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The Voice and Advocate for the California Food Processing Industry since 1905

October 19, 2012

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



SUBJECT: Comment Letter – Draft Industrial General Permit

Dear Ms. Townsend:

The California League of Food Processors (CLFP) has reviewed the Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (hereinafter referred to as “the draft permit”) issued for public comment on July 18, 2012.

CLFP would like to thank the staff of State Water Resources Control Board (hereinafter referred to as the State Water Board) for conducting informal stakeholder workshops in Sacramento in July and August with members of the WATER Coalition. We found these sessions extremely informative and helpful in better understanding the meaning and intent of the provisions of the draft permit. We would also like to thank the State Water Board for extending the comment deadline to October 22, 2012. The extra 30 days helped us conduct a more thorough review and analysis of the draft permit and thus provide more thoughtful comments.

Overall, we found this revised draft permit much improved from the original draft released in January of 2011. We appreciate all of the efforts by the State Water Board staff to revise the draft permit to make it more reasonable and workable. In particular, we appreciate the removal of numeric effluent limits and the inclusion of more flexible monitoring, sampling and training requirements.

Despite these improvements, we still believe that this new draft permit is a significant departure from the existing permit. We have a general concern that complying with this new draft permit will increase the time, energy, and costs for those who are already in compliance. We have to question why those who are already in compliance would be required to do more and incur additional costs.

The State Water Board’s Analysis of Cost Compliance found that, overall, the average annual cost of compliance of the new permit for facilities with no exceedances would

increase between 5% and 12% compared to the annual cost of compliance with the existing permit. In addition, the costs of the No Exposure Certification requirements have not been considered, and will present a significant additional cost across the State. While this may not seem like much, our member companies are operating on very narrow margins and have a number of other new regulatory pressures facing them in 2013. Remaining competitive in the global market is becoming a difficult task with the regulatory environment in California.

We understand that the goal of this revised draft permit is to improve water quality in California. We share this goal. However, we urge the State Water Board to consider making the permit as flexible as possible to allow our member companies to comply. Our comments are largely based on building more flexibility into the permit to help our member companies more easily and cost effectively comply with the new permit conditions.

Thank you again for the opportunity to provide comments. Again, we thank the State Water Board members and staff for all of their efforts to improve this draft permit.

We look forward to a continued dialogue on the issues. Attached are our detailed comments. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Trudi E. Hughes". The signature is written in a cursive, flowing style.

Trudi Hughes
Director, Government Affairs

Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities

COMMENTS BY CLFP

Findings

Notices of Non-Applicability - Industrial Activities Not Covered Under this General Permit, Finding B22, Page 3

This finding indicates that a facility may demonstrate storm water does not need to be covered under the IGP. Specifically, the finding indicates that a facility may be engineered and constructed so as to “never discharge industrial storm water to waters of the United States, as certified by a California licensed professional engineer.”

It is not clear what baseline design criteria/ standards would be acceptable to the State Water Resources Control Board for properly sizing on-site storm water retention structures such as evaporation or percolation ponds, bio-retention cells/swales, permeable paving, and subsurface infiltration (underground injection facilities) that would meet the “never discharge regulatory threshold.” For example, the State of Washington has developed Storm Water Management Manuals for Eastern Washington as well as Western Washington that cover such design requirements. The Eastern Washington Manual covers the semiarid region of the state and the Western Washington Manual covers the humid region of the state. Has the State Water Board and/or the various Regional Water Boards developed similar baseline design criteria for its regulated storm water community to utilize? If it has, these design criteria should be compiled in a common document or web based location for the regulated community to easily access/ utilize.

- *Request:* This finding should be expanded or a proviso should be added to the IGP to specifically detail the baseline engineering requirements/ submittals that need to be included in a NONA Technical Report to stipulate that a facility will never discharge industrial storm water to surface waters of the Unites States.

Requirements for Receiving General Permit Coverage

Application and SWPPP Revision Deadlines -- Existing Dischargers, Sections D.1 and D.3, Page 17

The Permit specifies that the previous permit remains in effect until July 1, 2013. Existing Dischargers that have submitted NOIs for the previous permit shall continue coverage under the previous permit until July 1, 2013. Existing Dischargers that have submitted NOIs for the previous permit shall have until July 1, 2013 to register for NOI or NEC coverage, and have until the same day, July 1, 2013, to revise and file their SWPPPs. Existing Dischargers that have not submitted NOIs for the previous permit shall have until July 1, 2014 to register for NOI or NEC coverage.

The application and SWPPP revision deadlines for existing permittees should be changed to July 1, 2014, consistent with QISP qualifications required for preparing "Permit Registration Documents (PRDs)" detailed in Part II, Condition G, Pages 18-19 and in Part IX, Condition A2c, Page 23, and for fairness to those already in the permitting program. In particular, existing dischargers should be given up to one year to update/revise their SWPPPs (particularly if these plans can only be prepared by QISPs and/or California licensed professionals). Otherwise Dischargers will be preparing SWPPPs on draft requirements that may be changed.

➤ *Request:* Revise Sections D1 and D3 to read:

"...Existing dischargers that have or have not submitted NOIs for the previous permit shall have until July 1, ~~2013~~ 2014 to register for NOI or NEC coverage. Existing dischargers that have submitted NOIs for the previous permit that do not register for NOI or NEC coverage by July 1, ~~2013~~ 2014 may have their coverage administratively terminated..."

"Existing Dischargers shall implement necessary revisions to the SWPPP and Monitoring Program in accordance with Section X and XI no later than July 1, ~~2013~~ 2014. Dischargers may either continue to implement the existing SWPPP in compliance with State Water Board Order No. 97-03 DWQ until July 1, ~~2013~~ 2014, or may implement a SWPPP revised in accordance with Section X prior to July 1, ~~2013~~ 2014."

Filing and Reporting Requirements

Submission of Annual Reports in SMARTS, Section XVI. , Page 57

Section XVI. A requires the Discharger to submit an Annual Report in SMARTS no later than July 15 of each reporting year. Given the amount of information required, and that the year end, and the reporting period, are during our busy harvesting and processing season, this deadline is not reasonable. In fact, it occurs before the last monitoring data may be due in SMARTS, since the last day a storm may trigger monitoring requirements in June 30. Reporting of June 30 sampling data via SMARTS would not normally be due until about August 15, assuming normal laboratory turn around. Finally, we note that the Construction General Permit Annual Report deadline is September 1, 2012, and

using the same deadline could minimize confusion. If additional time is needed to avoid overburdening SMARTS, we suggest a later rather than earlier deadline.

- *Request:* Revise Section XVI.A to change the Annual Report deadline to September 1 or September 15.

Section XVI. B requires several items in the Annual Report, which appear to need clarification. Items 5 and 8 essentially require the Discharger to report any “non-compliance” or certify to compliance with the IGP. It would be helpful to add clarification that a Discharger who has submitted an ERA report or a BIER would not, by virtue of the filings or any lack of agency response to the filings, be in “noncompliance.” We understand that the permit intends that compliance Section XXII simply requires following the process described in Section XXII. It would also be helpful to include provision for automatic acceptance or approval of the ERA or BIER if the State Water Board does not respond to such a report within 45 days of its receipt

- *Request:* Add provision that ERA reports and BIERs are deemed accepted or approved 45 days after submission. Also, add clarification regarding certification of compliance, such as: “A Discharger who has submitted an ERA technical report or a BIER pursuant to Section XXII (Exceedance Response Actions) will not, by virtue of the filings or any lack of agency response to the filings, be in ‘noncompliance’ with the permit.”

Further, Items 9 and 10 provide that a Discharger is to identify any compliance activities or ERAs that were not implemented. Assuming this refers to any ERAs or compliance activities that the Discharger has agreed to perform under Section XII, this should be made clear. Otherwise, a Discharger may believe these items require listing compliance activities or ERAs that are possible under the circumstances, and a reason why those are not being implemented, which is a subject covered in detail, differently, in Section XXII. There would be no reasonable justification for that requirement. Item 9 appears to duplicate the requirement earlier in the section for explanations of why compliance cannot be certification, so it may be clearest to delete item XVI.B(9).

- *Request:* Revise XVI.B (9) and (10) as follows:

- ~~“9. Identification of any compliance activities not implemented; and,~~
- 10. Identification of any ERAs that were not implemented as required in Section XXII of this General Permit.”

Submission of Storm Water Pollution Prevention Plans (SWPPPs) in SMARTS, Section II.A.1, Page 15

With respect to reporting and filing the SWPPP in SMARTS, there is a concern regarding confidentiality, and in the case of food processors, food safety, Bioterrorism Rules and Homeland Security Issues. USEPA's Multi-sector General Permit (MSGP) requires only that the Discharger have the SWPPP available at its facility. If a member of the public requests the SWPPP, then the Discharger and the Government can agree on those provisions to be released. It is not advisable to file the SWPPP, which can contain a map and itemization of chemicals. Food processors work with caustics, fertilizers and other chemicals to which it would not be wise to allow unrestricted public access as to their quantity and locations.

There is no legal mandate compelling the State Water Board to make SWPPPs public, because the SWPPP is not a permit application. Given the substantial agency burden of processing filings and protecting the confidentiality of information identified as having trade secret or security concerns, we request that filing confidential information be required only after found to be necessary. The process for filing must ensure the Discharger, and the agency, can protect inappropriate disclosures.

- Request: Delete the requirement for SWPPPs to be filed with the Water Boards (electronically or otherwise), and substitute a requirement that if a member of the public makes a request for the SWPPP to a Regional Board or the State Water Board, then the Discharger shall have ten business days to either (i) submit the SWPPP to the requesting party at the address specified by the agency, without redaction, or (ii) to submit the SWPPP to the requesting party and the Regional Board or State Water Board (as specified in the request) with redactions justified in the submission by the Discharger. If further information is requested, the Discharger and Regional Board or State Water Board shall cooperate in responding to the request and the agency may request submissions of omitted trade secret information for their review, under trade secret protections, to determine redactions are appropriate. Information redacted for food safety, Bioterrorism Rules and Homeland Security compliance need not be disclosed.

Roles of Discharger, Legally Responsible Person, and Duly Authorized Signatory

The provision for LRPs should be re-examined. The Draft Permit's approach to defining a "Legally Responsible Person" as an entity separate from the "Discharger" causes multiple problems, confusing the obligations of the permittee with that of particular individual people who may represent the permittee. It also is confusing and internally inconsistent in who can certify and file an NOI, an application which legally cannot be delegated. These problems can be solved by centralizing the certification and signatory requirements in one place (XXI.K is currently the best place), and completely abandoning use of the concept and term, "Legally Responsible Person" ("LRP"). The term "Discharger" can be substituted, as our suggested revisions demonstrate. The permit can defer to the SMARTS system guidance for logistics. If the Draft Permit

intends to require each Discharger to have only one primary signatory at a time, this can be explained more clearly through SMARTS instructions.

The IGP also identifies Duly Authorized Representatives (DARs), but is inconsistent in what tasks are performed by LRPs and which by DARs. A corporate officer at a remote location will not have the knowledge or information necessary to complete all PRDs or reports, and the permit should provide a clear way for the Discharger's representative defined in NPDES regulations to sign a delegation to the DAR for the facility.

- *Request:* Adopt language to accomplish this clarification and conform to federal regulations per Attachment A.

We understand that the SMARTS electronic filing system seems to be causing an additional level of administrative requirement that may be motivating the use of the term LRP. The SMARTS system need not complicate identifying who the permittee is and who is *legally* authorized to submit applications and reports.

- *Request:* Create a separate section of the Permit, or possibly direction *outside* the permit documents, which instructs users on how to work with SMARTS.

Monitoring

Submissions of Sampling and Analysis Results in SMARTS, Section XI

Section XI.B.9, page 40 of the draft permit specifies that the discharger's LRP shall certify and submit all analytical results via SMARTS within 30 days of obtaining all required results for each sampling event.

We believe that additional time is needed before data must be submitted. In comparison to continuous wastewater discharges, storm water sampling process involves more variable conditions, including multiple outfalls affected by outdoor conditions, and variable and discontinuous discharges and changing field conditions. There will be limited personnel to review and evaluate the data, who almost always will have other collateral duties. Finally, data entry will only be allowed by specified individuals. In order to have time to review and ensure quality assurance of data, and to reduce the number of corrective filings and confusion, more time is needed before submission.

- *Request:* Provide dischargers at least 45-days to electronically report analytical data through SMARTS.

We are also concerned that flawed data will be required to be submitted to SMARTS and therefore become publically available. While extending the data submission

deadline to 45 days will give dischargers more time to conduct quality assurance and quality control before filing, we would like assurances that erroneous data will be removed from SMARTS and not be a trigger for ERA through an annual average exceedance or an instantaneous exceedance.

- *Request:* If corrected data is submitted and accepted by the State Water Board, the erroneous data will be removed from SMARTS and replaced with the corrected data.

Averaging of Results for Determining NAL Exceedances, Section XII.A.1.a, Page 45

Under Section XII.A.1.a, reported analytical results will be averaged automatically by SMARTS. For all effluent sampling analytical results that are properly reported by laboratory as “non-detected,” or something similar, the Discharger shall report and use the value equal to $\frac{1}{2}$ the method detection limit reported for that analytical parameter for any calculations required by this General Permit.

CLFP strongly objects to the requirement that dischargers ‘report’ non detect data as anything other than as reported by the laboratory – the need to use numbers in a calculation should not affect how data is reported. Reporting data and calculating averages should be separate steps to assure data validity into the future.

Further, with respect to the calculation of ERA Triggers, if the laboratory reports a non-detect value, the Draft Permit should specify that the calculations should use zero, while the number of samples in the calculation should still count the sample. For example, if there are two non-detects and one value of 6 mg/l, the average would be 2 mg/l (6 divided by the number of samples, i.e. 3 samples).

- *Request:* Allow dischargers to report data in the same way reported by the laboratory. For purposes of calculations, use a value of zero for any effluent sampling analytical results that are properly reported by laboratory as “non-detect” and specify in the Draft Permit that the total number samples will be used in the calculation of ERA triggers.

Timing of Visual Observations and Sampling, Sections XI.A.2, and XI.B.2, Pages 37-38

Section XI.A.2.a of the draft permit states that “...Visual observations shall be conducted during scheduled facility operating hours and within the first four (4) hours of: the start of discharge or the start of facility operations if the qualified storm event (QSE) occurs within the previous 12 hour period. The same timing is specified for sampling in Section XI.B.2.

We believe that sampling at the start of discharge or start of facility operations per the above condition will be difficult to achieve and, at a minimum, needs to be more clearly defined for compliance purposes.

- *Request:* we suggest that this condition be rewritten to read “...Visual observations shall be conducted during scheduled facility operating hours and within the first four (4) hours of: (i) the approximate start of discharge; or (ii) soon after the start of facility operations...”

Observations before Anticipated Storm Events, Section XI.A.2.d, page 37

Section XI.A.2.d of the draft permit reads: “Prior to an anticipated precipitation event, visual observations of all storm water drainage and containment areas shall be conducted to identify any spills, leaks, or improperly controlled pollutant sources, and appropriate BMPs must be implemented prior to rainfall. The visual observations are required during scheduled facility operating hours and are not required more than once within in any 14-day period...”

We do believe that visual observations of operations prior to anticipated precipitation events can be beneficial, and that each facility should tailor its SWPPP to require inspections to address how they will minimize exposure of materials to precipitation. However, in practice, the provision will require burdensome tracking of weather predications, and inspections will be challenging to complete on this timing (even if the facility QISP makes it a daily routine to review the weather forecast).

- *Request:* Remove permit condition XI.A.2.d, and replace it with the following condition: “~~Prior to an anticipated precipitation event, v~~Visual observations of all storm water drainage and containment areas shall be conducted at least monthly to identify any spills, leaks, or improperly controlled pollutant sources, and to ensure appropriate BMPs ~~shall be~~ are implemented. ~~The visual observations are required during scheduled facility operating hours and are not required more than one within any 14 day period.~~ The Discharger shall strive to complete these monthly inspections prior to any anticipated precipitation event and may have to complete more than one monthly inspection during the rainy season to consistently meet NALs (though more than one monthly inspection is not mandatory). For purposes of gauging storm events, aAn anticipated precipitation event is any...”

Sampling and Analysis, Section XI.B.2.a and b, Page 38-39

According to Section XI.B.2.a and b of the draft permit, “a Qualifying Storm Event (QSE) is a discharge of storm water that occurs:

- a. From a storm event that has produced a minimum of 1/10 inch of rainfall within the preceding 24 hour period as measured by an on-site rainfall measurement device; and
- b. From a storm event that was preceded by 72 hours of dry weather. Dry weather shall be defined as 72 hours of combined rainfall of less than 1/10 inch as measured by an on-site rainfall measurement device.”

We believe that routine logging and tracking of rainfall at individual sites will represent a regulatory challenge (particularly if this work can only be completed by QISPs who will likely wear more than one hat at a factory/ plant). Some facilities are very close to a weather service station that represents rainfall conditions at their sites. In addition, some can avoid the need to examine a rain gauge if they can easily monitor whether discharge is occurring. Some (probably larger) facilities can choose to rely on the 1/10” benchmark to limit their observations, while other facilities should be allowed to elect to simply monitor whether discharge is occurring, which will be especially helpful if they have only one or two outfalls.

Accordingly, we suggest that this condition be rewritten to stipulate that rainfall alternatively can be measured as recorded by a local weather service station, provided that the choice of local weather service station is justified as representative of site conditions in the Annual Report, and to allow (but not force) the alternative of sampling when a discharge is observed regardless of the inches that have fallen.

- *Request:* Amend Section XI.B.2 as follows:
- a. From a storm event preceded by 72 hours of dry weather, and that has produced a minimum of 1/10 inch of rainfall within the preceding 24 hour period as measured by an on-site rainfall measurement device or as recorded by a local weather service station, provided that the choice of local weather service station is justified as representative of site conditions in the Annual Report; and or
 - b. At the Discharger’s election, from a storm event that was preceded by 72 hours of dry weather.
 - c. Dry weather shall be defined as 72 hours of combined rainfall of less than 1/10 inch as measured by an on-site rainfall measurement device or as recorded by a local weather service station, provided that the choice of local weather service station is justified as representative of site conditions in the Annual Report.”

Sampling Parameters Relating to 303(d) Listed Waters, Section XI.B.5.d, Page 39.

In Section XI.B.5.d the permit stipulates that discharges must analyze all effluent samples for applicable parameters related to 303(d) listed impaired water bodies.

Specify that Dischargers must only add such parameters annually, effective each October 1.

We recommend that a web link and/or address to review/ access the state 303(d) list of impaired water bodies should be provided in this condition as well as in Part VII, Condition B. Further, the State Water Board should regularly notify dischargers when this list changes and/or is updated during the term of this permit.

- *Request:* Include a web link and/or address to review/ access the state 303(d) list of impaired water bodies in Section Xi.B.5.d as well as in Part VII, Condition B.

Methods and Exceptions, Sampling and Frequency Reduction, Section XI.C.6, Page 44

Section XI.C.6 of the permit indicates that any discharger may be eligible to gain a sampling reduction (quarterly to annual sampling) when 8 consecutive storm water quality samples are collected and all of the sampled storm events pass defined NALs.

We believe that this permit condition is overly restrictive when compared to the US EPA 2008 MSGP that allows dischargers to suspend all sampling for the permit term following four quarters of benchmark monitoring, if the average of the four monitoring values does not exceed the benchmark for a parameter.

- *Request:* Allow discharger to suspend monitoring for one or more parameters upon the collection of four samples during consecutive quarters from the same discharge point that did not exceed the defined NALs.

Further, this condition should be re-written to clarify that if a discharger is unable to collect a sample during a quarter due to no rainfall or some other legitimate reason such as discharges outside normal business hours, these quarters do not need to be included in the calculation of consecutive quarters, and do not cause the tally to be reset; i.e., they are skipped over

- *Request:* Clarify in Section XI.C.6 that if a discharger is unable to collect a sample during a quarter for a legitimate reason, these quarters are not included in the calculation of consecutive quarters, and do not cause the tally to be reset.

Finally, this condition as written seems to indicate that dischargers are not eligible to suspend monitoring for any parameters (after collecting eight quarterly samples) unless all sample testing parameters fall in line with all defined NALs. If this is correct, this requirement is overly restrictive and should be modified/ rewritten to allow sampling reductions on a parameter-by-parameter basis. This will be more cost effective, without sacrificing meaningful monitoring information.

- *Request:* Rewrite Section XI.C.6 to allow sampling reductions on a parameter-by-parameter basis.

Exceedance Response Actions

Level 1 Improvements, Sections XII.C and D.1, Page 46-47

Sections XII.C and D.1 of the draft permit describe Level 2 corrective actions that need to be taken when a discharger repeats an NAL exceedance in any subsequent reporting year, for a parameter which showed an NAL exceedance triggering Level 1. This means that Level 2 can be triggered during the fall/winter of the same year in which the Discharger implemented Level 1 operational source controls – possibly only a month or two later. In fact, a “subsequent reporting year” might be interpreted as a year (or multiple years) in which BMPs are continuing to be installed, before the completion date, whether during a rain in the summer of the implementation year or during a period beyond October 1 allowed pursuant to a BEIR.

We believe that dischargers should be given up to two years to implement and measure the effectiveness of improvements made at Level 1 before a status change to Level 2. This time change is more than reasonable and is really needed to properly assess, benchmark, and validate any operational changes completed under Level 1 (before having to study and effect the more costly changes that may be required in Level 2). We believe that it is technically incorrect to expect a discharger to demonstrate resolution of a NAL exceedance in a single year’s monitoring after BMP improvements.

- *Request:* Give dischargers up to two years to implement and measure the effectiveness of improvements made at Level 1 before a status change to Level 2.
- *Request:* Specify that Level 2 will not be triggered during a period before the scheduled completion date for BMP improvements under a Level 1 technical report.

Level 2 Reports, XII.D.2, Page 47

Section XII.D.2 specifies that discharges have 120 days to complete all of the items listed, including determination of necessity of structural and/or treatment control BMPs, and preparation of a detailed Level 2 ERA Technical Report.

We believe that dischargers should be given up to one-year, rather than 120 days to complete these items as they represent a significant amount of work and most dischargers will not have the in-house expertise to complete all of the work/analyses required and will have to retain the services of a California licensed professional to help

them complete the work. If a licensed professional is needed, most businesses, both large and small, will have to plan and budget this work well in advance, since the fees charged by professional engineers can be substantial. Projects of this nature are typically identified at the beginning of the yearly business budget cycle and are completed by year end of the cycle.

- *Request.* Provide an additional year for the deadline provided for in Section XII.D.2.
- *Request.* Specify that a new evaluation under XII.D.2 will not be triggered during a period before the scheduled completion date for BMP improvements under a Level 2 technical report.

Level 2 Improvements, Section XII.D.3, Page 48

We believe that dischargers should be given up to two-years to fully implement any Level 2 Structural/ Treatment controls (as well as the Demonstration Technical Report, if applicable) given that these BMPs will likely involve capital expenditures, including the need to properly bid project work. Except in those rare cases where an imminent threat to the health of the public or environment exists, the deadline for completing extensive capital BMPs for purposes of this General Permit should be in two-years or longer (particularly given the case that it is unknown whether or not the NALs are appropriate state-wide at this time).

Request. Provide an additional year for the deadlines provided for in Section XII.D.3.

Premature Treatment Requirements, Section XII.D.2.a, Page 47

We do not think it is advisable either scientifically or economically, to require dischargers in this permit cycle to install treatment BMPs until it is determined whether the NALs are appropriate benchmarks state-wide and industry-wide.^[1]

The Draft permit language should clarify that at Level 2, considering and installing good operational source and structural controls should be allowed to satisfy the BMP requirements. USEPA only uses the benchmarks in the MSGP as a basis for evaluation, not as a basis for mandating that BMPs be improved and definitely not to require structural and treatment controls.

The State should be encouraging low impact strategies for controlling storm water, not costly end-of-pipe treatment solutions. We do not support pushing dischargers to make abrupt/ rash decisions to install costly mechanical and/or brick and motor treatment

^[1] This includes determining whether the EPA's use of aquatic life criteria in EPA benchmarks is appropriate as a basis for NALs as used under this General Permit (particularly as this pertains to Dischargers that do not discharge to TMDL and/or impaired water bodies). The MSGP only uses the benchmarks as a basis for evaluation, not as a basis for mandating that BMPs be improved.

systems to comply with NALs that may or may not be valid in all circumstances across the state.

Given the uncertainty of the EPA NALs as they apply to California water ways statewide, we believe that efforts should be focused on the collection of scientifically valid storm water quality data, developing an understanding of seasonal variations in storm water quality at sites, identifying problem areas at sites, improving storm water pollution prevention plans, better employee training, and the formulation of technically sound, cost-effective, and low maintenance measures to correct pollution problems at sites.

- *Request:* Revise the description of the Level 2 BMP evaluation in XII.D.2.a to require evaluation of all BMPs relating to the sources of the NAL Exceedance, without the requirement to provide special justification for not adopting structural and treatment controls. Permit the technical report to describe any additional BMPs including operational source controls.

Training Requirements

Simplify System Described in Section IX, Page 23-25

CLFP members find the division of roles and three levels of training in the permit to be cumbersome, and CLFP expects difficulties in understanding and implementing the complexity in the permit training and qualification program.

In addition, the nature of the required training and qualifications is not yet clear, though this will be a very important requirement under the permit affecting staffing and employment at the relevant facilities, as well as the availability of qualified staff and consultants. Staffing and training are the heart of an industrial facility's businesses, many of which operate in multiple states, and must move staff on relatively short timeframes.

- *Request:* Clarify in more detail the nature of training and qualification requirements, and simplify so there will be no more than two, and possibly even just one, level of "QISP."

Finally, the timing of the roll out of qualifications falling within the various levels of QISP creates a somewhat strange period, when SWPPPs are certified by people who will later be deemed unqualified, and it is unclear whether and how they must be later certified by a person qualified as a QISP. In the meantime, also, there is a period when only licensed engineers and geologists have a QISP III qualification (automatically), when it is unavailable to others who later can qualify.

Therefore, companies who must submit reports during the first years may have to pay much more than companies who happen to submit reports later.

- *Request:* Delay the effective date of the permit to ensure that all the relevant qualifications are achievable before PRDs, and particularly the SWPPP, must be completed and certified.

SWPP Requirements

Best Management Practices (BMPs), Condition 3b, Periodic SWPPP Updates, Page 33

The permit requires dischargers to update the SWPPP as needed and, when revised significantly, certify and submit the revised SWPPP via SMARTS within 30 days. It is unclear what type of revision will be considered significant enough to require filing. It is common for facilities to revise their SWPPPs periodically to keep them in step with operations and BMP improvements, and it will be burdensome for the person responsible for regulatory compliance to create a system to catch every change fast enough to re-file within 30 days. As a practical matter, this is likely to chill motivations to make changes and improvements, due to the burden of tracking and re-filing, which also does not appear to offer offsetting real benefits.

- *Request:* If filing of revisions will be required, please specify that this is not required more often than annually, except to the extent earlier submissions are required as part of ERA requirements in Section XII. This will allow compliance managers to calendar the task.
- *Request:* In addition, this permit condition should be revised/ expanded to detail what a significant SWPPP update encompasses from a regulatory perspective for purposes of compliance with this permit condition.

Conditional Exclusion – No Exposure Certification (NEC) Requirements

Requirements for Annual NEC Coverage Recertification, Section XVII.F, Page 61

The Permit provides that by July 1 of each reporting year beginning in 2014, any Discharger who has previously registered for NEC coverage shall annually submit and certify an NEC Checklist prepared by a QISP II or III demonstrating that the facility has been evaluated, and that none of the Industrial Materials or Activities listed above are, or will be in the foreseeable future, exposed to precipitation.

CLFP does not believe that the State Water Board has presented a strong argument for inclusion of this restrictive condition. Consistent with the US EPA 2008 MSGP as well as most other state storm water general permits, plants/facilities should only be required to renew NECs once every five years (matching the five-year renewal cycle of NPDES permits). If the State Water Board retains the requirement that an NEC recertification must be filed annually, this condition should be re-written to somewhat lessen the annual regulatory burden and related costs (as well as the need for a Discharger to hire an outside QISP or retain a QISP II or III on staff when they would not normally). The Water Board can always in their discretion require individual problem Dischargers to submit NECs annually, though if a Discharger falls in this category the facility probably should be covered under the full General Permit in any event. In other words, do not impose burdens on the majority of dischargers because of a few bad ones.

- *Request:* Remove recertification requirement. Alternatively, this recertification process could be a less burdensome requirement that the Discharger certify annually that facility operations have not changed substantially from year to year and that is reasonable to assume operations retain NEC coverage.

Minimum BMPs and Visual Monitoring -- Seasonal Activities

Many food processors cease processing activities seasonally, often during months corresponding to the typical rainy season.

- *Request:* Add language to the permit recognizing that facilities that are seasonally inactive may consider this under X.H.2, in justifying a choice not to adopt particular minimum BMPs.
- *Request:* If the permit retains Section XI.A.2.d's visual observation requirement prior to anticipated precipitation events, provide express relief from this requirement during periods when facilities are seasonally inactive (which could be documented by a certified filing in SMARTs).

Receiving Water Limitations and Receiving Water Corrective Actions

Section VI (p. 22) of the Draft Permit, together with Section XX.B (p. 65), substantially change the receiving water limitations in the current IGP, eliminating the existing permit's description of a process which maintain a Discharger's compliance with the permit. In addition, the language in VI.A should not include the phrase "or contribute," because, as recognized by USEPA when it eliminated those words in the MSGP in 2008, that phrase is not required by regulations in effluent limits but comes from the threshold that simply shows "reasonable potential" triggering the need to simply have a

limit. The phrase “or contribute” is not found in the Clean Water Act or clarified by precedent when used in an effluent limitation.

Therefore, we request that Sections VI.A, VI.D and XX.B.1 be revised follows:

VI. RECEIVING WATER LIMITATIONS

- A.** Dischargers shall ensure that industrial storm water discharges and authorized NSWDs do not cause ~~or contribute to~~ an exceedance of any applicable WQS in any affected receiving water.
- B.** Dischargers shall ensure that industrial storm water discharges and authorized NSWDs to any surface or groundwater do not adversely affect human health or the environment.
- C.** Dischargers shall ensure that industrial storm water discharges and authorized NSWDs to any surface or groundwater do not contain pollutants in quantities that threaten to cause pollution or a public nuisance.
- D.** A Discharger will not be in violation of Receiving Water Limitation C.2. as long as the Discharger has fully complied with the procedure described in Special Condition XX.B.

XX. SPECIAL CONDITIONS . . .

B. WATER QUALITY BASED CORRECTIVE ACTIONS

1. Upon determination by the Discharger or written notification by the Regional Water Board that industrial storm water discharges and/or authorized NSWDs contain pollutants that are in violation of may otherwise exceed of Receiving Water Limitations (Section VI.G)¹, the Discharger shall:
 - a. Conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether BMPs described in the SWPPP have been properly implemented;
 - b. Assess the facility’s SWPPP and its implementation to determine whether additional BMPs or SWPPP implementation measures are necessary to prevent or reduce pollutants in industrial storm water discharges to meet the Receiving Water Limitations (Section VI); and,
 - c. Certify and submit via SMARTS documentation based upon the above facility evaluation and assessment that:
 - i. Additional BMPs and/or SWPPP implementation measures have been identified and included in the SWPPP to meet the Receiving Water Limitations (Section VI); or,
 - ii. No additional BMPs or SWPPP implementation measures are required to reduce or prevent pollutants in industrial storm water discharges to meet the Receiving Water Limitations (Section VI).
2. The documentation, evaluation, and assessment above shall be completed by a QISP II or III.

¹ We assume reference to VI.C rather than VI was a typographical error.

Attachment A

Additional Wording to Eliminate LRP and Clarify Signatories

Abandoning Requirements for an “LRP” – Glossary, Attachment H

Revisions to the Glossary Definitions of Discharger and LRP: The Glossary contains a definition of “Legally Responsible Person”, which is not actually a person but can be a corporate entity and appears to be the actual permittee. The Glossary contains a definition of “Discharger” that simply cross refers to the definition of Legally Responsible Person, showing that two terms are not needed. (The phrase “or other entity” adds nothing because entities are mentioned in the LRP definition.)

- *Request:* Use the more detailed definition now assigned to LRP as the definition of “Discharger,” and delete the separate definition of LRP as per the following:

“Discharger: A person, company, agency or other entity that is the operator² of the industrial facility covered by The Legally Responsible Permit (see definition) or entity subject to this General Permit.”

~~“Legally Responsible Person: A person, company, agency or other entity that is the operator of the industrial facility covered by this General Permit.”~~

Revision of Glossary Definition of Duly Authorized Representative

The definition of Duly Authorized Representative says it means the individual “who may sign, certify and submit Permit Registration Documents, Notices of Termination, and any other documents, reports, or information required by the General Permit, the State or Regional Water Board, or US EPA.”³ The definition attempts to address the actual signatory requirements, which must be consistent with similar language in 40 CFR 122.22(b).⁴ However, it is not consistent with the regulation or the permit’s other more explicit instructions, in Section XXI.K, which are not easily restated as a definition. Among other things, the definition appears to allow a Duly Authorized Representative to file the permit application, i.e. the NOI, which may not satisfy 40 CFR 122.22(a), which

² This matches the federal requirement as to who must apply for a permit. 40 CFR 122.21(b) specifies that when a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.

³ The person authorized to sign and certify reports is intended to satisfy the federal regulation, and carries the familiar specifications:

“a duly Authorized Representative has responsibility for the overall operation of the regulated facility or activity, such as a person that is a manager, operator, superintendent or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company...”

⁴ The definition and other Draft Permit language also leaves ambiguous whether the authorization may be made by authorizing anyone holding a corporate *position* rather than a named person occupying the position (40 CFR 122.2(b) expressly allows designation by position).

requires a high level representative of the Discharger to certify the initial application, and to designate the Duly Authorized Representative.⁵

- *Request:* Simplify the definition of Duly Authorized Representative by making it a cross reference to Section XXI.K, as follows:

~~“Duly Authorized Representative A person who has been authorized by the Discharger to sign specified documents, as set forth in Standard Condition Section XXI.K., certify, and electronically submit Permit Registration Documents, Notices of Termination, and any other documents, reports, or information required by the General Permit, the State or Regional Water Board, or US EPA. Duly Authorized Representative eligibility is as follows:~~

- ~~a. The LRP must authorize via SMARTS any person designated as a Duly Authorized Representative;~~
- ~~b. The authorization shall specify that a person designated as a Duly Authorized Representative has responsibility for the overall operation of the regulated facility or activity, such as a person that is a manager, operator, superintendent, or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company; and,~~
- ~~c. The authorization must be current (it has been updated to reflect a different individual or position) prior to any report submittals, certifications, or records certified by the Duly Authorized Representative.”~~

Signatory References in Permit Registration Documents, Attachment C

The application attachment, helpfully, does not refer to a Legally Responsible Person or a Duly Authorized Representative at all. The relevant sections seem to be F. 5 and 6 (repeated in H.1 (d) and (e) for No Exposure Certification) , which require:

“5. A [sic] NOI Certification *by the Discharger* that all PRDs submitted are correct and true.”

“6. SMARTS Electronic Authorization Form Signed by *any user authorized to certify and submit data electronically.*”

- *Request:* Section F.6 (identical to H(1)(e)) appears to be a somewhat confusing administrative reference to who may sign and submit documents. Perhaps it could refer to Order Section XXI.K also.

Revisions to the Other “LRP” References in the Draft General Permit; Section XXI.K as Focus

The following changes address all references in the Order to “Legally Responsible Person” and “LRP” (Fact Sheet would also be amended accordingly).

⁵ Please also see Order Section XXI.K (see also Form 200 on the State Water Board’s website, which is the general WDR application form), for the lists of persons qualified to sign permit applications, which matches 40 CFR 122.2(a).

- *Request:* We request consideration of the following changes:

Permit Finding A. 14 (p. 2)

This General Permit requires the Discharger's ~~Legally Responsible Person (LRP)~~ to electronically certify and submit all documents through the State Water Board's Storm Water Multi-Application and Report Tracking System (SMARTS) website to reduce the state's reliance on paper, to improve efficiency, and to make such General Permit documents more easily accessible to the public and the State and Regional Water Boards.

Permit Finding B.22 (p. 3)

Facilities otherwise subject to this General Permit but for which a valid Notice of Non-Applicability (NON A) and a NONA Technical Report has been certified and submitted via SMARTS by the Discharger's ~~LRP~~ (see Wat. Code, § 13399.30, subd. (a)(2)) are not covered under this General Permit. [*Note also:* the Water Code does not require submission of NONA's via SMARTS and it appears inappropriate to add this requirement in a specific permit.]

Order Section II.A.1 p. 15)

II. REQUIREMENTS FOR RECEIVING GENERAL PERMIT COVERAGE

. . . Upon administrative termination, Dischargers are subject to enforcement by the Regional Water Boards until coverage under this General Permit is obtained by ~~designating an LRP to submitting new PRDs pursuant to the provisions of Section II.~~ Individuals authorized to certify and submit PRDs and other reports shall be consistent with Section XXI.K of this General Permit, and the administrative details for the use of the SMARTs forms, shall be described in guidance on the SMARTS system.

E. General Permit Coverage (N01)

1. Facilities Discharging Storm Water Associated with Industrial Activity.

. . . The Discharger shall ~~designate a Legally Responsible Person (LRP) to register for coverage under this General Permit by certifying and submitting Permit Registration Documents (PRDs) via the Stormwater Multi-Application Reporting and Tracking System (SMARTS) (<http://smarts.waterboards.ca.gov>), which consist of:~~

- a. Notice of Intent (N01) and Signed Certification Statement

- b. Copy of Current Site Map from the SWPPP (see Section X.E)
- c. Storm Water Pollution Prevention Plan (see Section X)
- d. Annual Fee

Order Section II.C (p. 16)

F. Obtaining General Permit Coverage for Facilities Subject to this General Permit

1. Existing or new Dischargers shall ~~designate an LRP to~~ register for NOI or NEC coverage under this General Permit by certifying and submitting PRDs in SMARTS in accordance with the schedule provided in this Section II.D-E below. When PRDs are certified and submitted and the annual fee is received, the State Water Board will assign the Discharger a Waste Discharger Identification (WDID) number.
2. The Discharger shall ~~designate an LRP to~~ certify and submit all PRDs and other required compliance documents via SMARTS, with the exception of annual fees, which must be mailed.

New PRDs shall be certified and submitted via SMARTS by the Discharger's ~~LRP~~ whenever there is a change to either the ownership of the facility operations or the location. When there is an ownership change, the prior Discharger (seller) must inform the new Discharger (buyer) of the General Permit requirements.

Order Section XXI.K – Primary Provisions on Discharger Signatories, Standard Conditions, p. 68

K. Electronic Signature and Certification Requirements . . .

3. All Permit Registration Documents (PRDs) for NOI and NEC coverage, Notices of Termination (NOTs), Annual Monitoring Reports, Level 1 ERA Report, Level 2 ERA Technical Reports, Level 2 ERA Demonstration Technical Reports, or any other document required by this General Permit shall be certified ~~and submitted for submission via SMARTS by the~~ on behalf of the Discharger's LRP as described in this Section K.

4. PRDs and designations of Duly Authorized Representatives shall be certified and submitted by one of the following representatives of the Discharger:
 - a. For a corporation: by an authorized corporate officer. For the purposes of this section, an authorized corporate officer means: (a) a president, secretary, treasurer, vice-president, or other officer of the corporation with authority to execute documents on behalf of the corporation pursuant to corporate bylaws or board resolution; or (b) the manager of the facility, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate bylaws and by corporate resolution;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively, that is authorized to execute legally binding documents on behalf of the partnership or sole proprietorship (as the case may be) in accordance with the entity's governing documents; or,
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official that possesses signatory authority of the governmental agency at issue. The principal executive officer of a federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of US EPA).

Other than PRDs, the LRP Discharger (via a signed document submitted by a person at the level qualified to submit PDRs) may designate a Duly Authorized Representative to certify and submit via SMARTS all other documents on the behalf of the LRP Discharger that are required by this General Permit or requested by the Regional Water Board, State Water Board, US EPA, or local MS4.

5. When a new ~~LRP~~ or Duly Authorized Representative is designated, the Discharger shall ensure that the appropriate revisions are made via SMARTS. In unexpected or emergency situations, it may be necessary for the Discharger to directly contact the State Water Board's Storm Water Section to register for SMARTS account access in order to designate a new Duly Authorized Representative ~~LRP~~. *[Note: If the intent of the language is to formalize a specific new permit requirement that a Discharger may only have one primary representative at a time authorized to certify documents at*

the level of PRDs and Duly Authorized Representative designations, this should be made explicit. If a new definition is truly needed, which we would prefer not to see, a term like “Primary Discharger Signatory” could be coined, but it seems clearer to use longer descriptive phrases matching normal permit signatory requirements, if possible. Regardless it would be clearer to keep all the signatory requirements in this single Section K and referring only to the Discharger elsewhere. This also avoids the confusion people have as to whether actual permit requirements attach to signatories personally, which is not the law or the intention.]

6. Documents certified and submitted via SMARTS by an unauthorized or ineligible LRP or Duly Authorized Representative person are invalid.
7. ~~LRP eligibility is as follows:~~
 - a. ~~For a corporation: by an authorized corporate officer. For the purposes of this section, an authorized corporate officer means: (a) a president, secretary, treasurer, vice president, or other officer of the corporation with authority to execute documents on behalf of the corporation pursuant to corporate bylaws or board resolution; or (b) the manager of the facility, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate bylaws and by corporate resolution;~~
 - b. ~~For a partnership or sole proprietorship: by a general partner or the proprietor, respectively, that is authorized to execute legally binding documents on behalf of the partnership or sole proprietorship (as the case may be) in accordance with the entity’s governing documents; or,~~
 - c. ~~For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official that possesses signatory authority of the governmental agency at issue. The principal executive officer of a federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of US EPA).~~
8. Duly Authorized Representative eligibility is as follows:
 - a. The LRP Discharger must authorize via SMARTS any person designated as a Duly Authorized Representative;
 - b. The authorization shall specify that a person designated as a Duly Authorized Representative has responsibility for the overall operation

of the regulated facility or activity, such as a person that is a manager, operator, superintendent, or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company; and,

- c. The authorization must be current (it has been updated to reflect a different individual or position) prior to any report submittals, certifications, or records certified by the Duly Authorized Representative.

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