

Solid Waste Industrial Stormwater Partnership

Burrtec Waste Industries, Inc.
Butte County Public Works
California State Association of Counties
City of Mountain View
City of Santa Cruz
City of Sunnyvale
Covanta Energy
Fresno County
Glenn County Planning & Public Works
Harvest Power
Inland Empire Disposal Association
Kern County
George Larson & Associates, Inc.
**Lassen Regional Solid Waste
Management Authority**
**Los Angeles County Waste
Management Association**

**Monterey Regional Waste
Management District**
**OC Waste & Recycling
Recology
Republic Services**
Riverside County Waste Management
**Rural Counties Environmental Services
Joint Powers Authority**
Salinas Valley Solid Waste Authority
SCS Engineers
Sector Strategies
**Solid Waste Association of North America,
California Chapters**
Sonoma County
Ventura Regional Sanitation District
Waste Connections
Waste Management
Yolo County

April 29, 2011

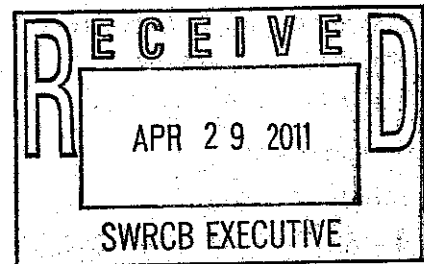
Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
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Email: commentletters@waterboards.ca.gov

Subject: Comment Letter -- Draft Industrial Stormwater Permit

Dear State Water Resources Control Board:

Thank you for the extended opportunity, from April 18, 2011 until April 29, 2011, to submit comments to you regarding the draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit or IGP). The Solid Waste Industrial Stormwater Partnership (SWISP) is an informal coalition of public and private solid waste facility owners, operators and



consultants that seek balanced regulations and permits regarding stormwater quality from facilities we own, operate or are otherwise responsible. We support the implementation of continuous stormwater quality improvement measures that are:

- cost-effective,
- practical, and
- known to have demonstrated water quality benefits.

Unfortunately, we are concerned that the draft permit proposed on January 28, 2011 does not meet these objectives. This letter documents our concerns and recommendations regarding several key issues of the State Water Resources Control Board's (SWRCB) draft permit. Attached to this letter is a detailed list of specific concerns, section by section, with the draft permit (Attachment 2).

Purpose of EPA MSGP Benchmarks and IGP NALs

The IGP incorporates the EPA Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) benchmarks, but changes the title of the values to numeric action limits (NALs). While the numeric values of the MSGP benchmarks and the NALs are the same, they do not function the same way. Benchmark exceedances do NOT require mandatory corrective actions be taken by the discharger, while NAL exceedances require mandatory corrective actions.

It is SWISP's opinion that MSGP benchmark values should not be used as IGP NAL values without a detailed evaluation and explanation of their suitability to serve as such. The EPA MSGP benchmarks serve a specific purpose, as quoted from the EPA MSGP below:

"The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) *may be necessary* to comply with the effluent limitations in Part 2" (italics and underline added for emphasis)

The MSGP benchmarks assist the discharger in determining whether additional corrective action(s) MAY be necessary. The MSGP further indicates that it is possible that "no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice."

The IGP NALs don't function the same way as the MSGP benchmarks, as the name itself implies action. The IGP specifies that if compliance with NALs cannot be achieved, the NALs change to numeric effluent limitations (NELs), limits that result in permit violations and mandatory minimum penalties when concentration triggers are exceeded. Further, additional treatment/structural control, best management practices (BMPs), will be required to comply

with the IGP. Under the terms of the MSGP, the benchmark concentrations could be exceeded at every sampling event, and no permit violation would occur and no additional treatment/structural control BMPs would be required. The MSGP limits additional treatment/structural control, best management practices (BMPs), corrective actions, to those that are practical and achievable.

SWISP realizes that IGP NALs and MSGP benchmarks don't necessarily function the same way, and that mandatory actions can be required as a result of a NAL/NEL exceedance. However, the same concentrations used for benchmarks should not be used for NALs/NELs since the concentrations serve different purposes and the resultant corrective actions are different. SWISP recommends that NAL concentrations be based on regional, industry specific studies and the process to determine appropriate NAL concentrations follow the recommendations of the SWRCB commissioned panel of experts, and not be based solely on the SWRCB's best professional judgment. These recommendations are discussed in more detail throughout this letter.

NELs are NOT Currently Feasible for Industrial Stormwater Discharges

The EPA has consistently held the position that it is difficult, if not infeasible, to assign NELs broadly to all industrial stormwater discharge. This position is clearly and thoroughly explained in the EPA MSGP Fact Sheet, Section VI.A.4, pages 38 and 39. Below are a few pertinent quotes from the referenced section:

"Numeric effluent limitations are not always feasible for industrial stormwater discharges as such discharges pose challenges not presented by the vast majority of NPDES-regulated discharges. Stormwater discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose source, nature and extent varies. See 55 FR at 48,038; 53 FR at 49,443. This is in contrast to process discharges from a particular industrial or commercial facility where the effluent is more predictable and can be more effectively analyzed to develop numeric effluent limitation..."

"The variability of effluent and efficacy of appropriate control measures makes setting uniform effluent limits for stormwater extremely difficult. The record for this permit indicates that there is a high level of variability among discharges, in terms of both flow rates and volumes and levels of pollutants, since the volume and quality of stormwater discharges associated with industrial activity depend on a number of factors, including the industrial activities occurring at the facility, the nature of precipitation, and the degree of surface imperviousness. Due to the dissimilarity among the 29 different industrial sectors covered by this permit, and among the individual facilities within the different industrial sectors, the sources of pollutants in stormwater discharges differ with the type of industry operation and specific facility features..."

"While EPA continues to study the efficacy of various types of pollution prevention measures and BMPs, EPA at this time does not have a record basis for developing numeric limits that would reasonably represent a well-run application of BMPs. Because the flow and content is so variable, if EPA were to try to base numeric limits on a few sites, it is likely that any number it would develop would not be technologically available and economically achievable by all well-run facilities..."

"These factors create a situation where, at this time, it is generally not feasible for EPA to calculate numeric effluent limitations, with the limited exception of certain effluent limitations guidelines that have already been established through national rulemaking. For example, covering exposed areas where feasible and cleaning them regularly where they are not covered may be an effective way of significantly reducing stormwater pollutant discharges, but the degree of pollutant reduction will be highly site-specific and cannot be generally quantified. Therefore, EPA has determined that it is not feasible for the Agency to calculate numeric, technology-based limits for many of the discharges covered under this permit and, based on the authority of 40 CFR 122.44(k), has chosen to adopt non-numeric effluent limits..."

The EPA has definitively concluded that "it is not feasible for EPA to calculate numeric effluent limitations" for stormwater discharges, except for a few industrial categories. The SWRCB disagrees with the EPA's position, as evidenced by the inclusion of NELs in the IGP. However, the SWRCB does not explain in the IGP how they were able to overcome the difficulties that rendered setting NELs infeasible for the EPA.

The SWRCB commissioned a panel of experts, referred to as the Blue Ribbon Panel, to assess the feasibility of setting NELs. A final report was prepared by the Blue Ribbon Panel, dated June 19, 2006, titled *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*. The IGP refers to and acknowledges the Blue Ribbon Panel's report and accompanying recommendations; however, the IGP has chosen to selectively use the findings and recommendations at their discretion, without explanation or justification.

SWISP reviewed the Blue Ribbon Panel's report. The Blue Ribbon Panel's findings were focused on three separate types of activities: municipal, construction and industrial. Regarding industrial activities, the Blue Ribbon Panel identified ten recommendations and concerns, which were reproduced in their entirety in the IGP. However, the SWRCB failed to address these concerns specifically in the text of the IGP, or to consider these concerns when the IGP was created. Instead, the SWRCB seems to discount the validity of the recommendations and concerns based on their absence in the IGP.

The IGP makes significant departure from the following Blue Ribbon Panel recommendations:

- “The Panel recognizes the inadequacy of current monitoring data sets and recommends improved monitoring to collect data useful for establishing Numeric Limits and Action Levels.” The IGP bases Numeric Limits and Action Levels on EPA MSGP benchmarks. SWISP explained in the previous section that EPA MSGP benchmarks were not developed to function as Numeric Limits or Action Levels. No data has been used to develop modified Numeric Limits or Action levels as recommended by the Panel. The Numeric Limits and Action Levels in the IGP are not based on technically sound principles.
- “Required parameters for future monitoring should be consistent with the type of industrial activity instead of the current parameters (i.e., monitor for heavy metals when there is reasonable expectation that the industrial activity will cause greater heavy metals concentrations in the storm water).” The IGP simply lumps all industrial activities together with the same set of monitoring parameters with no ability to recognize differences between types of industrial facilities. This results in needless monitoring and sampling which costs the public (for private entities) or taxpayers (for public entities) money for requirements that does not pertain to the facility.
- “Insofar as possible, the Panel prefers the use of California data (or National data if it can be shown to be applicable to CA) in setting Numeric Limits and Action Levels.” There does not appear to be any attempt to base the proposed Numeric Limits and Action Levels on California data. The proposed Numeric Limits and Action Levels are simply based on EPA MSGP benchmarks.
- “The Panel recognizes that economies of scale exist for large facilities and large groups of single facilities.” The IGP eliminates the group monitoring options and does not allow economies of scale for very large facilities. SWISP requests that the ability to use group monitoring programs be restored in a new revised permit and recognize the unique economies of scale that can be realized at very large facilities.
- The Panel did not show that the current process for industrial activities is broken. As appropriate, the current process is site specific with site specific and applicable requirements followed under the NPDES regulations.

SWISP requests that the final IGP be more aligned with the recommendations of the SWRCB commissioned Blue Ribbon Panel.

Unclear Use of Best Professional Judgment

The SWRCB's use of best professional judgment (BPJ) in the IGP is NOT well explained or justified, and differs markedly from use of BPJ in the EPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP). BPJ is a significant concept in the IGP because the SWRCB cites BPJ as the justification for determining numeric action levels (NALs), which are ultimately become enforceable effluent limits.

The IGP Fact Sheet states that:

It is the best professional judgment (BPJ) of the State Water Board staff that dischargers employing BAT and BCT can reduce the pollutants in their storm water effluent to achieve concentrations at or below the NALs.

BPJ is defined in the IGP Fact Sheet as:

The methods used by permit writers to develop technology-based NPDES permit conditions on a case-by-case basis using all reasonably available and relevant data.

BPJ was utilized by the EPA in the MSGP, which the IGP is based upon. However, the concept of BPJ used by the EPA differs from that used by the SWRCB. While the MSGP and the IGP each reference the use of BPJ, their respective uses within the permits are not the same. In fact their respective uses are significantly different and they shouldn't be confused.

To clarify the use of BPJ in the MSGP, versus the Draft Permit, the MSGP should be examined. The EPA doesn't specifically define BPJ, but describes the concept as follows in the MSGP Fact Sheet:

"When EPA has not promulgated effluent limitation guidelines for an industry, or if an operator is discharging a pollutant not covered by the effluent guideline, permit limitations may be based on the best professional judgment (BPJ, sometimes also referred to as "best engineering judgment") of the permit writer. 33 U.S.C. § 1342(a)(1); 40 CFR 125.3(c). See *Student Public Interest Group v. Fritzsche, Dodge & Olcott*, 759 F.2d 1131, 1134 (3d Cir. 1985); *American Petroleum Inst. v. EPA*, 787 F.2d 965, 971 (5th Cir. 1986). For this permit, most of the technology-based limits are based on BPJ decision-making because no effluent limit guidelines (ELG) apply. However, the permit also includes technology-based limits based on the stormwater-specific ELGs listed in Table 1-1 of the permit, where applicable.

VI.A.3. EPA's Authority to Include Non-Numeric Technology-Based Limits in NPDES Permits

The BPJ limits in this permit are in the form of non-numeric requirements. Under EPA's regulations, non-numeric effluent limits are authorized in lieu of numeric limits, where "[n]umeric effluent limitations are infeasible." 40 CFR 122.44(k)(3). As far back as 1977, courts have recognized that there are circumstances when numeric effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., BMPs) designed to reduce the level of effluent discharges to acceptable levels. *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir.1977)."

The MSGP Fact Sheet specifies that BPJ is used when no (ELG), in the IGP, exist. The MSGP Fact Sheet describes ELGs as follows:

"Technology-based effluent limitations are in many cases established by EPA in regulations known as effluent limitations guidelines, or 'ELGs.' EPA establishes these regulations for specific industry categories or subcategories after conducting an in-depth analysis of that industry.⁵ The Act sets forth different standards for the effluent limitations based upon the type of pollutant or the type of permittee involved."

The EPA uses BPJ as an alternative to ELG, when ELGs cannot be determined. The EPA used BPJ in the MSGP to determine the narrative, or non-numeric, effluent limit requirements. BPJ and ELG don't arrive at the same conclusion. BPJ determines appropriate narrative effluent limits and ELG determines appropriate numeric effluent limits. BPJ is utilized by EPA when numeric effluent limits are not feasible, not as a different process to determine numeric effluent limits.

The SWRCB's use of BPJ is completely different from the EPA's use of BPJ. BPJ doesn't have to be the same process in both permits, but the use of BPJ in two similar permits lends a casual reader to assume that the terms mean the same thing, when in fact they do not. Since the concept of BPJ was utilized first by the EPA in the MSGP, the IGP's use of BPJ is misleading to a reader unfamiliar with the SWRCB's use of BPJ in the IGP. This confusion is exacerbated by the fact that BPJ is not well described in the IGP.

The SWRCB provides little information describing the process of BPJ. The SWRCB's definition indicates that it is based on "all reasonably available and relevant data." However, the IGP doesn't describe or provide any of the data utilized in determining NALs/NELs by BPJ. In the absence of a detailed explanation of the process and data, the process appears both arbitrary and subjective.

If the SWRCB is going to use an approach to determine NELs and NALs, which differs from the EPA's in depth analysis (ELG process) or the approach recommended by the SWRCB commissioned Blue Ribbon Panel, SWISP recommends that the approach be transparent, technically sound and justifiable. SWISP requests that the SWRCB provide additional information regarding their use of BPJ. The IGP should be revised to clarify what the SWRCB's BPJ consists of and what data was utilized in the process.

Cost of Compliance

The IGP does not make any attempt to determine the cost of compliance with its provisions. SWISP has attempted to make an estimate of the basic administrative and monitoring cost associated with implementing this permit for the types of facilities we operate. These are presented in Attachment 1 to this letter. Estimated annual costs per facility generally range from \$15,000 to \$40,000 per facility per year for a Risk Level 1 Determination. SWISP believes that, under the proposed IGP, most landfills will fall under Risk Level 2 or 3 that generally range from \$50,000 to \$100,000 per year per facility for administrative and monitoring costs.

Assuming there are approximately 1,000 solid waste and recycling facilities in California affected by this rule, the total administrative costs of this rule will range from \$20 to \$50 million per year for our industry alone. These costs will not have any direct impact on improving water quality. These costs are associated with simply addressing the administrative burden of complying with the permit. Administrative and Monitoring Costs for complying with just the basic requirements of the IGP will be extremely high. SWISP requests that the proposed IGP be modified as follows:

1. The administrative and monitoring elements of the permit should be streamlined based on a cost/benefit analysis for all of affected California industries.
2. The permit should include at least a 1 year delay between the effective date of the final revised permit and the date that operators are required to comply with the administrative and monitoring provisions.
3. For organizations with many facilities, implementation should be staggered over at least a 4 year period to achieve full compliance with basic monitoring and administrative requirements. For example, if an industrial/public entity has 20 facilities affected by the final revised permit the following schedule should be included:
 - i. First year: prepare for compliance
 - ii. Second year: 1st set of 5 facilities in compliance
 - iii. Third year: 2nd set of 5 facilities in compliance
 - iv. Fourth year: 3rd set of 5 facilities in compliance
 - v. Fifth year: 4th set of 5 facilities in compliance

BMP, BAT and BCT costs will likely be as high as \$100 million (or more) for large industrial sites. This will be particularly true if Level 3 Corrective Action is imposed. The revised IGP must

provide some indication of the cost of compliance across the range of California industries subject to the permit.

The Proposed Permit Invites Costly Lawsuits

By establishing unachievable numeric limits and a myriad of ill-defined and impracticable mandatory minimum BMPs, the proposed permit, if adopted, will invite costly lawsuits. The permit must be amended to provide clear and achievable requirements and a shield to protect against such legal challenges, even if specific thresholds, numeric limits or action levels are exceeded as long as these exceedances are being addressed within the terms and framework of the permit.

The SWRCB must review and approve any reports submitted in a timely basis. Without this approval there is no mechanism to resolve any issues or concerns on a timely basis. The current process allows for timely resolution. The proposed process makes for a lawsuit setting where other parties may be more interested in a lawsuit rather than timely resolution. If lawsuits do arise, and they will under the proposed process, SWRCB staff and its counsel will be involved and this creates needless and costly atmosphere that could otherwise have been resolved on a timely basis.

Lack of Economic Impact Analysis

In consideration of the above 3 factors alone, the potential economic impact of this proposed permit is unknown, but probably quite high. The SWRCB should direct staff to prepare an economic impact analysis to explain the projected cost of the anticipated water quality benefits associated with the proposed permit. There should be no further development of a new or revised IGP until an economic analysis of the impact of the IGP is completed. The economic analysis of the IGP is required by Water Code sections 13241 and 13263. Please refer to Attachment 3 for a more thorough explanation of the Water Code required economic analysis of the IGP.

Regulatory Status of Landfills Is Not Clear

The status of municipal solid waste landfills, construction and demolition debris (C&D) landfills and hazardous waste landfill activities (collectively landfill activities) under the IGP are not clear. The IGP raises the issue that certain aspects of landfill activities are under the IGP while other aspects might be under the Construction General Permit (CGP). The IGP leaves this matter to be resolved by individual Regional Water Quality Control Boards. This is simply not appropriate. It leaves open the prospect that one type of operation may be subject to the IGP while other operations may be subject to the CGP – all at the same facility at the same time. This will inevitably lead to confusion on both the part of the regulator and the permittee.

The IGP should clearly define the manner in which landfill activities are to be regulated under the IGP. SWISP recommends and requests a clear statement that only construction of new landfills are covered by the CGP, while the construction of new or expanded landfill cells at existing landfills will not need coverage under the CGP. Operations at all existing landfill facilities should be subject to the provisions of the IGP.

Similarly the issue of how closed landfills are regulated is left unaddressed. Is a closed landfill still an industrial activity? Attachment A of the IGP indicates that the permit applies to Landfills, Land Application Sites, and Open Dumps and defines them as:

“Sites that receive or have received industrial waste from any of the facilities covered by this General Permit, sites subject to regulations under Subtitle D of RCRA, and sites that have accepted waste from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).”

This definition is overly broad and applies to virtually all landfills forever. While this language is in the current permit, some regional and state board staff have recognized that landfill-related industrial activities do not continue forever and have allowed landfills to terminate permit coverage after closure. The conditions to terminate coverage for closed landfills should be identified in the IGP so that the standards are uniform throughout the state. SWISP also requests that the permit provide a cut-off date to exclude landfills that closed prior to the adoption of the closure requirements contained in the RCRA Subtitle D regulations.

We suggest the following revision to address these issues:

Landfills, Land Application Sites and Open Dumps

Sites receive or have received industrial waste from any of the facilities covered by this General Permit, sites subject to regulations under Subtitle D of RCRA, and sites that have accepted waste from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more). This does not apply to sites that closed prior to October 9, 1993 or to sites, or portions of sites, that have completed closure activities.

Finally, the SWRCB should consider taking landfills out of the IGP altogether or creating a specific landfill subcategory in the revised IGP. Landfills are unique essential public services that should be subject to their own set of realistic stormwater provisions. SWISP respectfully requests that the SWRCB consider developing a specific NPDES permit for stormwater quality control at solid waste landfills. Landfills, by their very nature, are unique and distinct from virtually all other forms of industrial activities. Likewise, landfill facilities cannot simply be regulated like construction sites. Construction site owners can plan for stormwater permit compliance and design space for necessary stormwater treatment. Many landfills predate

stormwater permits and do not have available land to install new treatment facilities. Application of the proposed Action Levels and Numeric Limits in the IGP, which are not based on representative stormwater quality actually observed at landfills, may not be practically achievable. Realistic benchmarks for essential public landfill services must be incorporated into a revised permit. Such landfill specific benchmarks should be based on levels that are practically achievable at landfills.

In addition, some of the proposed best management practices (BMPs) for all industries are not appropriate for landfills and other solid waste facilities. Many solid waste landfills, transfer stations, recycling facilities, and composting activities have extensive systems for containing waste and for the storage of metals, green materials and other outdoors. These facilities are already adequately regulated under waste discharge requirements, solid waste regulations, and other regulatory standards. Therefore, duplicative and potentially contradictory mandatory BMPs should not be imposed on these activities.

Inconsistencies between Fact Sheet and Permit

There are numerous inconsistencies between the Fact Sheet and the proposed IGP. For example Item L-59 on page 9 makes reference to a 100 year, 24-hour storm as being eligible for a conditional exclusion. The fact sheet, on the other hand, references 3 consecutive 20-year, 24-hour storms for the same exclusion. Similarly, what is the minimum number of BMPs required on page 22: 6, 7, or 8? This is not clear depending on what part of the Fact Sheet or proposed IGP that you read. Prior to release of a revised IGP and Fact Sheet, SWISP requests that effort be made to make them consistent. See attachment 2 for more information.

Undefined and Vague Terms

Permit contains extensive number of undefined and vague terms. For example, what is "significant material" on page 20? What do the following terms mean on page 23:

1. "Cleaned as soon as possible"?
2. "Readily mobilized"?
3. "Can be transported or dispersed via wind dissipation"? How much wind? Any wind?

On pages 25 and 29, what does anticipated storm event mean? What is the process for identifying an anticipated storm event. Does the permit provide protection to the facility operator in making a determination of what constitutes an anticipated storm event? On page 26 what do "effectively manage" and "optimal performance" mean?

What is meant by "operating hours" on page 29?

If such vague, unclear and undefined terms continue to be used in this IGP, then the IGP must include clear provisions that grant the facility operator discretion in interpreting such terms and

the IGP must provide a "shield" from other parties arriving at different interpretive conclusions. See Attachment 2 for more details.

Unclear Sampling Requirements

The proposed sampling requirements in the IGP are unclear. SWISP recommends that a revised IGP contain pictorial diagrams to illustrate intent of sampling procedures.

Duplicative and Overlapping Requirements

The SWPPP requirements in the IGP have many duplicate and overlapping schedules, dates, monitoring, and inspection requirements. These must be streamlined in a revised permit. SWISP recommends inclusion of a single Excel spreadsheet in the IGP with all schedules, dates, monitoring requirements and inspection requirements. Opportunities should be found to significantly streamline these requirements. Again, the existing IGP process and the individual WDR for each site makes for a practical and effective way to protect surface waters.

Evaluation of Background Levels

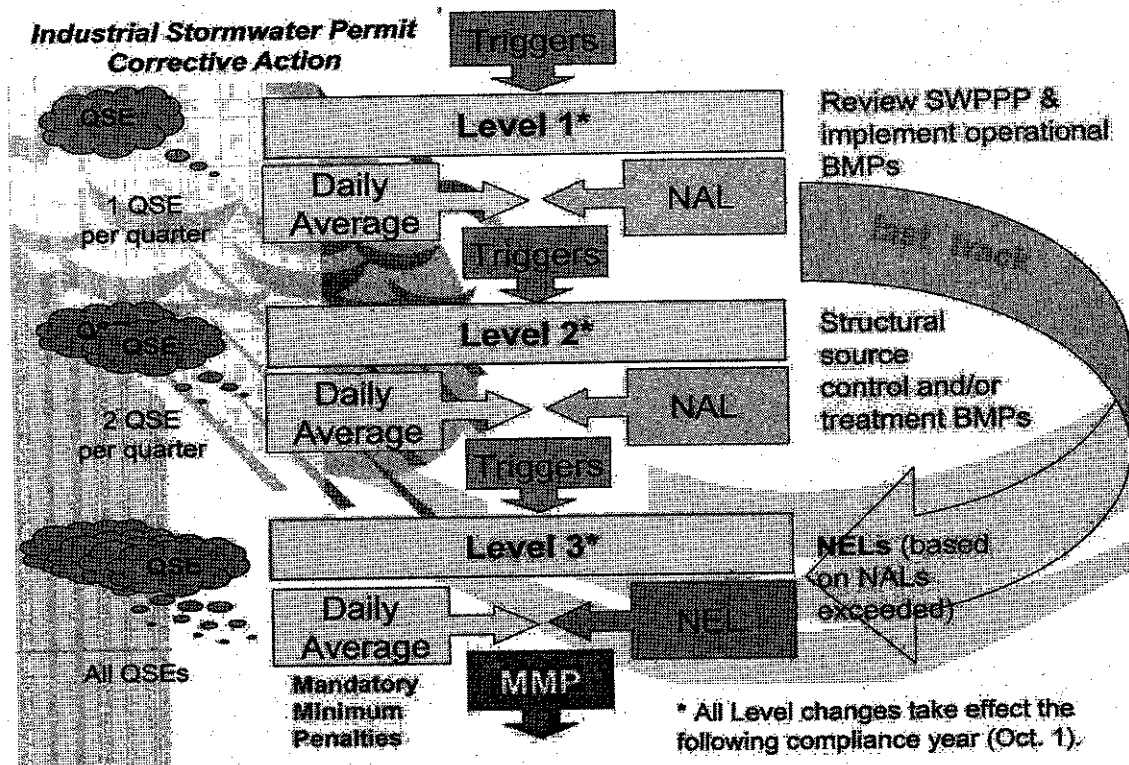
The IGP does not have any provision, other than appeal to a Regional Water Quality Control Board, to allow a discharger to evaluate background levels that may be higher than NALs/NELs or to account for factors beyond their control, such as aerial deposition of contaminants on discharger's property. NALs/NELs in the IGP were developed in the eastern part of the United States to be used as benchmarks – not strictly enforceable limits or action levels. There is significant concern that California background levels may be different and higher than EPA MSGP benchmarks. The IGP needs to be revised to address this issue and provide a means for an industrial facility operator to have clear and reasonable avenue to address this issue.

Elimination of Monitoring Groups

The proposed IGP eliminates the ability for similar industries or similar activities within a single regulated entity to find economies of scale by forming Monitoring Groups. The ability to use Monitoring Groups for similar facilities within an industry or within an individual company must be restored to a revised IGP.

Overly Restricted and Constrained Corrective Action Tiers

The proposed 3 levels of corrective action tiers are not workable as proposed. It has taken the SWRCB 13 years to revise the IGP – but now the IGP mandates that a regulated facility could be forced into the most restrictive corrective action tier in just 2 years after the IGP is adopted.



A regulated facility is provided only one year to demonstrate compliance within the first tier. If compliance is not demonstrated within one year, the regulated facility is moved up to the second tier. If compliance is not demonstrated within one year for the Level 2, the regulated facility is moved to Level 3. One year is much too short of a time to demonstrate compliance with the requirements of each tier. SWISP recommends that a 5-year period be provided to demonstrate compliance within each of the three levels of corrective action.

In addition, it appears that once a regulated facility is forced into Level 3, there is no mechanism to be moved to Level 2 or Level 1, regardless of the improvements that are made to protect water quality. The proposed IGP should be revised to allow a Level 3 facility to return to Level 2 or Level 1.

Closure

Thank you again for the opportunity to submit these comments and the attachments for your consideration. We sincerely hope the SWRCB will substantially modify the proposed IGP as we request in these comments and attachments. Please contact any one of the undersigned if you have any questions or require further information.

Sincerely,

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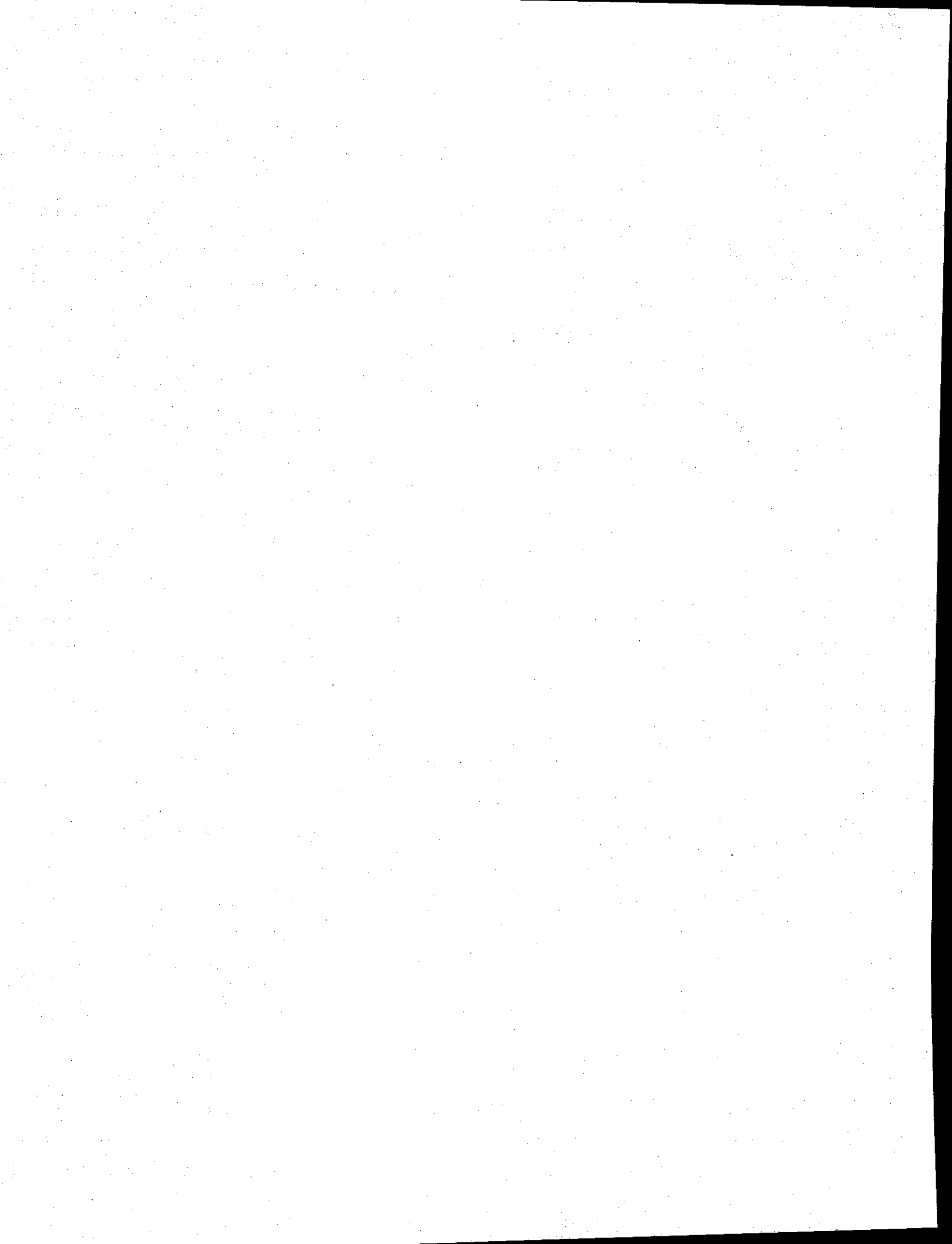
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Attachments:

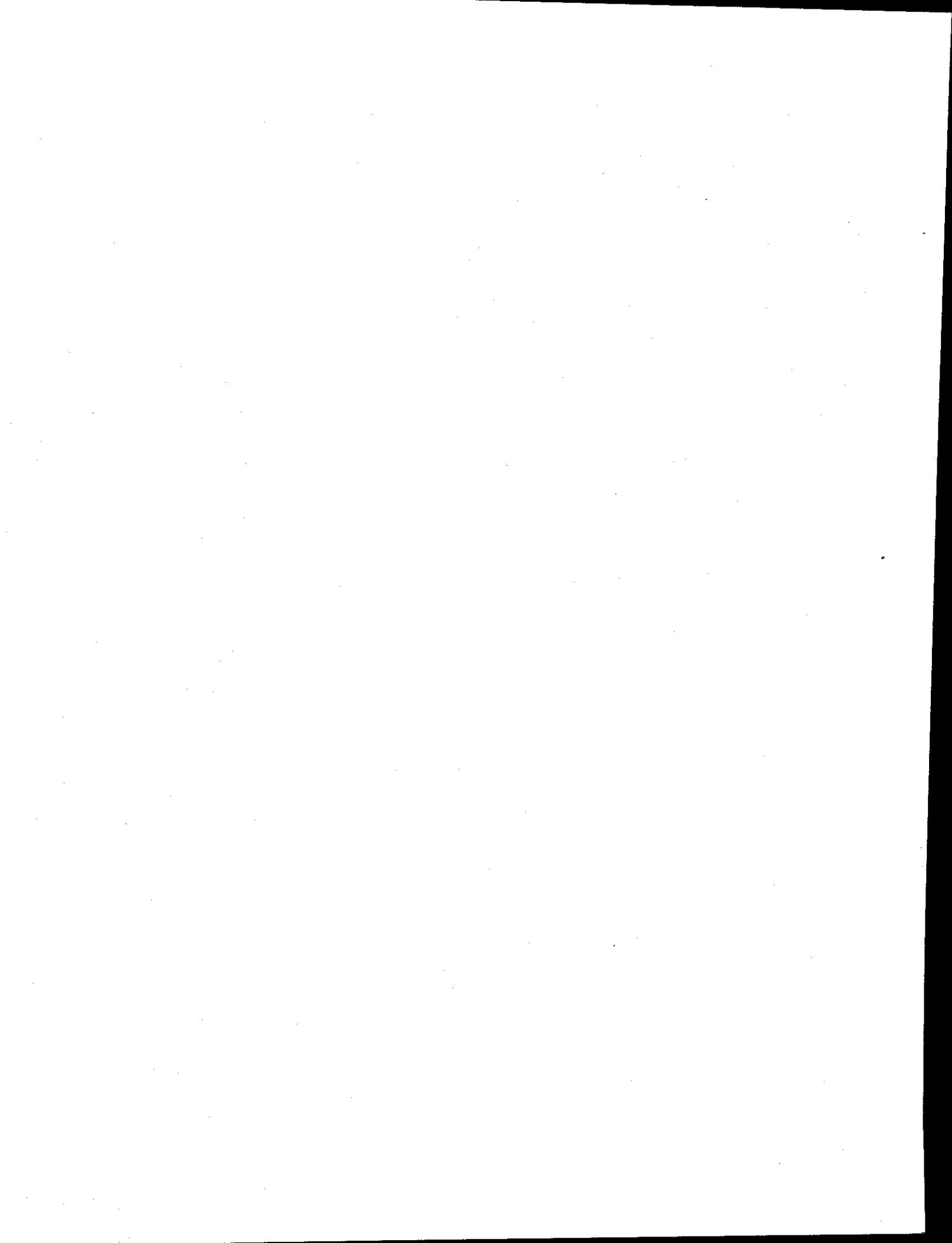
1. Potential Solid Waste Industry Costs Associated with the Draft Industrial Storm Water Permit
2. California DRAFT Industrial General Permit (ISP) – Specific Comments, Questions and Issues
3. Water Code Requires an Economic Analysis



Attachment 1

Potential Solid Waste Industry Costs Associated with the Draft Industrial Storm Water Permit

New SWPPP, full facility review, and monitoring plan Conducted by a qualified SWPPP Developer (year 1)	4,000 to 10,000
Purchase rain gauge-electronic with memory	300 to 500
Purchase pH and EC field instrument and calibration kits	300 to 500
Training on how to use field instruments 3 people/site	500
Training of employees (site of 50 folks est. 2 hr)	5,000
Training for Qualified SWPPP Practitioner (3 per site)	1,000
Daily facility inspections to meet "pre-storm" requirements	5,000
Weekly inspection of outdoor/exposed material (1 hr)	1,000
Quarterly sampling and analysis (assuming 4 sample points)	1,000
Entering quarterly data into SMARTs electronic reporting (4 hr/qtr)	400
Update SWPPP by QSD based on quarterly monitoring	2,000
Annual comprehensive evaluation by QSD	1,500
Exceedance evaluation report and SMART submittal	500
Total:	\$ 23,500 to \$ 28,900
Additional cost for landfills:	
Sample all discharge points each quarter (usually more points)	2,000
Inspect all discharge points each month	1,500
Daily sampling of discharges (assume 20 days)	4,000
Additional analytical	2,000
Total:	\$ 38,400



Attachment 2

California DRAFT National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities (IGP) – Specific Comments, Questions and Issues

General – Many of the following specific comments request clarifying information. If the permit is silent, then implementation/interpretation is subject to the discharger, the local Regional Water Quality Control Board, third party litigants and the courts. It is requested that the permit provide a clear and achievable path to compliance and a process to shield responsible operators from third-party legal action. In some cases it is necessary to obtain the clarifying information within the permit itself.

1. Page 3, Item 17. Landfills are now included as the eleventh industrial category (the previous permit listed ten specific categories and landfills were not included in that list). As defined in 40 CFR Part 445, the effluent limitation guidelines apply only to “landfill wastewater” which includes stormwater that comes into direct contact with landfill wastes or waste handling and treatment areas (i.e. contact stormwater). 40 CFR Part 445 specifically excludes non-contact stormwater which “flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill” from the effluent limitation guidelines. Where contact stormwater is prevented from discharge, the effluent limitation guidelines do not apply. Significant changes to operations or infrastructure will be required at many facilities to provide treatment for or eliminate the discharge of contact stormwater. The costs associated with implementing the effluent guidelines are unknown. A revised IGP should only be adopted if anticipated costs are reasonably known. The cost-effectiveness of the proposed permit must be thoroughly understood.
2. Page 4, Item 21. The proposed IGP should be clarified such that it does not apply to any landfill that are pre-Subtitle D. This would exclude any landfill that ceased receiving waste prior to October 9, 1993. Similar cut-off dates need to be defined for old industrial waste sites and C&D sites. The proposed IGP must be revised to clearly indicate that landfills in post-closure care are no longer “industrial sites”. Closed landfills are more akin to open space or other non-industrial activities once closure activities have been completed.
3. Page 4, Item 22. The proposed IGP needs to clarify what waste management and recycling activities are covered by permit. Solid waste and recycling activities are covered under a variety of Standard Industrial Classification (SIC) codes resulting in inconsistent applicability for facilities conducting a mixture of operations. Many facilities are integrated and include facilities covered under the permit and those that are not covered e.g. composting at a landfill. Inclusion of all recycling facilities is extremely broad since these recycling facilities

can range from the neighborhood buy-back center to the large industrial scrap yard. In addition, SIC have been superseded by the North American Industry Classification System (NAICS). It would more appropriate for the permit to use the updated classification system. The common SIC codes used include:

SIC Code	Facility
4212	Local Trucking Without Storage <ul style="list-style-type: none"> • Garbage, local collecting and transporting: without disposal • Refuse, local collecting and transporting: without disposal
4953	Refuse Systems (without disposal) <ul style="list-style-type: none"> • Garbage: collecting, destroying, and processing • Refuse systems • Rubbish collection and disposal
2875	Fertilizers, mixing only <ul style="list-style-type: none"> • Compost
5093	Scrap and Waste Materials <ul style="list-style-type: none"> • Bottles, waste-wholesale • Boxes, waste-wholesale • Iron and steel scrap-wholesale • Junk and scrap, general line-wholesale • Metal waste and scrap-wholesale • Nonferrous metals scrap-wholesale • Plastics scrap-wholesale • Scavengering-wholesale • Scrap and waste materials-wholesale • Wastepaper, including paper recycling-wholesale

4. Page 5, Item 32. Rather than to refer to potentially different interpretations by different Regional Water Boards, the permit itself must clarify the process for determining what areas of state are not tributary or "hydrologic ally" (sic) connected to waters of the US.

5. Page 6, Item 39. "The panel's final report concluded that it would be possible to determine numeric effluent limitations for industrial storm water discharges, but noted various reasons why such a determination would be problematic at that time." The permit provides no rationale how the State Water Board has resolved or refuted the problems noted by the panel. The panel specifically stated the "inadequacy of current monitoring data sets and recommends improved monitoring to collect data useful for establishing Numeric Limits and Action Levels." The permit does not provide information regarding the data utilized to establish the draft permit NALs.

The panel also favored an approach where "permits were established based upon industry types or categories, with the recognition that each industry has its own specific problems and financial viability." Therefore, implementing NALs, which later could be NELs, across broad industrial categories is not practical. For example, Petroleum Refining and Landfills are dissimilar industrial activities, but both are included in the draft permit. The TSS loading from Petroleum Refining and Landfill facilities are significantly different. As such, it is not reasonable to apply a broad general industry TSS NEL to both types of industrial activities.

The panel observed that "In cases where the industrial activity is similar to land disturbance activities (e.g. landfills, gravel mines, etc.), there exists data and design experience with runoff control, capture and advanced treatments systems ... that may make Numeric Limits feasible for new facilities, and the approach and limits should be the same as for construction permittees." SWISP agrees that construction NALs are more applicable to new landfill facilities; however, the panel's recommendation was limited to new facilities in recognition of the inability of many existing landfills retrofit treatment systems where no buildable land exists. The feasibility of construction NALs for existing sites should be evaluated on a case-by-case basis before being incorporated into the IGP.

6. Page 7, Item 40. EPA's MSGP specifies the following regarding Benchmark Monitoring:

"The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitations..."

The draft permit's incorporation of benchmarks as NALs serves a similar purpose as the EPA's MSGP benchmark monitoring. However, if a discharger is not able to meet the NALs in Level 2 corrective action, the NALs become NELs. The intent of the benchmarks is not to establish an effluent limit and the draft permit's use of NALs as NELs is without proper justification and contrary to the federal program upon which the IGP is based.

7. Page 7, Item 42. The draft permit specifies that effluent limits are "appropriate" without providing adequate justification. The SWRCB's panel of experts generally specified NALs or NELs could be established, provided that sufficient data were available to justify such. What data and analysis was utilized to conclude that the NALs are "appropriate?"

8. Page 7, Item 48. Need to clearly define "receiving waters". Does this mean all receiving water bodies downstream from facility – or just the immediate receiving water body? SWISP recommends that this requirement only apply to water body that directly receives discharge, NOT all subsequent downstream water bodies.
9. Page 8, Item 50. Facilities have 90 days to comply with permit, but 1-year to train personnel. Facilities should have at least 1 year to come into compliance.
10. Page 8, Item 54. Attachment F of Impaired water bodies is missing. Discharges that are not directly to the impaired water body should not be subject to impaired water body TMDLs. Only water bodies that are directly discharged to should be subject to this provision.
11. Page 9, Item 59. Inconsistency with Fact Sheet page 34. Permit only has 100 year 24-hour storm. Fact sheet references 3 consecutive 20 year, 24-hour storms. There should only be a single requirement of a 100-year 24-hour storm event.
12. Page 10, Item 60. Clarification of Conditional Exclusion for dischargers that implement Green Storm Water Impact Reduction Technology (G-SIRT). SWISP is supportive of the G-SIRT concept and looks forward to seeing some specifics on what these standards are. The permit should provide enough guidance to ensure a reasonable degree of consistency between the various RWQCBs. The draft IGP is incomplete without these standards.
13. Page 10 Section O. Item 63 – Requires facilities handling pre-production plastic pellets (Nurdles) to implement BMPs to eliminate discharge of plastic pellets. SWISP requests that this provision of the permit be clarified such that it only applies to the management of plastic nurdles. This should exclude other forms of the plastics including waste plastic managed at solid waste transfer stations, material recovery facilities (MRFs), processing facilities, and landfills.
14. Page 11, Section II.P. 7. This provision applies to No Exposure Certifications. There is no similar provision for No Discharge Certifications. Should there be a similar process for No Discharge Certifications? If not, why not?
15. Page 12 Section Q3. SWPPP implementation within 90 days of after adoption date. This should be extended to 1 year to be consistent with the IGP training requirement. It has taken 14 years to develop this new permit. Allowing at least 1 full year to come into compliance is reasonable. Also, dischargers with multiple facilities should be able to stage compliance. For example, if a discharger has 100 facilities, then 25% first year, 25% second year, 25% third year, 25% fourth year.
16. Page 12, Section S1. There needs to be clarification as to when coverage is terminated for closed landfills and other types of closed waste/recycling facilities. We recommend a modification of Attachment A as discussed in the main body of this letter.
17. Page 15, Section V. D. Refer to comments 6 and 7 above.
18. Page 15, Section V. E. Compliance Storm Event (CSE). Do numeric limits for constituents other than TSS apply? Can you exceed limits for all constituents if a storm greater than CSE

- occurs? SWISP recommends that benchmarks/NALs/NELs specified in the IGP apply only to the CSE.
19. Page 15, Section V. E. Compliance Storm Event (CSE). A 10-year 24-hour storm is a very large storm and the costs to retrofit existing facilities will be sizable. The compliance storm should be identified based on a cost benefit analysis. Please consider CASQA's recommended design and compliance storms.
20. Page 15, Section VI-A to D. Do these provisions apply to all waters downstream from Industrial discharge? The IGP need substantial clarification on impaired waterways. Does this include creek and tributaries that lead to an impaired waterway? SWISP recommends that they should only be applicable to the water body to which the facility discharges directly.
21. Page 16 Section A1 – Qualified SWPPP Practitioner is required to help implement SWPPP. Does there need to be a QSP at each facility or can they cover more than one facility? Can there be one QSP for several facilities with other persons assigned to individual facilities? Need to clarify QSD/QSP requirements for large organizations with many facilities. SWISP recommends that the QSP does not need to be dedicated to one specific facility.
22. Page 16 Section B1 – As numerous industries have testified, the eligible list of Qualified SWPPP Developers (QSD) should be broadened to include personnel with demonstrated experience.
23. Page 16, Section B2. QSD will successfully complete training within one year after effective date. Clarification on why the permit needs to be implemented within 90 days; however the QSD has one year for training. We recommend that 1 year be given to come into compliance, and more time to be given for organizations with many facilities.
24. Page 16 Section B3. QSP's are to implement BMPs. The proposed permit must be modified to allow the QSD and discharger to interpret what level of involvement is required by the QSP to implement BMPs, instead of the permit specifying that QSPs shall be onsite, continuously observing the implementation/construction of BMPs.
25. Page 16 Section B3. Qualified SWPPP Practitioner. What does "implemented" mean? Does QSP need to take samples? What if there is not a qualified person at time of inspection? SWISP recommends that implemented mean general implementation oversight, but others can do the actual field work under direction of QSP.
26. Page 18, Section C.3. Refer to comment 19.
27. Page 18, Section D.2. Greater clarity on QSD/QSP roles and roles of subordinates. This section seems to imply that team members can perform the majority of the work and that the QSD/QSP is not necessarily required to personally implement the SWPPP or perform the monitoring/sampling. SWISP requests confirmation that this provision may be interpreted to give greater flexibility to the QSD and discharger to allow much of the SWPPP work to be performed by subordinates under the general direction of the QSDs/QSPs.

28. Page 19, Section D.3. The SWRCB/RWQCBs should be required to post all such "other standards" on websites so a discharger can be sure to know what other standards may apply under this section. If not posted, then the discharger should have no obligation under the IGP. Alternatively, why can't these other requirements simply stand alone without having to be referenced in the SWPPP? The SWRCB should post a list that may be referred to for inclusion in the SWPPP or this provision should be removed from the IGP.
29. Page 20, Section F. What is a "significant material"? There should be an incidental or de minimis exclusion for both quantity and type. This is an example of where specific language defining "significant material" is needed in the IGP to minimize confusion and avoid unintentional non-compliance.
30. Page 22, Section H. Minimum BMPs. Inconsistency between main body of the IGP, the IGP fact sheet, and workshop power point presentation. Are their 6, 7, or 8 minimum BMPs? Can SWRCB specify means of compliance like this? There is a conflict with Water Code that requires prescription of performance levels rather than specific means of compliance? Is 100 ppm BAT/BCT for TSS? This provision of the permit must be modified to provide the facility with more flexibility in choosing appropriate BMPs rather than having a specific number or type of BMPs.
31. Page 22, Section H.1. Language of paragraph is indecipherable, not written in plain English and should be eliminated. This paragraph provides discharger the opportunity to justify that the minimum BMPs are not applicable or to justify alternative BMPs in the SWPPP. Facility operators should have complete flexibility in choosing the appropriate BMPs. The IGP should not specify minimum BMPs that are unclear and potentially misinterpreted language.
32. Page 23, Section H.1.a.ii-vi. Language is vague and subject to interpretation. Permit compliance will be difficult to measure when the discharger and Regional Water Quality Control Board are required to interpret terms such as "significant," "effective," and "optimal" are used. If the language of the IGP can clearly provide the discharger with discretion in interpreting these terms and if the permit contains specific language relatively to providing an enforcement "shield" by documenting these interpretations, then the use of such vague terms may be acceptable.
33. Page 23, Section H.1.b. Wind Erosion control? Isn't this under the regulatory authority of the California Air Resources Board (CARB) and local air quality management districts? SWISP recommends that this should be eliminated.
34. Page 23, Section H.1.b.ii. Requires a weekly inspection of all equipment that may leak. SWISP recommends that the QSD specify appropriate level of inspection in the SWPPP.
35. Page 24, Section H.1.c. "Based on quantities and locations of significant materials" – The IGP must provide a clear enforcement shield for discharger interpretations of what this phrase means.
36. Page 24, Section H.1.d.iii. Cover waste disposal containers when not in use. While this may be practical for some industrial facilities, this is not practical for waste transfer and landfill

facilities. The IGP should allow facility operators to determine the best course of action to minimize stormwater discharges from waste disposal containers that may be located on a particular site. These site specific practices can be identified by the facility operator in the SWPPP.

37. Page 24, Section H.1.d.v. "Clean daily". While this may be practical for some industrial facilities, this is not practical for waste transfer and landfill facilities. The IGP should allow facility operators to determine the appropriate frequency for cleaning outdoor material/waste handling equipment or containers. These site specific practices can be identified by the facility operator in the SWPPP.
38. Page 25, Section H.1.f. The amount of record keeping and quality assurance specified would be significant. For example, a document would be required to for each daily activity, for example the "daily cleaning" specified in Section H.1.d.v. The IGP should specify a reasonable amount of record keeping. The IGP must be modified to allow interpretation by facility operator with SWPPP and IGP as an enforcement "shield" to protect the discharger from contrary interpretations by the SWRCB and others.
39. Page 25, Section H.1.g.ii. How is effective stabilization prior to storm event determined? After storm event? What size of storm? How is anticipated storm identified? Weather.com? Such vague provisions should be eliminated unless the IGP provides clear authority for the facility operator to interpret the meaning of these types of terms. Further, the permit must provide a "shield" to prevent other parties from second guessing the judgment of the operator in making such determinations.
40. Page 26, Section H.1.g.iv. Refer to comment 19. SWISP recommends that the compliance storm event be a 5-year, 24-hour storm, and be applicable to sedimentation basin design.
41. Page 26, Section H.1.g.v. How is "effectively manage" determined? Need SWPPP as a shield.
42. Page 26, Section H.1.g.vi. How is "optimal performance" determined? Are storm size and intensity applicable factors? Need SWPPP as a shield.
43. Page 27, Section H.4. BMP Summary. Table from fact sheet should not be referenced here. Should be in permit.
44. Page 27, Section I. "Compliance" (sic) is misspelled.
45. Page 29, Section IX.B.3. How are "operating hours" defined? SWISP recommends that operating hours be defined as those hours when a facility is open and operating with full staffing. This should not include hours when the facility is operating with partial staffing
46. Page 29, Section IX.C.1. What about closed sites such as closed landfills? Do we need telemetry to monitor rainfall? Needs to be exclusion or reduced requirements for non-operating industrial sites. Landfills in post-closure care should not be included in the IGP as they are no longer "industrial sites".

47. Page 29, Section IX.C.2. Missing footnote? Definition of "operating hours"? Refer to SWISP comment 45.
48. Page 29, Section IX.C.4. "Containment"? Clarify that only secondary containment inspection is required.
49. Page 29, Section IX.C.4. Definition of an "anticipated storm event." SWISP recommends that an "anticipated storm event" is defined as anticipated storm where the chance of precipitation is greater than 50 percent, 2 working days in advance of the anticipated storm. The chance of precipitation is determined by consulting weather.gov and entering the city in which the facility is located. For example, on Monday, if the weather.gov forecast for Riverside, CA included a chance of precipitation of 60 percent for Wednesday, then a pre-storm inspection would be completed on Monday or Tuesday, prior to the anticipated storm event on Wednesday.
50. Page 30, Section IX.C.5. What kind of device is required to measure ¼ inch events as part of monthly inspection? The permit has all sorts of daily, weekly, monthly, pre-storm and post-storm inspections. There are too many overlapping and duplicative inspections. The IGP should be concise and simplified to enable dischargers to comply.
51. Page 30, Section IX.C.6. Visual observations of all anticipated storm events. What qualifies as an anticipated storm event? How are anticipated storm events identified (weather.gov)? What if storm arrives before pre-storm inspections can be completed? Is this a violation? Need flexibility here for facility operators with the IGP as a shield. Refer to comment 49 above.
52. Page 30, Section X.A. Not clear on what QSEs must be sampled if first QSE of a quarter is missed. Are all subsequent QSEs of the quarter required to be monitoring? SWISP recommends that the paragraph be modified as follows:
- "All dischargers (including dischargers Subject to Level 1 Corrective Actions) shall collect storm water samples from the first qualifying storm event of each calendar quarter. Dischargers subject to Level 1 Corrective Actions who fail to sample the first qualifying storm event of a quarter shall sample the following qualifying storm events that occurs during the quarter. The discharger shall document in the annual report the reasons for failing to sample required qualifying storm events."
53. Page 30, Section X.B. Dischargers Subject to Level 2 Corrective Actions shall collect samples from the first 2 qualifying storm events each quarter. SWISP recommends that following paragraph be added to the section to be consistent with the preceding section.
- "Dischargers subject to Level 2 Corrective Actions who fail to sample the first qualifying storm event of a quarter shall sample the two following qualifying storm events that occur during the quarter."
54. Page 30, Section X.E.2. What are "two consecutive days"? Calendar days? Any 24-hour period? What kind of gage is required for sites that are not continuously staffed? How is a discharger to monitor storm events that occur during non-operating periods, at closed sites

or closed landfills? Other sections only specified "two consecutive days." SWISP recommends that the reference to 48 hours be removed.

55. Page 31, Section X.F. Sampling only applies during scheduled facility hours. Please refer to comment 45. SWISP recommends that sampling be limited to "daylight hours" to ensure personnel safety. For 24 hour operations, change to "fully staffed facility hours Landfills frequently have fully staffed operating hours to receive waste, but greatly reduced personnel during other hours for security and minimal operations.
56. Page 31, Section X.F. collection of samples within 4 hours after qualified storm event has been determined. The facility should be allowed to take multiple samples during 4 hours and have them averaged for qualifying event. What are operating hours? What are all stormwater drainages?
57. Page 31, Section X.G. The existing previously adopted IGP uses the term "representative of industrial activity." This proposed IGP implies that any and all discharge locations must be sampled. Need to return to existing permit language, "representative of industrial activity". Discharges who do not collect samples from the first qualifying storm event in any quarter shall collect samples from the next qualifying storm events in that quarter. What is the reasoning of having to take two samples within the next quarter, especially for 3rd Quarter which typically does not have any rain events?
58. Page 31, Section X.H. SWISP recommends that all samples be analyzed for the parameters specified in Section H.1. Specific conductance should be eliminated from H.1. and be monitored separately only if there is activity that could contribute to elevated specific conductance (see comment 60 below). SWISP recommends the following:
"Dischargers shall analyze samples for the following, only when those discharge samples are downstream of the potential pollutant source of concern."
59. Page 31, Section X.H.6. What about closed landfills? Refer to comment 58 above. SWISP recommends that the section be replaced with the following:
"For facilities regulated by the Federal Effluent Limitation Guidelines (40 C.F.R. Sub Chapter N), the parameters for pollutants specified in the Federal Effluent Limitation Guidelines."
60. Page 32, Table 1. Electrical Conductivity needs to be field tested with calibrated portable instruments. What is the significance of having EC field sampled? SWISP recommends that EC sampling should only be conducted if there is an industrial activity likely to affect EC or if there is a TMDL for EC in the direct receiving water
61. Page 32, Section X.K. Field measurements for pH and TSS are specified. This is inconsistent with Table 1, which specified that pH and EC need to be field tested. SWISP Recommends that Table 1 be modified to be consistent with this section, and specify that pH and TSS can be analyzed in the laboratory or field tested. This allows the discharger to perform analysis in the most cost effective manner, consistent with their facility specific situation.

62. Page 32, Section XI. Analytical results within 30 days of obtaining all results from sampling event. SWISP recommends that results should be submitted in single report even if some results are obtained in the field or otherwise are obtained more rapidly than other results.
63. Page 34, Table 4. Specific Conductance. SWISP recommends that Specific Conductance can either be field tested or by EPA Method 120.1/SM 2510-B. The consistency in test method specified should be verified with Table 1 and section X.K.
64. Page 34, Table 4 – Test Methods. IGP must be modified to allow methods be changed to field method or best available current method.
65. Page 35, Section XII.A.4. This is in conflict with specified industrial activity drainage areas in other parts of the IGP. SWISP recommends this section be modified as follows:
“Dischargers shall collect samples from all drainage areas that are downstream of industrial activities.”
66. Page 36, Section XIII. Significant Land Disturbances. The IGP is not clear how landfill land disturbances are regulated: as a construction activity or industrial activity. The permit acknowledges that the landfills and specified other industrial activities have significant land disturbances. Accordingly, the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities has many provisions that are more applicable to landfill activities than the IGP. The NALs and NELs in the Construction permit are more applicable to landfill activities as benchmark standards than the NALs and NELs specified in the IGP. However, SWISP does not recommend that those be implemented as NALs or NELs. Please refer to our summary letter that provides information regarding the differences with benchmarks, NALs and NELs.
67. Page 36, Section XII.B. Additional sampling requirements, for Landfills, samples must be conducted each additional day of the storm event. What about landfill facilities that have ponds that could be consistently discharging for 15-20 days? The IGP must be modified to cover such activities or clearly provide operator discretion to appropriately address – with the permit framed as a shield from enforcement due to contrary by others.
68. Page 36 C. Exemptions. Other exemptions may also apply – see page 5. Exemption for closed landfills after period of time such that they are no longer an industrial activity. SWISP requests the permit be modified such that once landfills enter the post-closure care period, they no longer be considered “industrial sites” subject to the IGP.
69. Page 38, Section XVI.A.1 – the discharger must have 10 consecutive quarters in Level 3. This should be changed to also allow consecutive storm events. 10 is too many. 4-6 events should be sufficient provided they are representative of site conditions. The IGP must be clarified to allow past data to be used to eliminate parameters under the IGP.
70. Page 38. XVII. Corrective Actions. The IGP currently does not specify a mechanism to return to lower corrective action levels once corrective action Level 3 is reached. There needs to be a provision added that will allow a discharger to get back to Level II or even Level I. This is particularly needed if Level III is triggered by a set of circumstances that were

transient or that can be mitigated through improved/additional BMPs or treatment.. Year by year, parameter by parameter, discharge location by discharge location, dischargers should be allowed to change between corrective action levels.

71. Page 41, Section XVII.C.8.d. All submitted reports in this subsection must be certified by a California registered professional civil engineer. SWISP requests clarification on which exact subsection this refers to. SWISP also requests that the IGP clarify which reports specifically need to be signed by CA PE and/or QSD. SWISP also recommends that the SRWCB consult with the California Department of Consumer Affairs, Board for Professional Engineers, Land Surveyors, and Geologists to confirm that certification requirements (QSD/QSP) specified in the IGP do not conflict with state law by restricting the work of professional engineers and geologist already licensed to perform such work.
72. Page 41, XVII.D.4.-5. SWISP recommends that a discharger be allowed to submit this request at any time, not just in Level 3 corrective action. This will allow the local Regional Water Quality Control Board a sufficient amount of time to evaluate the request.
73. Page 42, Section XVII.E. Subsection numbering is incorrect. Paragraph numbers 3 through 11 should be subsections of E.2.
74. Page 43, Section XVIII. SWISP recommends that closed Landfills in post-closure care, which are similar to inactive mining operations, should either be exempted from the IGP or should have similar provisions as inactive mining operations.
75. Page 43, Section XX.A. Annual reports are now calendar years. Confirm that annual reports are due 6.5 months after end of calendar year.
76. Page 49, Section XXIII.E. G-SIRT standards are missing and thus the IGP is incomplete as a proposed. SWISP recommends that this information be provided in a future draft IGP and that a new public comment period be started once the proposed IGP is complete.
77. Page 49, Section XXIV. SWISP requests confirmation that only nurdle facilities are covered here not all plastic handling facilities.
78. Draft Fact Sheet, Page 2, Section I.B. SWISP generally agrees with the Blue Ribbon Panel of Experts and recommends that the Blue Ribbon Panels recommendations be followed to set benchmarks, numeric action limits or numeric effluent limits. Refer to SWISP's letter for a more comprehensive discussion regarding the Blue Ribbon Panel.
79. Draft Fact Sheet, Page 7, Section II.A.2. The Fact Sheet indicates that EPA MSGP benchmarks are being utilized in the IGP as NALs/NELs. The SWRCB used best professional judgment to determine that NALs are achievable through BAT and BCT. The analysis and rationale of the SWRCB's determination is still under development. SWISP does not agree with the SWRCB's use of best professional judgment, the inappropriate use of benchmarks as numeric action levels, and the arbitrary determination of numeric action levels. Refer to SWISP's summary letter for a more comprehensive discussion regarding these issues. Additionally, the IGP is incomplete without this information. SWISP recommends that this

information be provided in a future draft IGP and that a new public comment period be started once the proposed IGP is complete.

80. Draft Fact Sheet, Page 10, Section II.B.1. Refer to comment 16 regarding inactive and closed landfills. Refer to comment 68 regarding new construction at landfills.
81. Draft Fact Sheet, Page 15, Section II.D. Refer to comment 72 regarding potential work limitations for professional engineers and geologists. The QSP is specified as an individual from the facility. In many small facilities, with limited personnel, this requirement is not economically viable. Additionally, this requirement emphasizes a person's presence of the facility over storm water experience/expertise. SWISP recommends that the Fact Sheet allow responsible facility personnel, under the direction and supervision of the QSP, be allowed to perform the QSP's responsibilities.
82. Draft Fact Sheet, Page 29, Section II.K. "Additional rationale is forthcoming." The IGP is incomplete without this information. SWISP recommends that this information be provided in a future draft IGP and that a new public comment period be started once the proposed IGP is complete.
83. Draft Fact Sheet, Page 34, Section II.N. "Dischargers who have facilities to contain a 100 year 24-hour storm event and three (3) consecutive 20 year 24 hour storm events in a month..."The storm containment requirement for no discharge certification is different in the body of the IGP. SWISP recommends that this conflict be resolved and that the consecutive 20-year, 24-hour storm event requirement be removed.

Attachment 3

Water Code Requires an Economic Analysis

The State Water Resources Control Board (SWRCB) has previously argued that an economic analysis of the impact of an NPDES permit is not required. The basis of that argument is founded upon the opinion that the narrative effluent limits and numeric effluent limits (NELs) are similar compliance strategies, where one is not more stringent than the other. The Solid Waste Industrial Stormwater Partnership (SWISP) does not agree with this concept. While narrative and NELs serve the same purpose, that is to improve water quality, it is a fallacy to argue broadly that NELs are not more stringent than narrative effluent limits.

The SWRCB's State Wide Construction Permit Fact Sheet (page 14) explains the SWRCB's position regarding narrative and numeric effluent limits as follows:

Because the permit is an NPDES permit, there is no legal requirement to address the factors set forth in Water Code sections 13241 and 13263, unless the permit is more stringent than what federal law requires. (See *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618, 627.) None of the requirements in this permit are more stringent than the minimum federal requirements, which include technology-based requirements achieving BAT/BCT and strict compliance with water quality standards. The inclusion of numeric effluent limitations (NELs) in the permit do not cause the permit to be more stringent than current federal law. NELs and best management practices are simply two different methods of achieving the same federal requirement: strict compliance with state water quality standards.

Federal law authorizes both narrative and numeric effluent limitations to meet state water quality standards. The use of NELs to achieve compliance with water quality standards is not a more stringent requirement than the use of BMPs. (State Water Board Order No. WQ 2006-0012 (*Boeing*.) Accordingly, the State Water Board does not need to take into account the factors in Water Code sections 13241 and 13263.

The State Wide Construction Permit essentially argues that narrative and numeric effluent limits are equivalent methods of achieving compliance with water quality standards, and that one method is not more stringent than the other. Federal law does indeed authorize the use of narrative and numeric effluent limits. However, allowing the use of narrative and numeric effluent limits is not the same as stating that they are equivalent methods.

The EPA Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP), the federal permit for general industrial stormwater discharge, states that narrative effluent limits are an acceptable alternative to numeric effluent limits. The MSGP

does NOT state that narrative and numeric limits are equivalent. The EPA MSGP clearly explains this, as follows:

VI.A.3. EPA's Authority to Include Non-Numeric Technology-Based Limits in NPDES Permits

The BPJ limits in this permit are in the form of non-numeric requirements. Under EPA's regulations, non-numeric effluent limits are authorized in lieu of numeric limits, where "[n]umeric effluent limitations are infeasible." 40 CFR 122.44(k)(3). As far back as 1977, courts have recognized that there are circumstances when numeric effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., BMPs) designed to reduce the level of effluent discharges to acceptable levels. *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir.1977).

Through the Agency's NPDES permit regulations, EPA interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 C.F.R. §122.44(k), entitled "Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs ...)," provides that permits may include BMPs to control or abate the discharge of pollutants when: (1) "[a]uthorized under section 402(p) of the CWA for the control of stormwater discharges"; or (2) "[n]umeric effluent limitations are infeasible." 40 C.F.R. § 122.44(k).

And, as recently as 2006, The U.S. Court of Appeals for the Sixth Circuit has once again held that the CWA does not require the EPA to set numeric limits where such limits are infeasible. *Citizens Coal Council v. United States Environmental Protection Agency*, 447 F3d 879, 895-96 (6th Cir. 2006). The Citizens Coal court cited to *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005), stating "site-specific BMPs are effluent limitations under the CWA." "In sum, the EPA's inclusion of numeric and non-numeric limitations in the guideline for the coal remining subcategory was a reasonable exercise of its authority under the CWA."

Additionally, the Sixth Circuit cited to *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C.Cir.1982) noting that "section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction." EPA has substantial discretion to impose non-quantitative permit requirements pursuant to Section 402(a)(1)), especially when the use of numeric limits is infeasible. See *NRDC v. EPA*, 822 F.2d 104, 122-24 (D.C. Cir. 1987) and 40 CFR 122.44(k)(3).

The EPA has provided substantial detail to justify their use of narrative effluent limits instead of NELs. EPA has no where stated in the MSGP that narrative effluent limits are equal to NELs. Instead, the EPA has cited several court cases to support their use of narrative effluent limits as an "authorized" alternative to NELs. EPA has not argued that narrative and numeric effluent

limits are equal, but that narrative effluent limits are allowable since determining NELs is infeasible.

It is not clear why the SWRCB has chosen to use NELs in the draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit or IGP) instead of narrative effluent limits, especially in light of EPA's determination that NELs are infeasible and the SWRCB commissioned Blue Ribbon Panel's determination that NELs require a significant amount of sector specific background data, which currently does not exist. SWISP concludes that the SWRCB's opinion is that there is a water quality benefit to NELs in place of narrative effluent limits. As such, narrative and numeric effluent limits are not equivalent, and SWRCB believes that NELs provide a greater water quality benefit than narrative effluent limits. The greater water quality benefit is provided through pollutant reduction specified in more stringent permit conditions. Equal or less stringent permit conditions would not provide a greater water quality benefit.

Define "Stringent"

The crux of the SWRCB's argument is that NELs are not more stringent than narrative effluent limits. The case law cited by the SWRCB to support this argument is *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal. 4th 613, 618, 627. SWISP reviewed the subject case and the summary opinion provided by the California Supreme court is below:

Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than

the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

The California Supreme Court concluded that a comparison of pollutant restrictions specified in state and federal permits, whether one permit is more or less stringent than the other, would determine whether economic factors should be considered in state permits. Therefore, an understanding of stringency is important. The definition of stringent is "marked by rigor, strictness, or severity especially with regard to rule or standard (<http://www.merriam-webster.com/dictionary/stringent>)." It is reasonable to conclude that NELs are more stringent than narrative effluent limits and thereby the SWRCB's IGP is more stringent than the EPA MSGP. This can be assessed by the expenditure of fiscal and personnel resources to comply with narrative and numeric effluent limits.

MSGP versus IGP

Narrative effluent limits, as described in the EPA's MSGP require mandatory best management practices (BMPs) and discharger selected BMPs. The discharger is freely able to select BMPs which are suitable to the facility and nature of the stormwater discharge, and are cost effective. The EPA MSGP (p. 36) states the following:

Data exceeding benchmarks: After collection of 4 quarterly samples, if the average of the 4 monitoring values for any parameter exceeds the benchmark, you must, in accordance with Part 3.2, review the selection, design, installation, and implementation of your control measures to determine if modifications are necessary to meet the effluent limits in this permit, and either:

- Make the necessary modifications and continue quarterly monitoring until you have completed 4 additional quarters of monitoring for which the average does not exceed the benchmark; or
- Make a determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent limitations in Parts 2 of this permit, in which case you must continue monitoring once per year. You must also document your rationale for concluding that no further pollutant reductions are achievable, and retain all records related to this documentation with your SWPPP. You must also notify EPA of this determination in your next benchmark monitoring report.

While not exactly the same, the EPA's benchmarks and the SWRCB's numeric action limits (NALs)/NELs are functionally similar in some regards. When stormwater monitoring data exceeds the benchmark concentration thresholds or the NALs/NELs triggers, some type of correct action is required. The EPA MSGP allows for pollutant reduction strategies in the stormwater discharge considering economically practicable and achievable practices. Hence, benchmark concentration exceedances can occur, where no additional corrective action is implemented (no expenditure of human or capital resources), without a permit violation. The NALs, and subsequent enforcement as NELs, necessitate the implementation of corrective action (expenditure of human or capital resources) without respect to economic practicality or achievability. Even so, if corrective actions are implemented, that are not viable with respect to economic practicality or achievability, and NEL exceedance triggers occur, then a permit violation would also occur.

It is clear, that the use of NALs/NELs instead of narrative effluent limits, is a more stringent requirement. Strict IGP violations result from concentration triggers that exceed NALs/NELs. No MSGP violations occur as a result of concentration triggers that exceed benchmarks. Thereby, the SWRCB's IGP is more stringent than the EPA MSGP in this regard.

The SWRCB IGP is also more stringent regarding sampling requirements. The IGP Fact Sheet (p. 21) even states the "General Permit goes well beyond the US EPA permit requirements and requires sampling and analysis from all facilities covered by this General Permit." The "well beyond" (i.e. more strict) sampling requirements include the provision that a Level 3 Corrective Action discharger shall sample every qualifying storm event. Additionally, if that discharger also were a facility with land disturbance activities, then the discharger would be required to sample on the first day of a qualifying storm event, and sample for each additional day of the storm event. The EPA MSGP does not have any sample frequency escalation provisions beyond the baseline (i.e. benchmark) sample requirements. The baseline sample requirements specified in the EPA MSGP are quarterly sampling of a qualifying storm event. There is no increase in the frequency beyond quarterly sampling if the sample concentrations exceed the benchmark concentrations. Additionally, there is no requisite that sampling be conducted on consecutive days of multi-day storms.

Conclusion

The SWRCB IGP is more stringent than the EPA MSGP when comparing follow up actions as a result of benchmark/NAL/NEL exceedances and when comparing the sampling requirements. Greater human and fiscal resources are required to comply with the more stringent requirements of the SWRCB IGP. Accordingly, the SWRCB should take into account the factors in Water Code sections 13241 and 13263, which includes economic considerations resulting from the issuance of the IGP.

