



SPECIAL HEARING
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California Stormwater Quality Association

"Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation"

February 18, 2005

Debbie Irvin, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Recommendations for the Revision of the Industrial General Permit, Water Quality Order No. 97-03-DWQ

Dear Ms. Irvin and Members of the Board:

On behalf of the California Stormwater Quality Association (CASQA), thank you for the opportunity to provide comments regarding the reissuance of the current General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ (General Permit). CASQA has been working with staff over the last several years to develop recommendations for the reissuance, and we previously provided written comments in November 2002 and again in June 2003.

CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state, and was formed in 1989 to recommend approaches to the State Water Resources Control Board (State Board) for stormwater quality management in California. In this capacity, we have assisted and continue to assist the State Board with the development and implementation of stormwater permitting processes.

CASQA's Industrial Subcommittee identified several areas of the 2004 draft General Permit, issued December 15, 2004, that could be improved in the planned 2005 reissuance. To this end, our recommendations are crafted to achieve the following objectives:

- Identify achievable improvements in the stormwater program elements;
- Simplify and streamline the permit format;
- Provide our initial recommendations regarding numeric effluent limits;
- Clarify the intent and use of benchmarks;
- Provide sufficient flexibility to accommodate the diversity of the industrial activities covered by the General Permit;
- Conform with U.S. Environmental Protection Agency (USEPA) Phase II requirements, and;
- Address some of the initial concerns that may be raised by other interested parties.

We feel confident that our recommendations accomplish these goals.

CASQA Comments on Revision of the Industrial General Permit

We wish to contribute the following comments and recommendations regarding general policy issues, and provide specific recommendations on the 2004 draft General Permit in the attached Recommendations Table. The general policy comments provide recommendations to improve general policy interpretation and implementation, whereas the Recommendations Table identifies specific permit elements of concern, the reason for the concern, and CASQA's recommendation.

GENERAL POLICY COMMENTS

1. Support of the Continued Regulation of Stormwater Discharges through the Iterative Best Management Practice (BMP)-Based Process

CASQA supports the General Permit's iterative BMP-based approach for regulating stormwater discharges from industrial facilities and we appreciate State Board staff's efforts to provide a balanced approach when regulating stormwater. The iterative approach will assist industrial dischargers and the regulators in implementing and evaluating the effectiveness of the stormwater pollution prevention plans (SWPPPs) and in achieving water quality standards. In addition, this is the only approach that is consistent with both State and USEPA guidance on regulating stormwater discharges from industrial facilities.

CASQA and others in the regulatory and scientific communities recognize that, although the science of stormwater quality management continues to emerge and develop, there is currently not enough information to derive appropriate numeric effluent limits for industrial dischargers. In addition, USEPA recognizes this through its continued support of the interim permitting approach, which is applicable to discharges from municipal separate storm sewer systems (MS4s) and stormwater discharges associated with industrial activity. Further, before numeric effluent limits can be appropriately derived and incorporated into stormwater permits, the processes to derive numeric limits for stormwater discharges must be fully developed and incorporate a scientifically sound and defensible methodology that is in accordance with USEPA protocols (see also item #2). However, since such a process has not yet been defined or demonstrated, the permit must continue to clearly emphasize the iterative BMP-based approach as the process for demonstrating permit compliance.

As a result, CASQA strongly recommends the continuation of the iterative BMP-based approach to improve the quality of stormwater discharges from industrial facilities, rather than the imposition of numeric effluent limits.

Notwithstanding our support of the iterative process, CASQA does support the use of benchmarks as a constructive "next step" to provide more accountability and direction to industrial dischargers as they implement stormwater pollution prevention plans and evaluate their effectiveness. However, we support the use of benchmarks only in the context of assessing the effectiveness of a SWPPP and only in accordance with USEPA's intended application, not as an independent compliance standard (see our comments below regarding the use of benchmarks).

2. Development and Incorporation of Numeric Effluent Limits

The 2004 draft General Permit acknowledges that, although numeric effluent limits cannot be scientifically supported in this permit (see also item #1 above), the State Board is considering adopting numeric effluent limits for the next permit term. However, it is unclear whether the State Board is considering the development of technology-based or water quality-based effluent limits.

In either case, the State Board must recognize that, due to a number of factors including the variable nature of stormwater, the diversity among industrial categories, and the functionally different objectives for the proposed analytical monitoring program (i.e., SWPPP and BMP effectiveness assessment), the dataset that will be collected during this permit term will not, on its own, be sufficient for deriving numeric effluent limits. Due to the regulatory approach that is being considered for the next permit term, CASQA recommends the following:

- The iterative BMP-based approach proposed within the 2004 draft General Permit be allowed sufficient time for program implementation and effectiveness monitoring.
- The State Board identify a progressive policy and approach for regulating stormwater discharges through the statewide stormwater policy development process. Among other things, the policy could identify when it is appropriate to shift from an iterative BMP-based approach to technology-based effluent limits and/or water quality-based effluent limits as well as the process that should be followed in order to derive appropriate and scientifically sound numeric limits. This is critically important and should be something that is developed with adequate time as well as public input.
- Given the different objectives for the proposed analytical monitoring program, the inclusion of new requirements (beyond those in the current General Permit) should be deferred until the State Board more clearly defines which objective it desires to meet and what monitoring and data are needed to meet the objective in a statistically valid and scientific manner.
- If deemed appropriate (see bullet #2 above), the development of technology-based effluent limits should follow a similar process used by USEPA when developing national technology-based effluent guidelines (consistent with the pretreatment programs) (see **Attachment 1**).
- If deemed appropriate (see bullet #2 above), the development of water quality-based effluent limits must follow a scientifically sound, and statistically rigorous process (see **Attachment 2**).

Although CASQA understands that the development of numeric effluent limits is a complicated and time-consuming process, a reasonable, scientifically and technically sound process is critical for the successful evaluation and/or development of effluent limits. As such, CASQA would be willing to work with the State to address these issues.

3. Incorporation of EPA Benchmarks

CASQA supports the iterative BMP-based approach and the application of benchmarks to stormwater in a manner consistent with USEPA's Storm Water Multi-Sector General Permit for Industrial Activities (Multi-Sector Permit). However, some ambiguous statements in the 2004 draft General Permit (e.g., Section V.7.c) appear to equate benchmarks with best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) compliance. These ambiguous statements must be revised to clarify that benchmarks are not intended as a measure of BAT/BCT compliance.

Moreover, the 2004 draft General Permit is inconsistent with the Multi-Sector Permit in several ways that would result in the State's permit being unnecessarily costly to dischargers without increasing beneficial impacts to stormwater quality. These differences include:

- The Multi-Sector Permit clearly recognizes the variable nature of stormwater and specifies, *"An exceedance of a benchmark value does not, in and of itself, constitute a violation of this permit. While exceedance of a benchmark value does not automatically indicate that violation of a water quality standard has occurred, it does signal that modifications to the SWPPP may be necessary."* Additionally, the Multi-Sector Permit refers to average concentrations of pollutant parameters, clearly distinguishing it from a single sample. Although the State Board's Fact Sheet reflects the understanding that stormwater is variable, the 2004 draft General Permit appears to ignore this variability and trigger additional monitoring and additional BMP identification and implementation based on the result of one grab sample;
- The Multi-Sector Permit further recognizes the variable nature of stormwater and the uncertainty of a grab sample result by requiring actions only when the analytical results are considerably above benchmark values. The Multi-Sector Permit states *"...analytic levels considerably above benchmark values can serve as a flag to the operator that the SWPPP needs to be reevaluated and that the pollutant loads may need to be reduced."* The 2004 draft General Permit triggers corrective actions with any level of exceedance beyond benchmarks; and
- The Multi-Sector Permit recognizes the need for flexibility to deal with the variable nature of stormwater and specifies, *"The results of benchmark monitoring are primarily for your¹ use to determine the overall effectiveness of your SWPPP in controlling the discharges of pollutants to receiving waters"*.

The State Board should revise the 2004 draft General Permit to be consistent with USEPA's use of benchmarks by: (1) stating that the exceedance of a benchmark is not, in and of itself, a violation of the permit, (2) treating a benchmark exceedance as an event requiring review, but not automatically triggering changes to the SWPPP, (3) allow a reduction in the sampling requirements for dischargers who are meeting the benchmarks, and (4) stating that benchmarks are primarily for the use of the discharger to determine the overall effectiveness of the SWPPP. Moreover, before requiring use of benchmarks, the State Board should identify appropriate constituents and values for benchmarks that are representative of industrial activity-specific impacts.

¹ CASQA note: "your" in this context means discharger

Although CASQA supports the use of benchmarks, applied to stormwater in a manner consistent with USEPA's Multi-Sector Permit, that support does not necessarily extend to the specific constituents and benchmark values in the USEPA Multi-Sector Permit. To fulfill their purpose, benchmark values must be developed that are representative of industrial activities and not background conditions. The majority of the stormwater data available supports the observation that constituents such as iron and aluminum are abundant in background conditions, typically in concentrations significantly above USEPA's benchmark values. Imposition of benchmark values that do not distinguish between activity-specific pollutant sources and background sources will distract from efficient evaluation of BMP effectiveness. Caltrans comments (submitted February 2, 2005 to State Board) suggested a scientific review be conducted to identify appropriate constituents and values for benchmarks for industrial stormwater discharges—CASQA also supports such a scientific review.

4. Monitoring Program

Sampling for Parameters Causing or Contributing to Existing Exceedances of Water Quality Standards (WQS)

The 2004 draft General Permit imposes a new requirement that dischargers must sample for "*Parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a WQS in the facility's receiving waters*" (Section VIII.4.c.iv). This is a new requirement and is problematic for several reasons:

- The statement, as currently written is overly broad and would result in industrial dischargers monitoring for constituents that are not related to their industrial processes (i.e., bacteria).
- Absent an analysis of the 303(d) listed water bodies, it is unclear how the industrial dischargers would know which water quality standards are currently being exceeded in the receiving water. CASQA recommends that the State Board modify this statement so that the dischargers are only required to evaluate the 303(d) list and modify their SWPPP and monitoring program to reflect the site- and industry-specific pollutants that are under the direct control of the discharger and that can reasonably be expected to be discharged from their site.

Additionally, the intent of collecting data on such parameters could be easily misunderstood. The draft Fact Sheet states:

"The monitoring program requirements are designed to provide useful, cost-effective, timely, and easily obtained information to assist dischargers to identify pollutant sources, implement corrective actions, and revise BMPs."

That statement, as well as the acknowledgement in the 2004 draft General Permit that numeric effluent limits cannot be scientifically supported in this permit make the intended use of data on such parameters very clear, although not in one location in the permit. Therefore, the permit should include a clarification that data collected as a part of the proposed analytical monitoring program is only intended to be used for assessing the adequacy of a facility's SWPPP and BMPs.

One-time Pollutant Scan

Section VIII.6.a of the 2004 draft General Permit requires a one-time pollutant scan for additional parameters (i.e., metals, COD, etc.) listed in Table VIII.2 (pg 25). The Fact Sheet (pg IV) states that the State Board intends to use this database to develop numeric effluent limits. Since there is a tremendous amount of data and supplemental information that is necessary for the development of numeric effluent limits (see **Attachments 1 and 2**), the proposed one-time grab sample will ultimately be of little value and will not provide statistically valid results that could be used to develop numeric effluent limits.

Therefore, CASQA recommends that the one-time pollutant scan be eliminated from the 2004 draft General Permit. However, once a statewide stormwater policy is developed and a progressive policy and approach for regulating stormwater discharges has been identified, CASQA encourages the State Board to facilitate a discussion with appropriate stakeholders to develop a proposal and mechanism for a more appropriate statewide monitoring study of industrial stormwater discharges that would yield statistically valid results.

5. Need for Statewide Guidance

Due to the lack of standardized guidance for industrial dischargers, CASQA recommends that the State Board do the following:

- Reference CASQA's Industrial and Commercial BMP Handbook within the General Industrial Permit as a tool that is available for industrial dischargers. Since this is the only statewide guidance that is currently available and was a project that the State Board helped fund and participate in, the dischargers should be made aware that the Handbook is available and that it provides general guidance regarding the development of the SWPPP and selection of appropriate BMPs;
- The State Board should work with the dischargers and other interested parties in developing standardized guidance on how to comply with the General Industrial Permit through the iterative BMP process (i.e., demonstrating BMP effectiveness).

CASQA is committed to working with State Board staff and other stakeholders in development of this compliance guidance.

6. Statewide Stormwater Policy

Consistent with our previous comments, the State Board would be well served to use the development of a statewide stormwater policy as the vehicle to describe the process for having stormwater dischargers meet and protect water quality standards. Once developed, this policy would provide the necessary guidance in the development of general permits, be they construction, industrial or municipal. Therefore, we strongly recommend, prior to the State developing an industrial general permit that switches from an iterative BMP-based process to numeric effluent limits, that the State identify a constructive and progressive approach through the development of a statewide policy.

CASQA Comments on Revision of the Industrial General Permit

Thank you for the opportunity to comment on the proposed revisions to the Industrial General Permit. If you have any questions about our comments, please contact me at (530) 753-6400 or Maureen Daggett, Chair – CASQA Industrial Subcommittee, at (916) 972-7947.

Sincerely,

A handwritten signature in black ink that reads "Karen Ashby". The signature is written in a cursive, flowing style.

Karen Ashby, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors
CASQA Executive Program Committee

CASQA RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT			
Topic	Section	Comments	Recommendations
Responsibility for General Permit Enforcement	Finding 16	Finding 16 states "The RWQCBs shall administer and enforce the provisions of this General Permit." The intent of this finding could be misinterpreted to be in partial conflict with MS4 inspection and enforcement requirements.	CASQA recommends that the intent and meaning of this finding be expanded upon and made clearer, as it relates to MS4s, by combining Findings 6 and 16 (e.g., adding Finding 16's language to the beginning of Finding 6 as well as additional clarifying text (shown in underline)) as follows: " <u>6. The RWQCBs shall administer and enforce the provisions of this General Permit. This General Permit does not preempt or supersede the authority of municipal agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions, as allowed by State and federal law or required by MS4 permits.</u> "
Discharge Prohibitions	I.1	While it is generally understood that the intent of this provision is to prohibit the unauthorized discharge of non-stormwater, the use of the term "...materials other than storm water..." is confusing and creates the opportunity for misinterpretation and misapplication.	CASQA recommends that the term "...materials other than stormwater..." be replaced with " <i>non-stormwater discharges</i> " as defined by the General Permit.
Discharge Prohibitions	I.2	Section A.2 of the 2002 draft permit and Section I.2 of the 2003 draft permit stated that " <i>Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance as defined in CWC Section 13050</i> ".	CASQA recommends that either the intent and justification for the change be made clear so that it may be adequately reviewed or that the Discharge Prohibitions language contained in the previous two versions of the draft permit be carried forward to the final draft permit.

CASQA RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT			
Topic	Section	Comments	Recommendations
Receiving Water Limitations (RWLs)	III	<p>The 2004 draft General Permit language has been modified to read “<i>Storm water discharges and authorized non-storm water discharges shall not contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in CWC Section 13050.</i>”</p> <p>This is a change from the current General Permit language, and previous drafts’ language, which states that <u>the stormwater discharge cannot “cause or contribute”</u>. This language change has not been justified or supported in the Fact Sheet or finding statements.</p> <p>The current General Permit and the 2003 draft permit state:</p> <ol style="list-style-type: none"> Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely affect human health or the environment. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality objectives or standards contained. 	CASQA recommends that either the intent and justification for the change be made clear so that it may be adequately reviewed or that the previous Receiving Water Limitations language be carried forward in the final draft permit.

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		<p>The 2004 draft General Permit language has been modified to read:</p> <ol style="list-style-type: none"> Storm water discharges and authorized non-storm water discharges to any surface or ground water <u>shall not contain pollutants</u> that cause a nuisance. Storm water discharges and authorized non-storm water discharges <u>shall not contain pollutants that cause or contribute</u> to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in... <p>This change from the current General Permit language not been justified or supported in the Fact Sheet or finding statements.</p>	
Receiving Water Limitations	III.2	<p>There continues to be confusion and inconsistency within the regulated community and among Regional Board staff what "cause or contribute" means, particularly when applied to stormwater discharges. State and Regional Board staff have, for over 30 years, been assessing what constitutes "cause or contribute" in the wastewater arena.</p>	<p>CASQA recommends that the State Board develop formal specific guidance on what criteria must be met for a stormwater discharge to meet the "cause or contribute" language.</p>

CASQA RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT			
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Benchmarks as RWLs	II.3	<p>However, no clear and standardized guidance is available that identifies how industrial dischargers or the regulators determine if an industrial stormwater discharge contains pollutants that are causing or contributing to an exceedance of any applicable water quality objectives or water quality standards.</p> <p>The 2004 draft General Permit states that developing and implementing a SWPPP that meets SWPPP requirements stipulated in VII of the permit and that includes BMPs that achieve BAT/BCT constitute compliance with the permit's effluent limitations. The Fact Sheet (page VII) equates the EPA benchmarks to a measure of BAT/BCT. While the permit states benchmarks are not intended to serve as effluent limits and exceeding benchmarks is not a violation of the permit, no language exists that clarifies that exceeding the benchmark does not mean that the discharger has failed to meet BAT/BCT.</p>	<p>CASQA recommends that the State Board clearly state that exceedance of a benchmark not be considered a violation of the BAT/BCT requirement. This clarifying language is necessary to prevent the 2004 draft General Permit language's lack of clarity from being misinterpreted by claiming that benchmarks represent BAT/BCT and failure to meet BAT/BCT, and consequently failure to meet effluent limitation requirements, is a violation of the permit.</p>
Non-Storm Water Discharges	IV.1	<p>Section IV.1 states: "The following non-storm water discharges are authorized provided they satisfy the conditions of Section IV.2: ...d. Irrigation drainage and landscape watering;" The reason for including irrigation drainage in addition to landscape watering is not obvious.</p>	<p>CASQA recommends either that the language be clarified to distinguish the two terms from each other or only one term be used.</p>
Non-Storm Water	IV	<p>Section IV. states "Discharges from fire fighting activities are authorized by this</p>	<p>CASQA recommends that the permit language be modified to include a second</p>

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Discharges		General Permit and are not subject to the conditions of Section IV.2." This blanket authorization could be in conflict with requirements in MS4 permits.	sentence to the authorization: "This authorization does not cover non-emergency activities or training, which are subject to the conditions of Section IV.2."
Receiving Water Limitations	V.6	The Industrial General Permit's Receiving Water Limitations language has been modified. Citing a clarification in federal law (Defenders of Wildlife v. Browner (9 th Cir. 1999) 191 F.3d 1159), the safe harbor language has been eliminated. The 2004 draft General Permit requires the discharger to engage in the iterative process once the <u>discharge contains pollutants</u> in violation of the Receiving Water Limitations. The discharger is required to certify that additional BMPs and/or SWPPP implementation measures have been identified to meet RWLs. If the discharger certifies that no additional BMPs and/or SWPPP implementation measures are necessary, the discharger must certify that the exceedance will not occur again. There is no consideration in the 2004 draft General Permit for offsite or background pollutant sources, which are not related to the industrial activity and/or under the control of the discharger. Moreover, language has been added to the permit that authorizes Regional Boards to take enforcement actions while the discharger is responding to the exceedance through the iterative process.	For the reasons stated here and those expressed in CASQA's comment regarding Section III (above) regarding lack of justification or support for the change, CASQA recommends that the previous Receiving Water Limitations Language be carried forward in the 2004 draft General Permit for the following reasons: 1. Although the court drew parallels between the municipal and industrial provisions of the Clean Water Act, the court holding for Defenders v. Browner only applies to the municipal provisions; 2. Because the iterative process is the primary mechanism for stormwater quality management and permit compliance, dischargers should not be found in violation of the RWLs as long as they implement BMPs that achieve BAT/BCT and actively follow the iterative process as outlined;

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		The use of the iterative process has been changed from a proactive step to keep a discharger from being in violation of the permit to a reactive step in response to a permit violation.	3. There is no statewide or federal guidance that identifies how industrial dischargers or the regulators determine if an industrial stormwater discharge contains pollutants that are causing or contributing to an exceedance of any applicable water quality objectives or water quality standards. Therefore, there is no guidance to determine if one is clearly in violation of Receiving Water Limitations. Absent clear guidance, the dischargers should continue the current RWL approach.
Receiving Water Limitations	V.6.c.iii	The Fact Sheet (pg VIII, 2nd to last paragraph), states that a discharger can certify that no new BMPs are necessary if there are pollutants that do not appear to be caused by facility operations. Section V.6.c.iii of the permit does not reflect the same concept; rather its certification is if " <i>There are no sources of pollutants at the facility.</i> "	CASQA recommends that Section V.6.c.iii be amended so that it reflects the concept in the Fact Sheet: iii. There are no sources of the pollutants at the facility. <u>The pollutants are not caused by facility operations.</u>
Benchmarks	V.7	The Fact Sheet language and actual permit requirements are in conflict. The Fact Sheet language supports the current iterative BMP-based approach to demonstrate permit compliance, while the draft permit language essentially eliminates it as the point of compliance.	CASQA recommends that the permit language needs to support the intent stipulated in the Fact Sheet

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		<p>The response actions by a discharger to a determination that a RWL has been violated and the response actions to an exceedance of a benchmark value should be different. A significant body of evidence, in the form of sampling data, receiving water data, and observations, is required to make the determination that a RWL has been violated. Requiring the same onerous actions in response to a single grab sample data point, based on benchmarks, is unwarranted and unprecedented in other water quality compliance programs. Moreover, the 2004 draft General Permit's Standard Provisions impose appropriate investigation, corrective action and reporting obligations on the discharger in the event of that non-compliance, or anticipated non-compliance, with any permit provision that is identified.</p>	<p>CASQA recommends that Section V.7 of the 2004 draft General Permit be amended to be consistent with the iterative BMP-based approach, and require that dischargers, as part of their annual report, document and demonstrate that an exceedance of a benchmark has been investigated and monitored and to provide documented justification that the exceedance has been mitigated, if it is determined that the exceedance is a consequence of inadequate BMP and/or SWPPP development or implementation, or that the exceedance is not a consequence of site/industry-specific activities.</p>
		<p>There is no consideration of background levels or onsite pollutant sources that impact onsite discharges. The 2004 draft General Permit's definition of stormwater discharge associated with industrial activity makes it clear that the discharger is only responsible for sources of stormwater pollutants that are directly related to the industrial activity and which the discharger has control over.</p>	<p>CASQA recommends that:</p> <ul style="list-style-type: none"> • language be incorporated into the permit that reiterates the dischargers' responsibilities and allows for consideration of offsite or background pollutant sources, and • background levels be factored in when benchmark values are developed.

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		V.7.c: The certification language equates benchmarks to BAT/BCT. This section requires the discharger certify that BMPs meet BAT/BCT, yet the State Board admits that there is no process to assess what that means.	CASQA recommends that the permit clarify that the benchmarks are not intended to determine BAT/BCT compliance.
		V.7.c: Requires that the discharger certify there are no sources of the pollutants at the facility. The discharger cannot make this certification. For example there are always sources of suspended solids, such as dust, air deposition and natural soil materials. The dischargers' obligations are to control the discharge of site-specific and industry specific pollutants, that the discharge has control over, to economically achievable levels.	CASQA recommends that the discharger be required to certify, to the <i>discharger's knowledge and best judgment</i> , that the BMPs are appropriate and effective in controlling site-specific pollutants to economically achievable levels, and to levels that do not cause or contribute to an exceedance.
		V.7.c.v.: Requires that the certification show how the benchmark exceedance occurred and why it will not occur again under similar circumstances. This is certification is impossible to make in good faith due to the recognized variability of stormwater and impacts to stormwater discharges from offsite pollutant sources and background levels.	CASQA recommends that this language be removed.

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		<p>V.7.e-g (and V.8.4.d): if a benchmark is exceeded the 2004 draft General Permit requires the following:</p> <ol style="list-style-type: none"> 1. sampling of the next consecutive storm event until two consecutive samples do not exceed the benchmark and corrective BMPs be implemented within 90 days; 2. the discharger to submit written report to regional boards within 30 days for approval. Within 14 days of the regional boards "approval" of the report, the discharger is to update/revise the SWPPP. 3. the discharger to implement corrective action, including identification and implementation of additional BMPs within 90 days of the original exceedance; <p>The 2004 draft General Permit assumes that the benchmark is exceeded due to inadequate BMPs or SWPPP implementation. Requiring additional sampling before the corrective measures are identified and implemented serves no purpose, creates an endless sampling and response loop, which is only punitive in nature. Moreover, if sampling of the next two storm events show that the benchmark is not exceeded and the corrective measures have not been identified or implemented, that would indicate that the BMPs and SWPPP are adequate without implementation of additional BMPs or corrective action.</p>
		<p>Recommendations</p> <p>CASQA recommends that there must be a time limit placed on the Regional Boards to respond. The 90-day compliance period must only apply once the Regional Board has approved the corrective action report and the additional sampling requirements must only apply once the corrective BMPs have been implemented.</p> <p>CASQA further recommends that, when demonstrated by the discharger that additional time is warranted to either conduct an effective assessment of site and operating conditions that may have caused or contributed to the exceedance of a benchmark, or develop and implement appropriate BMPs in response to the exceedance, that Regional Boards be authorized to implement a schedule greater than the currently allowed 90 days.</p>

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		V.7.h: States that "Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this General Permit while dischargers prepare and implement the above report". This language appears to allow for a situation where a discharger could be in double-jeopardy and calls into question the standing and intent of using the iterative BMP-based process.	CASQA recommends that since the inclusion of numeric performance standards is a new element, that dischargers are allowed up to 3 years to meet benchmark numeric requirements for treatment and structural controls. This is the time frame originally provided for in the 1992 general permit. Alternatively, eliminate section V.7.h
Provisions - Small MS4 Permit Coverage and ISTEAs Exemption	V.8	The 2004 draft General Permit notes that the ISTEAs exemption for discharges from facilities owned by small MS4s has expired and that "Municipal dischargers who have not already filed an NOI for coverage under the previous SWRCB Order No. 97-03-DWQ shall complete and file an NOI..." for coverage under this General Permit. It is not clear from this draft language what the relationship is between the General Permit and MS4 permits regarding coverage for these types of industrial facilities.	CASQA recommends that this provision be clarified to state that coverage for such facilities is necessary under only one permit - either the Industrial General Permit or a MS4 permit.
Annual Report Submittal Date	V.10 & VIII.13	The time period for submitting annual reports dropped from 60 days to 30 days under the 1997 General Permit. The justification for this was consideration of Regional Board staffing constraints (e.g., student assistants were only available during the summer months). There is a significant increase in reporting and record keeping imposed under the 2004 draft General	CASQA recommends a minimum of 75 days from the end of the wet season, or 45 days from the end of the monitoring period, be allowed for submittal of annual reports. Annual Reports should not be due to the Regional Boards before August 15 of each reporting year

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Small MS4 Permit Coverage	V.12	<p>Permit. Consequently preparing and submitting an Annual Report within 30 days of the end of the dry season (and less than one day from the end of the monitoring/reporting period) becomes unreasonably burdensome.</p> <p>This provision is not consistent with the Fact Sheet, which clearly indicates that using the General Industrial Permit in lieu of the MS4 General Permit for small non-traditional MS4 is at the option of the discharger. This provision must be clarified or dischargers who are seeking coverage and waiting to obtain coverage will be in technical violation of the permit. Regional Boards are sometimes taking 12-18 months to approve municipal permit coverage.</p>	<p>CASQA recommends the following clarification: "Dischargers that have been designated as a non-traditional [Small MS4], and that are not seeking have-not-obtained coverage under the [small MS4 permit] 2003-0005-DWQ, shall incorporate into the facility's SWPPP...."</p>
SWPPP Performance Standards	VII.2	<p>VII2.a.i states that "Dischargers shall identify and evaluate all sources of pollutants that may effect the quality of a facility's stormwater discharges ..." This language makes the discharger liable for sources of pollutants that the discharger may not have knowledge of, and/or, control over from potential offsite or background pollutant sources.</p>	<p>CASQA recommends the following clarification: "Dischargers shall identify and evaluate all sources of pollutants associated with the industrial activity and that may affect the quality of a facility's storm water discharges and authorized non-storm water discharges;"</p>
SWPPP Performance Standards	VII.2 & Fact Sheet, p VIX: Minimum BMPs	<p>VII2.a.ii states that BMPs shall be selected to achieve BAT/BCT and compliance with WQS. The Fact Sheet states that "...The failure to implement facility-specific BMPs that are necessary to achieve compliance with</p>	<p>CASQA recommends eliminating the "...and compliance with WQS" language in Section V11.2.a.ii and modifying the Fact Sheet to read: "The failure to implement facility-specific BMPs that are necessary to achieve</p>

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		<p>BAT/BCT and to meet applicable water quality standards is a violation of this General Permit".</p> <p>However, staff admits that only in very limited conditions can industrial stormwater discharges' compliance with WQS be determined. No clear and standardized guidance is available to assist dischargers and regulators in evaluating stormwater discharges' compliance with WQS. Inclusion of this language without clear achievable obligation creates an unattainable compliance obligation and leaves the discharger open to unsubstantiated enforcement actions</p>	<p>compliance with BAT/BCT and to meet applicable water quality standards is a violation of this General Permit".</p>
Minimum BMPs	VII.8	<p>VII.8 states that "Dischargers shall identify, describe and implement appropriate...BMPs that will...to achieve compliance with the BAT/BCT standard and compliance with WQS". No clear and standardized guidance is available to assist dischargers and regulators in evaluating stormwater discharges' compliance with WQS. Inclusion of this language without clear achievable guidance creates an unattainable compliance obligation and leaves the discharger open to unsubstantiated enforcement actions.</p>	<p>CASQA recommends eliminating the "...and compliance with WQS" language</p>
Minimum BMPs	VII.8	<p>CASQA supports the concept of establishing minimum BMP requirements and recognizes that the majority of minimum BMPs are practicable and should be promoted as</p>	<p>CASQA recommends that:</p> <ol style="list-style-type: none"> 1. In order to provide for consistency between the General Permit and the

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		<p>common industry practices. However, the only statewide standardized BMP guidance developed for industrial dischargers is CASQA's Industrial BMP Handbook. The permit BMP categories are inconsistent with terminology that is widely used throughout the state and promoted within the CASQA Industrial and Commercial BMP Handbook.</p>	<p>industry specific guidance materials, the State should modify the categories to be consistent with existing terminology and CASQA's Industrial and Commercial Handbook; and</p> <p>2. Include a reference in the General Permit to the CASQA <i>Industrial and Commercial California Stormwater BMP Handbook (2003 or subsequent revision)</i> for additional guidance on the types of BMPs that may be implemented at Industrial and Commercial facilities.</p>
BMP Descriptions	VII.8.c	<p>The 2004 draft General Permit requires that the person responsible for the BMP implementation be identified, that BMP implementation and maintenance procedures be described, and that tools and equipment needed to implement the BMP be identified. These requirements are not always applicable to a BMP. Consider for example, the situation where the BMP is to conduct the industrial activity inside a building or roofed/cover structure.</p>	<p>CASQA recommends that the language "when applicable" be added to clarify the permit expectation.</p>
BMP Descriptions	VII.8.i.(2)	<p>The 2004 draft General Permit states that discharges shall "(2) Implement BMPs to reduce or prevent material tracking."</p>	<p>CASQA recommends that the language be revised to "(2) Implement BMPs to reduce or prevent <u>tracking offsite, or out of the area of industrial activity.</u>"</p>
BMP	VII.8.i.(3)	<p>The 2004 draft General Permit states that</p>	<p>CASQA recommends that additional detail be</p>

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Descriptions		discharges shall "(3) Implement BMPs to ensure that all facility areas impacted by rinse/wash waters are cleaned as soon as possible;" The scope and description of the BMPs is too general.	provided or referenced about the BMPs (e.g., see comment above regarding CASQA BMP Handbooks).
BMP Descriptions	VII.8.i.(7)	The 2004 draft General Permit states that discharges shall "(7) Divert storm water or authorized non-storm water flows from non-industrial areas (such as employee parking) from contact with industrial areas of the facility. Flows from nonindustrial areas that contact industrial areas of the facility are subject to this General Permit's requirements." The description of the BMP is too general	CASQA recommends that additional detail be provided or referenced about the BMPs (e.g., see comment above regarding CASQA BMP Handbooks).
Submittal of SWPPPs to Regional Boards	VII.10.a	This permit condition allows only 5 working days for submittal of requested documents versus the 30 days allowed currently in the General Permit. It was suggested by staff that the justification for this permit condition is to prevent sites from preparing a SWPPP document after a Regional Board's request for submittal. This is an unreasonable and overly burdensome requirement. Regional Boards already possess sufficient authority to regulate General Permit non-compliance.	CASQA recommends that a minimum of 15 working days from the date of receipt by the discharger of the notice be allowed.
Monitoring Program and Reporting	VIII	The reduced sampling provisions of the current General Permit have been eliminated from this 2004 draft General Permit.	CASQA recommends that the sample reduction provisions of the current General Permit be carried forward in the 2004 draft

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Requirements		<p>Consistent with past permits and current EPA policy, when a site can demonstrate, over a specified period of time, that the BMPs are effective in meeting and maintaining BAT/BCT then there must be an opportunity for relief. The 2004 draft General Permit provides no consideration or incentive for proactive efforts of dischargers in achieving and maintaining permit compliance. The 2004 draft General Permit, instead, places the discharger in a reactive, offensive mode of compliance demonstration, which is inconsistent and the presumptive basis of general permits.</p>	<p>General Permit, consistent with EPA's intended application of benchmarks in the Multi-Sector Permit. If industrial dischargers cannot demonstrate the effectiveness of the dischargers' BMPs and SWPPP implementation in meeting BAT/BCT through the iterative process, then it is the obligation of the Regional Boards' to regulate those dischargers through the more prescriptive individual site-specific permitting process.</p>
Visual Observation	VIII.3.a	<p>It appears that the motivation for this requirement is to ensure that sites conduct visual observations of stormwater discharges each month. This requirement is overly burdensome considering the new reporting requirements (pre-storm inspections and non-discharging storm event monitoring). If a site fails to conduct monthly visual observations of the site's stormwater discharges then the site is in violation of the General Permit. Regional Boards need to deal with this issue on a site-by-site basis and not burden the entire regulated community for the failures of some.</p>	<p>CASQA recommends that the current schedule be retained. Regional Boards need to deal with this issue on a site-by-site basis and not burden the entire regulated community for the failures of some.</p>
Sampling and Analysis	VIII.4	<p>The 2004 draft General Permit's requirement to collect samples from the first two consecutive storm events does not support the Superior Court's ruling (<i>San Francisco Bay</i></p>	<p>CASQA recommends that this requirement be removed from the permit unless adequate technical justification can be provided for sampling the first two qualifying events,</p>

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		<p><i>Keeper v. California State Water Resources Control Board, Sacramento County Superior Court, N.99Cs01929</i>) that the purpose of stormwater sampling is to assess the effectiveness of BMPs. For stormwater sampling to be useful for assessing BMP effectiveness, a reasonable period of time between rain events must be allowed to demonstrate BMP performance during the wet season.</p>	<p>consistent with the Superior Court 's findings.</p>
Sampling and Analysis	VIII.4.c.iv	<p>The 2004 draft General Permit states: "c. Dischargers shall analyze samples for... iv. Parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a WQS in the facility's receiving waters; and" Facilities do not usually have their own receiving waters as the language could imply. Standardized processes for assessing impacts on receiving waters from industrial stormwater discharges are not identified. The intent of collecting data on such parameters could be easily misunderstood.</p>	<p>CASQA recommends that the language be clarified as follows: "Parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a WQS in <u>a the-facility's-receiving waters. Such parameters are limited to only site- and industry-specific pollutants that are under the direct control of the discharger and that can reasonably be expected to cause or contribute to an exceedance of water quality standards in an impaired body of water. Data on parameters linked to existing exceedances of WQS is to be used solely for assessing the adequacy of a facility's SWPPP and BMPs. and not for determinations of cause or contribution."</u></p>
Benchmarks	VIII.4.f & Table VIII.2	<p>The 2004 draft General Permit has included numeric benchmarks for Specific Conductance (S/C) and Total Organic Carbon (TOC) that do not exist in EPA's Multi-Sector Permit</p>	<p>CASQA recommends that the inclusion of the TOC and S/C benchmarks be removed since they are not a part of the EPA established benchmarks discussed in the draft permit's</p>

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		<p>benchmarks . As part of the 1995 Multi-Sector Permit federal register notice, EPA provided a detailed discussion on the process utilized by EPA in establishing the benchmark levels. There is no technical justification for the selection and imposition of the S/C and TOC benchmarks in the 2004 draft General Permit.</p>	<p>Fact Sheet and not otherwise technically justified.</p>
<p>Stormwater Collection and Handling Instructions</p>	<p>VIII.9</p>	<p>This draft language sets permit compliance conditions that are not consistent with accepted EPA required protocols and good laboratory practices. For example, requiring that the testing laboratory receive stormwater samples within 48 hours is not necessarily required to maintain sample integrity (i.e., if field testing is used for pH and samples are preserved in the field). However, inclusion of this language likely will be misinterpreted to make the 48-hour timeline an enforceable compliance obligation.</p>	<p>CASQA recommends that Section VIII.9 be removed from the permit and replaced with language that requires dischargers to develop a Sample Plan that addresses accepted EPA required hold times, good lab practices for sample collection, sample preservation and Chain of Custody documentation. The 2004 draft General Permit language may be used as guidance only in the Fact Sheet or as an attachment to the permit.</p>
<p>General – TMDL Pollutants</p>	<p>Various – See Recommendations</p>	<p>The 2004 draft General Permit defers actions by industrial dischargers to address 303(d) impaired waterbodies and TMDLs to potential and separate RWQCB action (Finding 7). Given that TMDLs are the State Board's highest priority and that 303(d) listings and TMDLs, by their very nature, identify the pollutants of most concern to the health of the State's waterbodies, it seems the 2004 draft General Permit should include provisions that provide at least the opportunity to address</p>	<p>To recognize and provide the opportunity to address TMDL pollutants via the Industrial General Permit, CASQA recommends the inclusion of the following passages (shown in underline) in the sections listed:</p> <p>V. PROVISIONS:</p> <p><u>8. As an option under this General Permit and at their sole discretion, dischargers located within the watershed</u></p>

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		<p>TMDL pollutants.</p>
		<p>of a 303(d) impaired water body, for which a Total Maximum Daily Load (TMDL) has been adopted by the RWQCB or USEPA, may focus more of their efforts on, activities that generate and BMPs that address TMDL pollutants, in exchange for less effort on activities and BMPs that do not relate to TMDL pollutants.</p> <p>VII. SWPPP REQUIREMENTS:</p> <p>6. Description of Potential Pollutant Sources</p> <p>For each area of industrial activity identified in Section VII.4.e, dischargers shall prepare a narrative description of the facility's industrial activities, potential pollutant sources, and potential pollutants that could be exposed to storm water or authorized non-storm water discharges. If the discharger is implementing the TMDL pollutant option provided for in Section V.8, the discharger shall ensure that the narrative description also includes information for the appropriate TMDL pollutants. At a minimum, the following industrial activities shall be described as applicable:</p> <p>7. Assessment of Potential Pollutant Sources</p>

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			<p>a. Dischargers shall include in the SWPPP a narrative assessment of all areas of industrial activity and potential industrial pollutant sources as described in Section VII.6 to determine: (1) which areas of the facility are likely sources of pollutants in storm water discharges and authorized non-storm water discharges, and (2) which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. <u>If the discharger is implementing the TMDL pollutant option provided for in Section V.8, the discharger shall ensure that the narrative assessment also includes information for the appropriate TMDL pollutants. At a minimum, dischargers shall consider:</u></p> <p>8. BMPs</p> <p>b. Additional Facility Specific BMPs</p> <p>The BMPs listed in VII.8.a are the minimum BMPs that are required for all facilities. Dischargers, based upon the potential pollutant source</p>

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			<p>assessment required in Section VII.7, shall identify and implement additional facility specific BMPs necessary to reduce or prevent pollutants in storm water discharges to achieve compliance with the BAT/BCT standard and compliance with WQSs. <u>If the discharger is implementing the TMDL pollutant option provided for in Section V.8, the discharger may focus more of their additional facility specific BMP's on TMDL pollutants, in exchange for less effort on additional facility specific BMPs that do not relate to TMDL pollutants.</u></p> <p>VIII. MONITORING PROGRAM AND REPORTING REQUIREMENTS:</p> <p>4. Sampling and Analysis</p> <p>c. Dischargers shall analyze samples for:</p> <p>ii. Parameters indicating the presence of pollutants identified in the pollutant source assessment required in Section VII.7. <u>If the discharger is implementing</u></p>

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		<p>the TMDL pollutant option provided for in Section V.8. the discharger may focus more of their sampling and analyses on TMDL pollutants, in exchange for less effort on sampling and analysis of pollutants that do not relate to a TMDL.</p> <p>Dischargers shall modify these additional parameters in accordance with any updated SWPPP pollutant source assessment;</p>

Technology-Based Effluent Limits

Although CASQA strongly recommends that 1) the regulatory approach proposed within the 2004 draft General Permit be allowed sufficient time for program implementation and effectiveness monitoring; and 2) the State Board utilize the development of the statewide stormwater policy to identify a progressive policy and approach for regulating stormwater discharges, CASQA is also offering some initial thoughts regarding the development of technology-based effluent limits (TBELs). However, it should be noted that, given the inherent time constraints in providing the comment letter and the significance of shifting from a BMP-based approach to a numeric limit-based approach, CASQA reserves the right to provide additional comments.

CASQA recognizes that the intent of the TBELs is to require a minimum level of treatment for point source discharges (including industrial discharges) based on available treatment technologies while allowing the discharger to use any available control technique to meet the limits². CASQA also recognizes that, since TBELs are technology-based (i.e., based on the performance of treatment and control technologies), they are not based on risk or impacts on receiving waters, and, as a result, may or may not meet water quality standards (see **Attachment 2**). Although the State Board should utilize the development of the statewide stormwater policy to identify an approach for regulating stormwater discharges, CASQA is providing a series of initial recommendations that should be considered when and if the State Board evaluates the feasibility of developing TBELs.

CASQA's initial recommendations include the following:

- A general permit could incorporate TBELs because it would provide a single standard and/or pollution control obligation for all facilities within an industrial category or subcategory.
- Prior to developing TBELs, the State Board should develop clear guidelines specifying methodologies and criteria for developing TBELs, considering the variability of stormwater and its inherent differences, compared to traditional wastewater effluent discharge.
- Since the best control technology for one industry is not necessarily the same as another, TBELs would have to be developed based on sub-categories of industry.
- Prior to developing TBELs, the criteria for identifying which sub-categories of industry warrant the development of TBELs should be identified.
- The development of TBELs (effluent guidelines) should utilize a performance-based approach and follow a similar process used by USEPA when developing national effluent guidelines. The process should be modified where appropriate, to make the process compatible with the unique, variable features of stormwater discharges and the difficulties associated with sampling stormwater discharges. In fact, the State should consider following a process similar to what USEPA used when evaluating effluent limitations guidelines for discharges of stormwater from construction sites³.

² <http://cfpub.epa.gov/npdcs/generalissues/watertechnology.cfm>

³ Similar guidance is identified in USEPA's *Development Document for Proposed Effluent Guidelines and Standards for the Construction and Development Category* (June 2002)

- If TBELs (effluent guidelines) are developed, it should also include guidelines on methodology for sampling and determination of compliance.
- If developing TBELs, the State should consider:
 1. The performance of the best pollution control technologies or prevention practices that are available for an industrial category or subcategory; and
 2. The economic achievability of that technology, which can include consideration of costs, benefits, and affordability of achieving the reduction in the pollutant discharge.And follow a process similar to the one that is outlined below.

In order to appropriately derive a TBEL, the State should consider a number of parameters including, but not limited to, the following: (see also USEPA's Effluent Guidelines Flow Chart Exhibit 5-2 and USEPA's Development Document for Proposed Effluent Guidelines and Standards for the Construction and Development Category (June 2002))

- i. **Data Collection** - Existing technical and economic data should be obtained from various sources and evaluated so that the industry may be profiled with respect to general industry description, trends, environmental impacts, best management practices and economics. Once the information is obtained, data gaps could be identified and prioritized. The data sources that could be used include:
 - Literature searches – obtain information on various BMPs that pertain to the industry (journal articles, professional conference proceedings). This information could be used to summarize the most recent BMP effectiveness data, design and installation criteria, applicability, advantages, limitations and cost.
 - Existing Control Strategies - municipal stormwater permits, state and local guidance materials, and web sites could be reviewed to identify typical BMPs utilized to control industrial stormwater discharges.
 - Other Sources – Other data sources that could be reviewed include (but are not limited to):
 - The 2003 California Stormwater Industrial/Commercial BMP Handbook
 - The ASCE National Stormwater BMP Database
 - EPA's National Menu of BMPs
- ii. **Industry and Site Profile** - Industry specific information should be obtained through surveys, site visits, etc. and a profile developed. The profile should address items such as:
 - General description/definition and NAICS and/or SIC codes
 - Industry practices and trends
 - Manufacturing processes used
 - General facility information (age of equipment and facilities involved)
 - Discharge characteristics
 - Based on the data gaps identified as a part of the existing data collection efforts, additional field sampling and statistical analyses may be necessary
 - Local climatological data.

- iii. **Technology Assessment** - The technology assessment should determine the depth and breadth of effectiveness data for various industry related source and treatment BMPs and identify the quantity and quality of data available to describe the performance of all currently used and innovative practices, the ability of each to effectively control impacts due to runoff and the design criteria or standards currently used to size each practice to ensure effective control of runoff. The assessment should include an assessment of difficulties or practicality issues related to the inherent variability of stormwater and the challenges associated with sampling.

For each source and treatment BMP, the assessment should include:

- General Description of the BMP
 - Applicability
 - Design and installation criteria
 - Design and/or siting considerations and/or variations
 - Effectiveness
 - Limitations
 - Maintenance
 - Cost
- iv. **Regulatory Options** - Once the Data Collection, Industry Profile and Technology Assessment has been completed, the State should identify the regulatory options that are available. This effort should identify industry impacts, which pollutants to address as well as other non-water quality related impacts (such as energy requirements). For example, the regulatory options pursued by USEPA for Construction and Development essentially included:
- Promulgation of effluent guidelines that include minimum requirements deemed to result in an effective stormwater program; and
 - Continued reliance on the current State and local programs
- v. **Economic analysis**⁴ - Once the regulatory options are identified (see above), the State should evaluate the costs and environmental benefits and determine the appropriate option based on factors such as:
- Total Costs
 - Monetized and non-monetized environmental benefits⁵
 - Ease of implementation
 - Industry financial impacts
 - Industry acceptance

Although CASQA is not supporting the development of TBELs at this time, we clearly note that the use of this or a similar well-established process would be critical for the successful development of appropriately derived TBELs. Anything short of this effort would likely cast the limits into question.

⁴ Similar guidance is identified in USEPA's *Economic Analysis of Proposed Effluent Guidelines and Standards for the Construction and Development Category* (May 2002)

⁵ Similar guidance is identified in USEPA's *Environmental Assessment for Proposed Effluent Guidelines and Standards for the Construction and Development Category* (June 2002)

Water Quality-Based Effluent Limits

Although CASQA strongly recommends that: 1) the regulatory approach proposed within the 2004 draft General Permit be allowed sufficient time for program implementation and effectiveness monitoring; 2) the State Board utilize the development of the statewide stormwater policy to identify a progressive policy and approach for regulating stormwater discharges; and 3) it may be more appropriate for the State Board to evaluate the feasibility of developing technology-based effluent limits prior to water quality-based effluent limits (WQBELs), CASQA is also offering some initial thoughts regarding the development of water quality-based effluent limits. However, it should be noted that, given the inherent time constraints in providing the comment letter and the significance of shifting from a BMP based approach to a numeric limit based approach, CASQA reserves the right to provide additional comments.

As previously stated, CASQA recognizes that WQBELs may be necessary if it is determined that TBELs are not sufficient to ensure that water quality standards will be attained in the receiving water. However, it should also be noted that, given the current constraints and limitations with the dataset (including, but not limited to storm variability, intra-storm variability, averaging periods, application of chronic vs. acute criterion as well as human health criterion), it is not currently possible to appropriately derive WQBELs for industrial stormwater discharges.

Although the State Board should utilize the development of the statewide stormwater policy to identify an approach for regulating stormwater discharges, CASQA is providing a series of initial recommendations that should be considered when and if the State Board evaluates the feasibility of developing WQBELs.

CASQA's initial recommendations include the following:

- If an industrial discharger is in full compliance with all permit conditions and fully implementing the stormwater BMPs in accordance with industry and stormwater guidance, compliance with water quality standards should be presumed until it is demonstrated that the discharge is causing or contributing or has a reasonable potential to cause or contribute to an exceedance of water quality standards within the receiving water.
- Since there is no Statewide guidance regarding how a discharger determines if their discharge is causing or contributing or has a reasonable potential to cause or contribute to an exceedance of water quality standards within the receiving water, the State Board should work with CASQA and other interested parties in developing such guidance.
- If it has been determined that a discharger is causing or contributing or has a reasonable potential to cause or contribute to an exceedance of water quality standards within the receiving water, due to pollutants that are directly related to the industrial activity, the discharger should take all reasonable actions to ensure that future discharges do not cause or contribute to an exceedance of a water quality standard in the receiving water.
- If it is determined on a categorical or individual basis that, after the full implementation of TBELs that water quality standards are not being attained in the receiving water, individual permits and site specific WQBELs may be necessary (i.e., General Permits can not support site-specific WQBEL),

- Although USEPA and the State Board have provided guidance regarding the calculation of WQBELs for toxic pollutants in traditional NPDES permits⁶, the procedures outlined in these guidance documents (such as the determination of reasonable potential) are not directly applicable to highly variable flows such as stormwater. As a result, the State Board would need to work with the stakeholders to develop statewide guidance, policy and/or methodologies for stormwater discharges.
- The State should consider addressing the following in a statewide policy, guidance or methodology:
 - Derivations of WQBELs must require a sufficient amount of industrial discharge and receiving water data regarding frequency, duration and magnitude with which the site-specific conditions occur.
 - Defining the mixing zone and the method for developing dilution credits.
 - Determinations of reasonable potential to cause or contribute to exceedances of water quality standards within the receiving water must require a sufficient amount of industrial discharge and receiving water data as well as dilution considerations (where appropriate),
 - Given the above, detailed data sets may be necessary in order to appropriately derive WQBELs. The storm related data sets may include:
 - Effluent concentrations and flow data (more than 1 sample per hour);
 - Receiving water concentrations and flow data more than 1 sample per hour);
 - Storm event information (antecedent dry period, rainfall amounts, storm hydrograph); and
 - General facility information (facility type, BMPs implemented, etc.)
- When developing WQBELs, the Board must utilize a dynamic modeling approach, especially since dynamic models can explicitly predict the effects of receiving water and effluent flow and concentration variability.

Although CASQA is not supporting the development of WQBELs at this time, we clearly note that the use of a well-defined, scientifically and statistically sound process would be critical for the successful development of appropriately derived WQBELs. Anything short of this effort would likely cast the limits into question.

⁶ USEPA *Technical Support Document for Water Quality-based Toxics Control (TSD)* and the State Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)*