

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

BOARD OF PUBLIC WORKS MEMBERS

—
KEVIN JAMES
PRESIDENT

HEATHER MARIE REPENNING
VICE PRESIDENT

MICHAEL R. DAVIS
PRESIDENT PRO TEMPORE

JOEL F. JACINTO
COMMISSIONER

BUREAU OF SANITATION

—
ENRIQUE C. ZALDIVAR
DIRECTOR

TRACI J. MINAMIDE
CHIEF OPERATING OFFICER

LISA B. MOWERY
CHIEF FINANCIAL OFFICER

ADEL H. HAGEKHALIL
ALEXANDER E. HELOU
MAS DOJIRI
ASSISTANT DIRECTORS

—
TIMEYIN DAFETA
HYPERION EXECUTIVE PLANT MANAGER

1149 SOUTH BROADWAY, 9TH FLOOR
LOS ANGELES, CA 90015
TEL: (213) 485-2210
FAX: (213) 485-2979
WWW.LACITYSAN.ORG

February 14, 2018

ELECTRONIC MAIL: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Dear Ms. Townsend:

COMMENT LETTER – INDUSTRIAL GENERAL PERMIT AMENDMENT

The City of Los Angeles (City) Sanitation (LASAN) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) proposed amendment to the General Permit for Storm Water Discharges Associated with Industrial Activities (IGP). The City commits significant resources to protect water quality and supports the incorporation of Total Maximum Daily Loads (TMDLs) into the IGP. Although generally supportive of the proposed IGP Amendment, the City offers the following comments for your consideration.

Proper Inclusion of TMDLs for Equitable Accountability

The City has a vested interest in ensuring that TMDLs are properly developed, both technically and legally, and are in compliance with applicable law. Industrial dischargers can cause or contribute to exceedances of TMDL targets and/or receiving water limitations (RWLs), which could result in impacts to water quality and permit violations for which the City could be held responsible. Storm water runoff from industrial facilities that enters the municipal separate storm sewer system (MS4) affects the City's ability to meet requirements of the 2012 MS4 Permit [Order No. R4-2012-0175; NPDES Permit No. CAS004001]. Runoff from industrial sites becomes the City's responsibility when it enters the MS4 system.

The appropriate application of TMDLs into the proposed IGP Amendment requires that they be consistent with TMDLs as incorporated into the MS4 permit. The proper inclusion of these TMDLs into the IGP will help ensure that all dischargers equitably share the responsibility of protecting water quality and reducing pollutant loads to Waters of the United States.

zero waste • one water

AN EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION EMPLOYER

Recyclable and made from recycled waste



Infiltration Too Complex

The City is committed to protecting and using its water resources more wisely through water conservation and reuse and thanks the State Water Board for providing on-site and off-site compliance options, to incentivize storm water capture, in place of typical monitoring requirements for Numeric Action Levels (NALs), TMDL Numeric Action Levels (TNALs), and Numeric Effluent Limitations (NELs).

Although the City is supportive of the compliance options, the infiltration requirements are too complex to encourage such activity. Retrofitting existing, impervious urban landscape with green infrastructure restores storm water infiltration capacity previously lost in developed areas and reduces pollutant loads discharged to surface waters. The State Water Board should use this opportunity to encourage infiltration by creating a simpler single volumetric compliance storm standard, e.g., 1 inch, that can be used in lieu of the 85th percentile, 24-hour storm.

Protection from Frivolous Citizen Suits

The proposed IGP amendment deems dischargers meeting the requirements of a compliance option to be in compliance with NALs, Discharge Prohibitions Section III.C, TMDL Waste Load Allocations (WLAs), and RWLs.

LASAN supports the use of NALs and TNALs as triggers for an adaptive management and monitoring program leading to the development of Best Management Practices (BMPs) that comply with Best Available Technology Economically Achievable (BAT)/Best Conventional Pollutant Control Technology (BCT). NALs and TNALs were designed to provide feedback on industrial sources of pollutants. The Exceedance Response Action (ERA) process was supposed to provide a clear pathway to compliance through the implementation and installment of BMPs in order to comply with BAC/BCT and meet water quality standards (WQS) and RWLs. Instead, enforcement actions are at an all-time high – some of which are frivolous that expose the regulated community to unfounded and unwarranted lawsuits.

Although a need for citizen enforcement to correct violations certainly exists and such enforcement can be valuable, the proposed IGP amendment does not provide adequate protection to industries in full compliance with the IGP. Having industries pay large sums to settle or litigate frivolous claims directly competes for the same limited monies that these industrial users could use to protect water quality with BMPs. Consequently, LASAN requests that the State Water Board strengthen the language in the IGP so that the ERA process is the sole remedy for an NAL or TNAL exceedance.

Attachment A provides comments to make the IGP clearer on what is and is not a violation in order to limit citizen enforcement to those instances where clear violations exist. Attachment B includes proposed changes that should be made to clarify the terms and conditions of this permit. We request that the State Water Board consider these comments and suggested revisions and make the requested modifications prior to adopting the final IGP. We appreciate your consideration of our comments and look forward to working with you in developing an effective statewide order for industrial storm water discharges.

If you have any questions, please contact Mr. Hassan Rad, Regulatory Affairs Division Manager, at Hassan.Rad@lacity.org or at (213) 847-5186.

Sincerely,



ENRIQUE C. ZALDIVAR, Director
LA Sanitation

ECZ: HR:mtb:es

Attachments: Attachment A – Detailed Discussion of Major Issues
Attachment B – Comment Matrix

c: Traci Minamide, LASAN
Mas Dojiri, LASAN
Adel Hagekhalil, LASAN
Tim Dafeta, LASAN
Shahram Kharaghani, LASAN
Roshan Aflaki, LASAN
Mark Starr, LASAN
Hassan Rad, LASAN

Attachment A – Detailed Discussion of Major Issues

A. New Compliance Options Are Helpful, But Revisions and Clarifications Are Needed.

The addition of new Compliance Option language to the Permit may be helpful. However, the implication of such language is that permittees not taking one of the compliance options will be deemed out of compliance.¹

1. The Permit Does Not Provide Any Specific Provision in the Order Authorizing the Use of Compliance Options.

Currently, the proposed amendments contain a new Attachment I, and the following new Finding 56:

56. The State Water Board allows Dischargers statewide to comply with the alternative compliance options in Attachment I instead of complying with applicable numeric action levels (NALs),² Discharge Prohibitions Section III.C, TMDL waste load allocations (WLAs), and Receiving Water Limitations. Dischargers are still required to comply with applicable Subchapter N effluent limitations.

A Finding is not adequate to authorize the use of an alternative compliance option. There needs to be an enforceable provision in the Order portion of the Permit that specifically and clearly authorizes this option to comply with Discharge Prohibitions, Receiving Water Limitations, and WLAs. The Compliance Options need to be included in each of the relevant areas for which compliance is obtained in order to provide adequate clarity. As we have seen from previous court interpretations of permits, each provision is reviewed separately and apart from any other, so the applicable provisions must be clearly and adequately cross-referenced.

Request: Add Provision in the Order portion of the Permit authorizing the use of Compliance Options in Attachment I.

2. The Permit Needs to Recognize Potential Issues Related to Diversion to a Sanitary Sewer.

Paragraph II.B of Attachment I states: “The Discharger may include the BMPs that capture and divert the required storm water runoff volumes to a publicly-owned treatment works [POTWs] ...”

¹ Paragraph I.D. of Attachment I of the proposed amendments state:

“If a Discharger chooses, but fails to comply with the requirements for the On-Site or Off-Site Compliance Option provided below, the Discharger shall demonstrate compliance with the above sections of this General Permit.”

This proposed language fails to specify how a permittee can “demonstrate compliance,” particularly for BAT/BCT when there are no ELGs for the industry in question. This problem is discussed elsewhere in this letter.

² Only the ERA requirements that follow from an NAL exceedance present a compliance/violation issue, not the NAL exceedance itself, so the proper reference to the ERA requirements should be included instead.

The Permit must recognize that separate requirements must be met prior to implementing such diversions, and that diversions to the sanitary sewer may not be possible in many locations. Many POTWs do not have capacity to accept storm water during and after wet-weather events, or may be unable to accept the additional pollutants present in industrial storm water and still meet the POTW's effluent limitations. In addition, sewer use or pretreatment permits will likely be required before any such diversions would be authorized by the POTW. The Permit amendments appear to assume that an industrial site can unilaterally plumb their storm drains to the sanitary sewer and discharge unlimited quantities of untreated storm water to that sewer, when that is not the case. POTWs may need to be given incentives and regulatory relief if this is a solution that the State Board wishes to pursue.

Request: Clarify that there are other requirements that must be met before diversions to a POTW can be used as a Compliance Option.

3. The Compliance Options Should Not Regulate Discharges to Groundwater, Which Are Not Appropriately Addressed in an NPDES Permit.

Storm water discharges solely to land or groundwater do not require coverage under the Permit. See Permit at Provision II.B.1. (requiring coverage for discharges to waters of the United States). While the State Water Board has the authority under California law to permit discharges to land that could affect groundwater, that regulation should not be included in a federal permit. A straightforward reading of the CWA demonstrates that when Congress wanted certain provisions of the CWA to apply to groundwater, it stated so explicitly. For example, CWA section 102(a) identifies groundwater as distinct and separate from navigable surface waters, by stating:

The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, ... prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the *navigable waters and groundwaters* and improving the sanitary condition of *surface and underground waters*.

33 U.S.C. §1251(a) (emphasis added).

Similarly, CWA section 104(a) states that the EPA Administrator shall:

in cooperation with the States ... establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the *navigable waters and groundwaters* and the *contiguous zone*, and the *oceans*

33 U.S.C. §1254(a) (emphasis added). Thus, Congress specifically identified four different and distinct types of water bodies in the CWA: (1) navigable waters, (2) groundwater, (3) the contiguous zone, and (4) oceans.³

³ Other sections of the CWA also refer to navigable waters and groundwater as distinct and separate. See e.g., 33 U.S.C. §1256(e) ("...the Administrator shall not make any grant ... which has not provided or is not carrying out as part of its program – (1) the establishment ... of appropriate devices ... necessary to monitor and to compile data on ... the quality of *navigable waters* and, to the extent practicable, *groundwaters*") (emphasis added); see also 33 U.S.C. §§1288(b), 1314(a), and 1314(e).

The term “discharge of a pollutant” is defined in the CWA to cover the discharge of any pollutant to (1) *navigable waters*, (2) the *contiguous zone*, or (3) the *ocean*. 33 U.S.C. §1362(12). The omission of “groundwater” from the definition of “discharge of a pollutant” clearly indicates that Congress did not consider discharges to groundwater to be discharges that would trigger the need for an NPDES permit. (*See Russello v. United States*, 464 U.S. 16, 23, 78 L.Ed. 2d 17, 104 S. Ct. 296 (1983) (“Where Congress includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion”).) Therefore, regulation of infiltration discharges to groundwater should be addressed in a separate state-only general Waste Discharge Requirements (“WDR”) promulgated pursuant to the California Water Code, to avoid federal enforcement of state-only requirements that are not required by and more stringent than the CWA.⁴

Request: Remove requirements related to discharges to land/groundwater from the Permit and only regulate discharges to waters of the United States.

4. Besides not Being Appropriate for Inclusion in an NPDES Permit, the Infiltration Requirements are too Detailed to Encourage Such Activity.

a. Create a Single, Easier Volumetric Compliance Storm Standard

A standard amount of rain water (e.g., 1 inch) should be used instead of the 85th percentile, 24-hour storm as the latter may be impossible to meet in some parts of the state, such as the far North Coast, and creates a greater burden on permittees in high precipitation areas. Because the table in the Fact Sheet on p. 31 shows that the 85th percentile, 24-hour storm ranges generally from .61 to 1.16 inches, the selection of a standard amount in that range would be justified based on this data. In addition, any rain event that exceeds that selected value is likely to be large enough to provide ample dilution water for any remaining flows that the constituents discharged to be of less regulatory and water quality concern.

Request: Select a standard rain volume for use statewide.

b. Discharge into On-Site Ponds Should Not Require Compliance with MCLs

Attachment I proposes to require that all water entering infiltration BMPs meet Maximum Contaminant Levels (“MCLs”). (Attachment I, p. 3, Section II.E.6.a.) MCLs were designed to apply to finished drinking water supplied by public water suppliers at the point of consumption. While many Basin Plans have incorporated MCLs as water quality objectives, these objectives do not apply in storm water ponds. Further, requiring compliance with MCLs prior to storm water entering an infiltration pond, dry well, or underground gallery is overly stringent, since the value of the infiltration process itself in protecting groundwater is not taken into account. Such stringent requirements will not encourage adoption of infiltration BMPs. In fact, just the

⁴ Alternatively, any groundwater provisions should be included in a separate State Law Only portion of the permit. Many Regional Boards have separated requirements in this manner. However, the ability of citizens to enforce those provisions has not yet been tested in California.

opposite: if dischargers must pretreat the water anyway, permittees will in most instances choose just to discharge the water.

Request: Remove requirements from Attachment I regarding compliance with MCLs for water entering infiltration BMPs.

c. Monitoring of Bypassed Water Should not be Required.

If storms above the design storm standard and treatment levels occur, Attachment I proposes that the bypass/overflow be sampled. If such monitoring data is required and made public, this will become a new area of alleged violation, as the Permit does not clearly state that this discharge is not a prohibited discharge, or what requirements exist related to this discharge.⁵ If permittees are continuing to implement their SWPPPs, and rain flows are extraordinarily high, then any discharges should be deemed to be *de minimis* and not need to be monitored.

Request: Remove requirements to monitor bypass/overflow water above the capacity of the On-Site Compliance BMPs.

d. Exemptions Must Be in Permit

Attachment I states that Dischargers compliant with the On-Site Compliance Option are exempt from several provisions of the Permit. However, Attachment I does not appear to be expressly incorporated into the enforceable provisions of the Permit and, therefore, arguments will likely be made that such exemptions are inapplicable. In addition, it is unclear why the TMDL and Water Quality Corrective Action provisions are not also included in the exempted provisions.

Request: Place or clearly cross reference the Compliance Option provisions and exemptions in the Provisions part of the Permit. Include all other provisions that should be exempted.

e. Other Requested Changes to Attachment I.

In addition to the changes requested above, other modifications to Attachment I should be made for clarity.

- There are internal inconsistencies in Attachment I. For example, Section II.J.1.b. prohibits the discharge of authorized Non-Storm Water Discharges (“NSWDs”), yet this is contrary to Finding 33, Provision III.B., and Section IV of the Permit, which explain why and what authorized NSWDs are permitted for discharge.

⁵ The Fact Sheet contains Footnote 8, which says “This information is not to be used for enforcement of WQS or permit compliance but to provide feedback on the effectiveness of this Compliance Option” and other related text. However, this information contained only in the Fact Sheet is not adequate to put people on notice of how or why this information is being collected and what will be done with the data. The Permit could contain a Compliance Determination section to describe specifically what constitutes compliance. Further, this language raises concerns that permittees may be hesitant to invest in a particular Compliance Option that may cease to be an option in the future.

- It is unclear how an infiltration BMP can be built and maintained to recover capacity within a day (not 24 hours, but 12:00 am to 11:59 pm). Beyond the fact that this is micromanaging compliance in a manner contrary to Water Code section 13360(a), this may not be technically feasible. An alternative would be to require two times the water volume standard, so that if there are two back-to-back days of heavy rain, that volume would be contained. If rains extend for longer periods, the dilution would be significant and help minimize the pollutant concentrations.
- Remove the word “influent” from Attachment I (and elsewhere from the proposed amendments and Permit). This is a wastewater term. In this context, influent means storm water, so the term “storm water” should replace “influent.”
- Clarify Section II.K.1 of Attachment I applies only to infiltration Compliance Options, not diversions, as follows:
“The applicable Regional Water Board Executive Officer has the authority to review site-specific information, and disapprove ~~any~~ On-Site infiltration BMPs Compliance Option as a permissible Compliance Option for the Discharger where findings are made that such an option would raise to address regional groundwater concerns.”
- If groundwater requirements are maintained in the permit over the objections provided herein, then the following modification in Section II.K.4 of Attachment I should be made regarding monitoring:
“The State Water Board Executive Officer or the applicable Regional Water Board Executive Officer may exempt a site from or authorized [sic] the discontinuation of groundwater monitoring if no threat to groundwater is determined.”
- Section III.A.3. of Attachment I, which prohibits use of waters of the United States (“WOTUS”) or waters of the State (“WOTS”), will unduly constrain Off-Site Compliance Options. Since this is an NPDES permit, such discharges may be authorized. Further, the use of ditches, which might be characterized as WOTUS or WOTS, may require other adverse environmental impacts to achieve an off-site solution. As worded, large infiltration basins in the Los Angeles River and other southern California areas might be construed as falling under this prohibition. For these reasons, this provision should be removed or substantially modified.

Request: Make the above recommended Permit modifications.

B. No Numeric Effluent Limits Should Be Included Where No Reasonable Potential Exists.

The Permit should not prescribe effluent limitations for any constituents without demonstrated reasonable potential (RP). Under 40 C.F.R. section 122.44(d)(1)(i), limits must control conventional, nonconventional, and toxic pollutants only where those pollutants will be

discharged “at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” (See also Water Code section 13377 (requiring effluent limitations to be “necessary”). The proposed Permit newly imposes NELs based upon proximity to 303(d) listed waters with TMDLs, instead of relying upon the actual data that demonstrates a reasonable potential to exceed the applicable water quality objectives.

The State Water Board is bound by court and previous precedential decisions, which hold that in the absence of a showing of reasonable potential for a pollutant to be contained in the effluent, the Permit should not contain any limitations on that substance. Where substances were not detected, or were detected at low levels not rising to RP, limits are not required and may be removed from NPDES permits. Under the ruling in the *City of Woodland* case, Alameda Superior Court Case No. RG04-188200, Order Granting Writ of Administrative Mandamus (2005), where no reasonable potential exists, no effluent limit is required.

Federal rules require a reasonable potential analysis *first* (40 C.F.R. §122.44(d)(1)(ii)), and then if an effluent limitation is required, the permitting authority shall ensure that the effluent limits are consistent with the assumptions and requirements of any available waste load allocation (WLA) in a TMDL (40 C.F.R. §122.44(d)(1)(vii)(B)). To address the need to demonstrate compliance with the TMDL, the WLAs could be applied as Receiving Water Limitations, where compliance is determined in the receiving water, rather than effluent limits.

If NELs remain in the permit without a finding of reasonable potential, then these limits are more stringent State law-based requirements and the factors in Section 13241 must be considered.

C. The Permit Amendments Should Include Recognition of Self-Contained Prospective Injunctive Relief as the Appropriate Remedy for NAL/RWL Exceedances.

Under the Permit, as revised in 2014/15, permittees were required to develop and implement a new and improved Storm Water Pollution Prevention Plan (“SWPPP”) with both minimum and advanced BMPs. (Permit at Section X.) If, despite implementation of the new SWPPP, a permittee exceeded any NAL, then the permittee moved to “Level 1” status in July of the next year, and was required to undertake additional tasks and reporting obligations called “Exceedance Response Actions” or “ERAs.” (*Id.* at pp. 49-50, Section XII.C, and Fact Sheet at pp. 6-7.) If NAL exceedances continued during the second year for those same pollutants, notwithstanding the additional efforts in Level 1, then the permittee moved to “Level 2” status in July of 2017 and incurred additional compliance obligations. (*Id.* at pp. 50-55, Section XII.D.) The Permit recognizes “[i]t is not a violation of the General [2015] Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” (Permit Fact Sheet at p. 60 (emphasis added); see also *id.* at p. 45, Figure 3 (Compliance Determination Flowchart).)

Other reasons may exist for NAL exceedances, wholly unrelated to pollutants entrained in industrial storm water. Thus, the Permit allows permittees to demonstrate that the exceedances are “attributable solely to pollutants originating from non-industrial pollutant sources (such as run-on from adjacent facilities, non-industrial portions of the Discharger’s property, or aerial deposition).” (Permit at p. 12, Finding 66, and pp. 52-54, Sections XII.D.2.b. and c. (Non-Industrial and Natural Background Pollutant Source Demonstrations).) These exceedances “are

not a violation of this General Permit because the NALs were designed to provide feedback on industrial sources of pollutants.” (*Id.* at p. 12, Finding 66.)

The Permit also states that sampling results above the newly incorporated NALs are “not, in and of themselves, violations of the general permit.” (Permit at p. 11, Finding 63.) Only when a permittee’s industrial storm water discharge exceeds the NALs *and* the permittee does not comply with the Level 1 or Level 2 status ERAs, should the permittee be considered “in violation” of the Permit. Thus, the Permit includes self-contained prospective injunctive relief to correct the issue of exceeding an NAL (which is not a permit violation). The Permit should clearly state that this prospective injunctive relief is the sole remedy for a NAL exceedance.

Similarly, under the Permit, if a permittee’s discharge is determined to have caused or contributed to an exceedance of an applicable water quality standard in the local receiving waters, then the permittee must undertake “Water Quality Based Corrective Actions.” (Permit at pp. 67-68, Section XX.B, and Fact Sheet at p. 22, Section E.) Moreover, the permittee or the Regional Water Board must make this Receiving Water Limitation (“RWL”) exceedance determination based on data. (*Id.* at p. 22, Fact Sheet, Section E.) Where neither the Regional Board nor the permittee has determined that there have been RWL exceedances, no violation of the permit should be found. And, even if there had been RWL exceedances, these Corrective Actions, including identifying pollutant sources, assessing BMPs’ effectiveness, and determining whether additional BMPs are needed to reduce or prevent pollutants, are the same type of prospective injunctive relief that could be issued by a court and should be recognized by the Permit to be the remedy for such exceedances.

The Permit provides appropriate redress and concrete steps for permittees to take if NAL or RWL exceedances occur (e.g., Level 1 and 2 ERAs, SWPPP modifications, and, where applicable, Water Quality Based Corrective Actions). Because the Permit itself contains prospective injunctive relief, court intervention to order such relief is unnecessary and duplicative. The requested changes would be consistent with the State Board’s conclusion that significant revisions to the 1997 version of the Permit were “necessary for implementation, consistency and objective enforcement.” (Permit, Fact Sheet at p. 2 (emphasis added).)

Request: The Permit should include modifications to clarify that the ERA and Water Quality-Based Corrective Action pathways are the exclusive manner to address NAL and RWL exceedances, respectively.

D. Clarification of BAT/BCT Standards Needs to Be Included to Decouple Those Standards from NALs

The Permit’s technology-based effluent limitations and the Clean Water Act’s “BAT/BCT standards” are not clear, which has led to allegations of non-compliance that are unwarranted.

The CWA requires the achievement of “effluent limitations for categories and classes of point sources, other than publicly owned treatment works,⁶ which shall require application of the best available technology economically achievable [i.e., “BAT”] for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of

⁶ A publicly owned treatment works (“POTW”) is a municipal wastewater treatment plant.

all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title....” (33 U.S.C. §1311(b)(2)(A)(emphasis added). When setting BAT for industries, the Environmental Protection Agency (“EPA”) must consider many factors and set industry-specific Effluent Limitation Guidelines (“ELGs”). (See 33 U.S.C. §1314(b)(2)(A) and (B); 40 C.F.R. §125.3(a)(2) (iii)(A), (iv)(A), and (v)(A)(emphasis added).) Similar requirements exist for the EPA promulgation and achievement of “effluent limitations for categories and classes of point sources, other than publicly owned treatment works” to achieve best conventional control technology (“BCT”). (33 U.S.C. §1311(b)(2)(E); §1314(b)(4)(A) and (B)(factors considered when EPA sets ELGs based on BCT); 40 C.F.R. §125.3(a)(2)(ii)(A).)

Although BAT/BCT requirements have been included in the CWA since 1972, industrial storm water discharges were unregulated prior to the 1987 CWA amendments. (33 U.S.C. §1342(p).) Under the new subsection (p), industrial storm water dischargers were newly required to obtain NPDES permits (33 U.S.C. §1342(p)(2)(B)), and such “[p]ermits for discharges associated with industrial activity shall meet *all applicable provisions* of this section and section 1311 of this title.” (33 U.S.C. §1342(p)(3)(A)(italics added).)

The Permit must more clearly recognize that EPA has not set any ELGs or BAT/BCT standards for most categories and classes of industry. (See Permit at p. 10, Finding 58; p. 12, Finding 64, 174-175 (listing all industries for which EPA has promulgated ELGs with defined BAT/BCT standards).) Without promulgated ELGs, there are no applicable “BAT/BCT standards” to be compared to sampling data, or to be otherwise achieved.

The Permit currently states that:

“The “primary TBEL in this General Permit requires Dischargers to “implement BMPs that comply with the BAT/BCT requirements of this General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.” (Section V.A of this General Permit). This TBEL is a restatement of the BAT/BCT standard, as articulated by U.S. EPA in the 2008 MSGP and accompanying Fact Sheet. In order to comply with this TBEL, Dischargers must implement BMPs that meet or exceed the BAT/BCT technology-based standard.”

Because no “BAT/BCT standard” has been set for most industries, it is impossible to demonstrate compliance with this requirement or, on the flip side, to avoid allegations of non-compliance. To avoid this conundrum, the Permit must be modified to state that, for industries without promulgated ELGs, implementation of the minimum and additional BMPs specified for the facility in its SWPPP constitutes compliance with BAT/BCT. However, if NALs are not met, notwithstanding implementation of the SWPPP’s BMPs, then the permittee must attend to the ERA Level 1 and Level 2 reporting and action plan tasks to continue to be considered compliant with BAT/BCT. Currently, these requirements are confused and contradictory, particularly since the Permit states that “NALs are not intended to serve as technology-based or water quality-based effluent limitations.” (Permit at p. 11, Finding 63.) Similar concerns exist about the TNALs, since these values seem to be somehow tied to the TMDL, but yet are not indicators of technology or water quality-based requirements. Because NALs are being used as

indicators of non-compliance with both technology-based and water quality based requirements, and TNALs are likely to be used in the same way, the Permit must be clarified.

Request: To eliminate the current regulatory uncertainty, Effluent Limitation V.A. should be modified in one of the following ways:

“Dischargers shall implement BMPs that comply with the ~~BAT/BCT~~ requirements of this General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. Implementation of such BMPs, in accordance with the terms of the facility’s SWPPP, and updated as needed under Section XII. Exceedance Response Actions (ERAs), shall constitute BAT/BCT for industries not subject to storm water ELGs in Subchapter N.”

OR

“Dischargers shall implement BMPs that comply with ~~the~~ any applicable BAT/BCT requirements ~~of for the industry regulated by this~~ General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. If no BAT/BCT standards exist for a particular industry, the Discharger shall implement the BMPs required in Section X.H, as supplemented by modifications required as a result of Section XII. Exceedance Response Actions (ERAs).”

E. New Proposed Language Contradicts Previous Findings and Permit Language

1. Adding Numeric Effluent Limitations (“NELs”) is Contrary to Previous Permit Findings that Numeric Limits are Infeasible, and Lacks Supporting Evidence of Feasibility.

The Permit currently contains no numeric effluent limitations. The 2014/2015 Permit stated that “[i]t is not feasible for the State Water Board to establish numeric technology based effluent limitations for discharges authorized by this General Permit at this time.... Therefore, this General Permit requires Dischargers to implement minimum BMPs and applicable advanced BMPs as defined in Section X.H. (collectively, BMPs) to comply with the requirements of this General Permit.” (Permit at p. 5, Finding 33, and at Section X.H.) The Permit’s reliance upon BMPs in lieu of numeric effluent limitations to control or abate the discharge of pollutants is authorized by EPA regulations. (*Id.* at Finding 36; 40 C.F.R. §122.44(k)(2), (3), and (4).

The Permit’s Fact Sheet at page 17 recognizes (with emphasis added) that: “U.S. EPA has also interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 C.F.R. §122.44(k), titled ‘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).” Nevertheless, the Permit now proposes the addition of TNELs (NELs based on Total Maximum Daily Loads (“TMDLs”)), even though these TNELs are no more feasible to comply with than any other NEL.

The Permit contains numerous findings that NELs are infeasible, and contains no new findings or evidence demonstrating that the proposed TNELs will be feasible to comply with. Under the authority of federal regulations at 40 C.F.R. section 122.44(k)(2) -(4), BMPs are authorized in lieu of NELs, even those based on TMDLs. As such, the proposed TNELs should not be imposed as numeric limits, but should instead require BMPs designed to meet the numeric targets set by the TMDL for industrial sources.

The language of 40 C.F.R. section 122.44(k)(3), which allows BMPs in lieu of effluent limitations when “numeric effluent limitations are infeasible” turns on whether discharger *compliance* with such limitations is feasible, not on the ability and propriety of *calculating* numeric effluent limitations.

The fact that such limits can be calculated from the TMDL is irrelevant. “It will nearly always be possible to [calculate or] establish numeric effluent limitations, but there will be many instances in which it will not be feasible for dischargers to comply with such limitations. In those instances, states have the authority to adopt non-numeric effluent limitations.” (Emphasis added.) See Statement of Decision Granting Writ of Mandate, *City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (2010) at p. 42 (case is binding on the Water Boards since not appealed).

In addition, the *Communities for a Better Environment* case made clear that one factor a board may consider in determining whether a numerical effluent limitation is “feasible” is the “ability of the discharger to comply.” See *Communities for a Better Environment (“CBE”) v State Water Resources Control Bd.* (2003) 109 Cal. App 4th 1089, 1100. The court expressly approved the regional board’s consideration of this factor in upholding the determination that numeric effluent limits were not “appropriate” for the refinery at issue in that case. *Id.* at 1105 (approving determination that numeric WQBEL was not feasible “for the reasons discussed above,” which included inability of discharger to comply).

In *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir.1977), the D.C. Circuit stressed that when it is infeasible to comply with numerical effluent limitations, permits may be issued with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. *Id.* at 1380, and at n. 21 (noting that the proposition that Congress did not regard numeric effluent limitations as the only permissible limitation was supported by section 302(a) of the CWA (33 U.S.C. §1312(a)).

Accordingly, in determining the “feasibility” or “propriety” of numeric effluent limitations, the Water Boards may consider the ability (or inability) of the discharger to comply with such limitations. The ability to comply is a critical factor in determining the “feasibility” or “propriety” of numerical limitations. *City of Tracy v. SWRCB*, Statement of Decision at pg. 42. The feasibility of calculating a limit is not.

Request: Remove TNELs and utilize a BMP-based approach for TMDL compliance related to industrial storm water sources.

2. New Findings on RWL Compliance Point Conflict with Permit Provisions.

The 1997 version of the Permit contained different language than the 2014/2015 Permit, without express reference to receiving waters, as follows:

“Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

Under the 1997 Permit, RWLs had been judicially construed as applying to the “end of the discharge pipe.” (See *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 926-927 (C.D. Cal 2009).) However, the 2014/2015 Permit now expressly prohibits exceedances, *not* at the end of pipe, but “in any affected receiving water.” (Permit at p. 21, Section VI.A. (emphasis added); see also *Johnson v. Consumerinfo.com, Inc.*, 745 F.3d 1019, 1022 (9th Cir. 2014), quoting *Stone v. INS*, 514 U.S. 386, 397 (1995) (Amendments are presumed “to have real and substantial effect.”).)

Unlike the 1997 Permit, which was silent on this point and created adverse case law (e.g., *Kramer Metals*) as a result, the 2014/2015 Permit expressly recognized that “compliance with the receiving water limitations generally cannot be determined solely by the effluent water quality characteristics.” (Permit at p. 6, ¶37.) Thus, both end of pipe discharge *and* receiving water samples, preferably contemporaneously collected, would be needed to demonstrate an RWL exceedance is caused or materially contributed to by industrial storm water discharges. (See *Arkansas v. Oklahoma*, 503 U.S. 91, 111 (1992) (holding an exceedance may only occur where the discharge “effected an ‘actually detectable or measurable’ change in water quality.”).)

Collection of such data is not required under the 2014/2015 Permit because the State Board determined that “the infeasibility and costs associated with developing quantitative monitoring programs at each of thousands of industrial facilities currently permitted would outweigh the limited benefits.” (Permit, Fact Sheet, pp. 46-48.)

Newly proposed language turns this finding on its head by stating: “the point of compliance established in this General Permit is at the discharge point of the facility and not at the receiving waters.” Proposed Fact Sheet at p. 41, Section F.5.a.2. This is contrary to the language in Provision VI.A that ensures industrial storm water discharges are not causing or contributing to “an exceedance of any applicable water quality standards in any affected receiving water.” If there are no exceedances in the receiving water, then there can be no violations of this section, even if the concentrations of the storm water leaving the facility exceed standards. The amendments should not make this type of modification without more extensive public involvement on this topic.

Request: Remove findings attempting to modify the point of compliance for Receiving Water Limitations.⁷

⁷ As to meeting Waste Load Allocations (WLAs) and TNALs at the point of discharge, if these are modified to be BMP-based programs as requested previously, then no numeric target is needed. In addition, the change requested is consistent with the finding at the bottom of page 40 of the Fact Sheet, which states: “Concentration-based WLAs or concentration-based numeric targets applicable to industrial storm water discharges with a compliance location established in the receiving water body (not at the point of discharge from the industrial facility) are translated into a TNAL(s)” (emphasis added).

F. Reinsert Standard Provisions to Cover Treatment Systems

The CWA provides just two affirmative defenses, bypass and upset. However, in the most recent amendments to the Permit, the State Water Board removed the standard upset and bypass provisions set forth in the regulations for all NPDES permits. *See* 40 C.F.R.

§122.41(m)&(n) (“The following conditions apply to all NPDES permits . . . (m) (Bypass) . . . (n)(Upset).”) These provisions should be reinserted into Provision XXI. (Standard Conditions) of the Permit because technology-based BMPs and treatment can fail for reasons beyond the reasonable control of the permittee. *See FMC Corp. v. Train*, 539 F.2d 973 (4th Cir.1976) and *Marathon Oil v. EPA*, 564 F.2d 1253 (9th Cir. 1977). In the *Marathon Oil* case, the Ninth Circuit Court of Appeal concluded that a facility using proper technology operated in an exemplary fashion would not necessarily be able to comply one hundred percent of the time, and thus an upset defense in the permit was necessary. Further, in the *Marathon Oil* case, the Ninth Circuit Court of Appeal concluded an upset defense in the permit was necessary to cover instances of equipment failure and human error. (*Id.* at 1273.)

Request: Reinsert the Standard Provisions for Upset and Bypass into the Permit.

G. Additional Clarifying Changes Should be Made to Proposed Amendments

The following provides language changes that should be considered to make the Permit provisions more clear.

- Pg. 9 – Finding 50 – This finding should also be incorporated into the NEC and NONA sections of the Permit because findings are not enforceable provisions.
- Pg. 9 – Finding 51 – “This General Permit’s NALs found in Table 2, as applicable to the particular discharge and SIC code, shall continue to apply....”
- Pg. 13 – Finding 77 – “...NAL/TNAL exceedances defined in this General Permit are not, ~~in and of themselves,~~ violations of the General Permit and do not indicate that BAT/BCT is not being met.”
- Pg. 14 – Finding 80 - “Exceedances of the NALs that are attributable solely predominantly to pollutants originating from non-industrial pollutant sources (such as run-on from adjacent facilities, non-industrial portions of the Discharger’s property, or aerial deposition) are not a violation of this General Permit because the NALs are designed to provide feedback on industrial sources of pollutants. Dischargers may submit a Non-Industrial Source Pollutant Demonstration as part of their Level 2 ERA Technical Report to demonstrate that the presence of a pollutant causing an NAL/TNAL exceedance is attributable solely predominantly to pollutants originating from non-industrial pollutant sources.”

This change is needed because it is virtually impossible to show that no molecule of the constituents monitored is added by the industrial storm water. If the amount not attributed by industrial storm water exceeds the NAL/TNAL, that is not an industrial storm water issue.

- Pg. 22 – Discharge Prohibition III.A. – “All discharges of storm water associated with industrial activities to waters of the United States are prohibited except as specifically authorized by this General Permit or another NPDES permit.”

This change is needed because not all storm water is regulated by this permit.

- If a State Law Only section is included in the Permit, Sections III.C-E. Discharge Prohibitions, VI. Receiving Water Limitations, VIII.B. ASBS Exceptions, XVIII. Conditional Exclusion – NEC, should be placed in that section as these are based on State Law.
- Pg. 25 – Provision VII.C. – Clarify whether Compliance Groups can undertake TMDL reporting. Currently, the proposed language includes only the “Responsible Discharger.”
- Pg. 25 – Provision VII.C.2. – Add language specifying that exceeding a TNAL does not constitute a violation of the permit, but requires compliance with Provision VII.D.1.
- Pg. 26 – Provision VII.E. – If NELs are maintained over the objections provided herein, then the Permit should recognize or clarify that these exceedances would be subject to Mandatory Minimum Penalties (“MMPs”).
- Pg. 78 – Provision XXI.Q.1. – The civil penalty amount in this section is inaccurate. Currently, the civil penalty amount for Clean Water Act violations is \$53,484, not \$37,500 as stated. *See* 83 Fed.Reg. 1190 (January 10, 2018).
- Fact Sheet, pg. 24, Section b. – “The Clean Water Act requires NPDES permits to include technology-based effluent limitations and any more stringent limitations necessary to meet water quality standards. Industrial storm water NPDES permits must: (1) require compliance with technology-based standards, (2) prohibit unauthorized ~~nonstorm water discharges~~NSWDs, (3) require reduction of pollutants in the storm water discharge to ~~the~~ any applicable standard of BPT/BAT/BCT for the industry type in all cases, and (4) include additional limitations necessary to meet water quality standards.
- Fact Sheet, pg. 28 – Section 7 – The sentence stating that: “Discharges from BMP(s) implemented for the purposes of compliance with the On-Site Compliance Option smaller or equal to the 85th percentile 24-hour storm event (daily volume) are prohibited and a violation of this General Permit, unless the discharge sample data are below any applicable NELs and compliant with the ERA requirements.”

It is not clear why such discharges would be a violation if otherwise compliant with the Permit.

- Fact Sheet, pgs. 44-45 – Subsection c on Water Effect Ratios (“WERs”) allows for amendment of the Permit to incorporate WERs. However, where WERs already exist, those should be incorporated into the Permit now to avoid having to reopen the permit later.

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
1	General Comment	Sufficiently Sensitive Test Methods	The City of Los Angeles Bureau of Sanitation (LASAN) supports the proposed Amendments to the IGP related to incorporating the United States Environmental Protection Agency's (U.S. EPA) sufficiently sensitive methods analytical testing requirements given that Dischargers covered by the IGP should be required to generate data which allows for an assessment of water quality criteria.
2	General Comment	Compliance Options	LASAN supports the proposed amendments related to the addition of two compliance options that allow dischargers to demonstrate compliance either on-site by capturing and using, infiltrating, and/or evapotranspiring the runoff volumes generated up to and including the 85th percentile, 24-hour storm event OR off-site by participating in agreements with municipalities resulting in offsite retention best management practice (BMPs). The explicit language within the proposed amendments stating that dischargers have an off-site compliance option may open the dialogue between the LASAN and dischargers regarding coordination on BMPs which could have benefits to all stakeholders within the watersheds. Although LASAN is supportive of the compliance options, the infiltration requirements are too complex as currently written to encourage such activity. LASAN requests that the infiltration requirements be relaxed and simplified to encourage such activity.
3	General Comment	Total Maximum Daily Load (TMDL) Implementation of WQBELs and WQSS	<p>LASAN generally supports the proposed IGP amendments related to the addition of TMDL-related requirements given that the appropriate application of the TMDLs is needed to ensure that all responsible parties actively participate in solving the region's water quality issues.</p> <p>LASAN supports the use of TNALs as a trigger for an adaptive management and monitoring program leading to the development of BMPs that comply with BAT/BCT. However, the current MS4 Permit is under legal challenge. Included in that challenge is opposition to the TMDLs as water quality based effluent limitation requirements (WQBELs) and waste load allocations (WLA) limitations in receiving waters.</p> <p>Consequently, none of the TMDLs, including those for the several watersheds located in the Los Angeles Basin, should be recommended for inclusion into the IGP as WQBELs or WQS based receiving water limits until litigation is resolved.</p>
4	General Comment	BMPs and SWPPPs as primary mechanism to achieve compliance with Receiving Water Limitations	<p>Both the US EPA (Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159) and State Water Board (WQO 99-05 & WQO 2001-15) endorse the use of BMP control measures and compliance with a facility's SWPPP as a mechanism to ensure compliance with WQSS in receiving waters. The SWPPPs of individual industrial facilities are the mechanism to achieve compliance with WQS.</p> <p>The State Water Board chose to adopt an iterative approach for complying with WQSS in receiving waters, wherein municipalities must report instances where they cause or contribute</p>

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
			<p>to exceedances and then review and improve BMPs so as to protect the receiving waters. This should be the same for municipalities covered by the industrial storm water permit.</p> <p>The holding in the Browner allows the issuance of storm water permits that limit their provisions to BMPs that control pollutants to the maximum extent practicable (MEP), and which do not require compliance with WQSs (Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3d 1159.)</p>
5	General Comment	No Numeric Effluent Limits Should Be Included Where No Reasonable Potential Exists.	<p>The Permit should not prescribe effluent limitations for any constituents without demonstrated reasonable potential (RP). Under 40 C.F.R. section 122.44(d)(1)(i), limits must control conventional, nonconventional, and toxic pollutants only where those pollutants will be discharged “at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” (See also Water Code section 13377 (requiring effluent limitations to be “necessary”). The proposed Permit newly imposes NELs based upon proximity to 303(d) listed waters with TMDLs, instead of relying upon the actual data that demonstrates a reasonable potential to exceed the applicable water quality objectives.</p> <p>The State Water Board is bound by court and previous precedential decisions, which hold that in the absence of a showing of reasonable potential for a pollutant to be contained in the effluent, the Permit should not contain any limitations on that substance. Where substances were not detected, or were detected at low levels not rising to RP, limits are not required and may be removed from NPDES permits. Under the ruling in the <i>City of Woodland</i> case, where no reasonable potential exists, no effluent limit is required.</p> <p>Federal rules require a reasonable potential analysis <i>first</i> (40 C.F.R. §122.44(d)(1)(ii)), and then if an effluent limitation is required, the permitting authority shall ensure that the effluent limits are consistent with the assumptions and requirements of any available waste load allocation (WLA) in a TMDL (40 C.F.R. §122.44(d)(1)(vii)(B)). To address the need to demonstrate compliance with the TMDL, the WLAs could be applied as Receiving Water Limitations, where compliance is determined in the receiving water, rather than effluent limits.</p> <p>If NELs remain in the permit without a finding of reasonable potential, then these limits are more stringent State law based requirements and the factors in Section 13241 must be considered.</p>

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
6	IGP Section VII.B.3 pg. 25	Compliance with Water Quality Standards and Receiving Water Limitations	<p>IGP Section VII.B.3 states that The discharge of any listed pollutant will not cause or contribute to an exceedance of a water quality standard. This is demonstrated if: (1) the discharge complies with the water quality standard at the point of discharge or (2) if TMDL and the discharge is controlled at least as stringently as similar discharges subject to that TMDL.</p> <p>An exceedance of a WQS at the point of discharge does not imply that a violation of WQS exists in the receiving water just because an impaired pollutant is present in the discharge. WQS apply to the quality of the receiving water, not to the quality of the storm water discharge. Compliance with receiving water limitations cannot be determined solely by the storm water’s water quality characteristics.</p> <p>The City requests that the State Water Board add the following language.</p> <p>“Water Quality Standards apply to the quality of the receiving water, not to the quality of the storm water discharge. Therefore, compliance with receiving water limitations cannot be determined solely by the storm water’s water quality characteristics. Additional surface water monitoring required by other NPDES permits or other State Water Board programs can be used to inform dischargers whether receiving water limitations have been exceeded.”</p> <p>The IGP needs to make it clear that Qualified Storm Events only need to be sample, analyzed, and reported if there is a discharge to a Water of the US.</p>
7	IGP I A21 &28 XI B.1a	General Findings SWPPP Requirements	<p>Section XI B of the IGP requires dischargers to analyze storm water samples for additional parameters identified by the discharger in IGP Section X.G.2.a.ix – Assessment of Potential Pollutant Sources - including parameters related to receiving waters with 303(d) listed impairments or approved TMDLs.</p> <p>If a discharger determines that a TMDL or 303(d) listed constituent is a potential pollutant at the facility, the discharger must include that constituent in the MIP. Additional parameters may be added or removed in accordance with any updated SWPPP pollutant source assessment.</p> <p>Just because industrial pollutants are present at an industrial facility does not necessarily mean the pollutant it is likely to be in their storm water discharge in significant amounts to cause a violation of receiving water WQSs.</p> <p>The proposed IGP Amendment should allow monitoring prior to incorporation of TMDLs into the IGP for pollutants with existing TMDLs already established within a facility’s HUC 10 Watershed to establish the presence of the pollutant within the storm water discharge or lack thereof.</p>
8	IGP Section X.G.2a. ix pg. 33 and IGP Section XI pg. 41	Monitoring Industrial Pollutants with existing TMDLs	<p>Section XI B of the IGP requires dischargers to analyze storm water samples for additional parameters identified by the discharger in IGP Section X.G.2.a.ix – Assessment of Potential Pollutant Sources - including parameters related to receiving waters with 303(d) listed impairments or approved TMDLs.</p> <p>If a discharger determines that a TMDL or 303(d) listed constituent is a potential pollutant at the facility, the discharger must include that constituent in the MIP. Additional parameters may be added or removed in accordance with any updated SWPPP pollutant source assessment.</p> <p>Just because industrial pollutants are present at an industrial facility does not necessarily mean the pollutant it is likely to be in their storm water discharge in significant amounts to cause a violation of receiving water WQSs.</p> <p>The proposed IGP Amendment should allow monitoring prior to incorporation of TMDLs into the IGP for pollutants with existing TMDLs already established within a facility’s HUC 10 Watershed to establish the presence of the pollutant within the storm water discharge or lack thereof.</p>

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
9	IGP Section XI B, Table 1 Parameter reference, pg 46	Parameter Names	The proposed IGP Amendment needs to make it clear that each facility's SWPPP and MIP determine whether TMDL or 303(d) listed constituents are potential storm water pollutants that require additional monitoring.
10	Proposed Amended IPG, Page 47, footnote to Table 2	Usage of Outdated Reference	Change "Cr" for Cyanide to "CN". Similarly, change "NH" for Ammonia to "NH3" as it is used in Table 1
11	Proposed Amended IPG, XII.A.1 Exceedance Response Actions Pg. 52	Annual NAL Exceedance, Averaging	The proposed IGP amendment refers to methods and method #s from Std. Methods 18th Edition. LASAN suggests that the proposed IGP amended IGP refer to the updated 22nd Ed., 2012 version.
12	Attachment E, Table E-1: List of Applicable TMDLs, Pg. 1, 2	PCBs definition	The geometric mean is routinely used, in lieu of an average, for the summary of bacterial densities, as it is not influenced by very large values in a skewed population. LASAN requests that the geometric mean be used for bacterial densities.
13	Attachment E, Table E-1: List of Applicable TMDLs, Pg. 2	DDT Footnote 2	Clear distinction should be made between "Total PCBs" and "PCBs." To illustrate the need for this clarity, footnotes 1 and 3 state the same parameters (Polychlorinated biphenyls), but each refers to a different entity in Table E-1. Additionally, the form of PCBs of interest should be stated (i.e. Aroclors or congeners). The Water Board glossary (https://www.waterboards.ca.gov/water_issues/programs/stormwater/igp_20140057dwq.shtml) does not provide this information.
14	Attachment E. Table E-1, list of applicable TMDLs, pg 1,2	Pesticides	In Footnote #2, Dichlorodiphenyltrichloroethane is a single compound, but is listed as DDTs. Please clarify whether DDTs means Dichlorodiphenyltrichloroethane or the molecule DDT plus its five (5) transformation products (i.e. 2,4'-DDE; 4,4'-DDE; 2,4'-DDD; 2,4'-DDT; 4,4'-DDD; 4,4'-DDT).
15	Attachment E. Table E-1, list of applicable TMDLs, pages 1,11	Polycyclic aromatic hydrocarbons (PAHs)	The use of "Organochlorine Pesticides" and "Pesticides" is confusing. LASAN requests that the IGP clarify whether they referring to the same thing – as chemical names need to be consistent.
16	Attachment E, Table Following Table E-1, Pg. 3	TMDL Implementation – Ballona Creek Metals TMDL	PAHs need to be defined and the compound list should be included.
			The Total Zinc Instantaneous Maximum TMDL Numeric Action Level (TNAL) proposed to be incorporated into Attachment E of the IGP for Ballona Creek and Sepulveda Canyon Channel is 0.10777 mg/L. This value is inconsistent with the Ballona Creek Metals TMDL wet-weather numeric target identified in the BPA which is 0.10477 mg/L. Please revise the Total Zinc

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
17	Attachment E, Table Following Table E-1, Pg. 18-20, 22	TMDL Implementation – Los Angeles and Long Beach Harbor Waters TMDL	Instantaneous Maximum TNAL to be consistent with the Ballona Creek Metals TMDL BPA. The Total Lead Instantaneous Maximum TNAL proposed to be incorporated into Attachment E of the IGP for Dominguez Channel Estuary (Pg. 18 of Attachment E), the Greater Los Angeles/Long Beach Harbor waters including: Inner and Outer Harbor, Main Channel, Southwest Slip, Cabrillo Marina, Inner Cabrillo Beach, Los Angeles River Estuary, and San Pedro Bay (Pg. 19 of Attachment E), Consolidated Slip (Pg. 20 of Attachment E), and Fish Harbor (Pg. 22 of Attachment E) is 0.00853 mg/L. This value is inconsistent with the Los Angeles and Long Beach Harbor Waters TMDL receiving (salt) water column concentration-based Waste Load Allocation (WLA) identified in the BPA which is 0.00852 mg/L. Please revise the Total Lead Instantaneous Maximum TNAL to be consistent with the Los Angeles and Long Beach Harbor Waters TMDL BPA.
18	Attachment E, Table Following Table E-1, Pg. 18	TMDL Implementation – Los Angeles and Long Beach Harbor Waters TMDL	The polycyclic aromatic hydrocarbon (PAH) Instantaneous Maximum TNAL proposed to be incorporated into Attachment E of the IGP for Dominguez Channel Estuary is 0.00049 mg/L. This value is inconsistent with the Los Angeles and Long Beach Harbor Waters TMDL receiving (salt) water column concentration-based WLA identified in the BPA which is 0.000049 mg/L. Please revise the PAH Instantaneous Maximum TNAL to be consistent with the Los Angeles and Long Beach Harbor Waters TMDL BPA.
19	Attachment E, Table Following Table E-1, Pg. 25	TMDL Implementation – Los Angeles Area Lakes TMDL: Echo Park Lake	The Echo Park Lake Trash TMDL incorporation into the General Permit does not include a TNAL for trash. Instead, the IGP includes a required action to “comply with this General Permit and install minimum and advanced BMPs to control the discharges of trash”. The LASAN requests that the General Permit includes a TNAL of zero trash for Dischargers to help ensure that industrial dischargers are working as hard as MS4 permittees at eliminating the challenges posed by trash.
20	Attachment E, Table Following Table E-1, Pg. 31	TMDL Implementation – Los Angeles River Metals TMDL	The Total Copper Instantaneous Maximum TNAL proposed to be incorporated into Attachment E of the IGP for the Los Angeles River and Tributaries is 67.49 mg/L. This value is inconsistent with the Los Angeles River Metals TMDL wet-weather numeric target identified in the BPA which is 0.06749 mg/L (0.017 mg/L multiplied by a water-effect ratio of 3.97). Please revise the Total Copper Instantaneous Maximum TNAL to be consistent with the Los Angeles River Metals TMDL BPA.
21	Attachment E LA Harbor Bacteria TMDL pg 28 29	Coliform Monitoring	Both DCT and LAG are included in the LA River Watershed Bacteria TMDL, whose only indicator bacteria target is E. Coli (Attachment A to Resolution No. R10-007). Fecal coliform analysis is no longer performed by the City’s EMD laboratory and has been removed from the City’s certification. Enterococcus is not a fresh water bacterial indicator and is only required for ocean waters. EMD analyses E. Coli and Enterococcus for discharges to ocean waters and E.

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg.#)	Topic	Comment
22	Attachment E, Table Following Table E-1, Pg. 29-30	NALs for nitrogen compounds	Coli for discharges to the LA River. Attachment E requires Total Coliforms, Fecal Coliforms, and Enterococcus for the Harbor Bacteria TMDL. LASAN requests that Attachment E (LA Harbor Bacteria TMDL) be updated to reflect current approved monitoring for these TMDLs.
23	Attachment E, Table Following Table E-1, Pg. 35-36	TMDL Implementation – Marina del Rey Harbor Toxics TMDL	Table 2 of the General Permit does not include numeric action levels (NALs) for nitrate-nitrogen or nitrite-nitrogen. Therefore, LASAN requests TNALs for nitrate-nitrogen, nitrite-nitrogen, and nitrate-nitrogen plus nitrite-nitrogen be added to Table 2 of the IGP. The units assigned to the Instantaneous Maximum TNALs proposed to be incorporated into Attachment E of the IGP for Marina del Rey Harbor are µg/L. These units are inconsistent with the Marina del Rey Harbor Toxics TMDL numeric targets for organic compounds in sediment identified in the BPA which are µg/kg. Please revise the units to be consistent with the Marina del Rey Harbor Toxics TMDL BPA.
24	Attachment E	TMDL Implementation – Incorporation of Los Angeles River Bacteria TMDL and Santa Monica Bay Beaches Bacteria TMDL into General Permit	The General Permit Fact Sheet states “Attachment E of this General Permit lists the watersheds with U.S. EPA-approved and U.S. EPA-established TMDLs that include TMDL requirements for Dischargers covered by this General Permit.” However, it appears as if two U.S. EPA-approved TMDLs that include requirements for Dischargers were omitted when adopted in 2014: <ol style="list-style-type: none"> 1. Santa Monica Bay Beaches Bacteria TMDL 2. Los Angeles River Bacteria TMDL <p>The Santa Monica Bay Beaches Bacteria TMDL was adopted by the Los Angeles Regional Water Quality Control Board (LARWQCB) in 2002 and approved by U.S. EPA on June 19, 2003. The Santa Monica Bay Beaches Bacteria TMDL includes TMDL requirements for Dischargers by assigning waste load allocations through the following language within the TMDL Basin Plan Amendment (BPA) “Discharges from general NPDES permits, general industrial storm water permits and general construction storm water permits are not expected to be a significant source of bacteria. Additionally, these discharges are not eligible for the reference system approach set forth in the implementation provisions for the bacteriological objectives in Chapter 3. Therefore, the waste load allocations for these discharges for all time periods are the bacteriological objectives contained in Chapter 3. Any future enrollees under a general NPDES permit, general industrial storm water permit or general construction storm water permit within the Santa Monica Bay watershed management area will also be subject to a WLA based on these bacteriological objectives.” The Ballona Creek, Ballona Estuary, and Sepulveda Channel Bacteria TMDL and Marina del Rey Back Basins Bacteria TMDL contain almost identical language within their respective BPAs. These two bacteria TMDLs were incorporated into the General Permit, and Dischargers are assigned TNALs within the Proposed</p>

Attachment B – Comment Matrix

Comment Number	Document Reference (Doc, Section, Pg. #)	Topic	Comment
			<p>Amendments. For consistency, the General Permit should be revised to incorporate the Santa Monica Bay Beaches Bacteria TMDL through the assignment of Instantaneous Maximum TNALs equivalent to the Santa Monica Bay Beaches Bacteria TMDL single sample numeric targets.</p> <p>Similarly, the Los Angeles River Bacteria TMDL was adopted by the LARWQCB in 2010 and approved by U.S. EPA on March 23, 2012. The Los Angeles River Bacteria TMDL includes TMDL requirements for Dischargers by assigning waste load allocations through the following language within the TMDL BPA “<i>General NPDES permits, individual NPDES permits, the Statewide Industrial Storm Water General Permit, the Statewide Construction Activity Storm Water General Permit, and WDR permittees in the Los Angeles River Watershed are assigned WLAs of zero (0) days of allowable exceedances of the single sample target for both dry and wet weather and no exceedances of the geometric mean target. Compliance with an effluent limit based on the water quality objective can be used to demonstrate compliance with the WLA. In addition, permits which include stormwater effluent limitations for sites, which are measured in receiving waters, are assigned WLA for those sites in accordance with the table for MS4 dischargers listed above, where the subwatershed drained is open natural land and a demonstration has been made to the Regional Board that any exceedances are due to natural sources.</i>” The Harbor Beaches of Ventura Bacteria TMDL, the Long Beach City Beaches and Los Angeles River Estuary Indicator Bacteria TMDL, the Los Angeles Harbor Bacteria TMDL, and the Santa Clara River Bacteria TMDL contain almost identical language within their respective BPAs. These four bacteria TMDLs were incorporated into the General Permit and Dischargers are assigned TNALs within the Proposed Amendments. For consistency, the General Permit should be revised to incorporate the Los Angeles River Bacteria TMDL through the assignment of Instantaneous Maximum TNALs equivalent to the Los Angeles River Bacteria TMDL single sample numeric targets.</p>