REGION 9 PUBLIC COMMENT ID #	Commenters(s)	Submitted by	Date Submitted
1	Matt O'Malley, Waterkeeper, Legal & Policy Director	San Diego Coastkeeper	3/9/16
2	Drew Kleis, Deputy Director	City of San Diego	3/28/16
3	David Smith, Manager NPDES Permits Office	US EPA – Region IX	3/29/16
4	Allison Vosskuhler, Program Manager Planning and Green Port	Unified Port of San Diego	3/30/16
5	Sean Bothwell, Policy Director	California Coastkeeper Alliance	3/31/16
6	Chris Crompton, Interim Deputy Director	Orange County Public Works	3/31/16
7	Cesar Aranda, PE, Manager Water Resources	Vulcan Materials Company West Region	3/31/16
8	Kevin Buchan, Manager Bay Area Region	Western States Petroleum Association	3/31/16
9	Gregory D. Pirnik	State of California Auto Dismantlers Association	3/31/16
10	Geoff Brousseau, Executive Director	California Stormwater Quality Association	4/1/16
11	Jack Monger, Executive Director	Industrial Environmental Association	3/25/16
12	Gerald D. Secundy, President	California Council for Environmental and Economic Balance	3/31/16
13	Matt O'Malley, Waterkeeper, Legal & Policy Director - San Diego Coastkeeper Brian Felton - Student Attorney/ Aquatic Ecologist - San Diego Coastkeeper Livia Borak, Legal Advisor - Coastal Environmental Rights Foundation	San Diego Coastkeeper Coastal Environmental Rights Foundation	3/31/16
14	Matt O'Malley, Waterkeeper, Legal & Policy Director Brian Felton - Student Attorney/ Aquatic Ecologist	San Diego Coastkeeper	3/31/16
15	Matt O'Malley, Waterkeeper, Legal & Policy Director Brian Felton - Student Attorney/ Aquatic Ecologist	San Diego Coastkeeper	3/31/16
16	John Adriany, Technical Representative	Shelter Island Master Leaseholder Group	3/14/16
17	George Palermo, Chairman	San Diego Port Tenants Association	4/6/16

Ryan, Erica@Waterboards

From: Matt O'Malley <matt@sdcoastkeeper.org>
Sent: Thursday, March 10, 2016 1:32 PM
To: Walsh, Laurie@Waterboards
Cc: Ryan, Erica@Waterboards; Barker, David@Waterboards
Subject: Re: Question about TMDL/IGP

Categories: Red Category

Thanks Laurie. There is some debate on the enviro end here and throughout the state. I appreciate you getting back to me so quickly.

On Thu, Mar 10, 2016 at 1:29 PM, Walsh, Laurie@Waterboards <Laurie.Walsh@waterboards.ca.gov> wrote:

Matt,

First, the TMDLs are only applicable for the constituents they are adopted to address. I think you know that, but to be complete I said it. The TMDLs do not replace current receiving water limitations (CTR or other water quality objectives), the TMDL-specific permit requirements we propose to be incorporated into the IGP are our interpretation of what the TMDL explains is necessary to reduce loads of pollutants to attain the water quality standard (CTR or other water quality standards depending on the pollutant and the receiving water body).

***Laurie Walsh*, PE**

Senior Water Resource Control Engineer

Storm Water Management

San Diego Water Board

2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Phone: (619) 521-3373

Main Line: (619) 516-1990

Fax No. (619) 516-1994

Email: Laurie.Walsh@waterboards.ca.gov

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

www.waterboards.ca.gov/sandiego/

From: Matt O'Malley [mailto:matt@sdcoastkeeper.org]
Sent: Wednesday, March 09, 2016 2:49 PM
To: Ryan, Erica@Waterboards; Walsh, Laurie@Waterboards
Subject: Question about TMDL/IGP

Hi Erica and Laurie:

I do have a question re: TMDL incorporation into the IGP that I'm hoping one of you can answer.

1.1 Do you consider the incorporation of the TMDLs into the IGP to supplant the current receiving water limitations (including CTR and other water quality objectives), or do you consider them to be supplemental?

Or, should this question instead be directed to the State Board?

--

Matt O'Malley

Waterkeeper, Legal & Policy Director

matt@sdcoastkeeper.org

(o) 619-758-7743 x119

(c) 619-241-1894

San Diego Coastkeeper®

www.sdcoastkeeper.org

@SDWaterkeeper

@sd_coastkeeper

--
Matt O'Malley
Waterkeeper, Legal & Policy Director
matt@sdcoastkeeper.org
(o) 619-758-7743 x119
(c) 619-241-1894

San Diego Coastkeeper®

www.sdcoastkeeper.org

@SDWaterkeeper
@sd_coastkeeper

LEGAL PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is intended only for the individual(s) or entity(s) named within the message. This e-mail might contain legally privileged and confidential information. If you properly received this e-mail as a client or retained expert, please hold it in confidence to protect the attorney-client or work product privileges. Should the intended recipient forward or disclose this message to another person or party, that action could constitute a waiver of the attorney-client privilege. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited by the sender and to do so might constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. section 2510-2521. If this communication was received in error we apologize for the intrusion. Please notify us by reply e-mail and delete the original message without reading same. Nothing in this e-mail message shall, in and of itself, create an attorney-client relationship with the sender.

THE CITY OF SAN DIEGO

March 28, 2016

VIA EMAIL TO: sandiego@waterboards.ca.gov

Erica Ryan
Water Resources Control Engineer
Storm Water Management Unit
Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Subject: Comments on Draft TMDL-Specific Industrial General Permit Requirements

Dear Miss Ryan:

2.1 The City of San Diego (City) appreciates the Regional Water Quality Control Board's willingness to incorporate Total Maximum Daily Load (TMDL)-specific permit requirements into the statewide General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001 (Industrial General Permit (IGP)). Ensuring that regulations are applied equitably across the watersheds in San Diego will lead to better accountability and ultimately improvements in water quality. We support the Regional Board's efforts and have a few recommendations to improve upon the proposed fact sheets.

2.2 As an active participant in TMDLs in watersheds located within our jurisdiction, the City is continually striving to ensure that sources within our control are not contributing to exceedances of water quality standards. Where facilities and activities are not regulated adequately, they have the potential to cause or contribute to exceedances of TMDL targets, Receiving Water Limitations (RWLs) and/or Water Quality Based Effluent Limitations (WQBELs), which could result in impacts to water quality and permit violations for which the City could be held responsible. As runoff from IGP sites becomes the City's responsibility when it enters its Municipal Separate Storm Sewer System (MS4), the City is seeking equitable accountability from sites with coverage under the IGP. The inclusion of these TMDLs into the IGP will help to ensure that all dischargers in the San Diego region are active in their stewardship of the local environment and that those waters deemed in need of greatest protection will receive the extra attention provided by these requirements.

Specific comments on the incorporation of TMDL-specific requirements into the IGP are as follows:

- 2.3 As drafted, it appears that compliance with the TMDLs for IGP sites will be met through enrollment and implementation of the requirements within the IGP. The City supports this approach.

Transportation & Storm Water Department
9370 Chesapeake Drive, Suite 100, MS 1900 • San Diego, CA 92123
Hotline (619) 235-1000 Fax (858) 541-4350

- For TMDLs with established waste load allocations (WLAs) for industrial dischargers, the WLA is translated into WQBELs. Compliance with the WQBELs is achieved through implementation of the IGP. In these cases, implementation includes IGP required SWPPP development, BMP implementation, and monitoring to verify that the site is not causing or contributing to a violation of water quality standards related to the TMDL. The City supports this approach. Additionally, there should be a compliance mechanism for industrial permittees of any size to financially contribute in the restoration of Los Peñasquitos Lagoon. This participation could be incorporated into the iterative approach to achieve individual facility compliance. 2.4 2.5
- For TMDLs where there are no WLAs designated for industrial dischargers, there are no WQBELs in the fact sheets. The City supports compliance through IGP enrollment and implementation; however, the site should be required to perform monitoring for the TMDL constituent to demonstrate that they are not causing or contributing to exceedances of water quality standards. Rather than leave the determination of the "potential to cause or contribute" to the discharger, IGP permittees should have to monitor for TMDL constituents and report the results to the State with sufficient frequency to demonstrate that they are not causing or contributing to any exceedance of a water quality standard. 2.6
- Resolution R9-2010-0001, Revised Total Maximum Daily Loads for Indicator Bacteria Project 1 – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek) should be updated by a Basin Plan Amendment to incorporate a WLA for industrial dischargers. 2.7

The City supports the approach that the Regional Board is taking and appreciates your consideration of the recommendations above. If you have questions, please contact Ruth Kolb at (858) 541-4328 or at rkolb@sandiego.gov. 2.8

Sincerely,

Drew Kleis
Deputy Director

DK\rk

cc: Paz Gomez, Deputy Chief Operating Officer, Infrastructure/Public Works
Mike Hanson, Director of Land Use & Environmental Policy
Kris McFadden, Transportation & Storm Water Department Director
Ben Carrier, Deputy City Attorney, City Attorney's Office
Ruth Kolb, Program Manager, Transportation & Storm Water Department

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 29 2016

Erica Ryan
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92018-2700

Re: Proposed TMDL Requirements for General Permit No. CAS000001

Dear Ms. Ryan:

The following are EPA Region 9's comments on the San Diego Regional Board's proposals for incorporating the requirements of the following TMDLs into the State Water Board's industrial general permit (IGP) for stormwater discharges associated with industrial activity (NPDES permit No. CAS000001).

- Chollas Creek Diazinon TMDL
- Rainbow Creek Nitrogen and Phosphorus TMDL
- Shelter Island Yacht Basin Dissolved Copper TMDL
- Chollas Creek Copper, Lead, and Zinc TMDL
- Indicator Bacteria: Revised Project I - Twenty Beaches and Creeks in San Diego Region (including Tecolote Creek) TMDL
- Indicator Bacteria: Project II - Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay TMDL
- Los Peñasquitos Lagoon Sediment TMDL

The Regional Board's proposals were released for the public review on March 1, 2016.

3.1

For the Chollas Creek metals TMDL, Region 9 is pleased to see that the applicable wasteload allocations (WLAs) are proposed to be incorporated into the IGP as numeric water quality-based effluent limits. Although BMPs can also serve as effluent limits in some circumstances (with adequate justification in the fact sheet), numeric limits are the clearest way of ensuring consistency with NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B); these regulations require effluent limits consistent with assumptions and requirements of applicable TMDLs. We recommend that the numeric effluent limits be carried forward and retained in the final IGP modification adopted by the State Board.

3.2

For the Los Peñasquitos Lagoon sediment TMDL, the proposal assumes that compliance with the standard BMP requirements of the IGP would be sufficient to ensure compliance with the TMDL. However, we found no clear demonstration in the fact sheet supporting that assumption. This is especially problematic considering the substantial load reduction (67%)

required by the TMDL. Absent an adequate demonstration that IGP BMPs would ensure compliance with the TMDL, numeric effluent limits must be included in the IGP modification. EPA reserves the right to object to issuance of the proposed IGP modification unless this concern is addressed.

For TMDLs other than the Chollas Creek metals TMDL and the Los Peñasquitos Lagoon sediment TMDL, the fact sheets accompanying the proposed IGP modifications indicate that industrial discharges were not actually assigned specific WLAs. Attachment E to the IGP indicates that it includes a list of TMDLs that do have applicable TMDL requirements for industrial discharges, and all of the above TMDLs are included on the list in Attachment E. This apparent conflict needs further discussion and explanation.

3.3

For the Rainbow Creek TMDL, the fact sheet indicates that industrial dischargers were identified as responsible parties (Resolution No. R9-2005-0036, Attachment A) but no WLAs were assigned. We found no mention of industrial dischargers in this Resolution, and additional explanation is needed.

3.4

We appreciate the opportunity to provide our views on the proposals. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Section at (415) 972-3510.

Sincerely,

David Smith, Manager
NPDES Permits Office (WTR-2-3)

Unified Port of San Diego

3165 Pacific Highway, San Diego, CA 92101
P.O. Box 120488, San Diego, CA 92112-0488
619.686.6200 www.portofsandiego.org

March 30, 2016

San Diego Water Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Attn: Erica Ryan

Subject: Comment – Draft TMDL-Industrial General Permit Requirements

Dear Ms. Ryan,

4.1 The San Diego Unified Port District (Port) appreciates the opportunity to comment on the proposed revisions to the Total Maximum Daily Load (TMDL)-Specific Requirements in Attachment E of the Industrial General Stormwater Permit, Order No. 2014-0057-DWQ (General Industrial Permit).

4.2 As trustee for the tidelands of San Diego Bay, the Port is vested with the authority to hold and manage the tidelands for the people of California and those who visit San Diego Bay. Environmental stewardship aimed at protecting and preserving the natural resources of the tidelands is one of the key responsibilities that Port performs as trustee. The Port supports the State Board's efforts to ensure that industrial dischargers within TMDL watersheds take responsibility to eliminate discharges into impaired waters. However, the proposed revisions should go farther.

4.3 Several industrial facilities discharge into the San Diego Bay watershed's TMDL areas. As such, these industrial dischargers (Dischargers), regardless of whether they are given a TMDL-specific load allocation have the potential to discharge pollutants to the MS4 or waters within a TMDL watershed. MS4 Copermittees are assigned an MS4 load allocation within each TMDL and are responsible for achieving the TMDL-specific load reductions. Even minimal amounts of pollutants have the potential to impact MS4 Copermittees' compliance efforts. The Port recommends Attachment E be modified as follows:

4.4 1. A monitoring provision should be added to the "TMDL Compliance" section of Attachment E. The provision should clearly state that (1) monitoring for the TMDL-specific pollutant is required, and (2) monitoring should demonstrate that discharges do not contribute to the pollutant load for the TMDL-specific pollutant. While the General Industrial Permit discusses monitoring for TMDL pollutants, adding language to Attachment E for each specific TMDL will clarify that this monitoring is required if a Discharger is to be in compliance with the Permit.

Please contact Karen Holman via email at kholman@portofsandiego.org or (619) 725-6073 if you have any questions or would like to discuss the comments above.

Respectfully,

Allison Vosskuhler
Program Manager
Planning & Green Port

SB/er

cc: Jason Giffen

CALIFORNIA COASTKEEPER ALLIANCE

March 31, 2016

Ms. Erica Ryan
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Sent via electronic mail to: sandiego@waterboards.ca.gov

RE: Comment – Draft TMDL - Industrial General Permit Requirements

Dear Ms. Ryan:

5.1 In order to legally incorporate TMDL waste load allocations (WLAs) into the Industrial General Permit (IGP or Permit), any BMP-based water quality based effluent limitations (WQBELs) must be sufficient to meet WLAs as demonstrated by discharger monitoring.

5.2 California Coastkeeper Alliance (CCKA) is a network of twelve Waterkeeper organizations working to protect and enhance clean and abundant waters throughout the state, for the benefit of Californians and California ecosystems. We appreciate the opportunity to provide comments to the Regional Water Board on the proposed WLAs from various TMDLs for incorporation into the IGP. This letter is intended to outline our major concerns with regional boards' proposed IGP TMDL incorporation. We reserve the right to submit additional comments when the State Board takes up the matter.

5.3 The Clean Water Act's TMDL program represents the Act's "safety net."[1] It is the bedrock component of the Clean Water Act, the backstop to ensure that the goals of the Act can be achieved when initial efforts fail. CCKA supports the importation of the numeric WLAs from the TMDL directly into the Permit. However the proposed incorporation of WLAs as Numeric Action Levels (NALs) or TMDL Action Levels (TALs) rather than WQBELs is inconsistent with the requirements of the Clean Water Act, and creates an illegal compliance schedule. Further, because the WLA is incorporated into an adaptive management process rather than as an effluent limitation, the submission fails to meet the data and analysis requirements set out in the Permit.

5.4 While the current proposals to develop a trigger for an adaptive management process leading to additional BMPs might ultimately play some useful role in implementing the TMDLs, it cannot be the exclusive approach taken, as is now the case. NALs and TALs are not lawful substitutes for WQBELs. For these reasons, CCKA requests that staff revisit the proposed WLA incorporation, and apply the straightforward process contemplated by the TMDL and the Clean Water Act to submit numeric effluent limitations consistent with the concentration based WLA in the applicable TMDL.

I. TMDLS SHOULD BE INCORPORATED INTO THE PERMIT AS EFFLUENT LIMITATIONS—NUMERIC ACTION LIMITS OR TMDL ACTION LIMITS ARE NOT APPROPRIATE ON THEIR OWN.

5.5 The use of NALs or TALs as the exclusive method of WLA incorporation is unlawful. Permitting agencies must ensure that NDPES permits authorizing storm water discharges associated with industrial activities include both 1) technology based protections *and* 2) water quality based effluent protections in the form of WQBELs. As the

[1] Houck, Oliver A., The Clean Water Act TMDL Program 49 (Envtl. Law Inst. 1999).

State Board has recognized, the inclusion of WQBELs consistent with WLAs is non-discretionary.[2]

5.6 Regional Boards' current proposals relying on NALs or TALs represent neither a technology based nor a water quality based effluent limitation. TALs have the same permitting status as NALs.[3] The State Water Board has held that NALs are neither technology based nor water quality based effluent limitations.[4] Moreover, a NAL or TAL is used as a trigger for an adaptive management and monitoring program leading to development of BMPs, and only after a minimum of 10 months past incorporation must a discharger demonstrate that the facility's Stormwater Pollution Prevention Plan (SWPPP) is revised to include BMPs to prevent an exceedance of the TAL.

5.7 NALs or TALs create an illegal compliance schedule for metals and toxics, and may create schedules conflicting with existing Basin Plans for other pollutants, necessitating Basin Plan Amendments at a minimum. Since the WLAs are incorporated as triggers for an adaptive management process eventually requiring compliance with the numeric limits indirectly, rather than as a simple effluent limitation, the proposed incorporation creates impermissible compliance schedules, and also fails to meet the data and analysis requirements set out in the General Permit.

5.8 While the use of NALs or TALs might be an appropriate adaptive management measure, they can never be the sole, or even primary, approach to incorporating WLAs for TMDL constituents into the Permit—WQBELs must be an element of the WLAs. We urge the Regional and State Water Boards to incorporate the proposed WLAs, currently expressed as NALs or TALs, into the Permit as WQBELs—as the Clean Water Act requires. This direct approach should be coupled with the requirement that permittees implement BMPs necessary to achieve the numeric effluent limitations.

II. IF BMP-BASED EFFLUENT LIMITATIONS ARE INCORPORATED INTO THE PERMIT, THE STATE WATER BOARD MUST REQUIRE THE DISCHARGER TO IMPLEMENT BMPS SUFFICIENT TO ACHIEVE THE WASTE LOAD ALLOCATION THROUGH DEMONSTRATED MONITORING.

5.9

The Clean Water Act requires the permitting agency to adopt monitoring requirements in NPDES permits that will produce the information necessary to make efficient compliance determinations.[5] As the Permit dictates, the

5.10 Regional Water Boards will submit to the State Water Board the following information for each of the TMDLs listed in Attachment E:

- Proposed TMDL-specific permit requirements, including any applicable effluent limitations, implementation timelines, additional monitoring requirements, reporting requirements, an explanation of how an exceedance of an effluent limitation or a violation of the TMDL will be determined, and required deliverables consistent with the TMDL(s);
- An explanation of how the proposed TMDL-specific permit requirements, timelines, and deliverables are consistent with the assumptions and requirements of applicable waste load allocation(s) to implement the TMDL(s);
- Where a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable waste load allocations; and
- Where concentration-based monitoring is required, an explanation of how the required monitoring, reporting and calculation methodology for an exceedance of an effluent limitation or a violation of the TMDL(s) will be sufficient to demonstrate compliance with the TMDL(s).[6]

---

[2] General Permit Fact Sheet, pp. 23-26.
[3] Regional Board Notice, footnote 10, p.8.
[4] CAS000001 at 11.
[5] *Sierra Club*, 813 F.2d at 1491-92; *County of Los Angeles*, 725 F.3d at 1208-1209 (discussing the necessity and purpose of self-monitoring in context of general NPDES permits).
[6] Fact Sheet at p. 25.

5.11 Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits.[7] Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate."[8] Thus, the State Water Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation.[9]

5.12 If Regional Boards are to incorporate BMP based WQBELs to represent TMDL WLAs, then the Region and State boards should require the discharger to implement BMPs sufficient to meet WLAs as demonstrated by monitoring.

***

5.13 The TMDL program is the essential means to achieving the Clean Water Act's goal of restoring waters so that they are safe for swimming, fishing, drinking, and other "beneficial uses" that citizens enjoy, or used to be able to enjoy. We look forward to working with you to ensure clean, abundant water for California.

Sincerely,

Sean Bothwell
Policy Director
California Coastkeeper Alliance

[7] *See* 40 C.F.R. §§ 122.44(i), 122.48.
[8] 40 C.F.R. § 122.44(a)(1)(i)-(iii).
[9] *See County of Los Angeles*, 725 F.3d at 1207.

OC Public Works
Integrity, Accountability, Service, Trust
Shane L. Silsby, Director

March 31, 2016

VIA ELECTRONIC MAIL ONLY

Ms. Erica Ryan
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
sandiego@waterboards.ca.gov

Subject: Comment – Draft TMDL - Industrial General Permit Requirements

Dear Ms. Ryan,

6.1 OC Public Works appreciates the opportunity to comment on the draft Total Maximum Daily Load (TMDL)-Specific Permit Requirements for the State Water Resources Control Board's (State Water Board's) Industrial General Storm Water Permit (IGP), Order No. 2014-0057-DWQ, NPDES Permit No. CAS000001. The TMDLs in question that impact industries in south Orange County are:

- Indicator Bacteria: Revised Project I – Twenty Beaches and Creeks in San Diego Region (including Tecolote Creek) TMDL (Beaches and Creeks TMDL); and
- Indicator Bacteria: Project II – Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay TMDL (Baby Beach TMDL).

The following comments are offered:

6.2 1. The State Water Resources Control Board is revising the bacteria water quality objectives (WQOs) based on the 2012 USEPA Recreational Water Quality Criteria. The draft WQOs are expected to be available for public comment in April/May with anticipated adoption later in 2016. Indicator bacteria species, magnitude, and duration will all undergo revisions from the existing WQOs and both TMDLs will be affected. Regional Board staff is currently working on revisions to the TMDLs and implementation provisions with assistance from municipalities, including OC Public Works. Incorporation of the current TMDL-related requirements in the IGP, particularly fecal coliform, is questionable since this indicator is effectively obsolete based on the 2012 USEPA Recreational Water Quality Criteria and a transition of WQOs is anticipated.

6.3 2. Bacteria pollution is not generally associated with color or turbidity and visual inspection for bacterial sources may not be sufficient. Many issues are not visible, especially small leaks in the underground collection system, illicit connections, slow leaks at cleanouts and clarifiers. While regular bacterial sampling may not be necessary, especially for low-risk permittees, it may be appropriate in instances where there are elevated levels of fecal indicator bacteria in the downstream MS4 or receiving waters.

3. The statement: "The presence of pathogens and the probability of disease are directly correlated with the density of fecal coliform, total coliform, and enterococcus bacteria (Bacteria) in waters used for shellfish harvesting or recreation", as cited from the finding of Order R9-2010-0001, should be revised since fecal coliform is effectively obsolete for recreational contact given the 2012 USEPA Recreational Water Quality Criteria. 6.4

4. 303(d) listed waters should be considered by the IGP in addition to waters with approved TMDLs. Implementation strategies by IGP Permittees should consider multi-benefit BMPs that address all listed pollutants, not just the TMDL pollutants. 6.5

5. Consistent with the IGP's allowance of similar industries to form compliance groups to maximize efficiency and effectiveness, IGP permittees should be able to form compliance groups based on watershed area, including subwatershed areas such as industrial parks, where industrial facilities of various types are concentrated and would be easier to manage as a group. This would improve the efficiency and effectiveness of complying with the TMDLs. 6.6

6. Aliso Creek and San Juan Creek watershed MS4s have a long history of working collaboratively on water quality issues and have formed watershed groups to manage the bacterial water quality issues in these watersheds holistically. The option for IGP permittees within these watersheds to join these groups either individually or collectively to achieve the maximum efficiency and effectiveness is therefore helpful.

7. CAFO should be revised from *confined* animal feeding operation *to concentrated* animal feeding operation. 6.7

If you have any questions, please contact Jian Peng at (714) 955-0650 or jian.peng@ocpw.ocgov.com.

Very truly yours,

Chris Crompton, Interim Deputy Director
OC Environmental Resources

Ryan, Erica@Waterboards

From: Aranda, Cesar <arandac@vmcmail.com>
Sent: Thursday, March 31, 2016 4:27 PM
To: sandiego
Subject: Comments on Draft TMDL-Specific IGP Requirements – Draft Los Peñasquitos Lagoon Sediment TMDL.

Attn: Erica Ryan

Thank you for this opportunity to submit comments regarding the Draft TMDL – Industrial General Permit Requirements from the SDRWQCB dated February 26, 2016. Vulcan Materials Company has a couple of questions and comments specific to the Draft Los Peñasquitos Lagoon Sediment TMDL.

7.1 The Los Peñasquitos Sediment Lagoon TMDL states that all Responsible Parties, collectively and individually, are responsible for either reducing their sediment loads to the receiving waterbody or demonstrate that their discharges are not causing exceedances of the Waste Load Allocation (WLA). Dischargers whose point source discharges contribute to exceedance of the watershed WLA for sediment are required to reduce runoff discharges before it is discharged to the Los Peñasquitos Lagoon. Although individual parties have not been assigned individual waste load allocations (WLAs), it appears that all dischargers are liable for an exceedance if they discharge ANY amount of sediment. We feel that this needs clarification. How can we demonstrate that our discharges do not "cause or contribute"?

7.2 Industrial dischargers in the Peñasquitos watershed are assumed to be in compliance with the Los Peñasquitos Lagoon Sediment TMDL and their contribution to the watershed interim and final WQBEL if all of the following conditions are completed:

1. Enrollment in this General Permit; and
2. Inclusion of BMPs in the Discharger's SWPPP; and
3. Compliance with this General Permit; and
4. Collection of representative, or estimated flow monitoring.

Number 4 requires the collection of flow measurements in addition to Total Suspended Solids concentrations, to quantify sediment contributions, and assess compliance with the watershed WQBEL. The TMDL language proposes two methods for determining flow, the flow meter and float methods. Vulcan recommends including additional flow metering options. In addition, the total volume estimation along with concentration of the sample would allow for comparison with the WQBELs. Monitoring flow rate at the time of grab sampling will not provide the necessary information to calculate sediment load discharged from the facility during a rain event or the total load over the wet season. We recommend using the facility area in acres, runoff coefficients, the site's average TSS value, and the seasonal rainfall to estimate the annual load. This needs clarification.

Thank you for this opportunity to submit comments regarding the Draft TMDL – Industrial General Permit Requirements.

--

Cesar Aranda, P.E.
Manager, Water Resources
Vulcan Materials Company / West Region
11599 Old Friant Road, Fresno, CA 93730
Direct: (559) 433-0559
Cell: (559) 978-1721

Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Kevin Buchan
Manager, Bay Area Region

VIA ELECTRONIC MAIL

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
1515 Clay Street, Suite 1400
Oakland, CA 94612.
Via email: Christine.boschen@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Attention: Pavlova Vitale
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Santa Ana Regional Water Quality Control Board
Attention: Barbara Barry
3737 Main Street, Suite 500
Riverside, CA 92501
Via email: barbara.barry@waterboards.ca.gov

San Diego Regional Water Quality Control Board
Attention: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: WSPA Comments on Draft TMDL-Specific Industrial General Stormwater Permit Requirements

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

8.1

On behalf of the Western States Petroleum Association (WSPA), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California, Arizona, Nevada, Oregon, and Washington.

Given many of the requirements are proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

-Sonoma Creek

-Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

-Los Angeles River

-Long Beach City Beaches & Los Angeles River Estuary

-San Gabriel River

-Los Cerritos Channel

-Santa Clara River

-Calleguas Creek & Watershed

-Oxnard Drain #3

-Ventura River/Ventura Coastal

-Colorado Lagoon

-Santa Monica Bay

-Marina Del Rey

-Ballona Creek, Estuary & Sepulveda Channel

-Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel

-Los Angeles Area Lakes

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

Region 8 – Santa Ana Regional Water Quality Control Board

-San Diego Creek

-Newport Bay

-San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

-Chollas Creek

-Los Penasquitos Lagoon

-Rainbow Creek

-Shelter Island Yacht Basin

-Baby Beach in Dana Point Harbor and Shelter Island Shoreline

-Twenty Beaches and Creeks in SD Region

8.2 The following key points are put forth as overarching comments and recommendations with specific examples of TMDL sector-specific permit requirements that speak to the core issues raised.

Dischargers should be assigned Baseline Status for new constituents.
The Los Angeles Regional Water Quality Control Board (Los Angeles Regional Board) proposes to incorporate each TMDL waste load allocation (WLA) as a numeric "TMDL Action Level (TAL)," which would be treated in the same manner as a Numeric Action Level (NAL) in the IGP.

The Los Angeles Regional Board also proposes that Responsible Dischargers would be assigned Level 1 compliance status four months after the TMDL-specific requirements are incorporated into the IGP. However, as indicated in the IGP at p. 49, "At the beginning of a Discharger's NOI Coverage, all Dischargers have baseline status for all parameters." A Discharger's Baseline status for any given parameter "shall change Level 1 status if sampling results indicate an NAL exceedance."

Because these TMDL-derived monitoring requirements will be new to IGP Responsible Dischargers, the Responsible Dischargers would have no data upon which to determine if discharges from their facility are likely to exceed TALs, or if additional BMPs (and which BMPs) might be required to prevent TAL exceedances.

For example, dischargers within the Los Angeles River watershed will be subject to requirements for metals (cadmium, copper, lead, zinc, selenium), nitrogen compounds (ammonia; applicable to specific SIC codes), and indicator bacteria. IGP permittees have

typically not measured concentrations of these constituents in discharges from their facilities, and thus have no basis for assessing whether control measures would be needed for these constituents. In addition, the choice of control measures may vary depending upon which constituents require control, and the potential source(s) of those constituents at each facility.

Placing Responsible Dischargers in Level 1 status immediately imposes requirements to complete an Exceedance Response Action (ERA) Evaluation, which would be inappropriate, and which imposes a potentially unnecessary burden, if an exceedance has not occurred. For this reason, WSPA requests that all dischargers be assigned Baseline Status for any new constituent for which monitoring data do not exist.

8.3 **Metals TMDLs for the Los Angeles River should be implemented in the IGP in consideration of the WER for copper and the recalculated criteria for lead.**

On April 9, 2015, the Los Angeles Regional Board adopted site-specific objectives (SSOs) for copper and lead (Order No. R15-004). The SSO for copper was based upon an extensive water effect ratio (WER) study, for which extensive sample collection and toxicity testing was conducted. The WER study found that copper was less toxic in ambient water in the Los Angeles River and its tributaries than in the laboratory water used to establish the default water quality criteria of the California Toxics Rule (CTR).

The WER study also found that dry weather was the critical condition (i.e., that wet weather conditions had lower potential to cause toxicity than dry weather conditions). The SSO for lead was based upon a study that incorporated updated toxicity data for lead, and that considered the species present in the Los Angeles River watershed.

Both SSOs indicated that the default water quality criteria of the CTR, which had been used to develop the original Metals TMDLs for the Los Angeles River, were conservative, and that higher copper and lead concentrations could be present in waters and provide an equivalent level of protection of aquatic species.

Although it appears that the SSOs for lead and copper have not yet been approved by the State Water Resources Control Board, the Office of Administrative Law, or USEPA, the proposed IGP amendments do not reference these SSOs. In fact, the proposed IGP amendments state that, "…WER(s) have a default value of 1.0 unless site-specific WER(s) are approved. No site-specific values have been approved for industrial storm water discharges" (proposed amendments for Los Angeles River and Tributaries Metals TMDL at p. 7).

This language leaves the impression that WER(s) must be approved for individual discharges or types of discharges. However, the Los Angeles Regional Board's adopting resolution for these SSOs indicated that the SSO study "was to determine WERs for copper that would apply to all sources in Reaches 1, 2, 3, and 4 of the LA River, as well as select tributaries: Compton Creek, Rio Hondo, Arroyo Seco, Verdugo Wash, Burbank Western Channel and Tujunga Wash" (Resolution No. R15-004 at p. 2; emphasis added). Because

the SSOs developed by the WER and recalculation studies apply to receiving waters for both wet and dry weather conditions, the IGP TMDL requirements should be written to acknowledge these studies and to facilitate the incorporation of the applicable SSOs for copper and lead into the TALs proposed for the IGP, at such time as the SSOs become fully approved.

8.4 **Requirements from metals TMDLs should implement TALs using the dissolved fraction of the metal, and should provide several ways of demonstrating compliance.** Because the dissolved phase of a metal is the bioavailable fraction, and because water quality criteria for metals (e.g., CTR criteria) are expressed as dissolved metals, the proposals should be modified to implement the TALs for metals in the form of dissolved metals.

The Los Angeles Regional Board has previously taken this approach in the Ballona Creek Metals TMDL, which provides as follows: "Alternatively, permittees may be deemed in compliance with WQBELs if they demonstrate compliance with dissolved numeric targets in dry and wet-weather in the applicable receiving water." (Attachment A to Resolution R13-010 at pp. 10-11) Thus, WSPA requests that the IGP revisions allow metals concentrations to be measured in the dissolved form.

8.5 **The SWRCB should consider a regional approach to addressing issues related to non-industrial pollutant source demonstrations and natural background pollutant source demonstrations.**
Currently, the IGP allows Level 2 dischargers (i.e., those dischargers that have entered Level 2 status due to the exceedance of NALs) to make findings that "the exceedance of the NAL is attributable solely to the presence of non-industrial pollutant sources" or that "the NAL exceedance is attributable solely to the presence of the pollutant in the natural background that has not been disturbed by industrial activities."

However, the Los Angeles Regional Board has found that "industrial sources are generally not expected to be significant sources of bacteria," (see proposed amendments for Long Beach City Beaches and Los Angeles River Estuary TMDL for Indicator Bacteria at p. 5); it is also well established that wildlife, including birds, are significant sources of bacteria. Similarly, atmospheric deposition is a documented source of metals to storm water.

Thus, if exceedances of these constituents occur, it cannot be assumed that the source is the industrial facility—but the burden of conducting studies to establish a non-industrial or background pollutant source demonstration may be significant. For this reason, we encourage the Los Angeles Regional Board and the State Water Board to consider allowing IGP Responsible Dischargers to team with each other, or with other permittees within the Region (e.g., MS4 permittees), to conduct these studies and make these demonstrations if they are needed.

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

8.6 **The IGP should be amended to provide several ways of demonstrating compliance with TMDL requirements.**

Recent permit requirements adopted by the Los Angeles Regional Board recognize that water quality based effluent limitations (WQBELs) derived from TMDLs for metals can be met in one of three ways: (i) Final metals WQBELs are met; or (ii) CTR total metals criteria are met instream; or (iii) CTR total metals criteria are met in the discharge (see, e.g., p. N-8 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175, describing the incorporation of the metals requirements of the Harbor Toxics TMDL into MS4 permit).

If the receiving water body is in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements. For this reason, WSPA requests that similar language be incorporated into the TMDL requirements added to the IGP, such that IGP Responsible Dischargers will be determined to be in compliance with TMDL requirements, for all constituents, if the receiving water is in compliance with TMDL requirements.

8.7 **TALs for indicator bacteria should be applied only to discharges that drain directly to the receiving waters covered by the TMDL; water quality criteria for marine waters should not be applied to discharges to freshwater bodies.**

The proposed amendments indicate that the IGP amendments for bacteria would apply to "Responsible dischargers…that are within the direct drainages to the Long Beach City Beaches, as does the Los Angeles River Estuary direct drainage, as well as those dischargers within adjacent and upstream drainages, since discharges from those adjacent and upstream drainages are ultimately conveyed to the Long Beach City Beaches and the Los Angeles River Estuary."

The proposed amendments further indicate that "the San Gabriel River, Los Angeles River, and Alamitos Bay watersheds (collectively termed "adjacent drainages") discharge not directly to, but in close proximity to" the water bodies to which the TMDLs apply.

Thus, it appears that the Los Angeles Regional Board is proposing that monitoring requirements and TALs for total coliform, fecal coliform, and enterococcus would apply to all IGP Responsible Dischargers within the watersheds of the Los Angeles River, San Gabriel River, and Alamitos Bay. However, most dischargers within these watersheds discharge to freshwater receiving water bodies (e.g., the Los Angeles and San Gabriel River), in many cases dozens of miles upstream from the TMDL water bodies, where freshwater water quality objectives for bacteria are expressed in the form of *E. coli*.

To our knowledge, such an approach has not been previously applied. For example, the Los Angeles MS4 permit applies the requirements of the same Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDLs to only those MS4 permittees who discharge directly to those water bodies; the 2012 MS4 permit does not apply marine bacteria objectives to MS4 permittees whose discharges flow to freshwater water bodies (see Table K-5 at p. K-5 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175).

It is inappropriate to require the analysis of total coliform, fecal coliform, and enterococcus for freshwater discharges, and inappropriate to apply TALs for marine water quality requirements upstream of discharges to marine water bodies. WSPA requests that the proposal be modified to clarify that TALs for marine water quality objectives only apply to direct discharges to the TMDL-specified water bodies.

We thank you for the opportunity to provide these comments. If you have any questions, please contact me at my office information below. Thank you.

Sincerely,

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Kevin Buchan
Manager, Bay Area Region

VIA ELECTRONIC MAIL

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
1515 Clay Street, Suite 1400
Oakland, CA 94612.
Via email: Christine.boschen@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Attention: Pavlova Vitale
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Santa Ana Regional Water Quality Control Board
Attention: Barbara Barry
3737 Main Street, Suite 500
Riverside, CA 92501
Via email: barbara.barry@waterboards.ca.gov

San Diego Regional Water Quality Control Board
Attention: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: WSPA Comments on Draft TMDL-Specific Industrial General Stormwater Permit Requirements

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

8.1

On behalf of the Western States Petroleum Association (WSPA), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California, Arizona, Nevada, Oregon, and Washington.

Given many of the requirements are proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

-Sonoma Creek

-Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

-Los Angeles River

-Long Beach City Beaches & Los Angeles River Estuary

-San Gabriel River

-Los Cerritos Channel

-Santa Clara River

-Calleguas Creek & Watershed

-Oxnard Drain #3

-Ventura River/Ventura Coastal

-Colorado Lagoon

-Santa Monica Bay

-Marina Del Rey

-Ballona Creek, Estuary & Sepulveda Channel

-Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel

-Los Angeles Area Lakes

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

Region 8 – Santa Ana Regional Water Quality Control Board

-San Diego Creek

-Newport Bay

-San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

-Chollas Creek

-Los Penasquitos Lagoon

-Rainbow Creek

-Shelter Island Yacht Basin

-Baby Beach in Dana Point Harbor and Shelter Island Shoreline

-Twenty Beaches and Creeks in SD Region

8.2 The following key points are put forth as overarching comments and recommendations with specific examples of TMDL sector-specific permit requirements that speak to the core issues raised.

Dischargers should be assigned Baseline Status for new constituents.
The Los Angeles Regional Water Quality Control Board (Los Angeles Regional Board) proposes to incorporate each TMDL waste load allocation (WLA) as a numeric "TMDL Action Level (TAL)," which would be treated in the same manner as a Numeric Action Level (NAL) in the IGP.

The Los Angeles Regional Board also proposes that Responsible Dischargers would be assigned Level 1 compliance status four months after the TMDL-specific requirements are incorporated into the IGP. However, as indicated in the IGP at p. 49, "At the beginning of a Discharger's NOI Coverage, all Dischargers have baseline status for all parameters." A Discharger's Baseline status for any given parameter "shall change Level 1 status if sampling results indicate an NAL exceedance."

Because these TMDL-derived monitoring requirements will be new to IGP Responsible Dischargers, the Responsible Dischargers would have no data upon which to determine if discharges from their facility are likely to exceed TALs, or if additional BMPs (and which BMPs) might be required to prevent TAL exceedances.

For example, dischargers within the Los Angeles River watershed will be subject to requirements for metals (cadmium, copper, lead, zinc, selenium), nitrogen compounds (ammonia; applicable to specific SIC codes), and indicator bacteria. IGP permittees have

typically not measured concentrations of these constituents in discharges from their facilities, and thus have no basis for assessing whether control measures would be needed for these constituents. In addition, the choice of control measures may vary depending upon which constituents require control, and the potential source(s) of those constituents at each facility.

Placing Responsible Dischargers in Level 1 status immediately imposes requirements to complete an Exceedance Response Action (ERA) Evaluation, which would be inappropriate, and which imposes a potentially unnecessary burden, if an exceedance has not occurred. For this reason, WSPA requests that all dischargers be assigned Baseline Status for any new constituent for which monitoring data do not exist.

8.3 **Metals TMDLs for the Los Angeles River should be implemented in the IGP in consideration of the WER for copper and the recalculated criteria for lead.**

On April 9, 2015, the Los Angeles Regional Board adopted site-specific objectives (SSOs) for copper and lead (Order No. R15-004). The SSO for copper was based upon an extensive water effect ratio (WER) study, for which extensive sample collection and toxicity testing was conducted. The WER study found that copper was less toxic in ambient water in the Los Angeles River and its tributaries than in the laboratory water used to establish the default water quality criteria of the California Toxics Rule (CTR).

The WER study also found that dry weather was the critical condition (i.e., that wet weather conditions had lower potential to cause toxicity than dry weather conditions). The SSO for lead was based upon a study that incorporated updated toxicity data for lead, and that considered the species present in the Los Angeles River watershed.

Both SSOs indicated that the default water quality criteria of the CTR, which had been used to develop the original Metals TMDLs for the Los Angeles River, were conservative, and that higher copper and lead concentrations could be present in waters and provide an equivalent level of protection of aquatic species.

Although it appears that the SSOs for lead and copper have not yet been approved by the State Water Resources Control Board, the Office of Administrative Law, or USEPA, the proposed IGP amendments do not reference these SSOs. In fact, the proposed IGP amendments state that, "…WER(s) have a default value of 1.0 unless site-specific WER(s) are approved. No site-specific values have been approved for industrial storm water discharges" (proposed amendments for Los Angeles River and Tributaries Metals TMDL at p. 7).

This language leaves the impression that WER(s) must be approved for individual discharges or types of discharges. However, the Los Angeles Regional Board's adopting resolution for these SSOs indicated that the SSO study "was to determine WERs for copper that would apply to all sources in Reaches 1, 2, 3, and 4 of the LA River, as well as select tributaries: Compton Creek, Rio Hondo, Arroyo Seco, Verdugo Wash, Burbank Western Channel and Tujunga Wash" (Resolution No. R15-004 at p. 2; emphasis added). Because

the SSOs developed by the WER and recalculation studies apply to receiving waters for both wet and dry weather conditions, the IGP TMDL requirements should be written to acknowledge these studies and to facilitate the incorporation of the applicable SSOs for copper and lead into the TALs proposed for the IGP, at such time as the SSOs become fully approved.

8.4 **Requirements from metals TMDLs should implement TALs using the dissolved fraction of the metal, and should provide several ways of demonstrating compliance.** Because the dissolved phase of a metal is the bioavailable fraction, and because water quality criteria for metals (e.g., CTR criteria) are expressed as dissolved metals, the proposals should be modified to implement the TALs for metals in the form of dissolved metals.

The Los Angeles Regional Board has previously taken this approach in the Ballona Creek Metals TMDL, which provides as follows: "Alternatively, permittees may be deemed in compliance with WQBELs if they demonstrate compliance with dissolved numeric targets in dry and wet-weather in the applicable receiving water." (Attachment A to Resolution R13-010 at pp. 10-11) Thus, WSPA requests that the IGP revisions allow metals concentrations to be measured in the dissolved form.

8.5 **The SWRCB should consider a regional approach to addressing issues related to non-industrial pollutant source demonstrations and natural background pollutant source demonstrations.**
Currently, the IGP allows Level 2 dischargers (i.e., those dischargers that have entered Level 2 status due to the exceedance of NALs) to make findings that "the exceedance of the NAL is attributable solely to the presence of non-industrial pollutant sources" or that "the NAL exceedance is attributable solely to the presence of the pollutant in the natural background that has not been disturbed by industrial activities."

However, the Los Angeles Regional Board has found that "industrial sources are generally not expected to be significant sources of bacteria," (see proposed amendments for Long Beach City Beaches and Los Angeles River Estuary TMDL for Indicator Bacteria at p. 5); it is also well established that wildlife, including birds, are significant sources of bacteria. Similarly, atmospheric deposition is a documented source of metals to storm water.

Thus, if exceedances of these constituents occur, it cannot be assumed that the source is the industrial facility—but the burden of conducting studies to establish a non-industrial or background pollutant source demonstration may be significant. For this reason, we encourage the Los Angeles Regional Board and the State Water Board to consider allowing IGP Responsible Dischargers to team with each other, or with other permittees within the Region (e.g., MS4 permittees), to conduct these studies and make these demonstrations if they are needed.

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

8.6 **The IGP should be amended to provide several ways of demonstrating compliance with TMDL requirements.**

Recent permit requirements adopted by the Los Angeles Regional Board recognize that water quality based effluent limitations (WQBELs) derived from TMDLs for metals can be met in one of three ways: (i) Final metals WQBELs are met; or (ii) CTR total metals criteria are met instream; or (iii) CTR total metals criteria are met in the discharge (see, e.g., p. N-8 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175, describing the incorporation of the metals requirements of the Harbor Toxics TMDL into MS4 permit).

If the receiving water body is in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements. For this reason, WSPA requests that similar language be incorporated into the TMDL requirements added to the IGP, such that IGP Responsible Dischargers will be determined to be in compliance with TMDL requirements, for all constituents, if the receiving water is in compliance with TMDL requirements.

8.7 **TALs for indicator bacteria should be applied only to discharges that drain directly to the receiving waters covered by the TMDL; water quality criteria for marine waters should not be applied to discharges to freshwater bodies.**

The proposed amendments indicate that the IGP amendments for bacteria would apply to "Responsible dischargers…that are within the direct drainages to the Long Beach City Beaches, as does the Los Angeles River Estuary direct drainage, as well as those dischargers within adjacent and upstream drainages, since discharges from those adjacent and upstream drainages are ultimately conveyed to the Long Beach City Beaches and the Los Angeles River Estuary."

The proposed amendments further indicate that "the San Gabriel River, Los Angeles River, and Alamitos Bay watersheds (collectively termed "adjacent drainages") discharge not directly to, but in close proximity to" the water bodies to which the TMDLs apply.

Thus, it appears that the Los Angeles Regional Board is proposing that monitoring requirements and TALs for total coliform, fecal coliform, and enterococcus would apply to all IGP Responsible Dischargers within the watersheds of the Los Angeles River, San Gabriel River, and Alamitos Bay. However, most dischargers within these watersheds discharge to freshwater receiving water bodies (e.g., the Los Angeles and San Gabriel River), in many cases dozens of miles upstream from the TMDL water bodies, where freshwater water quality objectives for bacteria are expressed in the form of *E. coli*.

To our knowledge, such an approach has not been previously applied. For example, the Los Angeles MS4 permit applies the requirements of the same Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDLs to only those MS4 permittees who discharge directly to those water bodies; the 2012 MS4 permit does not apply marine bacteria objectives to MS4 permittees whose discharges flow to freshwater water bodies (see Table K-5 at p. K-5 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175).

It is inappropriate to require the analysis of total coliform, fecal coliform, and enterococcus for freshwater discharges, and inappropriate to apply TALs for marine water quality requirements upstream of discharges to marine water bodies. WSPA requests that the proposal be modified to clarify that TALs for marine water quality objectives only apply to direct discharges to the TMDL-specified water bodies.

We thank you for the opportunity to provide these comments. If you have any questions, please contact me at my office information below. Thank you.

Sincerely,

1415 "L" Street, Suite 600, Sacramento, California 95814
(916) 498-7755 • FAX: (916) 444-5745 • Kevin@wspa.org • www.wspa.org

STATE OF CALIFORNIA AUTO DISMANTLERS ASSOCIATION

3550 Watt Avenue, Suite 140—Sacramento, CA 95821—(916) 979-7088—Fax (916) 979-7089

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
1515 Clay Street, Suite 1400
Oakland, CA 94612.
Via email: Christine.boschen@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Attention: Pavlova Vitale
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Santa Ana Regional Water Quality Control Board
Attention: Barbara Barry
3737 Main Street, Suite 500
Riverside, CA 92501
Via email: barbara.barry@waterboards.ca.gov

San Diego Regional Water Quality Control Board
Attention: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: Comments on Draft TMDL IGP Requirements

9.1

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

On behalf of the State of California Auto Dismantlers Association (SCADA), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

SCADA represents approximately 150 small and medium sized businesses throughout California. SCADA was formed in 1959 to serve its members in the area of government relations, education, and business. SCADA members are licensed by the state Department of Motor Vehicles and take responsibility for recycling and disposing of End-of-Life Vehicles using environmentally responsible practices.

With many of the requirements proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

- Sonoma Creek

- Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

- Los Angeles River
- Long Beach City Beaches & Los Angeles River Estuary
- San Gabriel River
- Los Cerritos Channel
- Santa Clara River
- Calleguas Creek & Watershed
- Oxnard Drain #3
- Ventura River/Ventura Coastal
- Colorado Lagoon
- Santa Monica Bay
- Marina Del Rey
- Ballona Creek, Estuary & Sepulveda Channel
- Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel
- Los Angeles Area Lakes

Region 8 – Santa Ana Regional Water Quality Control Board

- San Diego Creek
- Newport Bay
- San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

- Chollas Creek
- Los Penasquitos Lagoon
- Rainbow Creek
- Shelter Island Yacht Basin
- Baby Beach in Dana Point Harbor and Shelter Island Shoreline
- Twenty Beaches and Creeks in SD Region

SCADA appreciates your consideration of the following overarching comments and recommendations.

Baseline Status for New Constituents

9.2

With a number of the TMDL monitoring requirements to be incorporated into the IGP being new, permittees will not have existing data to rely upon for assessing potential for exceedances or if additional BMPs might be warranted to prevent the exceedances. Because some of the constituents are new, IGP permittees may not have historically measured concentrations of these constituents in discharges from their facilities. As such, they are not likely going to have data to base determinations about control measures on nor will they be clear about what measures would be necessary to manage these constituents.

In this regard, SCADA recommends that all dischargers be placed at baseline for any new constituent where monitoring data is not available. Responsible dischargers, like those that are SCADA members, should have the opportunity to begin at baseline status.

Compliance Options

9.3

Consistent with its previous comments to the State Water Resources Control Board (SWRCB), SCADA strongly recommends the IGP be amended with the incorporation of the TMDL provisions to allow various options for dischargers to demonstrate compliance with overall IGP and specific TMDL requirements. Some of the regional board provisions allow for multiple options to achieve compliance if receiving water bodies are in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements based on flexibility to meet those requirements.

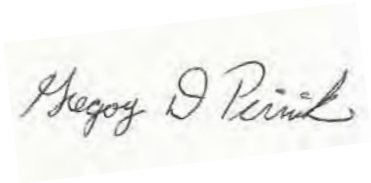
9.4 **Background Pollutant Source Demonstrations**

SCADA has long been concerned that there is not a broader review of the various background sources that contribute to background pollutant sources that are often inappropriately attributed to individual dischargers. In this regard, SCADA urges the state and regional boards to consider supporting a regional approach to addressing issues related to non-industrial pollutant sources and background pollutant source demonstrations whereby regional permittees could collaborate to conduct an assessment of the various background sources in a particular region that may be inappropriately attributed to IGP permittees. This would be of great assistance to permittees who find themselves in Level 2 with the need to bear the burden and cost of demonstrating that an exceedance(s) of a Numeric Action Level (NAL) is related to the presence of non-industrial pollutant sources or the source is tied to natural background not disturbed by industrial activities.

9.5 SCADA would also urge consideration of the possibility that establishing numeric limits does not account for pollutant loading differences among permittees. One discharger might be responsible for significant pollutant loading into the waterway annually, while another may load a de minimis amount. Under the proposed TMDL scenarios, however, they are treated equally because the limits are concentration-based rather than a mass-based limit. This assessment does nothing to account for risk and the differences among permittees who are attempting to be in compliance versus those that choose to ignore regulatory requirements in their totality.

On behalf of SCADA, I appreciate the opportunity to provide these comments. If you have questions regarding the points raised in this letter, please contact Gavin McHugh with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Sincerely,



Greg Pirnik

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

April 1, 2016

San Diego Regional Water Quality Control Board
Attn: Erica Ryan

Subject: Comments on Draft TMDL-Specific Industrial General Permit Requirements

Dear Ms. Ryan:

10.1 The California Stormwater Quality Association (CASQA) appreciates the opportunity to offer comments on the proposed incorporation of Total Maximum Daily Load (TMDL)-specific requirements into the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities (Order No. 2014-0057-DWQ), hereafter Industrial General Permit or IGP.

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.

The process of amending the Industrial General Permit to address each of the thirty-five TMDLs listed in Attachment E to the permit is multifaceted and complex. CASQA is providing comments on the following general topics, suggesting overarching principles for incorporating TMDL-based requirements into the IGP, rather than complete, detailed comments on each proposal. A limited number of illustrations of the general topics linked to specific TMDLs are provided within or following the general principles.

1. Maintain consistency with the IGP pollutant source assessment process.
2. Provide a clear statement of required actions, especially actions that go beyond the requirements of the IGP.
3. Establish how compliance with the TMDL-related requirements will be determined.
4. Establish that compliance with TMDL-related requirements is compliance with receiving water limitations for the applicable pollutant.
5. Provide options for compliance paths that may offer equivalent or more appropriate forms of control, particularly for pollutants that cannot be reasonably controlled via source controls or treatment systems, such as:
    a. Onsite volume reductions of stormwater to reduce pollutant loads.
    b. Participation in watershed plans (Water Quality Improvement Plans (WQIPs), Watershed Management Plans (WMPs), Enhanced Watershed Management Plans (EWMPs), Green Infrastructure (GI) Plans) or watershed/waterbody restoration plans.

P.O. Box 2105 Menlo Park CA 94026-2105 650.366.1042 www.casqa.org info@casqa.org

In addition to these overarching comments, CASQA provides some illustrations of how the general comments apply to some specific aspects of TMDL-specific proposals. These illustrations are attached to this letter.

10.2

1. **Maintain consistency with the IGP pollutant source assessment process.**

The IGP applies to a wide variety of industrial facilities that have different industrial pollutant sources specific to their operations. The IGP recognizes that not all potential industrial pollutants are present in the industrial operations of all facilities and requires dischargers to conduct a pollutant source assessment of the industrial operations and industrial materials and wastes (X.G). Based upon this assessment, BMPs are selected and implemented (X.H) and a monitoring program (X.I) is designed for the industrial pollutants identified.

CASQA recommends that the TMDL language follow this industrial pollutant source assessment process and limit the application of the pollutant specific TMDL-based requirements to those IGP facilities that identify the presence of the TMDL pollutant(s) in their pollutant source assessment.

10.3

2. **A clear statement of required actions, especially actions that go beyond the requirements of the IGP.**

CASQA recommends that in cases where a Basin Plan Amendment and assumptions in the TMDL staff report require actions beyond those required in the IGP to be consistent with the assumptions underlying TMDL waste load allocations, these additional requirements need to be clearly and explicitly defined in the TMDL-related language and supported in the Permit fact sheet.

CASQA recommends General Permit language, which affects a large number of dischargers, provide clear direction to dischargers and establish a common understanding of the compliance expectations for dischargers, regulators, and other stakeholders.

10.4

3. **Establish how compliance with the TMDL-related requirements and any interim milestones will be determined.**

CASQA recommends that each set of TMDL-related requirements incorporated into the IGP have a statement of how compliance will be assessed. Compliance with the waste load allocations should be based upon control measure or BMP-based approaches coupled with numeric action levels (NALs). Exceedances of TMDL-based NALs would be addressed through the Exceedance Response Action (ERA) process defined in the IGP (XII).

CASQA recommends that where the Regional Water Board establishes a TMDL-based NAL, consistent and distinct terminology should be used to distinguish it from the IGP NALs in Table 2, and to clearly articulate that the numeric criteria are modified NALs derived from TMDLs and are intended to be used in lieu of existing NALs for the purpose of IGP compliance at facilities subject to the pollutant specific TMDL.

Consistent use of this terminology would also clearly establish that the numeric criteria in the TMDL-related requirements are intended to modify NALs and are not numeric standards (actual or *defacto* numeric effluent limitations) intended to determine whether discharges have exceeded Receiving Water Limitations (Section VI).

10.5 The adoption of the TMDL-based NAL during the middle of the IGP reporting year could lead to ambiguity regarding determining compliance with the NALs for that reporting year.

CASQA recommends that the use of a new TMDL-based NAL to commence with the beginning of the IGP reporting year. Each TMDL-related requirement incorporated into the IGP needs to clearly define how compliance with the IGP will be determined for both (1) the reporting year in which the requirement is adopted, and (2) subsequent reporting years.

10.6 **4. Establish that compliance with IGP TMDL-related requirements is compliance with IGP receiving water limitations for the applicable pollutant.**

TMDL-based permit requirements are intended to satisfy Clean Water Act requirements for provisions necessary to attain water quality objectives. As is recognized in other California NPDES permits, compliance with the TMDL-based permit requirements satisfies receiving water limits for the relevant constituent.

CASQA recommends that the TMDL-related language state that compliance with these TMDL-related requirements constitutes compliance with Receiving Water Limitations of IGP Section VI.A, as well as Effluent Limitation Section V.C, with respect to the particular constituent involved.

10.7 **5. Provide alternative compliance paths for pollutants that may not reasonably be controlled via source controls or treatment systems.**

Many stormwater pollutants are not easy to control through traditional stormwater source control or treatment control practices. Stormwater programs implemented by industrial facilities can go a long way in reducing pollutant concentrations in stormwater but may not completely eliminate the pollutant or reduce the concentration to the NAL concentrations.

CASQA is concerned with the achievability of some of the TMDL-based NALs, where neither treatment control nor source control best management practices (BMPs) appear to be available, feasible, or capable of achieving the NAL concentrations. There is a larger issue of the appropriateness of these levels as NALs measured against varying and periodic stormwater discharges. Ideally, achieving these levels in-stream should be harmonized with the pollutant load reduction measures in watershed planning at the municipal level.

CASQA recommends that the Regional Water Board think broadly about how industrial facilities can achieve compliance consistent with assumptions underlying TMDL waste load allocations. One compliance path would be to allow facilities credit for volume reduction BMPs, when comparing sample results to NALs or other performance measures.

10.8 Significant load reductions can be achieved by sites that have the ability to collect, infiltrate, use stormwater and not discharge it or that can discharge to sewer systems the runoff volumes from most events, or a large proportion of runoff volumes from events. For sites that can reduce the load of pollutants, concentration TMDL-based NALs may not be appropriate.

CASQA recommends that compliance options also include the option for industrial facilities to coordinate with municipal permittees' watershed planning efforts, including WQIPs and/or watershed/waterbody restoration plans and regional BMPs that are designed to achieve load reductions at the watershed level.

10.9

A watershed level compliance option may be particularly useful where waste load allocations have not been disaggregated amongst the responsible parties (that is, a single waste load allocation is collectively applied to all permittees in a watershed, e.g., the Los Peñasquitos Lagoon Sediment TMDL assigns 2,580 tons/wet season collectively to all identified responsible parties in the watershed). A compliance option that engages responsible parties in the restoration plan for the waterbody may well achieve better outcomes than efforts to reduce pollutants at specific facilities.

The details of such a plan are difficult to develop in this format.

> *CASQA encourages the Regional Water Board to include language that allows for this option and leaves the details of such a plan to be developed and submitted for approval. To this end we suggest the following language:*
>
> > *The Regional Water Board may approve proposals to substitute an acceptable watershed-based program if it determines that participation in a watershed-based program will provide customized strategies, control measures, and BMPs that would be implemented in coordination with municipalities and/or TMDL responsible parties to achieve the required load reductions at a watershed scale. Dischargers participating in a watershed-based TMDL compliance program shall continue to implement the site specific BMPs and monitoring program in compliance with the requirements of this General Permit.*
> >
> > *The Regional Water Board may approve proposals for appropriate site-specific pollutant load reduction programs that provide load reductions credits achieved by reducing stormwater and non-stormwater runoff volume through collection and infiltration, use, or diversion to sanitary sewers.*

In closing, CASQA would like to thank the Regional Water Board for the opportunity to comment on the proposed TMDL-specific Industrial General Permit Requirements that are under consideration. Feel free to contact our Executive Director Geoff Brosseau with any questions at (650) 365-8620.

Sincerely,

Jill Bicknell, Chair
California Stormwater Quality Association

cc: Laurel Warddrip, State Water Board
CASQA Board of Directors and Executive Program Committee

Attachment: Proposed TMDL-Specific Illustrations of General Comments on Industrial General Permit Requirements

No.	TMDL	Comment
1.	• Chollas Creek Diazinon 10.11	CASQA supports the presumption that compliance with the IGP is compliance with the TMDL.
2.	• Chollas Creek Diazinon 10.12	Consistent with CASQA Comment 1, and pursuant to IGP provision (X.G.2.a.ix), clarify that only dischargers that have industrial sources of diazinon need to incorporate the TMDL-related provision into their SWPPPs and monitoring programs. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion. Given that diazinon is banned for most uses, it is unlikely to be present as an industrial pollutant source.
3.	• Chollas Creek Copper, Lead and Zinc 10.13	Consistent with CASQA Comment 1, and pursuant to IGP provision (X.G.2.a.ix), clarify that only dischargers that have an industrial source of copper, lead, or zinc need to incorporate the TMDL-related provision into their SWPPPs and monitoring programs and comply with the WQBELs. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion.
4.	• Chollas Creek Copper, Lead and Zinc 10.14	Consistent with CASQA Comment 3, CASQA recommends that the Regional Water Board incorporate the water quality based effluent limits (WQBELs) as control measures or BMPs coupled with TMDL-based numeric action levels (NALs), rather than as numeric effluent limits. CASQA notes that the Total Maximum Daily Loads for Dissolved Copper, Lead, and Zinc in Chollas Creek, Tributary to San Diego Bay Technical Report (May 30, 2007), provides the Regional Water Board with significant flexibility for incorporating WQBELs into the IGP. "*These point source discharges are subject to NPDES WDRs under Order No. 97-03- DWQ.54 NPDES WDRs shall be issued, reissued, or revised to include requirements of the WLAs described in Table 11.1. The WQBELs **may** include 1) numeric effluent limitations consistent with the WLAs; 2) a program of expanded or increasing BMPs consistent with the WLAs; **or** 3) some combination of both. …*" (emphasis added, pp 79) Based on the Technical Report the Regional Water Board is not compelled to include numeric WQBELs and may choose a BMP-based approach. This approach coupled with TMDL-based action levels would provide for increasing BMPs noted in the Technical Report. Such a path would be consistent with the approaches taken in all of the other TMDL-specific language proposals released to date (as of 3/29/2016). While NALs and proposed TMDL-based action levels are not directly enforceable, failure to conduct the Exceedance Response Actions is enforceable IGP.

No.	TMDL	Comment
5.	• Chollas Creek Copper, Lead and Zinc 10.15	Currently, Chollas Creek is undergoing a revised Water Effects Ratio (WER), which increases the allowed levels of metals per the California Toxics Rule (CTR). However, it is unclear from the draft TMDL language if the industrial dischargers would be able to apply the revised WER to their calculations once it goes into effect. CASQA recommends the inclusion of clarifying language that allows industrial dischargers to use the Chollas WER if it is incorporated into the Basin Plan.
6. 10.16	• Bacteria Project I Watersheds Bacteria Project II Watersheds	It is unclear why dates from the phase-in of the 2014 IGP are cited in the proposed TMDL language. CASQA recommends removing this language since the noted dates are past and will cause confusion.
7.	• Bacteria Project I Watersheds • Bacteria Project II Watersheds 10.17	Consistent with CASQA Comment 1, and pursuant to IGP provision (X.G.2.a.ix), only dischargers that have industrial sources of bacteria need to incorporate the TMDL-related provision into their SWPPPs and monitoring programs. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion. CASQA requests that the language in the TMDL Requirements and Monitoring and Reporting sections of the fact sheet be revised to be consistent with the IGP. ***TMDL Requirements*** *… This General Permit requires Dischargers to take actions to control their risk of Bacteria discharges associated with industrial storm water. The General Permit requires enrollees to identify ~~all~~ potential industrial sources of Bacteria ~~contributions from their site~~ (section X.G),* implement BMPs to reduce Bacteria *in industrial storm water* discharges *(section X.H), and conduct visual observations (section XI.A). …* ***Monitoring and Reporting*** *To the extent Dischargers may be contributing industrial sources of Bacteria ~~loads~~ into Bacteria impaired waters, the General Permit's existing monitoring requirements are sufficient to identify significant sources.*
8. 10.18	• Bacteria Project I Watersheds Bacteria Project II Watersheds	CASQA concurs with the assessment of the TMDL-specific language that the monthly visual observations are the appropriate monitoring for potential industrial sources of bacteria and these observations will trigger appropriate actions to reduce potential industrial sources of bacteria.

No.	TMDL	Comment
9. 10.19	• Los Peñasquitos Lagoon Sediment	CASQA supports the presumption that compliance with the IGP is compliance with TMDL-based requirements.
10. 10.20	• Los Peñasquitos Lagoon Sediment	It is unclear why the date July 14, 2015, is cited in the proposed TMDL language for updates of the SWPPP. CASQA recommends removing this language since the noted date is past, is not consistent with any of the dates in the IGP or the August 4, 2015 IGP amendment, and will cause confusion.
11. 10.21	• Los Peñasquitos Lagoon Sediment	CASQA recommends clarification that only industrial sources (i.e., industrial activities, industrial materials, or industrial wastes) of sediment are regulated by the IGP. ***TMDL Requirements*** *… The Los Peñasquitos Lagoon Sediment TMDL requires all industrial dischargers enrolled in the General Permit to identify ~~all~~ industrial sediment contributions from their facilities to the Peñasquitos watershed.*
12. 10.22	• Los Peñasquitos Lagoon Sediment	Consistent with CASQA Comment 3, CASQA recommends that the Regional Water Board incorporate the water quality based effluent limits (WQBELs) as control measures or BMPs coupled with TMDL-based numeric action levels (NALs), rather than as numeric effluent limits. The Los Peñasquitos Lagoon Sediment TMDL-based proposal appears to incorporate what is at least a virtual, if not an actual, numeric water quality based effluent limit. For example, referring to the numeric loads in Tables 2 and 3 as "WQBELs" is inappropriate. The TMDL refers to the listed loads as numeric load targets and Waste Load Allocations, and the IGP is to establish limitations consistent with the assumptions of the TMDL. The loads in Tables 2 and 3 would more appropriately be called numeric load targets. Dischargers should not be in violation of the IGP if found to be contributing (even in a small way) to these aggregate numeric loads.
13. 10.23	• Los Peñasquitos Lagoon Sediment	The TMDL language requires dischargers to determine flow rate in addition to Total Suspended Solids concentrations, to quantify sediment contributions, and assess compliance with the watershed WQBEL (or, as noted above, numeric load targets). The TMDL language proposes two methods for determining flow, the flow meter and float methods. Both of these methods are described in US EPA's *NPDES Storm Water Sampling Guidance Document*, EPA 833-8-92-001, July 1992. The guidance document includes other options for determining flow data. CASQA recommends that the Regional Water Board not limit discharger to the two methods listed in the draft TMDL language, which may not be appropriate for all facilities. Configurations of the discharge points from industrial facilities vary and those configurations may not be conducive to flow estimation. In particular, CASQA recommends that the runoff coefficient method be included in the options.

No.	TMDL	Comment
		Monitoring flow rate at the time of grab sampling will not provide the necessary information to calculate sediment load discharged from the facility during a rain event or the total load over the wet season. To obtain this information, estimates or measurements of the total flow volume is required. EPA notes in the referenced guidance document "Since accurate measurements of total flow is often impractical due to lack of equipment, total flow volumes are more commonly estimated." Total volume estimation along with concentration of the sample would allow for comparison with the WQBELs (which we suggest be called numeric load targets rather than WQBELs as noted above). Of the methods recommended in EPA's guidance document, the runoff coefficient is likely to be the most practical for industrial dischargers. The other method, which is derived from flow rate data, would require a series of flow rate samples over the course of the storm event, not a measurement made during the grab sampling event.
14.	• Los Peñasquitos Lagoon Sediment 10.24	It is unclear how an individual discharger will be able to determine compliance with the watershed interim and final WQBELs (or, better, "numeric load targets") based upon estimations of the pollutant load discharged. Further estimates conducted by different dischargers will not be comparable for since dischargers may choose to develop estimates from different rain event sizes. CASQA recommends the following changes to the Monitoring and Reporting discussion in the fact sheet. *The purpose of determining the flow rate is to estimate ~~calculate~~[12] the amount (i.e., load) of sediment being discharged from the site and to inform an industrial discharger as to the performance of the BMPs at the facility. ~~whether their discharge is in compliance with the watershed WQBEL in Table 2.~~*
15.	• Los Peñasquitos Lagoon Sediment 10.25	CASQA concurs for the need for a cooperative compliance approach for responsible parties subject to this TMDL. Given the aggregated waste load allocation and WQBELs, each party appears to be jointly and severally liable for an exceedance if they discharge any amount of sediment. A compliance option that engages responsible parties in the restoration plan for the waterbody may well achieve better outcomes than efforts to reduce pollutant at specific facilities and will reduce the enforcement exposure of all responsible parties.
16.	• Rainbow Creek Nutrients 10.26	CASQA supports the presumption that compliance with the IGP is compliance with the TMDL.

No.	TMDL	Comment
17.	10.27	Consistent with CASQA Comment 1, and pursuant to IGP provision (X.G.2.a.ix), only dischargers that have industrial sources of nutrients need to incorporate the TMDL-related provision into their SWPPPs and monitoring programs. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion. CASQA requests that the language in the TMDL Requirements section of the fact sheet be revised to be consistent with the IGP. ***TMDL Requirements*** *… This General Permit requires Dischargers to take actions to control their risk of Nutrients discharges associated with industrial storm water. Dischargers shall identify ~~all~~ potential industrial sources of Nutrients contributions from their site (section X.G), …*
18.	10.28	It is unclear why dates from the phase-in of the 2014 IGP are cited in the proposed TMDL language. CASQA recommends removing this language since the noted dates are past and will cause confusion (especially given the extension of the original filing deadlines granted by the State Water Board due to technical challenges with SMARTS).
19.	Shelter Island Yacht Basin Dissolved Copper 10.29	CASQA supports the presumption that compliance with the IGP is compliance with the TMDL.
20.	10.30	Consistent with CASQA Comment 1, and pursuant to IGP provision (X.G.2.a.ix), only dischargers that have industrial sources of copper need to incorporate the TMDL-related provision into their SWPPPs and monitoring programs. CASQA recommends clarification in the Responsible Parties section as well as the fact sheet discussion. CASQA requests that the language in the TMDL Requirements section of the fact sheet be revised to be consistent with the IGP. ***TMDL Requirements*** *… This General Permit requires Dischargers to take actions to control their risk of copper discharges associated with industrial storm water. Dischargers shall identify ~~all~~ potential industrial sources of copper contributions from their site (section X.G), …*

March 25, 2016

San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Attn: Erica Ryan Sent via email: sandiego@waterboards.ca.gov

Subject: Comment – Draft TMDL- Industrial General Permit Requirements

Dear Ms. Ryan,

11.1 Thank you for this opportunity to submit comments regarding the Draft TMDL – Industrial General Permit Requirements.

The Industrial Environmental Association (IEA) is a 33-year-old organization which includes approximately 50 manufacturing companies and a handful of well-respected consulting firms providing engineering, legal and other critical services to the manufacturing sector. Our active members include the compliance professionals whom many of California's largest manufacturers depend on to insure that these companies meet their environmental responsibilities under California law. IEA's mission, simply put, is to promote industry and protect the environment. For over 30 years, we have managed to accomplish that goal by developing collaborative relationships with government, regulatory agencies, and many other California trade associations.

Following the presentation by you and Laurie Walsh to the IEA Water Committee, IEA has prepared the following comments for your consideration:

11.2
- Perhaps our biggest concern is that the compliance date (October 22, 2018) for the interim WQBELs is extremely aggressive, and Industry is being unfairly asked to comply with this date. The outcome will be a negative impact on the level of compliance as facilities struggle to meet an unrealistic timetable. Other responsible parties (i.e., municipal copermittees) have been working on their compliance strategies since 2013. Furthermore, this date is inconsistent with the timeline established in the IGP to implement the Level 2 exceedance response actions (advanced BMPs), which at the earliest would be January 1, 2019. IEA

recommends that any advanced BMPs that need to be employed to comply with the interim WQBELs be consistent with the deployment of the Level 2 exceedance response actions.

11.3

- In the documentation provided, the list of responsible parties includes School Districts. Please confirm that until such time that the School District is designated a Phase II MS4, the TMDL is only applicable to the industrial activities subject to the Industrial General Permit.

11.4

- Please include language in the document to address how the Water Effect Ratio, which is being established for the Chollas Creek TMDL, will be incorporated into the TMDL

11.5

- The Industrial General Permit states the following:

> 68. This General Permit establishes design storm standards for all treatment control BMPs. These design standards are directly based on the standards in State Water Board Order 2000-0011 regarding Standard Urban Storm Water Mitigation Plans (SUSMPs). These design standards are generally expected to be consistent with BAT/BCT, to be protective of water quality, and to be effective for most pollutants. The standards are intended to eliminate the need for most Dischargers to further treat/control industrial storm water discharges that are unlikely to contain pollutant loadings that exceed the NALs set forth in this General Permit.

IEA recommends that this language be incorporated into the TMDL implementation document.

11.6

- The California Toxics Rule requires hardness samples to be collected in the receiving water at a location upstream of the facilities discharge. It may be more prudent for the copermittees to collect the receiving water hardness data and provide it to the industrial community. The data should be representative of the receiving water quality and collected during each qualifying storm event.

11.7

- IEA appreciates the RWQCB encouraging collaboration with the Phase I Municipalities. IEA recommends that the alternative compliance program that is established as part of the Phase I permit be available to industry. Providing for a means of alternative compliance is essential for facilities where it is impracticable or infeasible for facilities to employ structural treatment controls. Furthermore, alternative compliance is designed to yield more water quality benefit than what could have been accomplished on the development site.

11.8 IEA appreciates being able to provide these comments and appreciates the Board's consideration of them. Also, these comments are focused on the implementation of these TMDLs in the context of the SWRCB's storm water Industrial General Permit and do not necessarily represent our views on how they may be incorporated into other

permits, such as the SWRCB's storm water Construction General Permit. As such, IEA would also like the opportunity to comment on the implementation of the TMDLs into other statewide and regional permits.

Thank you for your consideration of our concerns.

Sincerely,

Jack Monger
Executive Director

1330 Orange Avenue, Suite 100 • Coronado, California 92118 • (619) 522-9000
www.iea-sd.com

California Council for Environmental and Economic Balance
101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
1515 Clay Street, Suite 1400
Oakland, CA 94612.
Via email: Christine.boschen@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Attention: Pavlova Vitale
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Santa Ana Regional Water Quality Control Board
Attention: Barbara Barry
3737 Main Street, Suite 500
Riverside, CA 92501
Via email: barbara.barry@waterboards.ca.gov

San Diego Regional Water Quality Control Board
Attention: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: Comments on Draft TMDL IGP Requirements

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

12.1 On behalf of the California Council for Environmental and Economic Balance (CCEEB), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

With many of the requirements proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

- Sonoma Creek
- Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

- Los Angeles River
- Long Beach City Beaches & Los Angeles River Estuary
- San Gabriel River
- Los Cerritos Channel
- Santa Clara River
- Calleguas Creek & Watershed
- Oxnard Drain #3
- Ventura River/Ventura Coastal
- Colorado Lagoon
- Santa Monica Bay
- Marina Del Rey
- Ballona Creek, Estuary & Sepulveda Channel
- Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel
- Los Angeles Area Lakes

Region 8 – Santa Ana Regional Water Quality Control Board

- San Diego Creek
- Newport Bay
- San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

- Chollas Creek
- Los Penasquitos Lagoon
- Rainbow Creek
- Shelter Island Yacht Basin
- Baby Beach in Dana Point Harbor and Shelter Island Shoreline
- Twenty Beaches and Creeks in SD Region

CCEEB appreciates the consideration of the following key points as overarching comments and recommendations with specific examples of TMDL sector-specific permit requirements that speak to the core issues raised.

12.2 **Baseline Status for New Constituents**

Under proposals like that of the Los Angeles Regional Board, responsible dischargers would be placed in the Level 1 compliance status four months after the TMDL requirements are incorporated into the IGP. This is seemingly in conflict with the provisions in the IGP (p.49) that provide that at the beginning of NOI coverage all dischargers will be at baseline status for all parameters. Currently, the IGP provides that a discharger's status is only subject to change if sampling results for a particular parameter demonstrate an NAL exceedance.

Given that a number of the TMDL monitoring requirements to be incorporated into the IGP are new, responsible dischargers are unlikely to have data upon which to rely for assessing whether they are likely to have an exceedance or if additional BMPs might be required to prevent the exceedances. As an example, dischargers within the Los Angeles River watershed will be subject to requirements for metals (cadmium, copper, lead, zinc, selenium), nitrogen compounds (ammonia; applicable to specific SIC codes), and indicator bacteria. To date, IGP permittees have typically not measured concentrations of these constituents in discharges from their facilities. As such, they do not have data to guide whether control measures would be needed for these constituents much less would they know what control measures to utilize.

CCEEB recommends that all dischargers be placed at baseline for any new constituent where monitoring data is not available.

12.3 **Options for Demonstrating Compliance**

CCEEB strongly recommends the IGP be amended in conjunction with the incorporation of the TMDL provisions to provide multiple options for dischargers to demonstrate compliance with TMDL requirements. Recent permit requirements adopted by the Los Angeles Regional Board, as an example, acknowledge that water quality based effluent limitations (WQBELs) derived from TMDLs for metals can be met in one of a few ways and result in compliance. Similarly, if receiving water bodies are in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements based on flexibility to meet those requirements.

12.4 **Non-Industrial & Natural Background Pollutant Source Demonstrations, Loading Differences**

CCEEB urges the SWRCB to consider a regional approach to addressing issues related to non-industrial pollutant sources and natural background pollutant source demonstrations. Currently, the IGP allows Level 2 dischargers to demonstrate that the exceedance of a Numeric Action Level (NAL) is related to the presence of non-industrial pollutant sources or the source is tied to natural background not disturbed by industrial activities. In some cases,

regional boards have officially indicated industrial sources are not expected to be significant sources – if sources at all – of some pollutants such as bacteria (LA Regional Board) or of metals in storm water that can be a result of atmospheric deposition, and more. In this regard, exceedances of such constituents should not be assumed to be the result of industrial activity and yet it is the industrial community that bears the technical burden and associated costs of demonstrating the non-industrial or natural background source.

A solution to this issue may be to explicitly allow regional permittees to collaborate for the purpose of conducting studies and making regional demonstrations, as needed.

Additionally, CCEEB urges consideration of the fact that establishing numeric limits does not account for pollutant loading differences among permittees. One discharger might be responsible for loading one pound of copper into the waterway annually, while another may load a ton; however, under these TMDL scenarios they are treated equally because the limits are a concentration-based limit not a mass-based limit. While equal, it is not adjusted for risk.

As an example, the Orange County Coastkeeper commissioned a study[1] several years ago regarding copper loading into Newport Bay. The study broke down the loading by drainage basin. On a basin-by-basin total there were differences, but when evaluated by acreage, the highest loading was from the smallest drainage basin. This is a result of drainage that had a large boat yard that re-painted ship hulls within the watershed. They were allowing the copper-laden hull paint that was removed to be subsequently washed into the Bay. To level the playing field and address the impacts of the largest pollutant discharges, there should be consideration of working differentially with industries that load metals at higher rates than others by offering grants for treatment and comprehensive technical assistance to ensure the removal of as much metals as opposed to implementing a TMDL.

Metals Calculations

12.5 Specific to calculations for metals, CCEEB recommends the state and regional boards implement the metals TMDLs proposed within the IGP upon considering the water effect ratio (WER) for copper and recalculated criteria for lead.

The Los Angeles Regional Board, in particular, adopted site-specific objectives (SSOs) for copper and lead (Order No. R15-004). The SSO for copper was based upon an extensive WER study[2] that took into account robust sample collection and toxicity testing. The study identified that copper was less toxic in ambient water in the Los Angeles River and its tributaries than in the laboratory water used to establish the default water quality criteria of the California Toxics Rule (CTR). Additionally, the study found wet weather conditions had lower potential to cause toxicity than dry weather conditions. In terms of lead, the SSO was based

[1] Orange County Coastkeeper, Lower Newport Bay Copper/Metals Marina Study, July 2007 http://d3n8a8pro7vhmx.cloudfront.net/coastkeeper/pages/47/attachments/original/1399483698/FinalCu_Report_0408.pdf?1399483698

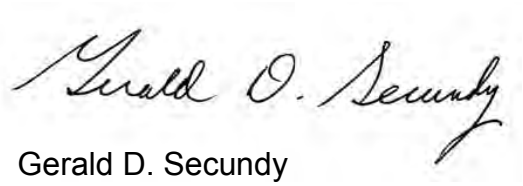
[2] Larry Walker Associations, Final Report – Los Angeles River Copper Water-Effect Ratio (WER) Study, June 2008 http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/77_New/Attachment%20A%20-%20FINAL%20LA%20River%20Cu%20WER%20Report%20-%206-3-08.pdf

upon a study that incorporated updated toxicity data for lead and contemplated species present in the Los Angeles River watershed. Both SSOs indicated that the default water quality criteria of the CTR, which had been used to develop the original Metals TMDLs for the Los Angeles River, were conservative, and that higher copper and lead concentrations could be present in waters and provide an equivalent level of protection of aquatic species.

While the SSOs for lead and copper have seemingly not been approved by the State Water Resources Control Board, the Office of Administrative Law, or USEPA as of yet, the proposed IGP amendments do not reference these SSOs. As a matter of fact, the proposed IGP amendments in the Los Angeles Regional Board proposals provide WER default values of 1.0 unless site-specific WERs are approved with the IGPS amendments indicating no site-specific values have been approved for industrial storm water discharges. The language seems to suggest that WER(s) must be approved for individual discharges or types of discharges; however, the Los Angeles Regional Board's adopting resolution for these SSOs indicated that the SSO study "was to determine WERs for copper that would apply to all sources…" Because the SSOs developed by the WER and recalculation studies apply to receiving waters for both wet and dry weather conditions, the IGP TMDL requirements should be written to recognize these studies upon final approval and to facilitate the incorporation of the applicable SSOs for copper and lead into the IGP.

On behalf of CCEEB, I appreciate the opportunity to provide these comments. If you have questions regarding the points raised in this letter, please contact CCEEB Water, Chemistry and Waste Project Manager Dawn Koepke with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Sincerely,



Gerald D. Secundy
CCEEB President

March 31, 2016

San Diego Regional Water Quality Control Board
Attn: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA92108

Re: Comments for Draft TMDL-Specific Requirements for SWRCB's Industrial General Storm Water Permit, Chollas Creek Metals

Dear Ms. Ryan,

13.1 On behalf of San Diego Coastkeeper ("Coastkeeper") and Coastal Environmental Rights Foundation ("CERF"), we thank you for the opportunity to comment on proposed Waste Load Allocation for the Chollas Creek Metals TMDL for incorporation into the General Permit for Stormwater Associated with Industrial Activities ("Permit" or "General Permit"). Coastkeeper and CERF support the importation of the numeric Waste Load Allocation ("WLA") from the
13.2 TMDL directly into the General Permit. However, the proposed incorporation of the WLA creates a compliance schedule that violates the Clean Water Act and impermissibly relaxes water quality based effluent limitations ("WQBELs") contained in the current Permit. For these reasons Coastkeeper and CERF request that staff revisit the proposed WLA incorporation with a numeric effluent limitation consistent with the current concentration-based Permit's WQBELs.

I. Statutory Background

A. NPDES Permit Program WQBELs

Permitting agencies must ensure that all NPDES permits that authorize discharges of storm water associated with industrial activity include both technology based ("TBELs") and water quality based ("WQBELs") water quality protections of the Clean Water Act. (*See* 33 U.S.C. §§ 1311(b)(1)(A)-(C), 1342(a)(1), 1342(b)(1), 1342(b)(2), 1342(p)(3)(A).), *see also Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163-65.) The water quality protections that must be adopted in all NPDES permits include:

(1) water quality based effluent limitations ("WQBELs") that require strict compliance with Water Quality Standards, and that implement Waste Load Allocations ("WLAs") in any applicable TMDLs. (33 U.S.C. §§ 1311(b)(1)(A)-(C), 1318(a)(A), 1342(a)(1), 1342(b)(1)(A), 1342(p)(3)(A).). These effluent limitations are defined as "any restriction imposed…on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States"…" 33 USC § 1362(11).

(2) requirements to monitor discharges to ensure that dischargers comply with water quality based pollution limits. 40 C.F.R. § 122.44(d)(1), 122.44(i), and 122.48.)

13.2 cont.

B. TMDL Incorporation into NPDES Permits.

A TMDL is the total load of a particular pollutant that a water body can sustain, on a daily basis, and still ensure that the water quality standards applicable to that water body for the same pollutant can be met. (*See* 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.2(i).) Each TMDL must be "established at a level necessary to implement the applicable water quality standards" and must include the individual WLAs for point sources discharging into the water body, as well as load allocations for non-point sources and natural background sources. (33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.2(i).) WLAs are "[t]he portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution." (40 C.F.R. § 130.2(h).) Thus a discharge of pollutants in excess of a WLA by definition contributes to exceedances of Water Quality Standards and impairment in the receiving water.

The agency establishing a TMDL may include "an implementation plan as a formal statement of how the level of that pollutant can and will be brought down to or be kept under the TMDL." (*Meiburg*, 296 F.3d at 1030.) TMDLs developed by California's water boards must include a program of implementation for achieving water quality objectives, and all TMDLs must be incorporated into Basin Plans with an implementation schedule. (*See* Memorandum from William R. Attwater, Chief Counsel, State Water Resources Control Board, to Gerard J. Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board, March 1, 1999).) The program of implementation consists of a "description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private," a "time schedule for the actions to be taken," and a "description of surveillance to be undertaken to determine compliance with objectives." (Water Code § 13242.)

TMDLs are not self-executing, but must be implemented "by adjusting pollutant discharge requirements in … NPDES permits." (*City of Arcadia*, 265 F.Supp.2d at 1144.) Once a TMDL with WLAs is developed, the permitting agency *must* incorporate the WLAs into applicable NPDES permits as WQBELs. (40 C.F.R. § 122.44(d)(1)(vii)(B); 40 C.F.R. § 130.2(h). In doing so, the permitting agency must ensure that the effluent limits of the NPDES permit "are consistent with the assumptions and requirements of any available wasteload allocation [WLA] for the discharge" (40 C.F.R. § 122.44(d)(1)(vii)(B).)

An NPDES permit may only include a compliance schedule when such schedules are expressly authorized by the state's water quality control plans. Star-Kist Caribe, 1989 EPA App. LEXIS, at *7; 33 U.S.C. § 1313(e)(3)(F); *see also* State Water Resources Control Board Resolution No. 2008-0025, Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits ("State Board Policy") ("states can include compliance schedules in NPDES permits when the applicable water quality standards or the states' implementing regulations authorize compliance schedules").

The Inland Surface Water Plan ("ISWP"), which implements the California Toxics Rule ("CTR"), authorized 10-year compliance schedules for achieving CTR criteria. The ISWP included a specific sunset provision where no NPDES compliance schedules for CTR-based

13.2 cont.

limits could extend beyond May 18, 2010. See ISWP at 19. Nor were compliance schedules authorized to be included in NPDES permits after that date. Id. Thus entities were required to achieve compliance with WQS based on CTR criteria no later than May 18, 2010. Id. On May 1, 2001, EPA approved the ISWP-authorized 10-year compliance schedule. See May 1, 2001 EPA Letter re: Implementation of Toxics Standards for Inland Surface Waters. While the ISWP also initially provided a separate compliance schedule for development of CTR based TMDLs over a 20-year period, in its October 23, 2006 letter, EPA expressly disapproved this extended compliance schedule. See October 23, 2006 EPA Letter re: California SIP, Compliance Schedule Provisions. Given EPA's actions on the ISWP, the State Board stated that May 18, 2010 was the final compliance deadline to meet CTR criteria reasoning: "the effect of the CTR's sunset provision was to 'limit the longest time period for compliance to ten years after the effective date of the CTR,' which is May 18, 2010." State Board Memo dated September 15, 2006 Re: CTR Compliance Schedules. In addition, the State Board Policy confirms that the ISWP is the authority for including compliance schedules in NPDES permits for achieving compliance with CTR-based limits, and that those schedules cannot extend beyond May 18, 2010. See State Board Resolution No. 2008-0025 at 4.

Thus any possible compliance schedule for copper, cadmium, lead, zinc, mercury, or chromium, all pollutants regulated under CTR, expired over five years ago.

Furthermore, even if this strict limitation on CTR-based limits was inapplicable (which it is not), before a compliance schedule may be included in an NPDES permit the permitting authority must determine that allowing the schedule is "appropriate." *See* 40 C.F.R. §122.47(a). Factors determining the appropriateness of including a compliance schedule in an NPDES permit include:

- how long the discharger has already had to meet the water-quality based effluent limits under prior permits:
- the extent to which the discharger has made good faith efforts to comply:
- whether there is any need for modifications to treatment facilities, operations, or measures to achieve compliance;
- whether the discharger would be expected to use the same treatment facilities; operations, or the measure to meet the limits as it would have used to meet its prior permit terms.

See May 10, 2007 EPA Memo RE: Compliance Schedules for Water Quality Based Effluent Limitations in NPDES Permits, ¶ 8 (citing 40 C.F.R. § 122.47(a)).

The State Board Policy establishes uniform provisions authorizing compliance schedules in NPDES Permits. The policy provides:

> Except as provided in paragraph 3 of this Policy, this Policy shall apply to all NPDES permits adopted by the Water Boards that must comply with Clean Water Act section 301(b)(1)(c) and that are modified or reissued after the effective date

13.2 cont.

> of the Policy. This Policy authorizes a Water Board to include a compliance schedule in a permit for an existing discharger to implement a new, revised, or newly interpreted water quality objective or criterion in a water quality standard that results in a permit limitation more stringent than the limitation previously imposed where the Water Board determines that the discharger has complied with the application requirements in paragraph 4 of this Policy and has demonstrated that the discharger needs additional time to implement actions to comply with the limitation. These actions may include, but are not limited to, designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to comply with a permit limitation specified to implement the standard. A "permit limitation more stringent than the limitation previously imposed" includes a new permit limitation implementing a new, revised, or newly interpreted water quality objective or criterion in a water quality standard for a pollutant that was not limited in prior permits.

For the San Diego region, the State Board Policy states that a "new, revised, or newly interpreted water quality objective or criterion in a water quality standard" is a water quality objective or criterion that is "adopted, revised, or newly interpreted" after November 9, 2005.[1] The State Board Policy defines "newly interpreted water quality objective or criterion in a water quality standard" as a

> narrative water quality objective or criterion that, when interpreted during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger. Newly interpreted water quality objective or criterion in a water quality standard also includes a numeric or narrative water quality objective or criterion that is implemented with a permit limitation with which the discharger cannot comply because the pollutant was newly detected in the discharger's effluent due to new analytical techniques that were developed after the prior permit was issued.

State Board Resolution No. 2008-0025 at 3-4.

13.3

C. The Clean Water Act Requires that Permitting Agencies Include Sufficient Monitoring

The Clean Water Act requires the permitting agency to adopt monitoring requirements in NPDES permits that will produce the information necessary to make efficient compliance determinations. (*Sierra Club*, 813 F.2d at 1491-92; *County of Los Angeles*, 725 F.3d at 1208-1209 (discussing the necessity and purpose of self-monitoring in context of general NPDES permits).)

[1] 2008-0025 page 3.

13.3 cont.

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits. (*See* 40 C.F.R. §§ 122.44(i), 122.48.) Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate." (40 C.F.R. § 122.44(a)(1)(i)-(iii).) Thus, the State Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation. (*See County of Los Angeles*, 725 F.3d at 1207.)

II. General Industrial Permit Requirements

A. Receiving Water Limitations

As stated in the Permit, "Pursuant to CWA section 301(b)(1)(C) and Water Code section 13377, this General Permit requires compliance with receiving water limitations based on water quality standards." (Fact Sheet at 22.) The Permit does so via an effluent limitation:

Dischargers shall ensure that industrial discharges and authorized NSWD do not cause or contribute to an exceedance of any applicable water quality standard in any affected receiving water. (Permit at 21.)

Thus, consistent with the Clean Water Act's mandate, a stand-alone requirement of the Permit is a prohibition on discharges that cause or contribute to receiving water impairment.

B. Water Quality Based Corrective Actions

Where a discharger violates the prohibition on causing or contributing to receiving water impairment, the Permit provides a program intended to bring the discharger into compliance. Where Discharger is notified by a Regional Water Board or who determines the discharge is causing or contributing to an exceedance of a water quality standard, it must comply with the Water Quality Based Corrective Actions found in Section XX.B of the General Permit. Specifically, a discharger must:

> a. Conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the 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 reduce or prevent 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). (Permit at 67.)

13.4

C. Monitoring

The monitoring program implemented in the General Industrial Permit is intended to evaluate BMPs rather than establish compliance with Water Quality Standards. *See* Permit at pp. 24, 47, 57 ("The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits.") Responding to environmental commenters requesting quantitative sampling sufficient to evaluate compliance with receiving water limitations, the State Board pointed to the complexities relating to monitoring storm water run-off:

> Unlike continuous point source discharges (e.g., publicly owned treatment works), storm water discharges are variable in intensity and duration. The concentration of pollutants discharged at any one time is dependent on many complex variables…Multiple samples would need to be collected over many hours. To determine the pollutant mass loading, the storm water discharge flow must also be measured each time a sample is collected. For a quantitative monitoring approach to yield useful pollutant loading information, the installation of automatic sampling devices and flow meters at each discharge location would usually be necessary… In addition, qualified individuals would be needed to conduct the monitoring procedures, and to handle and maintain flow meters and automatic samplers are needed. (Fact Sheet at 48.)

Thus the Permit requires visual observations, combined with sampling for a limited set of parameters, four times per year (maximum). (Permit at 39.)

D. TMDLs

While acknowledging that all NPDES permits must include effluent limitations consistent with the WLAs in TMDLs, the General Permit deferred including those limitations when adopted, and instead required submission of proposed WLAs from the RWQCBs. (Fact Sheet at p. 23-26.) The State Board explained:

> To date, the relevant waste load allocations assigned to industrial storm water discharges are not directly translatable to effluent limitations. Many of the TMDLs lack sufficient

13.4 cont.

> facility specific information, discharge characterization data, implementation requirements, and compliance monitoring requirements. Accordingly, an analysis of each TMDL applicable to industrial storm water discharges must be performed to determine if it is appropriate to translate the waste load allocation into a numeric effluent limit, or if the effluent limit is to be expressed narratively using a BMP approach.

The State Board goes on to explain that the monitoring program in the General Permit is inadequate to evaluate TMDL compliance:

> This method of monitoring may not appropriately serve as TMDL compliance sampling since grab samples are only representative of the particular moment in time when the sample was taken. Since storm water is highly variable, four grab samples per year may not provide sufficient confidence that the effluent limit is being met. An alternative monitoring scheme may be necessary to determine the facility's impact on the receiving water and to determine compliance with any assigned effluent limits. Questions concerning whether sampling results should be grab samples, composite samples, flow-weighted averaged over all drainage areas, etc. cannot be determined for each concentration-based TMDL without a more thorough analysis.

Additionally, monitoring and assessment requirements must be developed for all of the TMDLs to determine compliance with or progress towards meeting TMDL requirements. The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits. (Fact Sheet at pp. 47-48.)

As a result, the State Board included in the General Permit specific requirements for the RWQCB's submissions of WLAs to be incorporated into the General Permit:

> The Regional Water Boards will submit to the State Water Board the following information for each of the TMDLs listed in Attachment E:
>
> - Proposed TMDL-specific permit requirements, including any applicable effluent limitations, implementation timelines, additional monitoring requirements, reporting requirements, an explanation of how an exceedance of an effluent limitation or a violation of the TMDL will be determined, and required deliverables consistent with the TMDL(s);
>
> - An explanation of how the proposed TMDL-specific permit requirements, timelines, and deliverables are consistent with the assumptions and requirements of applicable waste load allocation(s) to implement the TMDL(s);
>
> - Where a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable waste load allocations; and

 Where concentration-based monitoring is required, an explanation of how the required monitoring, reporting and calculation methodology for an exceedance of an effluent limitation or a violation of the TMDL(s) will be sufficient to demonstrate compliance with the TMDL(s). (Fact Sheet at p. 25.)

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits.[2] Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate."[3] Thus, the State Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation.[4]

13.5

III. Chollas Creek Metals TMDL

As required by the General Permit, San Diego Regional Board Staff has prepared a draft WLA for Chollas Creek metals for consideration by the State Board for incorporation into the General Permit. Unfortunately, rather than requiring immediate compliance with numeric effluent limitations equivalent to CTR water quality objectives, the proposed WLAs allow numeric CTR water quality objectives to be exceeded for at least twelve years after the WLAs are incorporated into the Permit. The proposed action is illegal because it includes a compliance schedule for CTR-based limits extending beyond May 18, 2010.

Furthermore, notwithstanding the prohibition on CTR compliance schedules beyond May 1, 2010, incorporating a twelve year compliance schedule is illegal and inappropriate because 1) the proposed interim WQBELs allow dischargers to cause or contribute to water quality standard exceedances; 2) the proposed WQBELs are not implementing new, revised, or newly interpreted water quality objectives or criteria; 3) after considering the appropriate regulatory factors, allowing the schedule is not appropriate; 4) and because the reporting requirement for TMDL constituents is inappropriate and insufficient to assess compliance with the Clean Water Act.

13.6

IV. Conclusion

For the above listed reasons, Coastkeeper and CERF request San Diego Regional Board staff revisit the proposed WLA for incorporation into the Permit, require immediate compliance with CTR-based numeric criteria, and require more frequent reporting of TMDL constituent monitoring results.

---

[2] *See* 40 C.F.R. §§ 122.44(i), 122.48.
[3] 40 C.F.R. § 122.44(a)(1)(i)-(iii).
[4] *See County of Los Angeles*, 725 F.3d at 1207.

We thank you for the opportunity to comment on the Chollas Creek WLA incorporation draft. Please feel free to contact me with any questions or for further clarification.

Sincerely,

Matt O'Malley
Legal and Policy Director
San Diego Coastkeeper

Livia Borak
Legal Advisor
Coastal Environmental Rights Foundation

Brian Felten
Student Attorney, Coastkeeper
Aquatic Ecologist

SAN DIEGO COASTKEEPER

March 31, 2016

San Diego Regional Water Quality Control Board
Attn: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA92108

Re: Comments for Draft TMDL-Specific Requirements for SWRCB's Industrial General Storm Water Permit, Indicator Bacteria Project I

Ms. Ryan,

14.1

On behalf of San Diego Coastkeeper ("Coastkeeper"), we thank you for the opportunity to comment on the proposed monitoring requirements for the Bacteria Project I Total Maximum Daily Load for incorporation into the General Permit for Stormwater Associated with Industrial Activities ("General Permit"). The proposed monitoring requirements do not comply with state and federal law, are inappropriate, and insufficient to determine whether industrial dischargers ("Dischargers") are causing or contributing to Bacteria water quality standard exceedances in Bacteria impaired receiving waters. For these reasons Coastkeeper requests that staff revisit the proposed monitoring requirements and require quantitative storm water sample analysis for Bacteria for discharges into Bacteria impaired receiving waters.

I. Statutory Background

A. NPDES Permit Program WQBELs

Permitting agencies must ensure that all NPDES permits that authorize discharges of storm water associated with industrial activity include both technology based ("TBELs") and water quality based ("WQBELs") water quality protections of the Clean Water Act. (*See* 33 U.S.C. §§ 1311(b)(1)(A)-(C), 1342(a)(1), 1342(b)(1), 1342(b)(2), 1342(p)(3)(A).), *see also Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163-65.) The water quality protections that must be adopted in all NPDES permits include:

(1) water quality based effluent limitations ("WQBELs") that require strict compliance with Water Quality Standards, and that implement Waste Load Allocations ("WLAs") in any applicable TMDLs. (33 U.S.C. §§ 1311(b)(1)(A)-(C), 1318(a)(A), 1342(a)(1), 1342(b)(1)(A), 1342(p)(3)(A).). These effluent limitations are defined as "any restriction imposed…on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States"…" 33 USC § 1362(11).

(2) requirements to monitor discharges to ensure that dischargers comply with water quality based pollution limits. 40 C.F.R. § 122.44(d)(1), 122.44(i), and 122.48.)

2825 Dewey Road #200
San Diego, CA, 92106
619.758.7743
www.sdcoastkeeper.org

B. The Clean Water Act Requires that Permitting Agencies Include Sufficient Monitoring

The Clean Water Act requires the permitting agency to adopt monitoring requirements in NPDES permits that will produce the information necessary to make efficient compliance determinations. (*Sierra Club*, 813 F.2d at 1491-92; *County of Los Angeles*, 725 F.3d at 1208-1209 (discussing the necessity and purpose of self-monitoring in context of general NPDES permits).)

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits. (*See* 40 C.F.R. §§ 122.44(i), 122.48.) Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate." (40 C.F.R. § 122.44(a)(1)(i)-(iii).) Thus, the State Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation. (*See County of Los Angeles*, 725 F.3d at 1207.)

14.2

II. General Industrial Permit Requirements

A. Receiving Water Limitations

As stated in the Permit, "Pursuant to CWA section 301(b)(1)(C) and Water Code section 13377, this General Permit requires compliance with receiving water limitations based on water quality standards." (Fact Sheet at 22.) The Permit does so via an effluent limitation:

Dischargers shall ensure that industrial discharges and authorized NSWD do not cause or contribute to an exceedance of any applicable water quality standard in any affected receiving water. (Permit at 21.)

Thus, consistent with the Clean Water Act's mandate, a stand-alone requirement of the Permit is a prohibition on discharges that cause or contribute to receiving water impairment.

B. Water Quality Based Corrective Actions

Where a discharger violates the prohibition on causing or contributing to receiving water impairment, the Permit provides a program intended to bring the discharger into compliance. Where Discharger is notified by a Regional Water Board or who determines the discharge is causing or contributing to an exceedance of a water quality standard, it must comply with the Water Quality Based Corrective Actions found in Section XX.B of this General Permit:

a. Conduct a facility evaluation to identify pollutant source(s) within the facility

14.2 cont.

that are associated with industrial activity and whether the 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 reduce or prevent 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). (Permit at 67.)

14.3

C. Monitoring

The monitoring program implemented in the General Industrial Permit is intended to evaluate BMPs rather than establish compliance with Water Quality Standards. *See* Permit at pp. 24, 47, 57 ("The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits.") Responding to environmental commenters requesting quantitative sampling sufficient to evaluate compliance with receiving water limitations, the State Board pointed to the complexities relating to monitoring storm water run-off:

> Unlike continuous point source discharges (e.g., publicly owned treatment works), storm water discharges are variable in intensity and duration. The concentration of pollutants discharged at any one time is dependent on many complex variables…Multiple samples would need to be collected over many hours. To determine the pollutant mass loading, the storm water discharge flow must also be measured each time a sample is collected. For a quantitative monitoring approach to yield useful pollutant loading information, the installation of automatic sampling devices and flow meters at each discharge location would usually be necessary… In addition, qualified individuals would be needed to conduct the monitoring procedures, and to handle and maintain flow meters and automatic samplers are needed. (Fact Sheet at 48.)

Thus the Permit requires visual observations, combined with sampling for a limited set of parameters, four times per year (maximum). (Permit at 39.)

Additionally, existing Dischargers must analyze collected storm water samples for "[a]dditional applicable industrial parameters related to receiving waters with 303(d)

14.3 cont.

listed impairments or approved TMDLs based on the assessment in Section X.G.2.a.ix." (General Permit Section XI.B.6.e.). Section X.G.2.a.ix requires Dischargers to provide a "narrative assessment" of industrial activity areas that may contain "industrial pollutants" related to 303(d) constituents "that may be causing or contributing" to a water quality standard exceedance. Conflating these sections results in a cursory, narrative assessment of pollutant sources, rather than a definitive determination whether a Discharger is causing or contributing to a Bacteria water quality standard exceedance.

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits.[1] Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate."[2] Thus, the State Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation.[3]

D. TMDLS

The State Board explains that the monitoring program in the General Permit is inadequate to evaluate TMDL compliance:

> This method of monitoring may not appropriately serve as TMDL compliance sampling since grab samples are only representative of the particular moment in time when the sample was taken. Since storm water is highly variable, four grab samples per year may not provide sufficient confidence that the effluent limit is being met. An alternative monitoring scheme may be necessary to determine the facility's impact on the receiving water and to determine compliance with any assigned effluent limits. Questions concerning whether sampling results should be grab samples, composite samples, flow-weighted averaged over all drainage areas, etc. cannot be determined for each concentration-based TMDL without a more thorough analysis.

Additionally, monitoring and assessment requirements must be developed for all of the TMDLs to determine compliance with or progress towards meeting TMDL requirements. The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits. (Fact Sheet at pp. 47-48.)

---

[1] *See* 40 C.F.R. §§ 122.44(i), 122.48.
[2] 40 C.F.R. § 122.44(a)(1)(i)-(iii).
[3] *See County of Los Angeles*, 725 F.3d at 1207.

14.3 cont.

III. Bacteria Project I Total Maximum Daily Load (Bacteria TMDL)

The Bacteria TMDL identifies "industrial and commercial land uses" as a "potential source of Bacteria discharge to surface waters." (Bacteria TMDL Implementation Discussion at 2). Bacteria sources at industrial facilities may include "waste management and disposal areas ... septic systems or sewer lines and connections which may result in discharges of wastewater from a facility into the MS4." (Bacteria TMDL Implementation Discussion at 2). When determining waste load allocations for bacteria, the San Diego Regional Board includes industrial land use categories in the MS4 land use category, stating that bacteria discharges will be controlled through Municipal and Caltrans MS4 NPDES permits, and municipal land use ordinances. (Bacteria TMDL Implementation Discussion at 2). Other than Municipal, and Caltrans MS4 operators, no other Dischargers were assigned a WLA for bacteria. (Bacteria TMDL Implementation Discussion at 2). However, Dischargers are "responsible for demonstrating that their discharges do not cause or contribute" to Bacteria exceedances in Bacteria impaired receiving waters. (Bacteria TMDL Implementation Discussion at 3).

Unfortunately, rather than requiring Dischargers to provide storm water sampling analysis data for TMDL constituents — demonstrating that the Discharger is not causing or contributing to Bacteria exceedances — the draft as proposed is relies on existing General Permit Requirements, because, "Dischargers enrolled in the General Permit are not expected to cause or contribute to an exceedance of Bacteria in Bacteria impaired waters." (Bacteria TMDL Implementation Discussion at 3). The Bacteria TMDL states the "General Permit's existing monitoring requirements are sufficient to identify significant [bacteria] sources;" relying on visual observations, good housekeeping, wastewater infrastructure maintenance requirements; and discharger performed "narrative assessments." (Bacteria TMDL Implementation Discussion at 3; *see also,* General Permit Section X.G.2.a). The proposed TMDL compliance measures for the Bacteria TMDL are illegal and inappropriate because 1) the proposed monitoring requirements will not produce information necessary to make efficient TMDL compliance determinations, and 2) the General Permit's existing monitoring program is inadequate to determine whether a Discharger is causing or contributing to receiving water impairment for Bacteria.

14.4

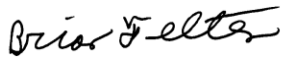
IV. Conclusion

For the above listed reasons, Coastkeeper requests San Diego Regional Board staff revisit the proposed Bacteria TMDL monitoring requirements for incorporation into the General Permit and require quantitative storm water sample analysis for Bacteria for discharges into Bacteria impaired receiving waters.

We thank you for the opportunity to comment on the Bacteria TMDL incorporation draft. Please feel free to contact me with any questions or for further clarification.

Sincerely,

Matt O'Malley
Legal & Policy Director



Brian Felten
Student Attorney
Aquatic Ecologist

SAN DIEGO COASTKEEPER

March 31, 2016

San Diego Regional Water Quality Control Board
Attn: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA92108

Re: Comments for Draft TMDL-Specific Requirements for SWRCB's Industrial Storm Water Permit, Los Penasquitos Lagoon Sediment

Ms. Ryan,

15.1 On behalf of San Diego Coastkeeper ("Coastkeeper"), we thank you for the opportunity to comment on proposed Waste Load Allocation for the Los Penasquitos Sediment TMDL for incorporation into the General Permit for Stormwater Associated with Industrial Activities ("Permit" or "General Permit"). Coastkeeper supports the importation of the numeric Waste Load Allocation ("WLA") from the TMDL directly into the General Permit. 15.2 However, the proposed incorporation of the WLA is illegal and inappropriate because 1) the proposed concentration-based monitoring is not sufficient to determine whether Dischargers are complying with the TMDL, 2) the proposed compliance schedule violates federal regulatory requirements, and 3) the proposed monitoring requirements are ambiguous and create uncertainty regarding whether Dischargers are complying with the watershed-based WLA.

15.3 For these reasons, Coastkeeper requests that Regional Board staff 1) incorporate a stand-alone numeric effluent limitation consistent with the concentration based WLA specific to Industrial Dischargers into its draft IGP WLA, 2) require flow rate determination 15.4 during all qualifying storm events, and 3) revise the proposed compliance schedule to conform with federal regulatory requirements. 15.5

15.1 -15.5 cont.

I. Statutory Background

A. NPDES Permit Program WQBELs

Permitting agencies must ensure that all NPDES permits that authorize discharges of storm water associated with industrial activity include both technology based ("TBELs") and water quality based ("WQBELs") water quality protections of the Clean Water Act. (*See* 33 U.S.C. §§ 1311(b)(1)(A)-(C), 1342(a)(1), 1342(b)(1), 1342(b)(2), 1342(p)(3)(A).), *see also Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163-65.) The water quality protections that must be adopted in all NPDES permits include:

(1) water quality based effluent limitations ("WQBELs") that require strict compliance with Water Quality Standards, and that implement Waste Load Allocations

15.1-15.5 cont.

("WLAs") in any applicable TMDLs. (33 U.S.C. §§ 1311(b)(1)(A)-(C), 1318(a)(A), 1342(a)(1), 1342(b)(1)(A), 1342(p)(3)(A).). These effluent limitations are defined as "any restriction imposed…on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States"…" 33 USC § 1362(11).

(2) requirements to monitor discharges to ensure that dischargers comply with water quality based pollution limits. 40 C.F.R. § 122.44(d)(1), 122.44(i), and 122.48.)

B. TMDL Incorporation into NPDES Permits.

A TMDL is the total load of a particular pollutant that a water body can sustain, on a daily basis, and still ensure that the water quality standards applicable to that water body for the same pollutant can be met. (*See* 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.2(i).) Each TMDL must be "established at a level necessary to implement the applicable water quality standards" and must include the individual WLAs for point sources discharging into the water body, as well as load allocations for non-point sources and natural background sources. (33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.2(i).) WLAs are "[t]he portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution." (40 C.F.R. § 130.2(h).) Thus a discharge of pollutants in excess of a WLA by definition contributes to exceedances of Water Quality Standards and impairment in the receiving water.

The agency establishing a TMDL may include "an implementation plan as a formal statement of how the level of that pollutant can and will be brought down to or be kept under the TMDL." (*Meiburg*, 296 F.3d at 1030.) TMDLs developed by California's water boards must include a program of implementation for achieving water quality objectives, and all TMDLs must be incorporated into Basin Plans with an implementation schedule. (*See* Memorandum from William R. Attwater, Chief Counsel, State Water Resources Control Board, to Gerard J. Thibeault, Executive Officer, Santa Ana Regional Water Quality Control Board, March 1, 1999).) The program of implementation consists of a "description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private," a "time schedule for the actions to be taken," and a "description of surveillance to be undertaken to determine compliance with objectives." (Water Code § 13242.)

TMDLs are not self-executing, but must be implemented "by adjusting pollutant discharge requirements in … NPDES permits." (*City of Arcadia*, 265 F.Supp.2d at 1144.) Once a TMDL with WLAs is developed, the permitting agency *must* incorporate the WLAs into applicable NPDES permits as WQBELs. (40 C.F.R. § 122.44(d)(1)(vii)(B); 40 C.F.R. § 130.2(h). In doing so, the permitting agency must ensure that the effluent limits of the NPDES permit "are consistent with the assumptions and requirements of any available wasteload allocation [WLA] for the discharge" (40 C.F.R. § 122.44(d)(1)(vii)(B).)

An NPDES permit may only include a compliance schedule when such schedules are

15.1-15.5 cont.

expressly authorized by the state's water quality control plans. Star-Kist Caribe, 1989 EPA App. LEXIS, at *7; 33 U.S.C. § 1313(e)(3)(F). NPDES permits that establish a compliance schedule, "which exceeds 1 year" from the permit issuance date, must implement "interim requirements and the dates for their achievement." (40 C.F.R. § 122.47 (a)(3)). Interim requirement dates must not be separated by more than one year. (40 C.F.R. §122.47 (a)(3)(i)).

C. The Clean Water Act Requires that Permitting Agencies Include Sufficient Monitoring

The Clean Water Act requires the permitting agency to adopt monitoring requirements in NPDES permits that will produce the information necessary to make efficient compliance determinations. (*Sierra Club*, 813 F.2d at 1491-92; *County of Los Angeles*, 725 F.3d at 1208-1209 (discussing the necessity and purpose of self-monitoring in context of general NPDES permits).)

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits. (*See* 40 C.F.R. §§ 122.44(i), 122.48.) Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate." (40 C.F.R. § 122.44(a)(1)(i)-(iii).) Thus, the State Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation. (*See County of Los Angeles*, 725 F.3d at 1207.)

II. General Industrial Permit Requirements

A. Receiving Water Limitations

As stated in the Permit, "Pursuant to CWA section 301(b)(1)(C) and Water Code section 13377, this General Permit requires compliance with receiving water limitations based on water quality standards." (Fact Sheet at 22.) The Permit does so via an effluent limitation:

> Dischargers shall ensure that industrial discharges and authorized NSWD do not cause or contribute to an exceedance of any applicable water quality standard in any affected receiving water. (Permit at 21.)

Thus consistent with the Clean Water Act's mandate, a stand-alone requirement of the Permit is a prohibition on discharges that cause or contribute to receiving water impairment.

15.1 - 15.5 cont.

B. Water Quality Based Corrective Actions

Where a discharger violates the prohibition on causing or contributing to receiving water impairment, the Permit provides a program intended to bring the discharger into compliance. Where Discharger is notified by a Regional Water Board or who determines the discharge is causing or contributing to an exceedance of a water quality standard, it must comply with the Water Quality Based Corrective Actions found in Section XX.B of this General Permit:

> a. Conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the 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 reduce or prevent 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). (Permit at 67.)

C. Monitoring

The monitoring program implemented in the General Industrial Permit is intended to evaluate BMPs rather than establish compliance with Water Quality Standards. *See* Permit at pp. 24, 47, 57 ("The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits.") Responding to environmental commenters requesting quantitative sampling sufficient to evaluate compliance with receiving water limitations, the State Board pointed to the complexities relating to monitoring storm water run-off:

> Unlike continuous point source discharges (e.g., publicly owned treatment works), storm water discharges are variable in intensity and duration. The concentration of pollutants discharged at any one time is dependent on many complex variables…Multiple samples would need to be collected over many hours. To determine the pollutant mass loading, the storm water discharge flow must also be measured each time a sample is collected. For a quantitative monitoring approach to yield useful pollutant loading information, the installation

15.1-15.5 cont.

> of automatic sampling devices and flow meters at each discharge location would usually be necessary… In addition, qualified individuals would be needed to conduct the monitoring procedures, and to handle and maintain flow meters and automatic samplers are needed. (Fact Sheet at 48.)

Thus the Permit requires visual observations, combined with sampling for a limited set of parameters, four times per year (maximum). (Permit at 39.)

D. TMDLs

While acknowledging that all NPDES permits must include effluent limitations consistent with the WLAs in TMDLs, the General Permit deferred including those limitations when adopted, and instead required submission of proposed WLAs from the RWQCBs. (Fact Sheet at p. 23-26.) The State Board explained:

> To date, the relevant waste load allocations assigned to industrial storm water discharges are not directly translatable to effluent limitations. Many of the TMDLs lack sufficient facility specific information, discharge characterization data, implementation requirements, and compliance monitoring requirements. Accordingly, an analysis of each TMDL applicable to industrial storm water discharges must to be performed to determine if it is appropriate to translate the waste load allocation into a numeric effluent limit, or if the effluent limit is to be expressed narratively using a BMP approach.

The State Board goes on to explain that the monitoring program in the General Permit is inadequate to evaluate TMDL compliance:

> This method of monitoring may not appropriately serve as TMDL compliance sampling since grab samples are only representative of the particular moment in time when the sample was taken. Since storm water is highly variable, four grab samples per year may not provide sufficient confidence that the effluent limit is being met. An alternative monitoring scheme may be necessary to determine the facility's impact on the receiving water and to determine compliance with any assigned effluent limits. Questions concerning whether sampling results should be grab samples, composite samples, flow-weighted averaged over all drainage areas, etc. cannot be determined for each concentration-based TMDL without a more thorough analysis.
>
> Additionally, monitoring and assessment requirements must be developed for all of the TMDLs to determine compliance with or progress towards meeting TMDL requirements. The proposed monitoring requirements in this General Permit are not designed to assess pollutant loading or determine compliance with TMDL-specific effluent limits. (Fact Sheet at pp. 47-48.)

As a result, the State Board included in the General Permit specific requirements for the RWQCB's submissions of WLAs to be incorporated into the General Permit:

15.1-15.5 cont.

The Regional Water Boards will submit to the State Water Board the following information for each of the TMDLs listed in Attachment E:

- Proposed TMDL-specific permit requirements, including any applicable effluent limitations, implementation timelines, additional monitoring requirements, reporting requirements, an explanation of how an exceedance of an effluent limitation or a violation of the TMDL will be determined, and required deliverables consistent with the TMDL(s);

- An explanation of how the proposed TMDL-specific permit requirements, timelines, and deliverables are consistent with the assumptions and requirements of applicable waste load allocation(s) to implement the TMDL(s);

- Where a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable waste load allocations; and

- Where concentration-based monitoring is required, an explanation of how the required monitoring, reporting and calculation methodology for an exceedance of an effluent limitation or a violation of the TMDL(s) will be sufficient to demonstrate compliance with the TMDL(s). (Fact Sheet at p. 25.)

E. NALs and Exceedance Response Actions

Separate from the technology based and water quality based narrative effluent limitations, (TBEL and WQBEL) the General Permit includes a compliance scheme based on Numeric Action Levels, or NALs. Like the Water Quality Based Corrective Actions requirement, Exceedance Response Actions are intended to bring the discharger into compliance. The NAL limits are not effluent limitations for purposes of the Clean Water Act. Rather, they are a trigger for an adaptive management process. The State Boards states:

This ERA process provides Dischargers with an adaptive management-based process to develop and implement cost-effective BMPs that are protective of water quality and compliant with this General Permit. This process is also designed to provide Dischargers with a more defined pathway towards full compliance. Fact Sheet p. 56

The permit itself specifically states:

> The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined

15.1-15.5 cont.

in this General Permit are not, in and of themselves, violations of this General Permit. (Permit at 11.) *See also* Fact Sheet at 57 ("…the NALs in this General Permit are approximate values used to provided feedback to the Discharger on site performance, and are not numeric criteria or limitations.")

Where NAL are exceeded, the discharger is required to undertake "Tier One" or "Tier Two" site evaluation and reporting, including a review of the SWPPP, and a description of BMPs that "are expected" to meet NALs. While the Tier One reporting requires implementation of the BMPs to meet the NAL standards, Tier Two is more ambiguous as to actual implementation of pollution controls. (Permit pp.49-52.) And while implementation of identified BMPs is required, achieving NAL levels in the discharge is not required by the NAL process. Id.

15.6

III. Los Penasquitos Sediment TMDL

As required by the General Permit, San Diego Regional Board staff has prepared a draft WLA for sediment for the Los Penasquitos watershed for consideration by the State Board for incorporation into the General Permit.

A. Waste Load Allocation and Responsible Parties

The Los Penasquitos Lagoon Sediment TMDL identifies "industrial permit dischargers" as one of multiple "responsible parties" regarding sediment contributions to the lagoon. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 2). The TMDL assigns a WLA of 2,580 tons/wet season to all of the identified responsible parties, collectively. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 2). No WLAs area assigned to any of the responsible parties, individually. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 2). However, the Responsible Parties are "collectively and individually" responsible for 1) reducing "sediment load discharges to receiving waters, or 2) "demonstrating that their discharges are not causing" sediment WLA exceedances. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 2). The "year-round" WLA is "applied equally" to all sediment discharges in the Los Penasquitos watershed, and any discharges that "contribute" to the WLA exceedance must "reduce runoff discharges." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 2).

B. TMDL Compliance and Compliance Schedule

Industrial dischargers are "assumed" to be in compliance with the TMDL if 1) they are enrolled in the General Permit, 2) they include BMPS in their SWPPPs, 3) they comply with the General Permit, and 4) they collect "representative, or estimated flow monitoring" data. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 3). The Regional Board "presume[s] that BMPs designed, constructed, and maintained in accordance with a SWPPP would deliver sediment loads consistent with water quality objectives and pollutant reductions set forth in the TMDL." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 4). Based on this presumption, the

Regional Board states that complying with the General Permit "satisfies compliance with the interim and final WQBEL ...." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 4).

The San Diego Regional Board proposes to implement a twenty-five year compliance schedule, which includes four interim effluent limitations. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 3). Interim effluent limitations one through four must be achieved by December 31, of each of the following years, respectively: 2019, 2023, 2027, and 2029. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 3). The final effluent limitation must be met by July 14, 2034. (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 3). This schedule violates federal regulations, which prohibits interim requirement dates from being more than one year apart.

C. TMDL Monitoring and Reporting Requirements

To supplement existing General Permit monitoring and reporting requirements, Responsible Parties must "contribute information regarding the amount of sediment discharged from their facilities." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 4). At a "minimum," Dischargers must collect "representative flow rates and TSS concentrations whenever long-term discharges occur." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 4). A "'long term discharge' is equivalent to the General Permit's qualifying storm event ...." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 4). The Implementation Discussion also states that Dischargers are only required to determine the flow rate "during one qualifying storm event," but that the "flow rates shall be completed concurrently with the General Permit's required TSS sampling." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 5). These multiple flow rate calculation requirements are contradictory and create ambiguity regarding when flow rates must be determined.

15.7

15.8

Flow rate data is required to calculate the sediment "load" discharged from a site "informing an industrial discharger as to whether their discharge is in compliance with the [interim] watershed WQBEL ...." (Los Penasquitos Lagoon Sediment TMDL Implementation Discussion at 5). Although Dischargers must quantify their sediment discharge load, the Regional Board provides no quantitative load threshold, or WLA specific to industrial dischargers. Thus, sediment load calculations do not inform industrial dischargers or the public to whether their discharges are complying with interim watershed WQBEL. In the absence of numeric effluent limitations that can be both measured and enforced on an individual discharger basis, we are left only with NALs. As discussed above in Section II.E., NALs are not legally sufficient substitutes for WLAs.

IV. Conclusion

15.9

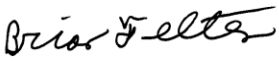
The proposed WLA to be incorporated into the Industrial General Permit is illegal and inappropriate because 1) the proposed concentration-based monitoring is not sufficient to determine whether Dischargers are complying with the TMDL, 2) the proposed compliance schedule violates federal regulatory requirements, and 3) the proposed monitoring requirements are ambiguous and create uncertainty regarding whether Dischargers are complying with the watershed-based WLA.

For these reasons, Coastkeeper requests that staff 1) incorporate a concentration based WLA specific to Industrial Dischargers as an effluent limitation into its draft IGP WLA, 2) require flow rate determination during all QSEs, and 3) revise the proposed compliance schedule to conform with federal regulatory requirements.

We thank you for the opportunity to comment on the sediment WLA incorporation draft. Please feel free to contact me with any questions or for further clarification.

Sincerely,

Matt O'Malley
Legal & Policy Director



Brian Felten
Student Attorney
Aquatic Ecologist

Ryan, Erica@Waterboards

From: John Adriany <john.adriany@yahoo.com>
Sent: Monday, March 14, 2016 3:57 PM
To: Ryan, Erica@Waterboards
Subject: TMDL specific requirements for the Industrial General Permit

Ms. Erica Ryan,

A lyris email announcement inviting public comment gave your name and contact info. I followed the hypertext references and found “revised Attachment E-vesion February 26, 2016”. The top of page 2 reads:

16.1

The SIYB Copper TMDL identifies the following dischargers responsible for point source discharges of copper to the SIYB: Municipal Separate Storm Sewer System (MS4s), industrial dischargers (SIYB marina owners and operators), persons owning boats moored in the SIYB, and SIYB underwater hull cleaners.[4]

I am confused by the classification of non-point sources as point sources, heretofore the MS4 system were point sources but boat owners, hull cleaners and the marinas that moor boats were considered non-point.

I have been working on Shelter Island TMDL for five years, have heard no mention of such a reclassification.

My question, is this is a poorly stated sentence or a revised plan for addressing 303(d) impairment.

John Adriany
Technical Representative to the Shelter Island Master Leaseholder Group
619-851-4795

SAN DIEGO PORT TENANTS ASSOCIATION

April 6, 2016

San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Attn: David Gibson, Executive Officer
Sent via email: David.Gibson@waterboards.ca.gov

Subject: Comment – Draft TMDL- Industrial General Permit Requirements

Dear Mr. Gibson,

The San Diego Port Tenants Association (SDPTA), which represents businesses that lease from the San Diego Unified Port District, including maritime, manufacturing, marine recreation and hospitality, respectfully submits the following comments regarding the Draft TMDL – Industrial General Permit Requirements:

17.1

- Perhaps our biggest concern is that the compliance date (October 22, 2018) for the interim WQBELs is extremely aggressive, and Industry is being unfairly asked to comply with this date. The outcome will be a negative impact on the level of compliance as facilities struggle to meet an unrealistic timetable. Other responsible parties (i.e., municipal copermittees) have been working on their compliance strategies since 2013. Furthermore, this date is inconsistent with the timeline established in the IGP to implement the Level 2 exceedance response actions (advanced BMPs), which at the earliest would be January 1, 2019. SDPTA recommends that any advanced BMPs that need to be employed to comply with the interim WQBELs be consistent with the deployment of the Level 2 exceedance response actions.

17.2

- In the documentation provided, the list of responsible parties includes School Districts. Please confirm that until such time that the School District is designated a Phase II MS4, the TMDL is only applicable to the industrial activities subject to the Industrial General Permit.

17.3

- Please include language in the document to address how the Water Effect Ratio, which is being established for the Chollas Creek TMDL, will be incorporated into the TMDL

17.4

- The Industrial General Permit states the following:

  68. This General Permit establishes design storm standards for all treatment control BMPs. These design standards are directly based on the standards in State Water Board Order 2000-0011 regarding Standard Urban Storm Water Mitigation Plans (SUSMPs). These design standards are generally expected to be consistent with BAT/BCT, to be protective of water quality, and to be effective for most pollutants. The standards are intended to eliminate the need for most Dischargers to further treat/control industrial storm water discharges that are

17.5

2390 SHELTER ISLAND DRIVE, SUITE 210 · SAN DIEGO, CALIFORNIA 92106 · (619) 226-6546 · FAX (619) 226-6557 · EMAIL: sharon@sdpta.com, sophie@sdpta.com
Web: www.sdpta.com

unlikely to contain pollutant loadings that exceed the NALs set forth in this General Permit.

SDPTA recommends that this language be incorporated into the TMDL implementation document.

- The California Toxics Rule requires hardness samples to be collected in the receiving water at a location upstream of the facilities discharge. It may be more prudent for the copermittees to collect the receiving water hardness data and provide it to the industrial community. The data should be representative of the receiving water quality and collected during each qualifying storm event.

17.6

- SDPTA appreciates the RWQCB encouraging collaboration with the Phase I Municipalities. SDPTA recommends that the alternative compliance program that is established as part of the Phase I permit be available to industry. Providing for a means of alternative compliance is essential for facilities where it is impracticable or infeasible for facilities to employ structural treatment controls. Furthermore, alternative compliance is designed to yield more water quality benefit than what could have been accomplished on the development site.

17.7

17.8 SDPTA appreciates being able to provide these comments and appreciates the Board's consideration of them. Also, these comments are focused on the implementation of these TMDLs in the context of the SWRCB's storm water Industrial General Permit and do not necessarily represent our views on how they may be incorporated into other permits, such as the SWRCB's storm water Construction General Permit. As such, SDPTA would also like the opportunity to comment on the implementation of the TMDLs into other statewide and regional permits.

Thank you for your consideration of our concerns.

Sincerely,

George Palermo, Chairman