30

(4/1/14) Board Meeting
Final Draft IGP
Deadline: 3/4/14 by 12:00 noon

WASTE MANAGEMENT

Public Affairs
915 L Street, Suite 1430
Sacramento, CA 95814
916/552-5859
916/448-2470Fax

March 4, 2014

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

Via Email: commentletters@waterboards.ca.gov

Subject: Comment Letter – April 1, 2014 Board Meeting: Final Draft Industrial General Permit -- FINAL DRAFT STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR THE DISCHARGE OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES (INDUSTRIAL GENERAL PERMIT -- IGP)

Dear Ms. Townsend and Board Members

Waste Management appreciates the opportunity to submit these comments on the Final Draft Industrial General Permit. We would like to incorporate by reference the comments that were previously submitted by the Solid Waste Industrial Stormwater Partnership (SWISP) on September 18, 2013 (attached), of which WM is a member. Unfortunately, due to the short time frame for review and comment on the final draft IGP, WM has not had time to coordinate and discuss our comments and concerns with other members of SWISP.

WM regrets that the SWRCB denied the additional requested time for review and comment recently requested by CASQA. WM is in agreement with the comments submitted by today's deadline separately by CASQA and we wish to incorporate those comments by reference.

Waste Management is the leading provider of comprehensive waste management and environmental services in North America. The company serves approximately 20 million municipal, commercial, industrial and residential customers through a network of 390 collection operations, 294 transfer stations, 266 active municipal solid waste (MSW) landfill disposal sites, 121 recycling facilities, 34 organic processing facilities and 136

beneficial-use landfill gas projects. Many of these operations and services are located in California.

WM commends the SWRCB on many of the changes made to the final draft IGP since it was first proposed 2 years ago. In general, we find the proposed final draft IGP is substantially improved from the IGP that was initially proposed. Although we had hoped for more time to review and comment, our limited comments on the proposed final draft IGP are as follows, in order in which the issue appears in the permit documents:

- Thank you for extending the compliance start date under the IGP to July 1, 2015.
- Thank you for clarifying that the special requirements for Facilities Handling Plastic Materials on apply to pre-production plastic materials. WM supports the definition of "plastic materials" as provided in the Glossary, Attachment C, to the IGP.
- Thank you for clarifying that a SWPPP does not have to be certified and resubmitted via SMARTS more than once every 3 months – except for significant changes. WM understands that the discharger has flexibility to determine what constitutes a "significant change" within the meaning of the permit and the site-specific situation. However, in response to SWISP comments, the SWRCB staff seems to imply (see comment #7 to commenter 64) that changes to QISP personnel and modification of site maps may be a "significant change". WM disagrees, such changes to QISP personnel and maps should be accommodated within the every 3-month time frame and not more frequently. WM does not believe these are significant changes that require "immediate" certification and resubmittal. Surely, certification and submittal within a 3-month time frame is sufficient.
- Thank you for clarifying the applicability of SIC Code 5093 in Table 1 does *not* apply to the handling of "source separated recycling". WM believes this exclusion is appropriate in recognition of the high value California places on recycling. This clarification excludes "source-separated recycling" facilities from the additional monitoring requirements in the draft permit (Fe, Pb, Al, Zn, and COD) and from the associated requirements for ERAs if one of the additional pollutants specified in Table 1 were to exceed an NAL in Table 2 of the 2013 draft permit.

30.1 • WM supports CASQA's request to remove the "(H)" hardness designation from Table 2 for the reasons discussed by CASQA.

30.2 • Conditional Exclusion – No Exposure Certification. Section XVII.B.3 states that a material handling activities included the storage, loading and unloading, transportation, or conveyance of any industrial raw material, intermediate product, final product, or waste product. (pg. 63). WM requests clarification that

"activities" do not include operations where "materials, intermediate products, final products or waste products" are managed in such a way as to prevent contact with the ground or stormwater. If a potential discharger is able to demonstrate that the management of these materials within the activity area cannot result in a stormwater discharge, the potential discharger should be eligible for a No Exposure Certification.

30.3 • General Permit Coverage for Landfills -- The fact sheet's description of the stormwater permit obligations of a landfill operator is significantly improved. The current fact sheet recognizes that a landfill is normally subject to the construction permitting requirements during the time the landfill is initially constructed and prior to operation. It is then subject to the industrial permitting requirements during landfill operations. Finally, it is subject to the construction permitting requirements during final closure activities. WM recognizes that Regional Water Boards will continue to exercise their discretion to protect water quality within this clarified guidance. However, WM disagrees that the Construction General Permit should be required – in addition to the General Permit – for ongoing landfill construction activities such as the construction of "buildings and impervious parking lots or roads that disturb greater than one acre" or other construction of "any structural improvements designed to remain until the landfill is closed." WM agrees with the Fact Sheet's statement that landfills are "subject to the industrial permitting requirements during landfill operations." However, WM disagrees with the Fact Sheet's interpretation that the construction permitting requirements apply to:

a. the construction or closure of a separate section of the landfill that is either subject to additional permitting by the local authorities and/or lasts more than 90 days, or

b. the construction of permanent facility structures such as buildings and impervious parking lots or roads that disturb greater than one acre.

WM requests that the SWRCB further clarify that ongoing landfill operations are covered completely under the IGP and a separate CGP is not required. WM does acknowledge that the CGP is applicable to initial landfill construction before operations begin and for final landfill closure after ongoing landfill operations have ceased. However, ongoing construction activities – once landfill operations have been initiated until they have ceased – should be covered solely by the IGP.

Thank you for the opportunity to submit these comments and concerns for your consideration. Please contact me if you have any questions or require further information.

Sincerely,

Charles A White, P.E.
Director of Regulatory Affairs/West

Attachment: SWISP IGP Comment letter submitted September 18, 2013

cc: Greg Gearhart, SWRCB, Greg.Gearheart@waterboards.ca.gov
Laurel Warddrip, SWRCB, Laurel.Warddrip@waterboards.ca.gov

Solid Waste Industry Stormwater Partnership

Butte County Public Works Department
California Refuse Recycling Council
Clean World Partners
Inland Empire Disposal Association
Los Angeles County Waste Management Association
Kern County Waste Management Department
Monterey Regional Waste Management District
North Bay Corporation
Placer County Department of Facility Services
Recology
Republic Services
Rural Counties' Environmental Services Joint Powers Authority
Salinas Valley Solid Waste Authority
Solid Waste Association of Orange County
Waste Connections
Waste Management
Western Placer Waste Management Authority

September 18, 2013

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Via Email: commentletters@waterboards.ca.gov

Subject: Comments of SWISP on Draft Stormwater Industrial General Permit (IGP)

Dear Ms. Townsend and the Board:

Thank you for the opportunity to submit comments on the proposed Stormwater General Industrial Permit (IGP). We understand and appreciate the extension of the comment deadline to you of 12 pm Noon, on September 12, 2013. The Solid Waste Industrial Stormwater

Partnership (SWISP) is an informal coalition of public and private solid waste facility owners, operators and consultants that seek balanced regulations and permits regarding stormwater quality from facilities we own, operate or are otherwise responsible. We support the implementation of continuous stormwater quality improvement measures that are:

- cost-effective,
- practical, and
- known to have demonstrated water quality benefits.

We are appreciative of the numerous changes and improvements that have been made to the proposed permit since it was initially proposed on January 28, 2011 with proposed revisions on July 16, 2013.

- **Numeric Effluent Limits.** As we have previously stated, we do not believe there is sufficient data to establish meaningful NELs at this time.
- **TMDLs**. There is insufficient justification to include TMDLs into the IGP at this time. We understand that the IGP may be amended in the future to incorporate TMDLs. However, this section of the General Permit sets a high bar for new dischargers in watersheds subject to TMDLs. *This provision of the General Permit would effectively prevent new businesses from opening or require new business to implement a substantially higher level of BMPs to meet water quality standards if there is no remaining load available.*

  At a minimum, the term 'new discharger' needs to be defined in the General Permit for the purposes of this section. The definition of new discharger for the purposes of this section should not include renewing dischargers, existing facilities that were previously exempt (NEC facilities), or new owners of existing facilities.

  SWISP recommends that the State Water Board reconsider this language and develop a proposal that would allow for the equitable distribution of remaining load capacity for new businesses within impaired watersheds so as to not unfairly restrict business development.

- **Receiving Water Limitations.** SWISP recognizes that the stormwater discharges have an obligation to comply with the provisions of the IGP as well as ensure compliance with receiving water quality standards. The current draft permit provides a reasonable framework to implement additional BMPs necessary to comply with receiving water standards.

- **Effective date.** SWISP appreciates that the effective date for this draft permit is extended to approximately one year (to January 1, 2015) after the adoption of this draft IGP by the SWRCB on or before January 1, 2014. However, SWISP requests that the effective date be extended to July 1, 2015. It will be problematic to have half of a rainy season under the existing permit and the second half of the rainy season under the new permit. Splitting the rainy season will overly complicate not only the reporting but also analysis of data to determine permit compliance.
- **Natural Background Pollutant Source Demonstration.** SWISP strongly supports including the Natural Background Pollutant Source Demonstration in Section XII.D.2.c., with one clarification.

  SWISP commends the SWRCB for including a provision in the Permit that will allow a discharger to demonstrate that an exceedance of an NAL is attributable to the natural background levels of the pollutant. This provision is important because it recognizes that facilities may have implemented appropriate control technologies and BMPs but the stormwater discharges nonetheless exceed NALs because of naturally occurring background concentrations in soils. For example, there are areas through California where soils have high naturally occurring levels of iron, aluminum, and other metals that cause exceedances of NALs in spite of the implementation of appropriate BMPs.

  EPA, in its most recent revisions to the MSGP, expressly recognized that the discharger should not be responsible for corrective action, or even monitoring, of pollutants in discharges where the benchmark exceedance is attributable solely to the natural background levels of that pollutant. See EPA's MSGP at §§ 6.2.1.2 & 6.2.4.2.

  Notwithstanding SWISP's support for this provision, SWISP recommends clarifying or revising the phrase "*solely* attributable to pollutants from natural background sources." SWISP understands this phrase to mean that if the pollutant levels in a permittee' s stormwater discharge would meet the applicable NAL, but that the naturally occurring background concentrations cause the discharge to exceed the NAL, the discharger would be entitled to the protections of the Natural Background Pollutant Source Demonstration. It would be useful to include this clarification to confirm that the presence of low concentrations of pollutants from industrial activities would not disqualify the permittee from the protections of the demonstration.
- **pH meters and monitoring for pH.** The previously proposed permit would have required that dischargers must use pH meter to measure pH in stormwater dischargers. As we commented previously, this does not make sense for discharges that may only

occur infrequently. The expense of maintaining and calibrating pH meters is not justified. The current draft permit allows the use of pH papers to measure pH in stormwater discharges. SWISP appreciates the additional flexibility allowed in the current draft permit and strongly requests that this approach be incorporated in the final permit.

Although we are very appreciative of the above changes from the previously proposed draft IGPs, this letter documents our continuing concerns and recommendations regarding several issues of the State Water Resources Control Board's (SWRCB) current draft permit.

SWISP continuing comments and concerns:

1. **General Permit Coverage for Landfills.** The fact sheet's description of the stormwater permit obligations of a landfill operator is significantly improved. The current fact sheet recognizes that a landfill is normally subject to the construction permitting requirements during the time the landfill is initially constructed and prior to operation. It is then subject to the industrial permitting requirements during landfill operations. Finally, it is subject to the construction permitting requirements during final closure activities. SWISP recognizes that Regional Water Boards will continue to exercise their discretion to protect water quality within this clarified guidance.

   However, SWISP disagrees that the Construction General Permit should be required – in addition to the General Permit – for ongoing landfill construction activities such as the construction of "buildings and impervious parking lots or roads that disturb greater than one acre" or other construction of "any structural improvements designed to remain until the landfill is closed."

   SWISP agrees with the Fact Sheet's statement that landfills are "subject to the industrial permitting requirements during landfill operations." However, SWISP disagrees with the Fact Sheet's interpretation that the construction permitting requirements apply to:

   a. the construction or closure of a separate section of the landfill that is either subject to additional permitting by the local authorities and/or lasts more than 90 days, or
   b. the construction of permanent facility structures such as buildings and impervious parking lots or roads that disturb greater than one acre.

2. **NAL Exceedances.** The Permit should clarify that the exceedance of the instantaneous NALs is determined based on two or more analytical results of the same parameter for discharges from the same drainage area at the facility but during different sampling events.

   Section I.M.62.b and XII.A.2 of the General Permit defines an exceedance of an instantaneous maximum NAL as two or more analytical results "from samples taken for any single parameter within a reporting year [that] exceed the instantaneous maximum NAL value …." The General Permit does not however explain whether the "two or more" exceedances are from the same discharge point, the same drainage area, or even the same sampling event. For example, if a permittee samples two discharge points within the same drainage area on the same day both exceed the NAL for TSS, would those two sample results constitute an "instantaneous NAL maximum exceedance"? Presumably not, since the stated intent of this provision is to determine whether the exceedances occurred because of storm event variability. See Fact Sheet at 55 (noting that multiple exceedances are needed to rule "storm event variability").

   Likewise, two exceedances of an instantaneous NAL in different drainage areas (whether during the same or different sampling events) should not trigger an instantaneous maximum NAL exceedance. The intent of this provision is to allow the permittee and the agencies to determine which drainage areas have chronic stormwater problems. Indeed, the Fact Sheet explains the purpose as:

   The intent of the instantaneous maximum NAL is to identify specific drainage areas of concern or episodic sources of pollution in industrial storm water that may indicate inadequate storm water controls and/or water quality impacts.

   Fact Sheet at 54. It would be inconsistent with this intent to define an instantaneous maximum NAL as an exceedance of the NAL in only one drainage basin during the first sampling event, followed by another exceedance in another drainage in a later sampling event. SWISP recommends clarifying language to state that the two or more analytical results must be for discharges in the same drainage or same discharge point, but for different QSEs. SWISP recommends the following revision to Section XII.A.2 (and a conforming revision to any other similar discussions in the permit):

   Instantaneous maximum NAL exceedance: The Discharger shall compare all sampling and analytical results from each distinct sample (individual or combined as authorized by XI.C.5) to the corresponding instantaneous maximum NAL values in Table 2. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken during different QSEs from the same drainage area or discharge

point for any single parameter within a reporting year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum NAL range for pH.

3. **Receiving Water Limitations.** SWISP is concerned that the permit, as currently proposed, removes the previous safe harbor with respect to receiving water limitations and now requires that dischargers ensure compliance, which will be difficult if not impossible to demonstrate.

Pg. 21: As with the other stormwater permits in California, the Receiving Water Limitations language in Provision VI. needs to be revised. How does a facility "ensure" compliance with these requirements? The current permit's language should be retained for this section, or the following changes should be made to this section:

VI. RECEIVING WATER LIMITATIONS

Permittees shall design, update as necessary, and timely implement the facility's BMPs and other requirements of the facility's SWPPP so that industrial storm water discharges and authorized NSWDs from the facility are not found by the Water Boards to:

A. ~~Dischargers shall ensure that industrial discharges and authorized NSWDs do not c~~C~~ause or contribute to~~[1]an exceedance of any applicable WQS in any affected receiving water.

B. ~~Dischargers shall ensure that industrial discharges and authorized NSWDs do not a~~Adversely affect human health or the environment.

C. ~~Dischargers shall ensure that industrial discharges and authorized NSWDs do not c~~Contain pollutants in quantities that threaten or cause pollution or a public nuisance.[1]

4. **No Discharge Determination.** The previous 2011 Draft of the IGP included the following No Discharge Certification conditional exclusion:

"Dischargers who have facilities designed to contain a 100 year 24-hour storm event and three (3) consecutive 20 year 24 hour storm events in a month are not

[1] The words "or contribute to" are not required by federal law except in the context of performing a reasonable potential analysis. (40 C.F.R. §122.44(d)(1)(i) and (ii).) Therefore, these words should be removed from this provision.

found to have a potential to discharge pollutants, and therefore pose no threat to water quality."

This is a reasonable and fair standard for compliance. However the current draft IGP appears to put a far higher – and we believe unreasonable – threshold that must be met to achieve such a determination:

"At a minimum, Dischargers must ensure that the containment design addresses maximum 1-hour, 24-hour, weekly, monthly, and annual precipitation data for the duration of the exclusion."

Requiring this level of containment is unreasonable. Natural background levels during this range of such extreme storm events are likely to be much higher than numeric action levels. A more reasonable standard consistent with the 2011 Draft IGP would be much more appropriate. The SWRCB should reconsider returning to the more reasonable and straightforward language cited above from the 2011 draft.

5. **QISP Change Timeframe.** Section H--Bullet 49 (Page 8) indicates that each Discharger is required to designate a Qualified Industrial Storm Water Practitioner (QISP) for each facility that has entered Level 1 Status in the Exceedance Response Action (ERA). The Fact Sheet (Page 44) indicates that the Discharger is required to enter this information in SMARTs when entering the Level 1 ERA.

   Is there any obligation on the discharger to amend this designation in SMARTs if the QISP changes and, if so, what is the timeline for such a change?

6. **Significant Change.** Page 15--General PRD requirements. This section indicates that when there is a significant change to a facility layout that a new facility map must be uploaded to SMARTs. The term "Significant" is rather loosely defined and includes the phrase "change in storage locations". It is our understanding that the permit provides the permittee to determine what constitutes a "significant change". For example, we would not consider moving a drum of oil from one side of the building to another side of the building to be significant.

   In addition, what is the required timeframe to submit a modified map into SMARTs?

7. **Empty Containers.** BMPs--Page 31 (e)(iii) —"Cover waste disposal containers when not in use." Our industry had provided this comment on the previous draft.

   The requirement to cover waste disposal containers should not apply to waste disposal containers that are new or have been cleaned. Since (we) store hundreds of new or cleaned containers at (our) facilities, it can be a storage

problem to require that they all be covered. Obviously, this requirement applies to containers that are being actively used for waste disposal, and not those that are stored at a facility prior to distribution to customers.

Our industry stores literally thousands of empty waste disposal containers throughout California when they are not in use, requiring such containers to be covered when stored would be tremendously expensive. Further, why mandate the covering of any containers if there is not a stormwater quality problem that can be otherwise mitigated. The permit should be modified to only require covering of containers that contain waste and, then, only if there is a water quality problem attributable to the storage of such containers.

Further, the owner of the industrial site where the container is located should be the entity responsible for any covering of containers – not the owner of the container.

Finally, some containers are very difficult to cover. Construction and demolition debris containers are typically covered when being transported from a collection site to a waste management facility. However, the covering or tarping of these containers while being used to collect waste at a construction site is problematic.

In summary, SWISP requests the following changes:

a) Waste Container covering not be required when the container is being stored and not used for the management of waste. Covering of empty containers may be proposed by a permittee if as a BMP if warranted to mitigate a stormwater problem.

b) Covering of Containers while in use only be required as part of a BMP developed by the permittee – not an absolute requirement of the permit.

8. **Effective Stabilization Prior to Forecasted Storm Events.** BMPs--Page 31(f)(ii)--Provide effective stabilization for inactive areas, finished slopes and other erodible areas prior to a forecasted storm event. There is no longer a definition of a forecasted storm event and SWISP requests this condition be revised to read: *Provide effective stabilization for inactive areas, finished slopes and other erodible areas.*

9. **Data Entry Timeframe and "minimum level" definition.** Sample Analysis Reporting Page 39 (11) — We request timeframe be extended to 45 days (compared to 30 days provided in draft permit) from date of receipt of analysis to enter the data into SMARTS.

10. **Use of "and" and "or" in draft permit.** There seems to be no consistency in the permit and attached documents with this phrase. In many cases the word "or" is used in place of "and". The permit needs to consistently use the words "and" and "or".

11. **Non-Industrial Source Pollutant Demonstration and/or a Natural Background Pollutant Source Demonstration Submittals.** Permittees should be allowed to submit a Non-Industrial Source Pollutant Demonstration and/or a Natural Background Pollutant Source Demonstration at any time.

    Section XII.D.2.b and XII.D.2.c state that a permittee can submit a Non-Industrial Source Pollutant Demonstration or a Natural Background Pollutant Source Demonstration as part of a Level 2 ERA Technical Report. SWISP recommends revising the General Permit to allow a permittee to submit these reports at any time. Since the very purpose of the reports is to demonstrate that other sources are the causes of NAL exceedances, the General Permit should not place limits on when those demonstrations can be submitted.

12. **Returning to Base Line Status.** The Permit should clarify that a discharger can return to Baseline status if the sample results for the same drainage area or discharge point show no exceedances for four subsequent and consecutive QSEs.

    Section XII.C.2.b. of the General Permit states that a discharger's Level 1 status will return to Baseline status if, among other requirements, the results "from four (4) subsequent and consecutive QSEs that were sampled indicate no additional NAL exceedances for that parameter." Likewise Section XII.D.4.a contains a similar provision. If prior NAL exceedances for one parameter (e.g., TSS) in one drainage area triggered Level 1 or Level 2 status and the facility has fully implement its BMPs in that drainage area, the facility should not be precluded from returning to Baseline status if the facility experiences an NAL exceedance for TSS in another drainage area of the facility.

    SWISP recommends the following revision to Section XII.C.2.b:

    A Discharger's Level 1 status for a parameter will return to Baseline status:

    - once a Level 1 ERA report has been completed,
    - all identified additional BMPs have been implemented, and
    - results from four (4) subsequent and consecutive QSEs that were sampled indicate no additional NAL exceedances for that *parameter in the drainage area or at the discharge point that triggered Level 1 status.*

Likewise, for Section XII.D.4.a, SWISP recommends the following revisions.

> Dischargers with Level 2 status who submit an Industrial Activity BMPs Demonstration in accordance with subsection 2.a.i through iii above and have implemented BMPs to prevent future NAL exceedance(s) for the Level 2 parameter(s) shall return to baseline status for that parameter, if results from four (4) subsequent consecutive QSEs sampled indicate no additional NAL exceedance(s) for that parameter(s*) in the drainage area or at the discharge point that triggered Level 2 status.* If future NAL exceedances occur for the same parameter(s*) in the same drainage area or at the same discharge point*, the Discharger's Baseline status will return to Level 2 status on July 1 in the subsequent reporting year during which the NAL exceedance(s) occurred. These Dischargers shall update the Level 2 ERA Technical Report as required above in Section D.3.c.

13. **Returning to Baseline Status.** Page 52. Eligibility for Returning to Baseline Status (4)(b). Dischargers should not be ineligible to return to Baseline status because they have:
    a) submitted an industrial activity BMP demonstration,
    b) a non-industrial pollutant source demonstration, or
    c) a natural background pollutant source demonstration.

    Inexplicably, Section XII. D.4.b precludes a discharger from returning to Baseline status if it has submitted one of three demonstrations: an industrial activity BMP demonstration, a non-industrial pollutant source demonstration, or a natural background pollutant source demonstration. SWISP fails to understand why the General Permit includes this prohibition, especially if a facility has made either non-industrial pollutant source demonstration, or a natural background pollutant source demonstration. Presumably these demonstrations are intended to allow a facility to reduce its obligations under the General Permit by demonstrating that any exceedances are the result of either non-industrial sources or natural background. Yet, by making these very demonstrations, the dischargers become ineligible to return to Baseline status. This makes no sense.

    SWISP recommends that the Board delete Section XII.D.4.b in its entirety, or, at a minimum provide a reasonable explanation as to these demonstrations should preclude returning to Baseline status.

14. **Changing Test Methods.** The General Permit should clarify whether the applicable test procedures are those in effect at the time of the General Permit's issuance or at the time of the sampling or both.

Section XI.B.10 requires that all laboratory analyses must be conducted "according to test procedures under 40 CFR part 136 …." Similarly, Table 2 specifies the specific EPA and SM test methods that must be used for analyzing samples. The problem with these two sections is that these test methods can change from time-to-time, which can then create considerable uncertainty in determine which test method is required. For example, even some of the test methods listed in Table 2 have been superseded by subsequent revisions to those test methods. See, e.g., Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Final Rule, 77 Fed. Reg. 29757, (May 18, 2012).

SWISP recommends that the General Permit allow for permittees to use either the test methods in effect at the time that the General Permit is issued or test methods that are subsequently adopted by EPA into 40 CFR Part 136.

15. **Monthly inspection on days *with* precipitation.** Section XI.1.b states that monthly visual observations "shall be conducted … on days *without* precipitation." It is not apparent from the General Permit why the permittee is precluded from making visual observations on days *with* precipitation. Not only does this appear to be an unnecessary restriction, it could be difficult to comply if a facility has scheduled its monthly visual observations toward the end of the month and there is an extended period of continuous precipitation, which would effectively preclude visual observations. Furthermore, the General Permit does not explain how to determine what days qualify as "without precipitation." Does this mean no precipitation at all? More than 1/10th of an inch? What happens if there is a brief shower in the early morning, then dry weather at the time of the visual observation?

    SWISP recommends revising Section XI.A.1.b as follows:

    > The monthly visual observations shall be conducted during daylight hours of scheduled facility operating hours and may be conducted on days without precipitation.

16. **Combining Samples.** Page 50 of the Fact heed indicates that the facility "may combine samples from up to four (4) discharge locations if the industrial activities within each drainage area and each drainage area's physical characteristics (grade, surface materials, etc.) are substantially similar" and upon approval of the RWQCB. Page 43, XI Monitoring C. Methods and Exceptions 5. Qualified Combined Samples (QCS)and Attachment H indicates that only the lab can combine samples and RWQCB approval is only needed if combining more than four discharge points. This creates a potential problem if the lab does not combine samples per the permittee's request. SWISP requests that permittees be allowed

to combine samples and that the Fact Sheet be consistent with the permit in regard to when RWQCB approval is necessary..

17. **Sampling Containers.** Attachment H-Sample Collection and Handling Instructions –(8) indicates only to use sample containers provided by the lab to collect or store samples. This condition is onerous, impractical and unnecessary. Wit the exception of sampling for oil and grease, the use of other containers to transfer the sample to the correct lab container for shipping samples (as identified by the lab method), should be allowed based on field conditions.. For example:

    a) Small disposable containers may be utilized to obtain stormwater samples from sample ports that allow access to drop inlet below filters. Glass sample containers provided by the lab will not fit in these access ports.

    b) Collection methods for sheet flow don't always allow direct collection into a lab provided sample container.

    Attachment H should be amended to provide a means to use substitute sampling devices as necessary to collect the sample prior to placement into the container provided by the lab.

18. **NAICS vs. SIC.** Fact Sheet Page 9 discussion of SIC codes. Would like to have clarification on use of NAICS codes. According to EPA's own TRI website:

    The North American Industry Classification System (NAICS) has replaced the U.S. Standard Industrial Classification (SIC) system. As of reporting year 2006, TRI submissions are required to report NAICS codes. The first three digits represent the Industry sector and industry sub-sector. The fourth digit represents industry group, the fifth digit represents industry, and the sixth digit is U.S., Canadian, or Mexican National specific.

    It would be helpful to have language in the fact sheet indicating that material recovery facilities sorting primarily cardboard, paper, plastic and metal are not "scrap metal facilities".

    The General Permit should define industrial activities through the use of NAICS codes, and not SIC codes. The Board should abandon the outdated use of SIC codes for purposes of determining general permit coverage under the General Permit and instead adopt the currently used NAICS codes. In 1997, over 15 years ago, the U.S. Census Bureau replaced the SIC code system with the North American Industry Classification System (NAICS). See, e.g., 62 Fed. Reg. 17288 (Apr. 9, 1997) presenting OMB's decision

to adopt NAICS and replace SIC system; 74 Fed. Reg. 68599, 68612 (Dec. 28, 2009) "NAICS codes are a new economic classification system that replaces the SIC system, which has traditionally been used by the Federal Government for collecting and organizing industry-related statistics.".

Thirteen years ago, EPA considered adopting the NAICS system for stormwater regulations, but declined to do so at the time. It did however state that it would consider doing so at a later time:

> "EPA also recognizes that a new North American Industry Classification System (NAICS) was recently adopted by the Office of Management and Budget (62 FR 17288, April 9, 1997). NAICS replaces the 1987 standard industrial classification (SIC) code system for the collection of statistical economic data. However, the use of the new system for non-statistical purposes is optional. EPA considered the use of NAICS for the today's MSGP reissuance, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the previous system and this system has generally proven to be adequate for identifying the facilities covered by storm water regulations. EPA will consider transitioning to the new NAICS system in future rule making."

65 Fed. Reg. 64746, 64752-64753 (Oct. 30, 2000). In contrast, as cited above, EPA has adopted the NAICS system for TRI reporting.

SWISP recommends that the Board consider making this transition now. The increasingly antiquated SIC system is no longer supported by the U.S. Census Bureau and will likely create greater uncertainty and litigation issues in the future if the new NAICS system is not adopted. See, e.g., Ecological Rights Found. v. Pac. Gas & Elec. Co., 713 F.3d 502, 512 (9th Cir. 2013); Envtl. Def. Ctr., Inc. v. EPA, 344 F.3d 832, 858 (9th Cir. 2003); Resurrection Bay Conservation Alliance v. City of Seward, 2008 U.S. Dist. LEXIS 13667, 10-11 (D. Alaska 2008).

19. **Effluent Limitation Guidelines(ELGs) s.** SWISP believes that clarification is needed to Table 1, "Storm Water Specific NSPS Effluent Limitation Guidelines". Only "contaminated storm water" from landfills is subject to ELGs. EPA's effluent limits for Subtitle D landfills are codified at 40 CFR Part 445. "Contaminated stormwater" is defined as:

> storm water that comes in direct contact with landfill wastes, the waste handling

and treatment areas, or landfill wastewater as defined in paragraph (f) of this section. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas. 40 CFR § 445.2(b). In contrast, "non-contaminated stormwater" is defined as, storm water that does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater that is defined in paragraph (f) of this section. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

20. **Plastics Facilities.** Pages 13 and 61. Almost all industrial facilities participate in post-consumer waste recycling for employees e.g., recycling bins in lunchrooms and recyclable collection bins and dumpsters. To avoid the unintended consequence of eliminating this type of recycling, the order should make it clear that facilities engaged in this type of recycling are not subject to the Plastics Materials requirements of the General Permit. While Finding 73 mentions pre-production plastics, it is not clear from the listing of plastics that post-consumer product recycling is excluded, and the provisions in section XVIII.A do not mention pre-production plastics.

21. **Sediment Basin Design.** Page 32. SWISP requests that the final permit Clarify that existing sediment basins do not need to be redesigned. Similar to treatment control design, SWISP requests that this design standard only apply to ***new*** sediment basins that are constructed after the effective date of the permit.

    For new sediment basins, ensure compliance with the design storm standards in Section X.H.6.

    If the design standard is required of existing sediment basins, provide at least a 5-year compliance period and, if reconstruction to meet the design standards is not feasible allow a proposal for alternative compliance.

22. **Annual Report Submittal.** Page 56. Section XVI Annual Report A. Reports are due July 15th. Fifteen days from the end of the reporting year is simply not enough time. SWISP recommends allowing at least 30 days to submit the annual report.

23. **Level 2 Technical Report Rejection**. Page 51. "Water Board may reject the Level 2 ERA Technical Report". This doesn't seem reasonable and timely. Considering the permittee has up to 1 year to submit a Plan and then submit a Technical Report by Jan 1 of the following

year. After all your effort and time, the permit should provide an opportunity to meet and resolve technical report issues short of outright rejection. SWISP requests that an opportunity be provided in the permit to meet and confer with the SWRCB or RWQCB prior to rejection of any technical report.

SWISP appreciates the hard work the staff of the SWRCB have put into this draft permit – and the opportunity to express our remaining concerns and reservations regarding the draft permit. Please contact any one of the undersigned if you have any questions regarding our concerns or require further information.

Sincerely,

Mike Crump, Director
Butte County Public Works Dept.
mcrump@buttecounty.net
530-538-7681

Kathy Lynch
California Refuse Recycling Council, South
lynch@lynchlobby.com

Ralph Chandler
California Refuse Recycling Council, North
(916) 444-2055
rca@ralphchandler.com

Shawn Garvey
Vice President
Clean World Partners
shawn.garvey@cleanworld.com

Douglas E. Landon, Director
Kern County Waste Management Dept.
dougl@co.kern.ca.us

Kelly Astor, General Counsel
Los Angeles County Waste Management Assn
Inland Empire Disposal Assn
Solid Waste Association of Orange County
(714) 245-0995
jka@astor-kingsland.com

Lou Ratto, CEO
North Bay Corporation
707-243-0291

William Merry, P.E.
General Manager
Monterey Regional Waste Management District
wmerry@mrwmd.org

Amy Dietz
Corporate Environmental Manager
Recology
415/875-1113
adietz@recology.com

Bill Zimmerman, P.E., Deputy Director
Placer Co. Department of Facility Services
(530) 889-6826
bzimmerm@placer.ca.gov

Chuck Helget, President
Sector Strategies
For Republic Services
sectorstrategies@hotmail.com

Mary Pitto
Regulatory Affairs Advocate
Rural Counties' Environmental Services Joint Powers Authority
(916) 447-4806

Patrick Mathews, General Manager
Salinas Valley Solid Waste Authority
patrickm@svswa.org

Tom Reilly, Corporate Compliance Manager
Waste Connections
tomr@wcnx.org
916.549.0443

Charles A. White, P.E.
Director of Regulatory Affairs
Waste Management
cwhite1@wm.com

James Durfee, Executive Director
Western Placer Waste Management Authority
JDurfee@placer.ca.gov
(530) 886-4948

Cc: Greg Gearhart, SWRCB
Leo Cosentini, SWRCB
Laural Warddrip, SWRCB
Regan Morey, SWRCB