

WATER

Workable Approach to Environmental Regulation

Public Comment
Industrial General Permit Amendment
Deadline: 2/14/18 by 12 noon



VIA ELECTRONIC SUBMISSION

commentletters@waterboards.ca.gov

February 14, 2018

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

RE: Industrial General Permit Amendment Comment Letter

Dear Ms. Townsend:

We, the signatories to this letter, appreciate the opportunity to comment on the State Water Resources Control Board's (SWRCB) amendment to the General Permit for Storm Water Discharges associated with industrial activities (IGP). We note that the amendment seeks to incorporate and implement the total maximum daily load (TMDL) requirements in the four specified regions – San Francisco Bay, Los Angeles, Santa Ana and San Diego; integrate the U.S. EPA's sufficiently sensitive test method (SSM) testing protocols; and provide two additional compliance options for industrial dischargers under the IGP.

WATER is a coalition of businesses, schools, cities and local governments that supports cost-effective water quality policies. Collectively we represent 50 trade associations with over 20,000 businesses that employ 1.5 million workers, dozens of cities, and nearly 500 school districts that encompass 92% of California's school children.

At the outset, we must convey our appreciation for the proactive engagement of staff in this process and the time they've taken with the discharger community to discuss and receive feedback on the TMDL incorporation and alternative compliance options. Unfortunately, however, we have a number of concerns with the amendment as currently drafted. As many of us have discussed with the Board over the years, we as industrial dischargers endeavor to be in full compliance with water quality laws at all times. However, the Amendment as currently drafted has a multitude of provisions that lack clarity regarding applicability; include duplicative and conflicting requirements; and are unnecessary.

Applicability

The TMDL incorporation into the IGP is indisputably complex seeking to implement more than 30 TMDLs across four regions for similar constituents and adjacent to or downstream from the same waterbodies. We are not aware of any current, comprehensive TMDL list organized by water body and industrial discharger site that exists. In this regard, it may be a significant challenge for industrial dischargers to identify whether they are subject to one or multiple TMDLs. Furthermore, we note some TMDLs overlap watersheds and the associated

waterbodies for the same constituent. In this regard, an industrial discharger could find itself needing to comply with multiple TMDLs for the same constituent with different, potentially conflicting requirements in the same watershed.

To assist dischargers in identifying applicability of any specific TMDL requirements for their facility, the SWRCB must develop a map, interactive GIS system or other mechanism prior to the permit amendment effective date.

Additionally, the WATER Coalition strongly urges the Board to clarify dischargers should not be subject to multiple downstream TMDLs with different requirements (TNAL/NEL) for the same parameter. In this regard, we urge the Board to clarify industrial dischargers are only subject to the TMDLs for which they directly discharge to a correlated impaired waterbody segment.

Further, the Amendment should also clarify that industrial facilities are only subject to the TMDL TNAL/NEL requirements if the relevant TMDL pollutant is determined to be an industrial pollutant present at the facility and a result of industrial activity happening at that site. Clarification should also be provided relative to a pollutant being located within the corresponding impaired waterbody segment. Under the current IGP, there is appreciation for the fact that not all industrial operations have the same industrial pollutant sources and discharges. In this regard, the current Permit accommodates a pollutant source assessment to evaluate such issues and their applicability to the facility in question. The assessment findings then, in turn, dictate the BMPs implemented at a facility as well as the monitoring requirements for the relevant pollutants rather than all that have been attributed to industrial activity. Unfortunately, the amendment to the IGP does not clearly consider or link TMDL applicability to the assessment in the IGP or to industrial pollutant sources. The IGP Amendment should be consistent with this approach, requiring only those facilities with assessments identifying the TMDL pollutant and that are sited within the impaired waterbody segment to comply with the new TMDL TNAL/NEL requirements. At a minimum, facilities that would otherwise be subject to TMDL NELs should be afforded the opportunity to conduct a pollutant source assessment to demonstrate that a NEL is not properly applied to the facility's discharge.

Ultimately, to the extent that the industrial discharger is properly implementing the required Exceedance Response Actions (ERA), Water Quality Based Corrective Actions and/or alternative compliance options provided under the IGP Amendment, the discharger should be deemed in compliance with all provisions of the IGP, including the applicable Water Quality Based Effluent Limits (WQBEL) and receiving water limitations, regardless of exceedance of any TNALs or NELs.

These clarifications are critically important to dischargers who strive to be in full compliance. Absent clarity being provided, we are concerned further litigation will ensue from third parties who may allege non-compliance with a TMDL target or Waste Load Allocation (WLA) for a receiving water that, in fact, the facility is not discharging or subject to.

TMDL Numeric Action Levels (TNAL)

TNALs under the Amendment should be established using the same numeric limit derivation regulations procedures required to establish WQBELs (discussed below). Specific to copper, lead and zinc, WATER Coalition members are concerned that the TNALs for these pollutants are infeasible. The 3 ppb copper limit is certainly such a case. Other limits proposed are pushing technology confidence intervals as well. This has been highlighted in recent weeks by the California Storm water Quality Association (CASQA) who noted that only 14% of dischargers

meet the copper TNAL, Exhibit 1, currently and less than half (44%) meet the zinc TNAL for Los Angeles – Long Beach Harbor, Exhibit 2. Further, we question whether WLAs were appropriately applied and set for receiving waters directly as TNALs applicable to storm water discharges. In doing so, it has led to inappropriately low and infeasible TNALs.

The WATER Coalition believes this will result in dischargers opting not to invest in capital upgrades, especially if available technologies cannot achieve TNALs and the ERA process is rendered useless. It is critical to provide clear permit compliance language so that dischargers dutifully and faithfully implement the IGP requirements and are not subject to citizen suit litigation based solely on exceedances of TNALs. This is especially important where dischargers may have significant challenges meeting the TNAL values. Further, the Permit, as amended, must clearly state that exceedances of TNALs are not permit violations. Instead, the SWRCB should consider incorporating water board issuance of compliance certificates for dischargers implementing ERAs and Compliance Options.

Numeric Effluent Limits (NEL)

In amending the IGP, it is critical that dischargers have clear and available compliance pathways to comply with realistic and properly established numeric effluent limits (NELs) in the permit due to the substantial threat of costly and time-consuming third party citizen suits. We believe there are potential openings under currently proposed permit amendment language for third parties to threaten and pursue frivolous litigation against dischargers that are diligently and faithfully complying with the permit's requirements. In this regard, it is important that the SWRCB understand and eliminate these openings based on the appreciation that dischargers want to comply with reasonably established permit requirements, including NELs, and in return should receive regulatory certainty that they will not be burdened with frivolous and overzealous third party enforcement actions. This is critically important for small and medium sized businesses who respond to such threats of litigation and, at times, capricious complaints that can become overwhelming and threaten the businesses' continued viability.

The proposed permit amendments would impose for the first time NELs, exceedance of which would constitute a permit violation. NELs are a type of WQBEL. USEPA regulations set forth the required analysis and procedures when establishing WQBELs, none of which the SWRCB followed in adding the new NELs in the permit. Specifically, when setting WQBELs the SWRCB is required to conduct a Reasonable Potential Analysis and to use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant in the effluent, and the dilution of the effluent in the receiving water. 40 CFR §§ 122.44(d)(1)(i), (ii). Rather than conduct the required Reasonable Potential Analysis, implement procedures and consider essential conditions, the SWRCB simply regurgitated the regional water boards' TMDL/WLA findings and adopted WLAs -- properly applied to receiving waters -- as end-of-pipe NELs. Nothing in the Clean Water Act, USEPA regulations, or Porter-Cologne permit such a substitution – and for good reason: TMDLs/WLAs are focused primarily on conditions in receiving waters and pollutant loads allowable while maintaining / restoring beneficial uses while WQBELs are focused on the characteristics of the effluent. The SWRCB's failure to conduct the Reasonable Potential Analysis and procedures required by the applicable regulations to deriving the NELs proposed results in inappropriately set and applied NELs. For these reasons, the SWRCB must first conduct the required Reasonable Potential Analysis and procedures before adopting NELs in the permit.

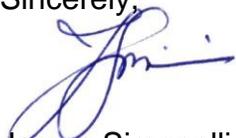
Compliance, Citizen Suits

Building on the concerns relative to growth in citizen suit potential from the IGP Amendment, we again must be clear of the critical need to provide dischargers compliance pathways so they are able to comply with the permit and avoid citizen suit enforcement actions. In this regard, the Permit must be clear that implementation of Water Quality Based Corrective Actions when there is an NEL exceedance constitutes compliance with the Permit in full, rather than just parts of the permit. Additionally, we remain concerned that there is a lack of clarity relative to the use of the onsite or offsite Compliance Options when there is an NEL or TNAL exceedance constituting compliance with the Permit.

Additionally, we recommend the IGP Amendment should include modifications to the Permit to provide for water board-issued compliance certificates to document compliance with required responsive actions (i.e., ERAs, Water Quality Based Corrective Actions, alternative Compliance Options) to provide dischargers with regulatory assurances and to respond to third party citizen suits based solely on reporting of exceedances of NALs, TNALs, and NELs in SMARTS. This is necessary to protect dischargers complying with the permit to implement iterative responsive actions adaptively to improve water quality and achieve TMDLs.

As co-chairs of the ad-hoc WATER Coalition along with the signatories to the letter, we appreciate your consideration of these comments and look forward to working with you and staff to ensure a clear, workable and cost effective approach to compliance with TMDL requirements is put forth. Thank you!

Sincerely,



James Simonelli
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WATER co-chair



Dawn Koepke
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Cc: Mr. Jonathan Bishop, Chief Deputy Director, SWRCB
Ms. Karen Larsen, Deputy Director, Division of Water Quality, SWRCB
Laurel Warddrip, Senior Environmental Scientist, Industrial/Construction Storm Water Unit, SWRCB
Shuka Rastegarpour, Environmental Scientist, Industrial/Construction Storm Water Unit, SWRCB
Members, WATER Coalition

Attachments

- Legal Memo/Comment Letter to WATER Coalition
- Exhibit 1 – Slide 1 “Potential TNAL Implications for Copper”
- Exhibit 2 – Slide 2 “Potential TNAL Implications for Zinc”

CALCIMA

California Construction and Industrial Materials Association

CICWQ

Construction Industry Coalition on Water Quality



MFANC

METAL FINISHING ASSOCIATION OF NORTHERN CALIFORNIA, INC.

CalChamber
CALIFORNIA CHAMBER OF COMMERCE



CMTA
CELEBRATING 100 YEARS



MFASC

METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA, INC.



California Food Producers

WSPA
Western States Petroleum Association



CAPA
CALIFORNIA PORTS
COMMERCE | JOBS | ENVIRONMENT

LEGAL MEMORANDUM

TO: Dawn Koepke, WATER Coalition

FROM: Sue Meyer, Nossaman
Mary Lynn Coffee, Nossaman
Jeremy Jungreis, Rutan and Tucker
S. Wayne Rosenbaum, Environmental Law Group
Katharine E. Wagner, Attorney

DATE: February 13, 2018

SUBJECT: **Comment Letter – Industrial General Permit Amendments**

1. It is critical that dischargers have clear and available compliance pathways to comply with realistic and properly established numeric effluent limits (NELs) in the Industrial General Permit (permit) due to the substantial threat of costly and time-consuming third party citizen suits.
 - a. It is important that the State Water Resources Control Board (SWRCB) understand and eliminate the potential openings under currently proposed permit amendment language for third parties to threaten and pursue frivolous litigation against dischargers that are diligently and faithfully complying with the permit's requirements.
 - b. Dischargers want to comply with reasonably established permit requirements, including NELs, and in return receive regulatory certainty that they will not be burdened with frivolous and overzealous third party enforcement actions. For a small or even medium sized business, responding to such threats of litigation and bogus complaints can become overwhelming and threaten the business's continued viability.
2. The NELs are not appropriately derived and tailored to regulate the varied discharges that may be permitted under the IGP because the SWRCB did not follow the federal regulatory process governing derivation of water quality based effluent limits (WQBELs).
 - a. Federal Regulations Governing Derivation of WQBELs.
 - i. The CWA requires that permits for storm water discharges associated with industrial activity comply with section 301 of the Act, including the requirement under section 301(b)(1)(C) to contain WQBELs to achieve water quality standards for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion. CWA section 402(p)(3)(A).
 - ii. USEPA's regulations governing NPDES permitting require the SWRCB to establish technology based effluent limitations for industrial storm water permits, and to include additional limitations that are determined

necessary to achieve water quality standards in order to control pollutants and pollutant parameters that it determines “are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard”. 40 CFR § 122.44(d)(1); see NPDES 2010 Permit Writer’s Manual at 6-23.

- iii. In determining whether WQBELs must be implemented for a specific pollutant, the SWRCB is required to conduct a “**Reasonable Potential Analysis**” (“RPA”). 40 CFR § 122.44(d)(1)(i).
- iv. The regulations further require the SWRCB, in making this determination and in deriving the appropriate value for a WQBEL, permit writers “**shall** use procedures which account for **existing controls** on point and nonpoint sources of pollution, the **variability of the pollutant or pollutant parameter in the effluent**, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water” (emphasis added). 40 CFR § 122.44(d)(1)(ii); see also, *Divers’ Env’l Cons.Org. v. SWRCB* (2006) 145 Cal. App.4th 246, 253-54 (describing RPA and procedures required when setting WQBELs).
 - 1. Section 6.3 of the NPDES Permit Writers’ guide directs the permitting authority to conduct a RPA when setting WQBELs, and specifies that “permit writers need to document the details of the reasonable potential analysis in the NPDES permit fact sheet.” USEPA, NPDES Permit Writers’ Manual, 2010, p. 6-30.
 - 2. The Permit Writers’ guide also notes that a model and the conditions used to inform the RPA and its decision-making process for purposes of determining whether a WQBEL is required are the same model and conditions used to determine and derive the appropriate numeric standard issued as a WQBEL. See NPDES Permit Writers’ Manual at 6-32.
- v. Nothing in the regulation or the Clean Water Act suggests that 40 CFR § 122.44(d)(1)(ii)’s use of the word “shall” indicates a discretionary duty.
- vi. When the word “shall” appears in a regulation, it is generally construed as mandatory, leaving no room for agency discretion. See, e.g., *Am. Canoe Ass’n, Inc. v. U.S. E.P.A.*, 30 F. Supp. 2d 908, 918 (E.D. Va. 1998) (“The regulation cannot be read as anything other than mandatory; it sets out a list of required elements for state Clean Water Act § 303(d) submissions and states that the administrator “shall” only approve a list that includes all required elements”); *Reid v. Kayye*, 885 F.2d 129, 131 n. 1 (4th Cir.1989) (“Use of the word ‘shall’ generally indicates a mandatory intent.”).
- vii. Nothing in the regulation abridges the SWRCB’s duty to conduct an RPA when determining if a WQBEL is required for a particular pollutant to achieve water quality standards – any interpretation absolving the Board of its duty to conduct an RPA in deciding if a WQBEL was required for a

pollutant would impermissibly “re-write” an unambiguous regulation. *Christensen v. Harris Cty.*, 529 U.S. 576, 588 (2000) (unambiguous regulation could not be effectively rewritten by agency under guise of interpreting regulation and judiciary owed no deference to agency interpretation).

- viii. Upon completion of the mandatory RPA and procedures, and a determination that a WQBEL is necessary to achieve water quality standards, the SWRCB is required to ensure that the WQBEL is consistent with the assumptions and requirements of any available wasteload allocation (“WLA”) for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.” 40 CFR § 122.44(d)(1)(vii). Note that 40 CFR section 122.44(d)(1)(vii) does not excuse the SWRCB from its duty to conduct an RPA using the specified procedures.
- b. The SWRCB did not conduct the RPA, or consider all of the factors in deriving any of the impaired water body / pollutant NELs in Table X of Attachment E as required by the regulations. Instead the SWRCB improperly substituted the technical analysis used to establish WLAs as a substitute both for its obligation to conduct an RPA and for its obligation to consider appropriate factors specified by the regulations in deriving the numeric value for each WQBEL. See Fact Sheet, pp. 48-81.
 - i. The process the RWQCBs/EPA followed in establishing TMDLs/WLAs and the purpose in establishing TMDLs/WLAs are different than the process and purpose of an RPA analysis. See Findings 45-47.
 - ii. The receiving water condition and the appropriate loads permitted in the receiving water for attaining receiving water standards is the focus of the TMDL and WLA determinations. These considerations are narrow and mostly quantitative, aimed primarily at calculating the total amount of pollutant a receiving water body can handle, taking into account its assimilative capacity, without violating water quality standards.
 1. “A TMDL is a written, quantitative assessment of water quality problems and contributing pollutant sources. It identifies one or more numeric targets based on applicable water quality standards, specifies the maximum amount of a pollutant that can be discharged (or the amount of a pollutant that needs to be reduced) to meet water quality standards, allocates pollutant loads among sources in the watershed, and provides a basis for taking actions needed to meet numeric target(s) and implement water quality standards.” SWRCB, *The Distinction between a TMDL’s Numeric Targets and Water Quality Standards*, at 3 (June 12, 2002) available at https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/iwguide_apxb.pdf.

2. Other considerations in setting a TMDL include seasonal variations; critical conditions for stream flow; loading from other sources unrelated to particular discharges of effluent; and water quality parameters. 40 CFR §130.7(c)(1). But ultimately, a TMDL determination seeks solely to determine the maximum pollutant “load” a receiving water body can take, given certain conditions and the water body’s pollutant sources.
 3. WLAs identify the portion of the receiving water’s loading capacity allocated to existing and future point source(s) 40 CFR §§130.2(h), (i). WLAs for a point source are calculated based on receiving water body flow, pollutant concentration of the receiving water body, and the discharge flow. See, e.g., NPDES 2010 Permit Writer’s Manual at 6-33.
- iii. Considerations mandated under the regulations in connection with conducting an RPA and deriving WQBELS are primarily and more narrowly focused on character and quality of the *effluent* being discharged and require consideration of the factors specified in 40 CFR section 122.44(d)(1)(ii):
1. Effluent variability information such as history of compliance problems and toxic impacts;
 2. Point and nonpoint source controls such as existing treatment technology, the type of industry, POTW treatment system, or BMPs in place;
 3. Species sensitivity data including in-stream data, adopted water quality criteria, or designated uses; and
 4. Dilution information such as critical receiving water flows or mixing zones. See NPDES 2010 Permit Writer’s Manual at 6-30.
- c. Analysis of the foregoing considerations in conducting an RPA and deriving a WQBEL yields information critical to successful implementation of the permit NEL established via the process. The SWRCB’s failure to conduct the analysis and procedures required by the applicable regulations in performing the RPA to determine whether NELs were necessary and in deriving the NELs proposed results in inappropriately set and applied NELs. To the extent it is has been determined a WQBEL is necessary to achieve water quality standards using the RPA process, the RPA failed to consider appropriate regulatory factors. In addition, because the regulatory factors were not considered in the first instance in deriving the NELs, the NEL values established by the SWRCB have not been reliably set at appropriate WQBELS for purposes of regulating particular pollutants in specified categories and types of industrial storm water discharges subject to and regulated by the IGP.

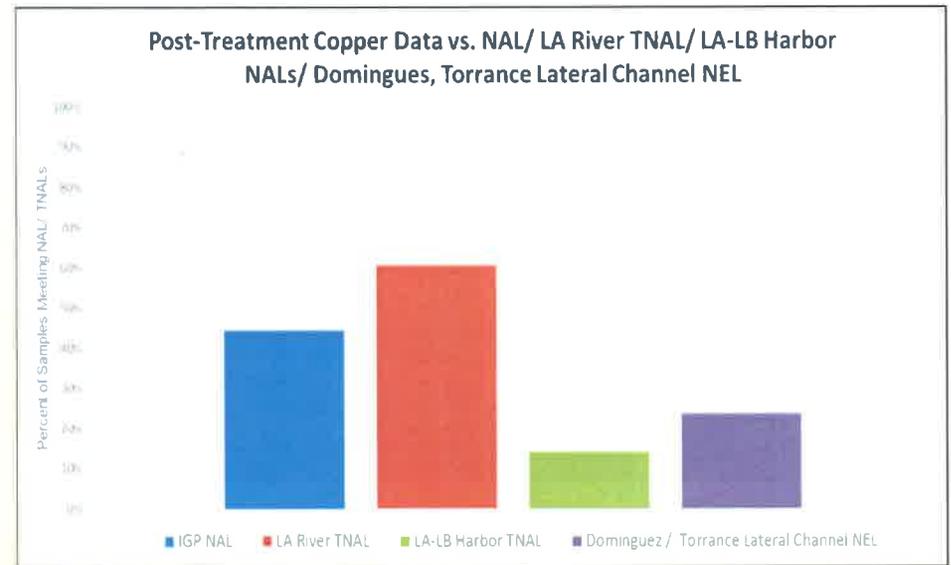
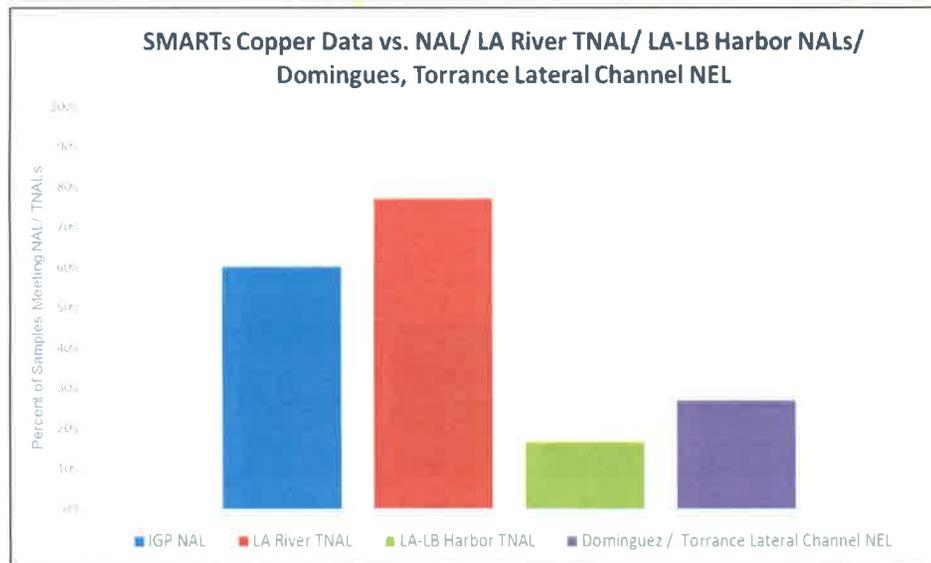
3. The proposed NELs for copper, lead, and zinc are improperly established because the SWRCB did not take into consideration the feasibility of attaining the NELs in storm water discharges. For example, our clients report that the NELs for copper, lead, zinc in the Dominguez Channel and Torrance Lateral Channel are infeasible. See, e.g., Exhibit 1 (showing less than a quarter of discharges implementing ATS meet proposed copper NEL).
 - a. Upon conducting an RPA determining that WQBELs are necessary and setting NELs, the regulations also require permit writers to determine whether WQBELs should be expressed as numeric limits or BMPs. WQBELs may be expressed in the form of either numeric limitations or BMPs. 40 CFR 122.44(k); see *Cmtys. for a Better Env't v. State Water Res. Control Bd.* (2003) 109 Cal. App. 4th 1089, 1105 (holding NPDES permit did not have to contain a numeric WQBEL even where numeric water quality standards were effective).
 - b. BMPs to control or abate the discharge of pollutants are authorized under 402(p) for control of storm water discharges or when NELs are infeasible. 40 CFR 122.44(k)(2), (3); see *Divers, supra*, at 258, 260 (holding BMPs authorized under 40 CFR section 122.44(k)(2) are WQBELs, which the permitting authority may impose for control of industrial storm water discharges); see also IGP Finding 42 (acknowledging BMPs are authorized under section 122.44(k)(3) because *numeric effluent limitations are infeasible*).
 - c. “The permitting authority’s decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the **nature of the storm water discharge**, available data, modeling results, and other relevant information.” USEPA, Memorandum, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,’” (Nov. 26, 2014) (EPA 2014 Memo), p. 6.
 - d. EPA’s 2002 Memo states: “the NPDES permitting authority will review the information provided by the TMDL . . . and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit” USEPA, Memorandum, Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (Nov. 22, 2002), p. 2
 - e. Numerous statements in the 2014 IGP and Fact Sheet that NELs are not feasible see Fact Sheet, pp. 1-2, 19-20; Findings 39, 42.
 - f. In establishing the 2017 NELs, the SWRCB did not produce or consider any evidence regarding whether NELs determined infeasible to attain in 2014 became feasible to attain in storm water discharges in 2017. Instead, the 2017 amendments simply implement NELs that were determined in 2014 to be infeasible to attain. Under applicable regulations, these infeasible NELs should be replaced with BMPs and an integrative process and appropriate time schedule

- c. Clarify that industrial facility storm water discharges are only subject to TNALs and NELs if the industrial activity implemented at the facility employs the particular pollutant regulated by the numeric limit.
 - d. Further clarify that so long as the permittee is implementing the required Exceedance Response Actions (ERAs), Water Quality Based Corrective Actions and/or alternative Compliance Options specified by the IGP, the permittee is in compliance with all provisions of the IGP, including the applicable WQBELS and receiving water limitations, regardless of the exceedance of any TNALs or NELs.
 - e. Such direction is critical to dischargers to avoid litigation from third parties alleging that a discharger is not complying with a TMDL target or WLA for a receiving water that, in fact, the facility is not discharging or subject to.
 7. It is critical to provide dischargers compliance pathways so that dischargers are not out of compliance with the permit and subject to citizen suit enforcement actions even as they are diligently and faithfully implementing the permit's requirements.
 - a. The Order (and not the Findings or the Fact Sheet) must state:
 - i. Implementation of Water Quality Based Corrective Actions when there is an NEL exceedance constitutes compliance with the permit (not just parts of the permit)
 - ii. Implementation of onsite or offsite Compliance Options when there is an NEL or TNAL exceedance constitutes compliance with the permit
 - iii. Exceedances of TNALs are not violations of the permit
 - iv. If a TNAL is exceeded, the discharger is in compliance with the permit provided the discharger is implementing the appropriate ERA or Compliance Option.
 - b. The amendments should include modifications to the Order to provide for water board issued compliance certificates to document compliance with required responsive actions (i.e., ERAs, Water Quality Based Corrective Actions, alternative Compliance Options) to provide dischargers with regulatory assurances and to respond to third party citizen suits based solely on reporting of exceedances of NALs, TNALs, and NELs in SMARTS. This is necessary to protect dischargers complying with the permit to implement iterative responsive actions adaptively to improve water quality and achieve TMDLs.
8. TNALs should be established using the same RPA / numeric limit derivation regulations procedures required to establish WQBELS.
 - a. TNALs for copper, lead and zinc are infeasible as reported by our clients; even with deployment of ATS, 14% of dischargers meet the copper TNAL (Exhibit 1) and less than half (44%) meet the zinc TNAL for Los Angeles – Long Beach Harbor (Exhibit 2).

- b. The SWRCB inappropriately applied WLAs set for receiving waters directly as TNALs applicable to storm water discharges, resulting in inappropriately low (and infeasible) TNALs.
- c. Dischargers will be discouraged from investing in expensive capital upgrades such as ATS if those technologies cannot achieve TNALs, and the ERA process is rendered useless.
- d. It is critical to provide clear permit compliance language so that dischargers dutifully and faithfully implementing the permit's requirements are not subject to citizen suit litigation based solely on exceedances of TNALs.
 - i. The Order as amended must clearly state that exceedances of TNALs are not permit violations.
 - ii. The permit amendments should provide for water board issuance of compliance certificates for dischargers implementing ERAs and Compliance Options.

THE POTENTIAL IMPACT FOR COPPER

IGP and Proposed TMDL		IGP NAL	LA River TNAL	LA-LB Harbor TNAL	Dominguez / Torrance Lateral Channel NEL
Parameter		Copper	Copper	Copper	Copper
Numeric Action Level or Effluent Limit (mg/L)		0.0332	0.06749	0.00373	0.0097
Region 4 Storm Water Data*	% meeting NAL/ NEL	60%	77%	17%	27%
	No. of Samples	5570	5570	5570	5570
Advanced Treatment System Data**	% meeting NAL/ NEL	45%	60%	14%	24%
	No. of Samples	182	182	182	182



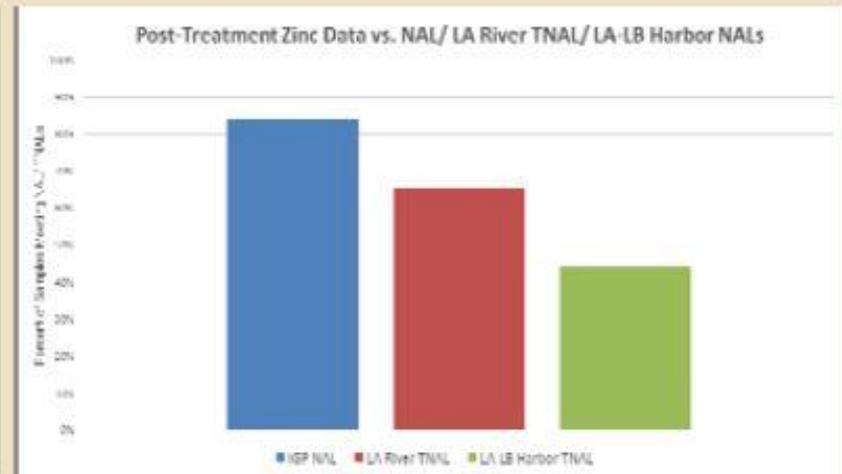
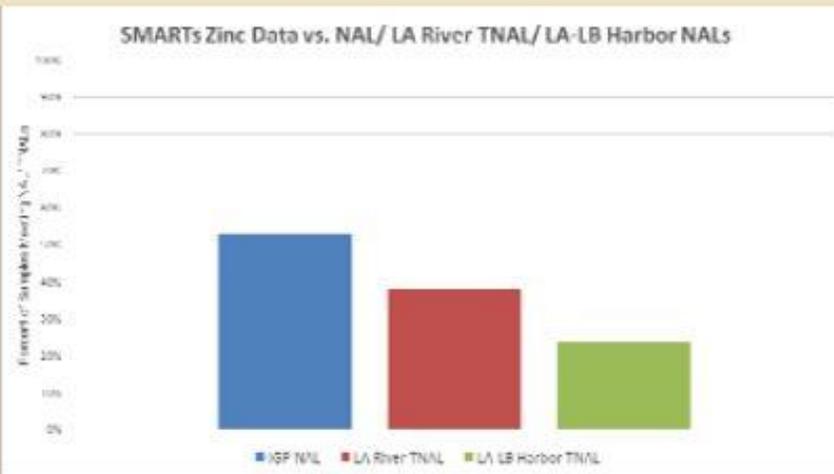
- LA River TNAL for Copper has incorporated Water Effect Ratio (WER=3.97).
- The lower TNAL/ NEL makes a difference!

* Based on Region 4 storm water results exported from SMARTS on 1/31/2018

** Dataset represent advanced treatment at 17 sites from 5 different types of systems

POTENTIAL TNAL IMPLICATIONS FOR ZINC

IGP and Proposed TMDL		IGP NAL	LA River TNAL	LA-LB Harbor TNAL
Parameter		Zinc	Zinc	Zinc
Action Level (mg/L)		0.26	0.159	0.0856
Region 4 Storm Water Data*	% meeting NAL	53%	38%	24%
	No. of Samples	10717	10717	10717
Advanced Treatment System Data**	% meeting NAL	84%	66%	44%
	No. of Samples	203	203	203



* Based on Region 4 storm water results exported from SMARTS on 1/31/2018

** Dataset represent advanced treatment at 17 sites from 5 different types of systems