “shall be conducted during scheduled facility operating hours and within the first four (4) hours of the start of discharge; or the start of facility operations if the QSE occurs within the previous 12 hour period (storms that begin the previous night).”*

This section needs to be further qualified with the statement of “during daylight hours.” Facilities that operate 24 hours a day should not be expected to search for storm water discharges and collect storm water samples in the middle of the night. Language in this section would not absolve the facility from performing basic SWPPP functions with regard to spill control and prevention, non-storm water discharge prevention, etc., but it is a health and safety issue to have persons walking around a facility at night during a storm looking for storm water discharges. This language would further prevent the subjective nature of any question that may arise in a litigious situation regarding the safety of NOT conducting the observation in the middle of the night.

SHN requests that Section XI.A.2.a include the language “Visual observations shall be conducted *during the daylight hours of scheduled facility operating hours...*”

Summary

The north coast area already has a depressed economy. We believe that more time is needed to understand the ramifications of this draft Industrial General Permit, because the economical analyses of the cost implementing the current Industrial General Permit versus implementing the draft 2012 Industrial General Permit has only been evaluated on a very rudimentary level (primarily assumes one [1] discharge location). Therefore, we suggest that the cost impacts are further developed, evaluated, and factored into a final Industrial General Permit.

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Respectfully submitted,

SHN Consulting Engineers & Geologists, Inc.



Mike Foget, PE
Environmental Services Director

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