



California Stormwater Quality Association®

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

March 4, 2014

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



Subject: Comment Letter–Final Draft Industrial General Permit issued February 19, 2014

Dear Ms. Townsend and Members of the Board:

The California Stormwater Quality Association (CASQA) appreciates this opportunity to comment on the February 19, 2014 version of the draft General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit).

The CASQA Industrial Subcommittee includes a broad representation of the entities that will be affected by the Industrial General Permit, including municipalities, regulated industries, stormwater professionals, academics, and attorneys. CASQA has been involved with each issuance of California's Industrial General Permit, and has been an advocate for industrial stormwater permits that protect water quality and are practical for industrial operations, providing both technical resources to the State Water Board and a voice for stakeholders affected by the permits.

CASQA would like to thank State Water Board staff for working to address the many comments of stakeholders, including CASQA. The draft Industrial General Permit has become more workable for the variety of dischargers in the State, though it is still very challenging. CASQA looks forward to discussing our remaining comments with the State Water Board staff, and, if concerns remain, with the Board, and to continuing cooperation in permit implementation.

CASQA remains concerned about the receiving water limitations, as noted in each of our prior comment letters. CASQA continues to advocate for including language similar to the existing General Permit, to clarify the process to be followed where a discharge is found to cause an in-stream exceedance of water quality objectives. The law allows best management practices to be used in lieu of numeric water-quality based effluent limits, so a defined process can be used as the receiving water limit itself. We urge that the language in the existing General Permit be continued, at least until conclusion of and any policy clarifications in the present State Water Board review of receiving water limits in the Los Angeles MS4 permit review proceeding.

CASQA registered its concern with the abbreviated comment period in our letter dated February 25, 2014. As a collaborative body of multiple stakeholders, CASQA's process to develop comments requires some time for thoughtful consideration of multiple perspectives. On the whole, CASQA believes this process and integration of multiple stakeholder perspectives benefits the State Water Board. On February 19th the State Water Board posted more than 200

pages of documents, some of them not redlined for review, and on February 24th the Response to Comments from the July 2013 draft was posted. The Response to Comments document was also more than 200 pages, providing rationale on draft permit changes and addressing comments from a variety of stakeholders. The abbreviated comment period (less than 10 business days) was inadequate for a thorough review process, especially for the extent of the changes, which CASQA found to be significant and on the whole represent substantive changes.

Given the short review period, the comments attached to this letter are focused on a few key issues. To the extent the comments are not superseded in this letter, CASQA requests that our previous comments on the Industrial General Permit submitted on April 29, 2011, October 22, 2012, and September 19, 2013 be incorporated by reference.

Thank you for the opportunity to provide comments. Please contact Geoff Brosseau, our Executive Director, at (650) 365-8620 if you have any questions or need additional information, or me at (805) 654-5051.

Very truly yours,



Gerhardt Hubner, Chair
California Stormwater Quality Association

Attachment 1. Detailed Comment Table

cc: Jonathan Bishop, State Water Board
Diana Messina, State Water Board
Greg Gearheart, State Water Board
Leo Cosentini, State Water Board
Laurel Warddrip, State Water Board
CASQA Industrial Subcommittee, Executive Program Committee, Board of Directors

Attachment 1. Detailed Comment Table, February 19, 2014 Draft Industrial General Permit

No.	Issue	Location in Draft Industrial General Permit	<p style="text-align: center;">Comment</p> <p style="text-align: center;"><u>Redlines</u> are State Water Board Staff changes in the February 19, 2014 <u>Yellow Highlighted</u> Text are CASQA Recommended Changes</p>
1.	Receiving Water Limitations Compliance	I.E.37 (pg.6)	<p>The language in Section I.E.37 should be consistent with and reference Section XX.B. Section XX.B allows the facility to evaluate its BMPs through a facility evaluation and SWPPP assessment, therefore this should be reflected in Section I.E.37. As such, the language should be changed as noted below.</p> <p><i>Recommended change shown in highlighted text:</i></p> <p>... <u>If any Discharger's storm water discharge causes or contributes to an exceedance of a water quality standard, that Discharger must comply with the mechanism in Section XX.B. implement additional BMPs or other control measures in order to attain compliance with the receiving water limitation.</u> ...</p>
2.	SWPPP Implementation and Revisions	X.B.3 (pg. 25)	<p>In response to several comments regarding the need for improved clarity regarding the timing of SWPPP revisions and significant changes, new language has been inserted into the permit that further confuses the issue.</p> <p>CASQA's goal is to help ensure that the SWPPP remains a dynamic tool to protect water quality at industrial facilities first and foremost and to fulfill the needs for public access to the SWPPP. To that end CASQA recommends that Discharger update their SWPPPs as needed and as directed by the Regional Water Board and that the Industrial General Permit establish a regular schedule to upload SWPPP updates into SMARTS.</p> <p>The changes proposed in February 19th draft represent a significant and substantive change since the July 19th draft because it imposes an additional requirement to upload non-significant changes to SMARTS. Whereas the previous draft appeared to limit the number of uploads to SMARTS to four times during the reporting year. This draft increases the potential number of uploads significantly.</p> <p>CASQA recommends striking item X.B.3 unless a complete revision of the section could be made to limit the number of uploads to SMARTS to no more than four times during the reporting year, if needed.</p> <p><u><i>Option 1-- strike new requirements regarding non-significant revisions, preferably limiting submissions to quarterly for significant revisions, unless otherwise directed by the RWQCB:</i></u></p> <ol style="list-style-type: none"> 1. Revise their <u>on-site</u> SWPPP whenever necessary; 2. Certify and submit via SMARTS their SWPPP within 30 days <u>after making any significant revisions to</u>

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			<p>the SWPPP provided that such submissions need not be made more often than quarterly unless directed under a schedule directed by the Regional Water Board¹, whenever the SWPPP contains significant revisions(s); and</p> <p>3. Not be With the exception of significant revisions, the Discharger is not required to certify and submit via SMARTS their SWPPP revisions more than once every three (3) months in the reporting year.</p> <p><i>Option 2 -- revise section to require quarterly submissions when SWPPPs have been revised:</i></p> <ol style="list-style-type: none"> 1. Revise and certify their on-site SWPPP whenever necessary; 2. Certify and submit via SMARTS quarterly any changes made to the SWPPP in the preceding 90 days. their SWPPP within 30 days whenever the SWPPP contains significant revision(s); and, 3. Certify and submit via SMARTS any SWPPP changes directed by the Regional Water Board per the time schedule required by the Regional Water Board. <p>3. Not be With the exception of significant revisions, the Discharger is not required to certify and submit via SMARTS their SWPPP revisions more than once every three (3) months in the reporting year.</p>
3.	Design Storm Standards for Treatment Control BMPs	X.H.6 (pg. 37)	<p>Given the broad definition of Treatment Control BMPs, many simple and effective BMPs employed by a discharger in satisfying the minimum BMP section may be considered treatment control. For instance, most sediment and erosion controls would be considered “mechanical, chemical, biologic, or any other treatment technology”. By way of example erosion control for disturbed slopes would include track walking (mechanical), a bonded fiber matrix that includes a polymer (chemical), seeds and vegetation (biologic), and fiber rolls along the slope and at the base of the slope (mechanical). CASQA does not believe that the State Water Board’s intent is to apply the design storm criteria to practices that may be part of the minimum BMP suite. Therefore CASQA recommends the following clarification to specify the design storm standard applies to Advanced BMPs and sediment basins.</p> <p><i>Recommended change shown in highlighted text:</i></p> <p>All new treatment control BMPs employed by the Discharger to comply with Section X.H.2 Advanced BMPs and new sediment basins installed after the effective date of this order shall be designed to comply</p>

¹ “Quarterly” means that two revisions need not be submitted within the same calendar quarter. If a significant SWPPP revision was made and submitted to SMARTS within the same calendar quarter, the next significant revision may be filed the later of the 10th day of the next calendar quarter, or 30 days after the revision is made.

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			<p>with the design storm standards in the Section, <u>except as provided in an Industrial Activity BMP Demonstration (Section XII.D.2.a).</u></p>
4.	Sampling Event Visual Observations for Bypass	XI.A.2.b (pg. 39)	<p>The new requirement in this section is unclear and combines statements about sampling and visual observation requirements in the visual observation section of the permit.</p> <p>Sampling event observations are required at discharge locations under paragraph XI.A.2. Therefore, CASQA does not believe that this newly inserted statement in XI.A.2.b is needed. Observations at the discharge location would be of the combined bypass and treated flow leaving the site. In circumstances where the bypass and treated flow went to different discharge locations, the permit requires all discharge locations be observed; therefore this is an unnecessary and confusing statement.</p> <p>CASQA recommends the entire new item be removed, however if it maintained CASQA recommends the following edits shown in highlighted text to clarify the intent.</p> <p><u>b. The Discharger shall ensure that visual observations and sampling of storm water discharges from volume-based or flow-based treatment BMPs include observation of and any bypass that is occurs occurring at the same time the observations are conducted at the same time.</u></p>
5.	Hardness references for NALs	Table 2 (pg. 45)	<p>Remove references to hardness from Table 2. The origin of the Numeric Action Levels (NALs) is clearly identified in other sections of the permit. The inclusion of hardness references in this table implies that the Discharger is expected consider hardness when assessing NALs.</p> <p><i>Delete the following table notes and the (H) from the parameters listed in column 1:</i></p> <p><u>(H) — Hardness dependent</u></p> <p><u>** The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.</u></p> <p>Zinc, Total <u>(H)</u> Copper, Total <u>(H)</u> Lead, Total <u>(H)</u> Cadmium, Total <u>(H)</u> Nickel, Total <u>(H)</u> Silver, Total <u>(H)</u></p>
6.	Update of ERA Level 2 Action Plans	XII.D.3.c (pg. 56)	<p>CASQA recommends the following language changes to limit the update of the ERA Level 2 Technical Report to changes in conditions at the facility that would warrant reconsideration of actions being undertaken by a facility. Once a Discharger has satisfactorily demonstrated a natural background pollutant source, a non-industrial pollutant source, or Industrial Activity BMPs have been achieved, is it unnecessary to revise the Technical Report for the same exceedance in the same drainage area. This appears to put a Discharger into an endless loop, especially in the cases of the non-industrial or natural background sources.</p>

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			<p>Other provisions in the permit provide for reinitiating the ERA process if there is an NAL exceedance for a new constituent or the same constituent in a different drainage area.</p> <p><i>Recommended change shown in highlighted text:</i></p> <p>Dischargers with Level 2 status who have submitted the Level 2 ERA Technical Report are <u>only</u> required to annually update the Level 2 ERA Technical Report based upon <u>additional NAL exceedances of the same parameter and same drainage area</u>, facility operational changes, pollutant source(s) changes, and/or information that becomes available via compliance activities (monthly <u>inspections visual observations</u>, sampling results, annual evaluation, etc.). The Level 2 ERA Technical Report shall be <u>prepared by a QISP and be certified and submitted via SMARTS by the Discharger</u> with each Annual Report. <u>If there are no changes prompting an update of the Level 2 ERA Technical Report, as specified above, the Discharger will provide an annual certification that there have been no changes warranting re-submittal of the Level 2 ERA Technical Report.</u></p>
7.	NONA	Section XX.C.2.a (pg. 71) and Fact Sheet pg. 70-71	<p>The revised provisions regarding the Notice of Non-Applicability (NONA) confuse an area already difficult for many to understand. NONA filings are made under Water Code Section 13399.30, a separate state statute designed to help Regional Water Boards to identify non-filing facilities which already need coverage of the General Permit. Section 13399.30 does not define the types of discharges that require permit coverage, or mandate any specific permit terms. It simply requires that if a Regional Water Board sends a particular notice, the recipient must do one of two things: (1) file “the appropriate notice of intent to obtain coverage,” or (2) file “a notice of nonapplicability that specifies the basis for not needing to obtain coverage under an NPDES permit.”</p> <p>Yet language newly inserted into Section XX.C.2.a indicates that certain discharges to groundwater prevent a NONA filing, and thus inappropriately force a facility into the only other choice -- to file Permit Registration Documents under the General Permit. If read broadly, this would inappropriately expand the requirement for NPDES permit coverage.</p> <p>CASQA understands from the State Water Board’s Legal Counsel that this section was not intended broadly require NPDES permits for discharges to groundwater, or to prevent facilities that have discharges to groundwater from filing an acceptable NONA. We understand that Section XX.C.2.a is not intended to affect the actual requirement for permit coverage stated elsewhere in the permit, which, matching federal law, is for discharges to waters of the U.S. CASQA understands that federal case law has found that NPDES permit coverage would be needed for certain very direct subsurface connections to waters of the U.S. However, a short phrase referring to groundwater in the NONA provisions is confusing and</p>

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			<p>potentially misleading; instead, permit coverage requirements should be addressed in the fact sheet where other background and regulatory information is documented.</p> <p><i>Recommended change shown in highlighted text:</i></p> <p>The facility shall is either be (1) engineered and constructed to have contained the maximum historic precipitation event (or series of events) using the precipitation data collected from the National Oceanic and Atmospheric Agency’s website (<u>or other nearby precipitation data available from other government agencies</u>); or so that there will be no discharge of industrial storm water to waters of the United States, including no discharge to groundwater that has a direct hydrologic connection to waters of the United States; <u>or,</u></p>
8.	Standard Provisions for Bypass	XXI (pg.71)	<p>The standard upset and bypass provisions must be included in Provision XXI. (Standard Conditions) of the Draft Industrial General Permit, particularly because technology-based BMPs and treatment can fail. <i>See accord</i> 40 C.F.R. §122.41 (The following conditions apply to all NPDES permits) (m) (Bypass) and (n) (Upset); see also <i>FMC Corp. v. Train</i>, 539 F.2d 973 (4th Cir.1976) and <i>Marathon Oil v. EPA</i>, 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 and could be used to cover instances of equipment failure and human error. (Id. at 1273.)</p> <p>In the State Water Board’s Response To Comments document, the response to this suggestion was: “40 C.F.R. section 123.25(a) allows states to omit provisions, including the bypass and upset provisions, as long as doing so results in more stringent requirements. While the specific defenses are not included in the permit, there are other permit provisions that address similar issues. For example, the design storm standards at section X.H.6 of the permit authorize the construction of treatment control BMPs that are not designed to capture all storm water from every type of storm event possible.”</p> <p>This justification that the State may be more stringent is not sufficient, because if the State makes that policy choice then it must consider the Water Code Section 13241 factors prior to doing so, and has not done this analysis to address the costs and consequences of not including these standard provisions. <i>See Burbank v. SWRCB</i>, 35 Cal. 4th 613 (2005).</p> <p>Further, the Draft Industrial General Permit does not state that discharges larger than design storm for the treatment control BMPs are expressly authorized. Thus, in addition to the upset/bypass defenses, the Draft Industrial General Permit must expressly define a design storm for BMPs and allow discharges during</p>

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			<p>events that exceed this size storm event since dilution would be so great at that point.</p>
9.	Impaired Waters	Appendix 3 (pg. 1)	<p>Appendix 3 introduces language regarding responsibilities of Dischargers in “303(d) listed watersheds.” CASQA requests that the language be revised to refer, instead, to “303(d) listed <u>water bodies</u>.” CASQA believes that the use of the term “watershed” may be a typographical error. However, if the SWRCB intends to refer to watersheds, this change represents a significant and substantive change to the permit, significantly expanding the scope of the additional monitoring and assessment requirements for facilities throughout the watershed of a 303(d) listed water body.</p> <p>The 303(d) list is a list of impaired water bodies, not a list of impaired watersheds. Frequently, only segments of a water body are listed as impaired so it would be inappropriate to impose addition monitoring on an entire watershed.</p> <p><i>Recommended change shown in highlighted text:</i></p> <p><u>The 303(d) impairments below are sourced from the 2010 Integrated Report. The rows in red are impairments for which industrial storm water Dischargers subject to this General Permit are not required to analyze for additional parameters unless directed by the Regional Water Board, because these parameters are typically not associated with industrial storm water. Test methods with substantially similar or more stringent method detection limits may be used if approved by the staff of the State Water Board prior to sampling and analysis and upon approval , will be added into SMARTS. The rows that are not in red are impairments for which Dischargers that discharge directly into in the 303(d) impaired waters watershed are required to analyze for additional parameters, if applicable, because these parameters are more likely to be associated with industrial storm water. See General Permit Section XI.B.6.e. In the event that any of the impairments in this appendix are subsequently delisted, the Dischargers into that water watershed are no longer required to analyze for the additional parameters for those impairments, and the provisions for new Dischargers into 303(d) impaired waters watershed contained in Section VII.B of this General Permit no longer apply for those impairments.</u></p>