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(via email james_a_laity@omb.eop.gov)

June 17, 2013

James A. Laity, Acting Branch Chief
Natural Resources & Environment Branch
Office of Information and Regulatory Affairs
White House Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Re: Executive Order 12866 Meeting on EPA's NPDES
Stormwater Multi-Sector General Permit (MSGP), RIN #2040-ZA21

Dear Mr. Laity:

On behalf of the Copper Stormwater Benchmark Coalition, please accept our thanks to you and your staff, and participating EPA and SBA Office of Advocacy staff, for meeting with us on May 29, 2013. The Coalition's members (American Foundry Society, Institute of Scrap Recycling Industries, Inc., Non-Ferrous Founders' Society, Steel Founders' Society of America, Steel Manufacturers Association, and Treated Wood Council) appreciate the opportunity to explain our concerns regarding the range of extremely low benchmark values for copper as part of the EPA's Stormwater Multi-Sector General Permit (MSGP).

As discussed further below, we remain concerned that the current copper benchmark values are not scientifically valid and appropriate concentrations to use in the MSGP as performance indicators for best management practices (BMPs) and controls. Further, as we pointed out at the meeting, states are compounding the problem by treating these benchmark values as enforceable numeric effluent limits in individual permits. If, as EPA appeared to indicate at the meeting, state reliance on these benchmarks is not what EPA intended and is in its view inappropriate, EPA should clearly acknowledge this view in the forthcoming MSGP.

Scientific Concerns Regarding the Copper Benchmark Value

As the Coalition discussed in its February 25, 2013 comments, which were distributed at the meeting and are attached to this letter, the copper benchmark values are not valid scientific values to be used as stormwater concentrations for the following reasons:

- The lack of achievability of the current copper benchmark value at industrial facilities with the use of water quality controls.
- The presence of copper above the current benchmark value in non-industrial stormwater discharges, such as residential, mixed residential, commercial, mixed commercial, industrial, mixed industrial, freeway, and mixed freeway discharges.
- The failure of grab samples taken in the first 30 minutes of a stormwater event to accurately represent the pollutant concentrations coming from an industrial facility.
- The misguided practice of using total copper as the copper benchmark when acute toxicity criteria are derived from dissolved copper concentrations.

Similar concerns about benchmark values generally were raised in a Small Business Administration Office of Advocacy report and comments submitted to EPA on March 14, 2006, which we also circulated at our May 29 meeting and attach to this letter. The key points raised in the SBA Office of Advocacy report are:

- The setting of current benchmark levels is based on insufficient data – the setting process does not account for background pollutant levels; equates stormwater discharges to receiving waters (e.g., does not account for mixing); and does not properly address whether levels are realistically achievable.
- The current sampling protocol is arbitrary/not scientifically supportable – the sampling protocol should better reflect the correlation between water quality-based benchmarks and mass event load; the current first 30 minute discharge sampling is arbitrary and provides worst case values that result in continuation of overly burdensome requirements for SWPPP review and analytical monitoring;
- EPA acknowledges that it does not have any evidence that MSGP benchmark monitoring is sufficiently robust to evaluate SWPPP/BMP performance;
- The data EPA used to identify industry sectors/pollutants of concern and benchmark achievability are not sufficient for these determinations.*

These comments raised continuing, significant scientific concerns about the validity of the current benchmark values, including those for copper that EPA is using for monitoring purposes in the MSGP. The Coalition reiterates its recommendation that EPA seek more information and commit to address these problems in the forthcoming proposed MSGP.

State Reliance on Benchmark Values

Participants at our May 29 meeting also voiced concerns that these questionable copper benchmark values, as well as other benchmark values, are being used by states not only in their own general permits, some with more-stringent corrective action regimes, but also as numeric effluent limits in individual permits. While we understand the reaction from federal regulators that these monitoring values are not intended to serve as permit limits, the fact remains that states are relying on the copper and other benchmark numbers in ways that require appropriate action from EPA.

In order to provide an example of how this occurs, we can relate one Treated Wood Council member company experience from earlier this year. While negotiating an individual stormwater permit for a facility in West Virginia, authorities in that State not only used the value from the EPA MSGP for copper but considered that value to be non-negotiable. Because this was, in their view, “EPA’s value” the authorities would not discuss using any other value as the required and enforceable copper limit in the permit.

* Letter from T. Sullivan and K. Bromberg, SBA Office of Advocacy, to B. Grumbles, Assistant Administrator, EPA Office of Water (March 14, 2006), and attached Technical Memorandum prepared by Pechan, “Analysis of Multi-Sector General Permit (MSGP) Stormwater Discharge Monitoring Requirements,” at 3 (March, 2006).

Requested Action

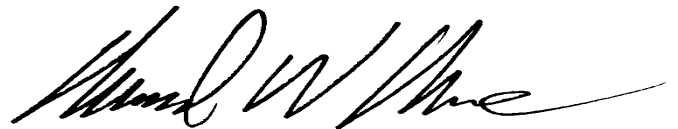
If EPA is unwilling to conduct a full initiative to develop scientifically justified copper and other benchmark values, at a minimum EPA should make clear in the MSGP that these numbers were meant to be used only as a diagnostic tool to assess whether an operator's stormwater plan includes appropriate BMPs and controls. Even when used as a diagnostic tool, EPA should note that it may not be attainable. If despite relying upon BMPs and controls, a benchmark level is exceeded, the operator's responsibility is simply to evaluate whether the plan needs to be amended, but if further controls would not reduce concentrations below the benchmark, no additional action need be taken. If EPA agrees, as it appeared at our May 29 meeting it did, that this is the correct interpretation of the benchmark provisions, then the proposed MSGP should explicitly set forth this explanation and reinforce that the benchmark values are not intended to serve as effluent limits, explicitly or implicitly, for state permit uses.

Please contact Jeff Miller at 202-463-2045 or jeff_miller@treated-wood.org if you have questions or if we can provide further information.

Respectfully submitted,



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Raymond W. Monroe
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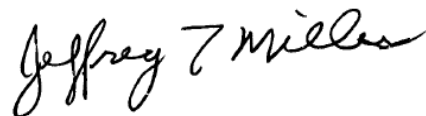
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Attachments (2)