



Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907



Kevin Buchan

Senior Coordinator, Bay Area Region and State Water Issues

VIA ELECTRONIC MAIL

September 18, 2013

Chair Marcus, and Members of the Board
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

Subject: WSPA Comments on the Revised Draft Industrial Storm Water Permit

Dear Ms. Marcus and Members of the Board,

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, Washington and Hawaii.

On February 18, 2005 and on October 22, 2012, WSPA submitted extensive comments and a technical report to the SWRCB on the Industrial Storm Water General Permit (IGP). We believe the information in this 2005 report continues to be timely and relevant in the current permit adoption process, and supports many components of the SWRCB's draft permit, as noted below. WSPA incorporates by reference our previous comments from 2005 and 2012.

Additionally, WSPA supports by reference the comments submitted by CASQA.

These comments provide clarification regarding our support of numeric action levels (NALs), and the quantitative information required to develop the use of numerical effluent limits (NELs).

1) Compliance Storm Should Be Added to the 2013 Draft IGP

WSPA agrees that NELs are not feasible to include in this permit at this time, because the data and information to support the development of appropriate NELs do not exist. The information on storm size and intensity, the variability of storm flows and constituent concentrations in stormwater runoff from industrial facilities, receiving water mixing and dilution, and the performance capabilities of BMPs and other treatment controls required to develop scientifically defensible NELs is substantial.

WSPA also supports the inclusion of design storm criteria for BMPs in the 2013 Draft IGP, and suggests further that a “compliance storm” should be added and applied to the NALs. Inclusion of a compliance storm would recognize that facilities typically do not have the capability, land area, or resources to design control measures for extraordinarily large storm events, and thus that water quality from extreme storm events would not be fully treated or controlled through BMPs.

Given the eventual addition of TMDLs to the IGP, these TMDLs contain WQBELs that are the equivalent of NELs. These more stringent limitations should be the subject of “compliance storm” limitations for the purpose of enforcement. Therefore, we recommend that a compliance storm be defined for the IGP.

Further, samples collected during extraordinary events should be excluded when comparing analysis results to the NALs specified in the permit, and that additional ERAs would not be required for these extreme events. Under such extreme conditions, ERAs become less relevant or meaningful.

2) Receiving Water Limitations

Receiving Water Limitations (Section VI, page 2) should specifically include the control of pollutants in discharges through a BMP selection process as allowed under the Clean Water Act. The selection and evaluation of BMPs through such a defined process will address technology-based and water quality-based effluent limits.

3) Clarification that BMPs May be Used to Implement TMDL Waste Load Allocations

WSPA appreciates that the 2013 Draft IGP allows the use of BMPs to comply with the waste load allocations (WLAs) from total maximum daily loads (TMDLs). However, Regional Water Quality Control Boards (RWQCBs) can often differ in their approach to implementing TMDL requirements in NPDES permits, and the 2013 Draft IGP appears to provide discretion for disallowing BMP-based approaches to TMDL implementation.

WSPA recommends that the language of Section I.F.41 (p. 7 in the 2013 Draft IGP) specify that, where a Discharger provides sufficient information, the RWQCB must allow the discharger to use a BMP-based approach.

4) Requirements for New Dischargers

Section VII.B of the 2013 Draft IGP states that “new dischargers” who apply for discharge to a 303(d) listed waterbody will be ineligible for permit coverage unless they are able to submit information or data that,

“Demonstrates that the discharger has eliminated all exposure to storm water of the pollutant(s) for which the water body is impaired, and documents the procedures taken to prevent exposure onsite, and retains such documentation with the SWPPP at the facility”

“Demonstrates the pollutant for which the water body is impaired is not present at the site, and retains documentation of this finding with the SWPPP at the facility; or,

“Demonstrates the pollutant discharge will not cause or contribute to an exceedance of a WQS. This is demonstrated if: (1) the discharge complies with WQS at the point of discharge, or (2) if there are sufficient remaining WLAs in an approved TMDL and the discharge is controlled at least as stringently as similar discharges subject to that TMDL.” (pp. 21-22 in the 2013 Draft IGP)

WSPA believes that these requirements improperly impose a NEL equivalent to the water quality objective, and treat existing and new dischargers unequally.

Section VII.B does not appear to consider if the pollutant(s) is associated with a new discharger’s industrial activity, a non-industrial source, or a natural background source; these considerations are included in the 2013 Draft IGP only for dischargers that have already obtained Permit coverage.

If a waterbody is impaired by a pollutant that is listed primarily through atmospheric deposition—a process that would deposit the constituent throughout the area, and across a wide range of land use types—it is possible that a new discharger would be unable to make the findings quoted above. This would prevent the discharger from obtaining IGP coverage. Similarly, if a waterbody is impaired by legacy sources, even if current discharges are negligible, a new discharger may be prevented from applying for and obtaining IGP coverage.

WSPA requests removal of Section VII.B.

5) Return to Baseline Levels

The 2013 Draft Permit allows a permittee at Level 2 to demonstrate either (1) implementation of industrial activity BMPs, (2) non-industrial pollutant source pollutants, and (3) natural background pollutant source pollutants.

Dischargers who make an Industrial Activity BMPs Demonstration can, under certain circumstances, return to Baseline Status. However, permittees who choose demonstration options (2) or (3) cannot return to Baseline Status and thus would continue to be subject to Level 2 ERAs (p. 50 in the 2013 Draft Permit). Level 2 permittees would be ineligible to reduce their sampling frequency and would potentially also be subject to additional requirements and restrictions imposed by their local regional water board (pp. 58 -60 in the 2013 Draft Fact Sheet).

WSPA believes this unfairly penalizes and subjects dischargers under the IGP to additional permit requirements for pollutants that do not originate from their facility or industrial processes (e.g., run-on from neighboring sources or atmospheric deposition of pollutants).

We note that the 2008 EPA Multi Sector General Permit (MSGP), from which the 2013 Draft Permit's NAL values are taken, does not require a permittee whose exceedance is due to natural background sources to implement any corrective actions:

"...if the average concentration of a pollutant exceeds a benchmark value, and you determine that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, you are not required to perform corrective action or additional benchmark monitoring..." (p. 37 in the MSGP 2008)

WSPA recommends allowing a permittee to return to the Baseline status if all ERAs are met, even if the exceedances are due to non-industrial pollutant sources or natural background conditions. We also recommend that the SWRCB require the regional boards to provide detailed justification whenever additional requirements are imposed on permittees at Level 1 and Level 2.

6) Sampling of Two QSEs Per Year

WSPA is concerned that the 2013 Draft IGP requires four qualifying storm events (QSEs) to be sampled, while earlier drafts of the permit required sampling only two. No clear justification for this change has been provided.

WSPA requests the SWRCB amend the IGP to allow sampling of two QSEs per year, or provide an explanation of how the benefits of additional monitoring justify the costs.

7) Compliance Groups

WSPA requests the SWRCB clarify that multiple facilities operated by one company may form a compliance group. The 2013 Draft IGP directs each compliance group to designate a compliance group leader who is a QISP. That leader is required to conduct annual site inspections of group facilities.

WSPA is concerned that this requirement may preclude the formation of compliance groups between facilities in a similar industrial type because of trade-secret and proprietary issues. The formation of a compliance group made up of facilities owned by the same company would facilitate the company's efforts to enhance stormwater quality while also adequately protect sensitive trade secret information.

8) Additional Points

WSPA requests that the SWRCB address the following additional points of concern:

- WSPA requests the term "significant materials" be clearly defined (p. 26 of the 2013 Draft Permit).
- WSPA requests, consistent with Staff representations at the August 14, 2013 workshop, that only specific sections of the SWPPP (i.e., those that require engineering analyses or expertise) must be prepared by a CA licensed professional engineer.
- WSPA request clarification of the No Discharge Certification (NDC) requirements of the permit. Currently, the NDC requirements are based on the "historic maximum precipitation event" (p. 65 in the 2013 Draft Permit), which is undefined. Consistent with the request for a compliance storm event, we request that a specific, smaller size storm event be defined for the NDC.
- WSPA requests that the permit become effective in July 2015, rather than January 2015. Implementation of the new permit in the middle of the storm season may create unintended implementation and compliance efforts.

WSPA appreciates the extensive work by staff to bring the revised draft IGP to this stage for public input. We look forward to our continued collaboration in finalizing the draft IGP. Thank you.

Sincerely,

