



September 12, 2012

VIA E-MAIL AND HAND DELIVERY

Ms. Laurie Walsh
WRC Engineer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

RE: NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Regional MS4 Permit) (Order No. R9-2012-0011)

Dear Ms. Walsh,

Please accept the following comments on behalf of the The Industrial Environmental Association (IEA) with regard to the draft language for the new Regional MS4 Permit.

IEA was formed in 1983 to promote responsible, cost-effective environmental laws and regulations, facilitate environmental compliance among member companies and provide related education activities for the community at large. IEA actively insists on strong environmental compliance efforts among member companies as a matter of written policy. Further, IEA urges reliance on scientific, analytical data to evaluate the regulations necessary to protect the public and the environment. Accordingly, IEA has reviewed the administrative draft Regional MS4 Permit and presents the following comments.

1. **Overall Methodology-** In general, IEA supports a Regional MS4 Permit promoting an adaptive planning and management process that allows implementation of appropriate strategies, control measures, and best management practices (BMPs) to protect and preserve water quality and suitable beneficial uses of waters of the state.
2. **Water Quality Improvement Plan Approach-** IEA recognizes the general intent of the Water Quality Improvement Plans (Section II. B.) is for Copermittees to develop focused watershed-based plans to identify water quality conditions and issues, develop priorities, establish strategies and schedules, and implement adaptive processes to carry out prioritized actions to improve water quality. IEA welcomes the opportunity to participate in the Water Quality Improvement Plan development process and

collaborate with Copermittees to develop targeted and cost-efficient strategies and assessment metrics aimed at water quality improvement.

3. **Monitoring and Assessment-** IEA recognizes a key goal of an effective Monitoring and Assessment framework (Section II. D.) is the collection of precise and useful data to inform stakeholders about water quality conditions in discharges and receiving waters. It is presumed that this data will allow for focused implementation actions and water quality improvement strategies. IEA is concerned that the current monitoring framework, although extensive, may not provide cost-effective informed data to guide future actions. Accordingly, IEA supports stakeholder involvement in developing a more strategic, cost-effective, question-driven monitoring approach. The approach should incorporate short-, medium-, and long-term goals and outline procedures to collect comparable data across watersheds/jurisdictions that allows for future statistical assessments. Short-term goals can include discharge and receiving water characterization to understand current conditions and track progress. Medium-term goals can include planning for Clean Water Act Section 303(d) listings/delistings and best available science-based TMDL development. Long-term goals can include collecting data appropriate for development of site-specific water quality objectives and potential revisions to Basin Plan objectives.
4. **Non-Storm Water Discharges-** IEA recognizes the Regional MS4 Permit intent to reduce transport of pollutants through elimination of non-storm water discharges (Section II. E. 2.). IEA supports the Regional MS4 Permit implementation approach for certain categories of non-storm water discharges. Specifically, the Regional MS4 Permit currently specifies that air conditioner condensation is a non-storm water discharge that must be directed to landscaped areas or other pervious surfaces *where feasible* (emphasis added). IEA members have previously independently evaluated this potential action and have identified potentially significant costs for compliance. A case study in the Los Penasquitos watershed estimated that due to current system configuration, re-routing the condensation line at one building facility would require ~\$12,000 investment. For these reasons, it is suggested that these designs are limited to development/re-development, unless otherwise required by the Water Quality Improvement Plans. Also, non-emergency firefighting flows from controlled or practice blazes and fire suppression equipment maintenance activities can be treated with BMPs and in such cases should not be considered an illicit discharge.

The Regional MS4 Permit appears to use the terms “illicit discharges” and “non-storm water discharges” interchangeably throughout the draft Permit. These terms have different meanings and cannot be used interchangeably. The Regional MS4 Permit definition of illicit discharges excludes discharges subject to NPDES permits and discharges resulting from firefighting activities. Therefore, these non-storm water discharges are not illicit discharges and are authorized discharges to MS4s. However, Finding 7 of the Regional MS4 Permit states: “The federal regulations [40 CFR 122.26(d)(2)(iv)(b)] require the Copermittees to have a program to prevent all types of non-storm water discharges, or illicit discharges, from entering the MS4”. This finding incorrectly equates non-storm water discharges and illicit discharges and is inconsistent with federal regulations [40 CFR 122.26(d)(2)(iv)(b)]. Whereas under federal regulation, the Copermittees’ program must address illicit discharges (which do not include discharges made pursuant to NPDES permits and discharges resulting from firefighting activities), the Regional MS4 Permit would incorrectly expand this “all types of non-storm water discharges”. Further, the Regional MS4 Permit definition of “non-storm water discharges” states: All discharges to and from a MS4 that do not originate from precipitation events (i.e., all discharges from a MS4 other than storm

water). Non-storm water includes illicit discharges and NPDES permitted discharges”. Including “NPDES permitted discharges” in the definition of “non-storm water” could lead to the incorrect conclusion that, because the permit states that discharges of non-storm water to MS4s need to be prohibited, NPDES permitted discharges must be prohibited. IEA urges the RWQCB to revise the Regional MS4 Permit to eliminate this confusion and to clarify that discharges made pursuant to NPDES permits and discharges resulting from firefighting activities are not required to be prevented.

Further, the discharges need to be authorized to areas of the MS4 that discharge to ASBS as provided for in the SWRCB ASBS exception. Attachment A Section 2. A. 1. e. (non-storm water discharges to MS4s that discharge to ASBS), is missing the final language adopted into the ASBS exception that allows non-storm water discharges that do not affect natural water quality. The Regional MS4 Permit needs to find that these permitted discharges are authorized.

- 5. Development Planning-** IEA supports the implementation of cost-effective methods to: “reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP) and effectively prohibit non-storm water discharges to provide the *reasonable* protection, preservation, enhancement, and restoration of water quality and designated beneficial uses of waters of the state” (emphasis added). IEA supports the business and development community in requesting the Development Planning (Section II. E. 3.) criteria for technical infeasibility and mitigation requirements for projects deemed technically infeasible be carefully examined. Given the poor soil infiltration rates in much of San Diego County, many development projects will likely demonstrate technical infeasibility in implementing cost-effective Low Impact Development (LID) and hydromodification controls. The process currently identified in the Regional MS4 Permit does not provide sufficient detail for consistency among Copermittees in evaluating technical infeasibility conditions and implementation of feasible mitigation alternatives. IEA supports development of a stakeholder-lead Technical Advisory Committee to assist in the revision of Section II. E. 3. to meet multiple objectives for both improved water quality and consideration of site-specific conditions and economic constraints.

Further, linear underground/overhead projects, as defined in the State Water Resources Control Board (SWRCB) Construction General Permit, are exempt from post-construction BMPs. The Regional MS4 Permit needs to maintain consistency with the Construction General Permit on this issue.

- 6. Existing Development Management-Inspections-** In general, IEA recognizes the importance of Copermittee inspection activities at inventoried existing development to ensure compliance with applicable local ordinances and permits and the Regional MS4 Permit. However, the draft Regional MS4 Permit currently states that inventoried existing development must be inspected within six months of any change in property ownership or change in pollutant generating activity [Section II. E. 5.d.(1).(a)]. Through the course of normal business operations, many IEA members make periodic adjustments to industrial processes, materials and handling procedures. Accordingly, in accordance with the state Industrial General Permit and local Copermittee ordinances, the facility Storm Water Pollution Prevention Plan is amended to reflect operations and other changes with potential to impact storm water quality discharging from the site.

As written, the Regional MS4 Permit requires that Copermittees re-inspect facilities after these relatively minor changes that would potentially be considered a “change in pollutant generating activity”. The

potential increase in inspection frequency is an undue burden on both the Copermittees and the inspected facility. Accordingly, IEA recommends that Section II. E. 5.d.(1).(a) be revised to remove the provision that re-inspection be required after changes in pollutant generating activity at an existing development facility.

Thank you for the opportunity to comment regarding the draft language for the MS4 Permit. On behalf of IEA's 61 member companies, I appreciate your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Monger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack Monger
Executive Director