



California Stormwater Quality Association®

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

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comment Letter – Construction General Permit NEL Amendment

Dear Ms. Townsend and Board Members:

On behalf of the California Stormwater Quality Association¹ (CASQA), please accept these comments on the proposed amendment to Order No. 2009-0009-DWQ. As specified in the notice, CASQA's comments are limited to the issues and modifications of the Order, Fact Sheet, and Attachments proposed for amendment to address the judgment and peremptory writ of mandate in *California Building Industry Ass'n et al. v State Water Resources Control Bd.*

CASQA appreciates this opportunity to provide comments on the proposed modifications to the Construction General Permit (CGP). CASQA supports the State Water Board's decision to remove Numeric Effluent Limitations (NELs) from the Construction General Permit and defer the development of construction stormwater effluent limitations until such time as there is sufficient information and data on the performance of best management practices (BMPs) reflective of the construction site effluent.

Our two major comments are noted in this cover letter. More detailed comments that address specific language and clarifications of the proposed amendment are included in the attached table.

CASQA believes it is not appropriate to incorporate receiving water monitoring triggers at the previously proposed NEL values because the State Water Board has not provided scientific support or regulatory rationale for these trigger concentrations. Receiving water monitoring represents a significant cost for Risk Level 3 and LUP Type 3 site operators, especially as they are proposed to extend for the duration of the project once a trigger has been exceeded. CASQA therefore proposes that the State Water Board eliminate in its entirety the receiving water monitoring provisions of the CGP.

CASQA also believes it is inappropriate to include new Receiving Water Monitoring for Active Treatment System (ATS) discharges. This change represents a new requirement in the CGP and is outside the scope of the limited reopener notice.

¹ CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 23 million people in California. CASQA was originally formed in 1989 as the Stormwater Quality Task Force to recommend approaches for stormwater quality management to the California State Water Resources Control Board.

The attached table provides our detailed comments arranged by section number of the CGP. While we have attempted to note all relevant sections of the permit, some references to similar language throughout the permit and Fact Sheet may have been omitted.

Please feel free to contact me at 714-955-0670 if you have any questions regarding these comments. Alternately you may contact Sandra Mathews, Chair of CASQA's Construction Subcommittee, at 510-625-1580 ext. 12.

Sincerely,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive style with a large, looped initial "R".

Richard Boon, Chair
California Stormwater Quality Association

cc: Greg Gearheart
CASQA EPC and BOD

Attachment 1. CASQA Comments on Construction General Permit NEL Amendment

CASQA Comments are italicized and underlined.

Comment #	Permit Element/Issue/Concern	Location in Draft Permit	Comment/Recommendation
1.	Receiving Water Monitoring Triggers	Fact Sheet Section I.J Items 63, 64 Section V.C Attachment A, Section F.3, Section M.4.d, M.4.xii, Table 5, M.4.j.iii Attachment E, Section I.4.g, I.9.d, Table 3	<p>CASQA does not support the incorporated receiving water monitoring triggers given that the State Water Board has not provided scientific support or regulatory rationale for the receiving water monitoring trigger concentrations. The technical background information in the Fact Sheet, which established the rationale for the NELs, has been removed from the permit, and analogous sections to provide the regulatory and technical justification for the receiving water monitoring triggers have not been added.</p> <p>Receiving water monitoring represents a significant cost for Risk Level 3 and LUP Type 3 site operators, especially as they are proposed to extend for the duration of the project once a trigger has been exceeded.</p> <p>CASQA recommends that the State Water Board eliminate in its entirety the receiving water monitoring provisions of the CGP.</p>
2.	ATS NEL exceedance trigger for receiving water monitoring	Attachment F, Section I, Items 6 and 7, ATS Effluent Discharge	<p>CASQA does not support the addition of Receiving Water Monitoring for ATS discharges. This change represents a new requirement in the CGP and is outside the scope of the limited reopener of the notice. This new monitoring is not required to respond to the court order and no explanation is provided for its addition to the CGP. The State Water Board chose not to include receiving water monitoring for ATS discharges originally, after the extensive proceedings associated with adoption of the order in 2009.</p> <p>Effluent limitations for ATS discharges are set significantly below the proposed receiving water monitoring triggers for sites that implement traditional erosion and sediment controls. The justification for receiving water monitoring does not extend to ATS discharges: these sites may not be Risk Level or Type 3 sites and excursions above the ATS NEL of 10 NTU, which is based solely in a measure of technical performance of ATS, is unlikely to represent a threat to receiving water quality. The fact sheet does not provide any justification for this monitoring or for the relationship between excursions of the NEL and threat to receiving water.</p> <p>CASQA recommends deferring consideration of additional receiving water monitoring requirements for ATS discharges until the next permit term when data collected from this permit term can be evaluated and assessed.</p>

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3.	Use of daily averages to determine receiving water trigger exceedances	Order, Section V, Effluent Standards & Receiving Water Monitoring Fact Sheet, Section II.F Attachment A, Section F.3.a Order Footnote 5 and Attachment A Footnote 8 Attachment E, Section, E.I.4.g	CASQA recommends that language regarding the use of daily averages and the statement that pH monitoring is only required during periods of high risk of pH discharge be incorporated into the new section C. This language was part of the NEL section that is being deleted. Suggested Revision for Order Section V.C.1 1. The receiving water monitoring triggers for Risk Level 3 dischargers with direct discharges to surface waters are triggered when <i>the daily average</i> effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when <i>the daily average</i> effluent turbidity exceeds 500 NTU. Suggested Revision for Attachment A Section F.3.a a. The receiving water monitoring triggers for LUP Type 3 dischargers with direct discharges to surface waters are triggered when <i>the daily average</i> effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when <i>the daily average</i> effluent turbidity exceeds 500 NTU.
4.	Clarification as to which parameter must be monitored if only one parameter’s receiving water monitoring trigger is exceeded.	Order, Section V, Effluent Standards & Receiving Water Monitoring Item C.2 And other locations noted in the comment.	CASQA recommends that the State Water Board clarify the parameter triggers for receiving water monitoring. State Board staff guidance, which has been incorporated into QSD/QSP training and the CASQA Construction Handbook, provides the clarification that when the pH trigger is exceeded, the receiving water is monitored for pH, and when the turbidity trigger is exceeded the receiving water is monitored for turbidity and SSC. This connection of receiving water parameters to the specific effluent monitoring triggers is not clear in the permit language. The first occurrence of this issue is in Order Section V.C.2, but similar changes and clarifications are needed in Attachment A Section F.3.b; Attachment A Table 5; Attachment E.I.4.g; Attachment E Table 3. Suggested Revision for Order Section V.C.2 2. Risk Level 3 dischargers with direct discharges to surface waters shall conduct receiving water monitoring whenever their effluent monitoring results exceed the receiving water monitoring triggers. <i>If the pH trigger is exceeded, the receiving water shall be monitored for pH. If the turbidity trigger is exceeded, the receiving water shall be monitored for turbidity and SSC.</i>

Item Continued on Next Page

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4. continued	Clarification as to which parameter must be monitored if only one parameter’s receiving water monitoring trigger is exceeded.		<p>Suggested Revision for Attachment A Section F.3.b <i>b. LUP Type 3 dischargers with direct discharges to surface waters shall conduct receiving water monitoring whenever their effluent monitoring results exceed the receiving water monitoring triggers. If the pH trigger is exceeded, the receiving water shall be monitored for pH. If the turbidity trigger is exceeded, the receiving water shall be monitored for turbidity and SSC.</i></p>
5.	Clarification of direct discharge	Order Section V.C.2 Attachment A, Section F.3.b Appendix 5	<p>CASQA recommends that the State Water Board take this opportunity to clarify the definition of direct discharge in Appendix 5 of the CGP as this definition has a direct bearing on the receiving water monitoring triggers.</p> <p>Shortly after the CGP was released the State Water Board posted FAQ 26 that clarified the definition of direct discharge to align with the intended use of the term in connection with receiving water monitoring in the CGP. The definition in Appendix 5 should be revised to reflect the additional information in the FAQ.</p>
6.	Receiving Water Monitoring Trigger Exceptions	Order Findings 55 and 58 Order Section V.C.2 Attachment A, Section F.3.b Attachment A, Section M.4.d Attachment E, Section I.4.g	<p>CASQA recommends that the State Water Board include exceptions to receiving water monitoring similar to those that were provided for NELs and the actions triggered when NEL were exceeded. Specifically, CASQA requests that the State Water Board include a “storm event receiving water monitoring trigger exception” and a “run-on receiving water monitoring trigger exception”. These exceptions would be similar to the current NEL Compliance Exceptions but would shield the dischargers from the liability for unnecessary actions as result of exceeding the receiving water monitoring trigger due for forces beyond their control.</p> <p>While the threat of mandatory fines and penalties has been eliminated with the removal of NELs from the permit, the Discharger is still required to undertake site evaluations and undertake resource intensive receiving water monitoring, which may not be warranted when the cause of the exceedance is the size of the storm event or in the case of run-on from a forest fire or any natural disaster.</p> <p>CASQA recommends the addition of the following language as a new item in the Receiving Water Monitoring Sections of the Fact Sheet, Order, and Attachment A.</p> <p style="text-align: right;"><i>Item Continued on Next Page</i></p>

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6. continued	Receiving Water Monitoring Trigger Exceptions		<p>Revise the deleted Order Findings to read</p> <p><u>55. This General Permit establishes a 5 year, 24 hour (expressed in inches of rainfall) as the receiving water monitoring trigger exemption for Risk Level 3 and LUP Type 3 dischargers.</u></p> <p><u>58. If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply.</u></p> <p>Order Section V.C.2 and Attachment A Section F.3.b (add two new items)</p> <p><u>Dischargers shall initiate receiving water monitoring when the receiving water monitoring triggers are exceeded unless the storm event causing the exceedance is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using NOAA Atlas 14, Volume 6 and can be accessed at this site: http://hdsc.nws.noaa.gov/hdsc/pfds/.</u></p> <p><u>Verification of the storm event receiving water monitoring trigger exception shall be done by reporting on-site rain gauge readings as well as nearby governmental rain gauge readings.</u></p> <p><u>If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply.</u></p>

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7.	Length of Receiving Water Monitoring	Attachment E, Section I.4.g, Risk Level 3 Monitoring and Reporting Requirements Attachment A, Section M.4, LUP Type 2&3 Monitoring and Reporting Requirements	<p>CASQA recommends limiting the duration of the receiving water monitoring. CASQA recommends that receiving water monitoring triggered by the exceedance of the receiving water monitoring trigger cease once pH and/or turbidity levels are demonstrated to be below the NAL indicating the discharge is no longer a significant threat to the receiving water.</p> <p>Suggested revision to Attachment E, Section I.4.g g. In the event that a Risk Level 3 discharger’s effluent exceeds violates an NEL the receiving water monitoring trigger of 500 NTU turbidity or pH range 6.0-9.0 contained in this General Permit and has a direct discharge into receiving waters, the Risk Level 3 discharger shall subsequently sample receiving waters (RWs) <i>as applicable</i> for all parameter(s) required in Section I.4.e above turbidity, pH (if applicable), and SSC for the duration of coverage under this General Permit <i>until the discharger demonstrates the effluent quality is below the NAL.</i></p> <p>Attachment A, Section M.4.i i. In the event that an LUP Type 3 discharger’s effluent violates an applicable NEL exceeds the receiving water monitoring triggers of 500 NTU turbidity or pH range of 6.0-9.0, contained in this General Permit and has a direct discharge to receiving waters, the LUP discharger shall subsequently sample Receiving Waters (RWs) <i>as applicable</i> for turbidity, pH (if applicable) and SSC <i>until the discharger demonstrates the effluent quality is below the NAL.</i></p>