



Environmental Compliance Management

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

On behalf of Environmental Compliance Management Services (ECMS) and its clients, thank you for the opportunity to provide comments regarding the renewal of the current General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ (General Permit). We would like to commend the State Water Resources Control Board staff on its efforts in the development of the formal 2004 Draft Industrial General Permit, issued December 15, 2004. While this three year effort has been at times, exhaustive, we believe that staff is proposing a well-balanced permit that has achieved the following objectives:

- identify achievable improvements in storm water program elements;
- simplify and streamline the permit format;
- clarify the compliance obligations;
- provide sufficient flexibility to accommodate the diversity of the industrial activities covered by the General Permit;
- and adequately address EPA's Phase II requirements, as well as the concern and criticism of Regional Board staff and citizen groups about the current permit.

The following policy comments and attached Recommendations Table present our recommendations regarding the formal draft 2004 General Permit. The general policy comments offer recommendations to improve general policy interpretation and implementation. The table identifies the specific permit element of concern, the reason for the concern, and our comment or recommendation:

1. Support The Continued Application Of The Iterative BMP Approach To Regulate Industrial Stormwater Discharges

ECMS supports the General Industrial Permit's approach of regulating storm water discharges from industrial facilities through the use of Storm Water Pollution Prevention Plans (SWPPPs) and Best management Practices (BMPs), combined with appropriate monitoring requirements. We appreciate State Board staff's efforts to provide a balanced approach when regulating stormwater and strongly concur that industrial stormwater discharges should continue to be regulated in a manner that is based upon an iterative BMP-based approach, consistent with USEPA guidance.

USEPA recognized that application of the permitting approach typically applied to traditional end-of-the pipe point-source discharges was infeasible for ambiguous stormwater discharges. As an alternative to traditional water quality permitting, USEPA promoted permit compliance through development, implementation and demonstration of effective BMPs through an iterative process. USEPA continues to reaffirm that the vast majority of stormwater discharges can be adequately controlled to meet water quality standards by managing activities that have the potential to contribute pollutants through a BMP-based framework¹. The draft permit's fact sheet reiterates and continues to support this iterative BMP approach. The appropriateness and effectiveness of an adaptive management approach to water quality management in general, and urban water quality management specifically, is well demonstrated in the emerging management strategies being developed for a range of water quality issues, including irrigated land discharges and sediment quality objectives.

As the Group Leader for the California Auto Dismantlers Group Stormwater Monitoring Program (CADG SMP) and Wine Makers Group Stormwater Monitoring Program (WMG SMP) ECMS has collected, analyzed and reviewed over 400 stormwater data sets in the last 12 years. Our data clearly shows that reductions in pollutant loads can, and have been, and continue to be, achieved through the effective application of the BMP iterative process. For example, the CADG SMP participants have reduced pollutant loads in stormwater discharges between the first and second permit periods by over 50%. Total Suspended Solids (TSS) were reduced by over 54% from 201ppm on average during the first permit period to less than 92 ppm by the end of the second permit period. Similarly, Total Oil & Grease (TOG) was reduced 37% from 10 ppm to 6.3 ppm and Lead (Pb) was reduced 57% from 210 ppb to 90 ppb.

Demonstration of the effectiveness of the iterative BMP approach in reducing pollutant loads in industrial stormwater discharges is not limited to only a well run industrial group monitoring program. A rudimentary review of the State Board's Annual Report Stormwater Data Database (AR Database), released in January 2005, clearly demonstrates the following:

- Region 8 industrial stormwater discharges² reported a 38% reduction in Total Suspended Solids (TSS) and a 78% reduction in Total Oil and Grease (TOG) pollutant loads since the 1997-1998 monitoring year (see Table 1 below); and
- Two industrial activities scrutinized by both USEPA, regional boards and environmental groups over the last several years, Auto Parts Recycling (SIC Code 5015) and Scrap Recycling (SIC Code 5093), show significant pollutant load reductions (see Table 1 below):

¹ NPDES Storm Water Program Questions and Answers, January 21, 2004 (Revised December 17, 2004)

² Over 72% of the data represented in the AR Database are reported from Region 4 and Region 8 sites

- Stormwater discharges off of auto dismantling sites show reduction in TSS loads by 71% and TOG loads by 64% since the 1997-98 monitoring period; and
- Stormwater discharges off of scrap recycling sites show reductions in TSS loads by 56% and TOG loads by 82% since the 1999-2000 monitoring period.

Monitoring Period	Region 8 Dischargers		Auto Dismantling Sites		Scrap Recycling Sites	
	TSS (mg/l)	TOG (mg/l)	TSS (mg/l)	TOG (mg/l)	TSS (mg/l)	TOG (mg/l)
97-98	278	46		28		
98-99	202	25	370	14		
99-00	220	15	148	17	640	44
00-01	177	9	166	14	308	17
01-02	172	11	170	10	284	15
02-03		10	111		280	8
03-04			107			
% Reduction	38%	78%	71%	64%	56%	82%

Note: Parameters reported are average values adjusted to two significant figures

The State Board's AR Database clearly contradicts the WaterKeeper organizations' claims, made at both the June 2003 and the February 2004 workshops, that the iterative BMP approach was a failure and attempted to present "technical" justification for numeric effluent limits for stormwater discharges at the point of discharge. Rick Rollins, the expert hired by the CoastKeeper, employed junk science and false assumptions to attempt to demonstrate that stormwater sampling data generated over the last ten years shows that stormwater discharges are causing or contributing to exceedances of water quality standards. What Mr. Rollins actually succeeded in doing was demonstrating that the science of applying stormwater quality data at the point of discharge to receiving water limits, is at best, an immature and unsubstantiated discipline.

It is an accepted concept, both throughout the regulatory communities as well as the scientific communities, that the science of storm water quality management is an emerging one. EPA continues to stipulate that the application of numeric limits to storm water discharges is inappropriate due to the unique and variable nature of storm water discharges. EPA's position on the application of numeric effluent limits is well represented in the Agency's November 22, 2002 memo "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs". The 11/22/02 EPA memo states:

(Water Quality Based Effluent Limits) WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary. EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances. When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

Until such time that a formalized standard, based in accepted and sound scientific principals, has been developed by the State Board which equably and objectively defines the process by which numeric limits are applied to storm water discharges in determining compliance to receiving water limitations, compliance must continue to be based on the USEPA approved BMP iterative approach. It is paramount that the State Board does not impose upon the regulated community an unattainable and undefined compliance obligation.

2. Intent of Stormwater Sampling

Of particular concern is the subversive attempt of environmental groups and other groups, both governmental and non-governmental, to redefine the intent of stormwater sampling. As the federal and state courts have repeatedly affirmed, the intent of sampling stormwater discharges from industrial and construction sites is to assess the effectiveness of the sites' BMPs. The nexus between stormwater discharge analysis and water quality standards is that if, through stormwater discharge analysis it can be demonstrated that the BMPs are effective in eliminating or reducing pollutants, then the BMPs are meeting the BAT/BCT standard established to protect water quality. The Fact Sheet to the 2003 Draft Industrial General Permit made this point quiet clear.

We are concerned with the mis-application of analytical monitoring of stormwater discharges as compliance monitoring, as described by USEPA Guidance³, in the this draft permit. USEPA's iterative BMP-based approach is described and demonstrated through the development of a site specific Stormwater Pollution Prevention Plan (SWPPP) and Monitoring and Report Program (M&RP), in accordance with USEPA guidance. Integral to evaluation of BMP effectiveness is monitoring of the BMP design, development and implementation process.

To facilitate the evaluation of BMP effectiveness USEPA requires as many as three different and distinct types of monitoring of stormwater discharges: visual examination, analytical monitoring, and compliance monitoring. Visual examinations provide a simple and inexpensive means of obtaining a rough assessment of storm water quality. Analytical monitoring provides feedback to the facility operator to assess the effectiveness of the site's stormwater Pollution Prevention Plan and BMPs. Compliance Monitoring is required for discharges subject to numeric storm water effluent limitations to determine compliance with those types of limits².

Analytical monitoring of stormwater discharges is not designed nor intended to satisfy compliance monitoring obligations. Analytical monitoring is designed and intended to be used by the discharger, in conjunction with other monitoring data and tools specific to the discharger's SWPPP and M&RP, to evaluate BMP effectiveness. USEPA describes two separate and distinct sampling plan approaches for analytical monitoring and compliance monitoring⁴. It is inappropriate to apply data generated under the analytical monitoring protocols to determine compliance with effluent limitations.

The most recent publication that mis-applies stormwater discharge analytical monitoring data and attempts to redefine the intent of analytical monitoring of stormwater discharges is the "Final Report: Industrial Stormwater Monitoring –Existing Statewide Permit Utility and Proposed Modifications" ("UCLA Report"), authored by Michael K. Stenstrom and Haejin Lee, Civil and Environmental Engineering Department, UCLA, Los Angeles California January 2005. Caution

³ Guidance Manual For The Monitoring And Reporting Requirements Of The NPDES Multi-Sector Storm Water General Permit, USEPA, January 1999

⁴ NPDES Stormwater Sampling Guidance Document, USEPA, July 1992

must be taken when considering this report's credibility since the report's conclusions and recommendations are based in flawed assumptions; statistical modeling mythology that does not replicate accepted scientific fact; and the failure of the authors to consider accepted scientific concepts regarding the variability of stormwater flows in formulating their conclusions and recommendations:

- The report states that the "original goal of the monitoring program associated with the GISP was to identify polluters.." and a secondary goal was to "..develop TMDLs..". These were never the goals of stormwater sampling in either the State's General Industrial Permit or USEPA's Multi-Sector Permit. USEPA guidance makes it clear that the goal of stormwater sampling at industrial sites is to assess BMP effectiveness. Stormwater Sample Plans are designed to achieve that objective. The authors' assumption regarding the intent of stormwater monitoring is flawed, so, consequently, are any conclusions made based on the flawed assumptions;
- The report fails to show a relationship between TSS and other particulate-based constituents, such as metals. Yet the premise that pollutants are transported on suspended sediments is an accepted fact within the water quality and soil science arenas and is the basis of the Sediment Quality Objectives regulatory efforts. When a statistical model fails to replicate accepted fact, then the model is flawed, as is any findings and conclusions based on the flawed model;
- The authors failed to consider the variability in stormwater discharges when compared to wastewater discharges. It is accepted, and supported by USEPA, that stormwater discharges are not like wastewater discharges where the flows and pollutant loadings are somewhat predictable. The quantity of a storm water discharge is linked to the storm size. Pollutant loading is linked to factors including the antecedent dry period and the time and intensity of a storm event. The authors erroneously assumed the variability in the stormwater discharges was a direct consequence of poor sample collection and quality control. Based on the authors failure to consider the variability of stormwater as a reasonable explanation for the variability in stormwater sample data, the authors recommend that certified laboratories and consultants be hired to collect and evaluate stormwater data; and
- The report's review committee's recommendations are grossly biased. The review committee included representatives from Heal the Bay and the Surfrider Foundation, Los Angeles Regional Board, several LA regional municipalities and two consulting firms, Brown and Caldwell and Geosyntec, Inc. Industrial stormwater dischargers were not represented on the review committee.

What the UCLA Report does do effectively is demonstrate the authors lack of understanding the regulatory intent of stormwater monitoring and sampling and that several constituents, such as zinc, iron and aluminum are abundant in background conditions, typically in concentrations significantly above USEPA's benchmark limits. Figures 3.6 and 3.7 of the UCLA Report shows that even the 25th percentile of the boxplot for these metals are above USEPA Multi-Sector Benchmark Levels.

3. Incorporation of USEPA Benchmarks As An Enforcement Tool

We support the iterative BMP-based approach and the application of benchmarks to stormwater but only in a manner consistent with USEPA's Storm Water Multi-Sector General Permit for Industrial Activities (Multi-Sector Permit). Assessing any punitive action, including a rigorous and time consuming reporting process to regional boards, for a single exceedance of a benchmark is un-defendable and unacceptable.

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 your use to determine the overall effectiveness of your SWPPP in controlling the discharge of pollutants to receiving waters".

Moreover, there is significant data to support the need to develop benchmark criteria that are more representative industrial activities and not background conditions. The majority of the stormwater data available supports the observation that constituents such as lead, zinc, iron and aluminum are abundant in background conditions, typically in concentrations significantly above USEPA's benchmark limits. Imposition of benchmark criteria which does not distinguish between activity specific pollutant sources and background sources will do nothing but distract from efficient evaluation of BMP effectiveness.

4. Development of Formal Guidance to the Revised General Permit

In working with staff over the last two years regarding the revision and reissuance of the General Permit, it became apparent that many of the issues and concerns arising out of the current General Permit were related to the misinterpretation of the General Permit's intent and assumptions and mis-application of the General Permit's requirements. It is imperative that formal guidance be developed that standardizes the General Permit's intent, requirements, and the expected level of effort necessary to demonstrate compliance to the General Permit's requirements. Development of formal standardized guidance addressing the application and implementation of the revised Industrial General Permit is critical to ensure fair and consistent enforcement of, and compliance to, the permit's intent and obligations.

Again, 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 916-972-7947.

Sincerely,

Maureen Daggett

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President, ECM Services
CADG SMP & WMG SMP Group Administrator

Attachments

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

Topic	Section	Comments	Recommendations
Discharge Prohibitions	I.1	<p>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 mis-application.</p>	<p>Recommend that the term "...materials other than stormwater..." be replaced with "non-stormwater discharges" as defined by the General Permit.</p>
Discharge Prohibitions	I.2	<p>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>". The 2004 draft 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 permit language, and previous drafts' language, which states that <i>the stormwater discharge cannot "cause or contribute"</i>. This language change has not been justified or supported in the fact sheet or finding statements.</p>	<p>Recommend that the Discharge Prohibitions language contained in the previous two versions of the draft Industrial Permit must be carried forward to the final draft permit.</p>
Receiving Water Limitations (RWLs)	III	<p>The current permit and the 2003 draft permit state:</p> <ol style="list-style-type: none"> 1. <u>Storm water discharges and authorized non-storm water discharges</u> to any surface or ground water shall not adversely affect human health or the environment. 2. <u>Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance</u> of any applicable water quality objectives or standards contained. 	<p>Recommend that the previous Receiving Water Limitations (RWLs) Language t be carried forward in the 2004 draft</p>

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		<p>The 2004 draft permit language has been modified to read:</p> <ol style="list-style-type: none"> 1. Storm water discharges and authorized non-storm water discharges to any surface or ground water <u>shall not contain pollutants that cause a nuisance.</u> 2. 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 permit language has not been justified or supported in the fact sheet or finding statements.</p>	
<p align="center">EPA Benchmarks as RWLs</p>	<p align="center">II.3</p>	<p>The 2004 draft 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>ECMS recommends that the State Board clearly state that exceedance of an EPA Benchmark is not considered a violation of the BAT/BCT requirement. This clarifying language is necessary to prevent the draft permit language's lack of clarity from being misinterpreted by claiming that EPA's 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>
<p>Receiving Water Limitations</p>	<p>V.6.c.iii</p>	<p>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</p>	<p>Section V.6.c.iii should be amended so that it reflects the concept in the fact sheet: iii. There are no sources of the pollutants at</p>

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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(RWLs)		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> ”	the facility. <u>The pollutants are not caused by facility operations.</u>
EPA 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.	The permit language needs to support the intent stipulated in the fact sheet
		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 EPA Benchmarks, is unwarranted and unprecedented in other water quality compliance programs. Moreover, the draft permit’s Standard Provisions imposes 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 is identified.	ECMS recommends that Section V.7 of the draft permit be eliminated. The permit, consistent with the iterative BMP-based approach, should <i>continue</i> to 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.

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		<p>There is no consideration of background levels or offsite pollutant sources that impact onsite discharges. The draft 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>	<ol style="list-style-type: none"> 1. ECMS recommends that language be incorporated into the permit that reiterates the dischargers' responsibilities and allows for consideration of offsite or background pollutant sources. 2. ECMS recommends that benchmark criteria be develop that considers background contributions
		<p>V.7.c: The certification language equates benchmarks to BAT/BCT. This section requires the discharger to certify that BMPs meet BAT/BCT, yet the State Board admits that there is no process to assess what that means.</p>	<p>ECMS recommends that the permit clarify that the benchmarks are not intended to determine BAT/BCT compliance.</p>
		<p>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.</p>	<p>ECMS 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 over to economically achievable levels, do not cause or contribute to an exceedance.</p>
		<p>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.</p>	<p>ECMS recommends that this language be removed.</p>

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		<p>V.7.e-g (and V.8.4.d): If a benchmark is exceeded the permit required the following:</p> <ol style="list-style-type: none"> 1. Required 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. Requires 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. Required that discharger to implement corrective action, including identification and implementation of additional BMPS within 90 days of the original exceedance; <p>The 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>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>ECMS 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>

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		<p>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 makes it clear that there is no longer any "safe harbor" and kills the iterative BMP-based process.</p>	<p>Recommend 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</p>
<p>Annual Report Submittal Date</p>	<p>V.10 & VIII.13</p>	<p>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 draft General 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>ECMS recommend 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</p>
<p>SWPPP Performance Standards</p>	<p>VII.2</p>	<p>VII.2.a.i states that "Dischargers shall identify and evaluate all sources of pollutants that may effect the quality of the 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>Suggested 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>
<p>SWPPP Performance Standards</p>	<p>VII.2 & Fact Sheet,</p>	<p>VII.2.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</p>	<p>ECMS 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-</p>

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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	p VIX: Minimum BMPs	<p>necessary to achieve compliance with 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 guidance creates an unattainable compliance obligation and leaves the discharger open to unsubstantiated enforcement actions</p>	<p><i>specific BMPs that are necessary to achieve compliance with BAT/BCT and to meet applicable water quality standards is a violation of this General Permit".</i></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 <i>and compliance with WQS</i>". 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>ECMS recommends eliminating the "<i>..and compliance with WQS</i>" language</p>
Minimum BMPs	VII.8	<p>ECMS supports the concept of establishing minimum BMP requirements and recognizes that the majority of minimum BMPs are practicable and should be promoted as 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</p>	<p>ECMS recommends that:</p> <ol style="list-style-type: none"> 1. In order to provide for consistency between the Permit and the industry specific guidance materials, the State should modify the categories to be consistent with existing terminology and CASQA's Industrial and Commercial Handbook; and

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		throughout the state and promoted within the CASQA Industrial and Commercial BMP Handbook.	2. Include a reference in the Permit to the <i>CASQA Industrial and Commercial California Stormwater BMP Handbook (2003)</i> for additional guidance on the types of BMPs that may be implemented at Industrial and Commercial facilities.
BMP Descriptions	VII.8.c	Require 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.	ECMS recommends that the language <i>“when applicable”</i> be added to clarify the permit expectation.
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. 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. It is recommended that a minimum of 15 working days from the date of receipt by the discharger of the notice be allowed.	It is recommended that a minimum of 30 days from the date of receipt by the discharger of the notice be allowed. Anything less is punitive.
Monitoring Program and Reporting Requirements	VIII	The reduced sampling provisions of the current permit have been eliminated from this permit. Consistent with past permits and current EPA policy, when a site can demonstrate, over a	ECMS recommends that the sample reduction provisions of the current permit be carried forward in the 2004 Draft Permit, consistent with EPA’s intended application of

RECOMMENDATIONS FOR THE 2004 DRAFT INDUSTRIAL GENERAL PERMIT

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		<p>specified period of time, that the BMPs are effective in meeting and maintaining BAT/BCT then there must be an opportunity for relief. The draft permit provides no consideration or incentive for proactive efforts of dischargers in achieving and maintaining permit compliance. The draft 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>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>
<p>Visual Observation</p>	<p>VIII.3a</p>	<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. We recommend the current schedule be retained.</p>	<p>ECMS recommends 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>
<p>Sampling and Analysis</p>	<p>VIII.4</p>	<p>The draft 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 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</p>	<p>ECMS recommends that this requirement be removed from the permit unless adequate technical justification can be provided for sampling the first two qualifying events, consistent with the Superior Court 's findings.</p>

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		must be allowed to demonstrate BMP performance during the wet season.	
EPA Benchmarks	VIII.4f & Table VIII.2	The draft 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 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 draft permit.	ECMS 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 Fact Sheet and not otherwise technically justified.
Stormwater Collection and Handling Instructions	VIII.9	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.	ECMS recommends that Section VIII.9 removed from the permit and be 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 current draft language may be used as guidance only in the Fact Sheet or as an attachment to the permit.
ACSCE Report Format	A.9.d.vii:	Requiring dischargers to use a report format prepared by the regional board staff is unnecessarily restrictive.	A SWPPP and its reports must be allowed to be reflective of a facility's existing reporting and documentation procedures. Requiring a facility to have to use a pre-formatted report form, merely for the connivance of the regional boards' staff is unacceptable. The SWPPP and its reports must be allowed to formatted/structured to best facilitate the facility's needs. There is language throughout the permit and a compliance

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			<p>expectation that the SWPPP's be site specific. This requirement seems to disappear if it not convenient the regional boards. Recommend language allowing an alternative report format as long as the alternative format includes all of the information and detail required by the permit's format</p>
Qualifying Storm Event	Section B:	The definition needs to be consistent for visual observations as well as sampling requirements	Clarify that the term "qualifying storm event" is the same throughout the section, regardless of being applied to visual observations or sampling conditions
Group Monitoring	C.2 .b	The purpose of Section c.2.b is to define what is sufficient education, experience and qualifications to be a group leader. C.2.b is too ambiguous	Eliminate C.2.b.iv and replace with persons certified as an Certified Professional in either Erosion and Sediment Control (CPESC) and/or Stormwater Quality (CPSWQ).
Existing Members Inspections	Section C.2.c.v (3)	Limiting inspection and sampling of existing group members to the first 4 years of the five year permit	There is not justification for this provision. It is clear that the S. Cal regional boards do not support group monitoring and this provision is merely punitive in nature. Eliminate it.
Reporting to Regional Boards	Section C.2.c.v (4)	The Reporting Schedule is unreasonable. Again, this requirement is punitive. Until the regional boards can meet this type of restrictive time table there is not justification for imposing it onto group leaders and the regulated comities	Recommend that 15 days be allowed to provide a report to the site and that the report to the regional board be accomplished within 90 days, as part of a Quarterly GSMP Status Report issued each quarter to affected regional boards and the state providing a status of group activities accomplished during the reporting period.
Corrective Action Report	Section C.2.c.v (6)	Signed Participant's Corrective Action Report: Again, this requirement is punitive. Group leaders do not have this type of authority. Our only	The group leaders obligation must be limited to providing to the regional board a status on the recommended corrective actions to the

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		recourse would be to remove the participant from our groups, which I assume is the regional boards expectation. It is an unreasonable one. It is the responsibility of the regional boards to conduct enforcement, not the group leaders.	regional boards for the regional boards to initiate follow-up actions.
Group Size	Section C.3	10 member minimum participation	Groups made up solely of sites within a single corporation should not be limited by this requirement.