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VIA ELECTRONIC MAIL

17 February 2005

**Re: Comments on Draft Industrial General Permit
No. CAS000001 and Proposed Order No. 02-01-DWQ**

Dear Board Members and Ms. Jennings:

Thank you for the opportunity to comment on the latest draft of NPDES Permit No. CAS 000001, the General Permit for Discharges of Storm Water Associated with Industrial Activities (“General Permit”). These comments are submitted on behalf of California Coastkeeper Alliance (an alliance of the Southern California Waterkeepers, including Santa Barbara Channelkeeper, Ventura Coastkeeper, Santa Monica Baykeeper, Orange County Coastkeeper, and San Diego Baykeeper), the San Luis Obispo Coastkeeper, the Russian Riverkeeper, the Humboldt Baykeeper, and of Waterkeepers Northern California (San Francisco Baykeeper and Deltakeeper), (hereinafter referred to collectively as “Waterkeepers”), Heal the Bay, and Natural Resources Defense Council (collectively, the Environmental Commenters).

As you are aware, the Waterkeepers submitted extensive comments on 23 June 2003, when the draft of the re-issuance of the General Permit was released for comments. Unfortunately, the Permit is virtually unchanged from that draft developed over twenty (20) months ago. Therefore the 23 June 2003 comment letter, the associated report from HOH Corporation (Richard Rollins), and the data submissions associated with that report are incorporated by reference into this comment letter. The Environmental Commenters specifically request that the State Board respond to the 23 June 2003 Comment Letter, including the analysis of data presented by HOH Corporation, as well as these

comments, in the State Board's Response to Comments for this Permit required by State and Federal Law.

Rather than restate the serious flaws with the draft General Permit noted in the 23 June 2003 letter, this comment letter will focus on the schematic failure of the draft General Permit (1) to provide for efficient, transparent regulation of dischargers, to establish an objective standard for the Regional Boards, the permittees, and the public to determine permit compliance, or (2) to protect water quality and comply with Federal Law. The Environmental Commenters submit that a simple compliance evaluation, based on readily applied numeric discharges standards, will serve the goals of the policies of Cal EPA, will protect water quality, and will meet the minimum requirements of the Clean Water Act, in ways that the overcomplicated, paper driven, and fatally vague program perpetuated by the draft General Permit cannot.

I. The Vague, Byzantine, and Internally Inconsistent draft General Permit is Inconsistent with the Policies of Cal EPA and the Requirements of Clean Water Act.

Terry Tamminen, former Secretary of Cal EPA sent an Enforcement Initiative, dated 30 November 2003, to the Board Chairs, Department Directors, and Executive Officers of the agencies making up Cal EPA. It is our understanding that Cal EPA, and the administration, continues to pursue the goals of the initiative under the new Secretary.

In that Initiative, Secretary Tamminen stated:

Action Item # 6 in Governor Schwarzenegger's Action Plan for the Environment identifies the need to "protect California's environment through the tough enforcement of existing laws." The Governor's Environmental Action Plan states that:

"Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives. My Administration will focus on keeping underlying statutes and regulations simple; simple rules are easiest to follow and comply with; unnecessarily complex rules are hard to comply with, hard to enforce, and encourage evasion. Particular attention will be given to better use of information technologies with strict, clear and rapid penalties for intentional or negligent misstatements or omissions."

The Initiative continues at page 7:

10. Enforceable Permits and Regulations

Currently, one of the greatest difficulties faced by enforcement staff is complicated, ambiguous and/or poorly written permits or multiple, conflicting and confusing regulatory requirements that are unenforceable. There is a need to ensure that all BDO permits and requirements are enforceable. Permit requirements must be unambiguous. They should be written in such a way that they are clear, easy to understand, and determining compliance is simple. Similarly, the enforcement consequences for violation should be clear. Also, a majority of enforcement staff have identified the need to streamline existing code and regulations, with an emphasis on consistency among BDO relevant authorities.

Therefore, I am asking the SWRCB to lead the effort and each BDO to participate in a task force of regulatory staff, permit writers and enforcement field staff from our local, regional, and state branches to make recommendations on ensuring that our regulations and permits are enforceable by our enforcement staff.

Unfortunately, the draft General Permit is a step in precisely the opposite direction from that laid out by the Secretary of Cal EPA. The General Permit covers at least 9500 industrial facilities, making it the single permit affecting the most permittees, regulating a very significant source of pollutants. Rather than representing the SWRCB's lead in providing readily enforceable permits, however, the draft General Permit is overcomplicated, confusing, and is focused on paper generation rather than improving water quality. The draft General Permit is 71 pages long with attachments. Moreover, the draft General Permit continues a permit scheme that is vague and ambiguous, provides no effective mechanism for determining compliance, requires substantial Regional Board staff time to implement, imposes onerous reporting requirements on permittees that can easily be violated, and fails to use the sampling data generated by the permit in a meaningful way to measure compliance. Perhaps most damning, the Permit scheme is a demonstrated failure in terms of protection of the waters of the State.

Examples of the Permit's shortcomings include the draft General Permit's requirement that the permittee implement Best Management Practices (BMPs) that comply with both the BAT/BCT standard set out in the Clean Water Act, and which comply that Water Quality Standards (WQS). General Permit, pp. 3-4. While requiring dischargers to meet these minimum requirements of the Clean Water Act, the General Permit provides no means for the Discharger (or anyone else) to determine if the standard is met and the permit has been complied with. Sampling data will not provide that information—the General Permit states that sampling data is at most “useful” for evaluating the effectiveness of the BMPs. Fact Sheet, p. 8. Similarly the Benchmark Levels cited in the General Permit are only indicators, and “are not intended to determine whether or not discharges are causing or contributing to a water quality impairment” and exceedances are not necessarily violations of the Permit. Fact Sheet, p. 9. Instead, a determination of compliance is “site specific and may be based on various factors, including indicator monitoring results, visual observations of the site, discharges, and the receiving water, and a review of the BMPs.” Fact Sheet, p. 15. Thus there is no objective method for the discharger to determine if she is in compliance, and the permittee and the public will live in uncertainty as to a site's compliance status. Further, even if the

permittee follows all of the requirements of the Permit, improving its SWPPP, submitting reports, and so on, "...the Regional Board may find that these steps are not adequate, and it may require implementation of more measures or may take enforcement against the discharger." Fact Sheet, pp. 8-9.

Apparently attempting to avoid the investment of resources in developing readily enforceable standards for the General Permit, which the Fact Sheet characterizes as "particularly difficult," staff has continued to support a permit where compliance determinations are largely subjective, and at best extremely difficult to establish. Fact Sheet, p.16. Further this short sighted approach will consume tremendous resources of the dischargers and the Regional Boards in attempting to comply with or enforce the General Permit. Further, it is intrinsically unfair to the permittees to be perpetually in limbo regarding compliance, and potentially subject to very substantial penalties via Regional Board or citizen enforcement. That this approach is a failure was demonstrated in 2003 in the Waterkeepers' review of the available data for the Los Angeles Region, that showed between 92.5% and 99.9% non-compliance with Water Quality Standards for facilities covered by the General Permit for Copper, Zinc and Lead.

Adoption of scientifically based numeric effluent limitations, while requiring some investment of State Board staff time initially, will simplify permit oversight by Regional Boards, provide certainty for dischargers, and streamline the entire process.

II. Numeric Effluent Limitations Will Provide a Streamlined, Fair and Enforceable Standard, and Can Be Readily Developed and Included in the General Permit

It is not debatable that numeric limits are simple to enforce, easy for dischargers to evaluate, and provide a transparent, efficient, and fair mechanism for determining compliance. As demonstrated in the Waterkeepers' June 2003 comments, numeric effluent limits also achieve vastly greater levels of compliance, and therefore better protect receiving waters. The Waterkeepers' survey of sampling data collected pursuant to the General Permit in the Los Angeles area watershed indicates that while WQS compliance rates for copper and lead are between 0.1% and 7.5% under the General Permit's BMP based scheme, compliance for facilities with numeric limits for storm water discharges in their NPDES permits surveyed by the Waterkeepers for those pollutants is between 90% and 99%.

Staff has consistently taken the position that numeric effluent limitations for storm water permits are infeasible, impracticable, or at least "particularly difficult." Fact Sheet, p. 16. To the Environmental Commenters knowledge, however, State Board staff has never undertaken a systematic review of the over ten years of data collected by permittees under the General Permit (including the RPA required by the Clean Water Act), of performance achieved by well run industrial facilities, or of limits adopted by other agencies in an effort to establish numeric effluent limits. The Environmental Commenters believe that numeric effluent limits, both to determine compliance with the technology based requirements of the Clean Water Act, and to demonstrate compliance

with Water Quality Standards, can be developed by State Board staff, and included in the General Permit.

A. Effluent Limits Establishing BAT/BCT Compliance Can Be Readily Developed by State Board Staff

Numeric effluent limitations to satisfy the technology based requirements of the Clean Water Act can be readily established by the State Board. As an example, the Waterkeepers have developed proposed technology based numeric limits for industrial dischargers. The Waterkeepers and NRDC retained an expert, Richard Rollins of HOH Corporation, to review current performance by dischargers using storm water pollution control technology meeting the BAT/BCT standard, and numeric limits imposed by Regional Board and other States.

To review current performance, Mr. Rollins utilized the International Stormwater Best Management Practices (BMP) Database (IBMPDB). The IBMPDB project, which began in 1996 under a cooperative agreement between the American Society of Civil Engineers (ASCE) and the U.S. Environmental Protection Agency (USEPA), now has support and funding from a broad coalition of partners including the Water Environment Research Foundation (WERF), ASCE Environmental and Water Resources Institute (EWRI), USEPA, Federal Highway Administration (FHWA) and the American Public Works Association (APWA). A copy of the database is attached to this comment letter, and can be accessed on the internet at <http://www.bmpdatabase.org/>. The IBMPDB provides analytical results from over 1600 systems treating urban runoff that have been collected under a specified protocol and validated by the IBMPDB sponsors. Systems evaluated include hydrodynamic devices, biofilters, detention basins, media filters, wetland basins, grassy swales, as well as others not listed here.

In developing proposed technology based numeric effluent limits for selected pollutants, Rollins averaged the pollutant concentration levels reported in the database for those pollutants. Those proposed effluent limits are provided in a table attached to this letter. Because the database provides the current performance of urban¹ stormwater dischargers expressed in numeric concentrations, well run sites will be able to comply with these limits using readily available BMPs, as hundreds do currently.

The Waterkeepers recommend that the numeric effluent limits set out in the attachment or something similar, be incorporated into the General Permit. The Waterkeepers welcome a dialogue with staff regarding the proposed BAT effluent limits.

¹ While the IBMPDB database provides data on urban storm water discharges rather than strictly industrial discharges, given the concentration of industrial activities in urban areas, the data is still representative of current performance at industrial sites.

B. The Federal Multi-Sector Permit Benchmark Levels Provide an Objective Standard for Determining BAT/BCT Compliance

The General Permit uses the Benchmark Level from the Federal Multi-Sector Permit as “indicators” of compliance with the BAT/BCT technology based requirements of the Clean Water Act. Fact Sheet, p.14. Federal Courts in the Central District of California and the Northern District of California, the Federal Court Districts which cover the most urbanized and thus industrialized portions of the State, have already used the Benchmarks for significantly more.

In *Ecological Rights Foundation v. Sierra Pacific Industries*, C-01-0520 MEJ (ND Cal 2002), the Court found that while Benchmark levels do not apply directly to industrial dischargers covered by the statewide Permit in California, a violation of such guidelines can provide the basis for a finding that a discharger has violated the BAT/BCT requirement of the Permit. And, in fact, that was the finding of the court; Sierra Pacific Industries (“SPI”) was found to be in violation of the Permit’s BAT/BCT requirement because of its discharges in exceedance of the federal benchmarks set out in the Multi-Sector Permit.

[T]he storm water sampling results, which show exceedances of benchmarks established by EPA, demonstrate that the management practices implemented at the Arcata Mill do not meet the BAT/BCT standard required by the General Permit. *Id.* at p. 44

The Court also ruled that SPI’s monitoring results showed discharges in exceedance of WQs included in the applicable Basin Plan and therefore such discharges violated the statewide, Permit and the CWA since both provide that discharges shall not cause or contribute to an exceedance of any applicable water quality standard. The Court further ruled that *any* discharge of petroleum hydrocarbons, PCP, or TCP to waters in the of the region violates the Basin Plan. Since SPI’s discharges contained some of these constituents, the discharges were found to be illegal and “. . . are conclusive evidence of Clean Water Act violations.” *Id.*

Similarly, in *Santa Monica BayKeeper v. Sunlite Salvage*, CV 99-04578 WDK (CD Cal. 1999), the District Court ruled:

The benchmark levels set out in the EPA Multi-Sector Permit provide an objective standard to determine if BAT has been implemented; if storm water containing concentrations of toxic pollutants above benchmark levels is being discharged, further BMPs are required and this BAT is not being achieved. *Sunlite* at p.5.

Thus the two Courts applied the Benchmark levels as effective effluent limits, finding that exceedances of Benchmarks are violations of the technology based limits of the Permit. To the extent that State Board staff continues to argue that it lacks the

resources to develop effluent limitations for the technology based requirements of the Permit, the Benchmark Levels can be imported directly into the permit as well-established, defensible measures of compliance with the BAT/BCT limit.

Some commenters have argued that the Benchmarks do not accurately represent BAT/BCT, and were not developed solely based on technology standards. While this is correct, the Benchmarks have been used by industry and regulators nationwide in evaluating BMP performance for over ten (10) years, and are an accepted measure of compliance. Benchmarks are commonly included in SWPPPs in California for determining compliance. Further, in the Waterkeepers' survey of compliance rates, between 1996 and 2002, 71% of permittees achieved the benchmark level for lead, and 43% of permittees achieved the benchmark level for copper. Thus, almost three quarters of site are currently meeting the Benchmark Level for the difficult to control pollutant lead, and almost half are meeting that level for copper. Given the generally poor levels of implementation of BMPs representing BAT/BCT at industrial sites in California, this indicates that well-run facilities can comply with the Benchmarks, and that Benchmarks are an accurate measure of the BAT/BCT requirement.

C. Numeric Limits for Water Quality Standard Determinations Can be Readily Developed by State Board Staff

As with the technology based requirements of the General Permit, State Board staff take the position that developing WQBELs for storm water permits is effectively impossible. Again, to the Environmental Commenters' knowledge, no one on State Board staff has taken a serious look at the issue.

The most obvious place to look for effluent limitations that will ensure that Water Quality Standards are achieved in the receiving waters where industrial storm water is discharged, is to Water Quality Standards themselves. The most obvious example is the California Toxics Rule (CTR), which lists the Water Quality Standards for priority pollutants in California. As noted in the CTR, unless a mixing zone has been calculated and provided for a site (which has not occurred for any permittee under the General Permit), CTR applies end of pipe for the discharge. 40 C.F.R. § 131.38(c)(2)(i). Thus the effluent limitation for CTR pollutants would be the CTR levels. Similarly, for other pollutants of concern, the effluent limitation would be the WQS itself.

Given the dischargers' current levels of non-compliance with WQS, this approach may well face significant resistance from the dischargers. However, the Clean Water Act and Porter Cologne provide sufficient flexibility to mitigate the impact on permittees.

First, to the extent that dischargers believe that their discharges are assimilated into the receiving waters without impacting Beneficial Uses, they may apply for a mixing zone credit. Because the Inland Surface Waters Plan does not currently provide for a mixing zone analysis for storm water, staff will need to develop one and include it in the General Permit for dischargers to benefit from this mechanism.

Second, where dischargers' sampling demonstrates that they do not currently meet WQSs, the General Permit could provide for Time Schedule Orders for permittees that apply and qualify for them. As an alternative, the General Permit could provide for a compliance schedule, so long as the dischargers achieved compliance with the WQBELs within the five year life of the permit. In either instance, the schedule would be required to provide enforceable interim limits and other performance milestones with measurable pollutant reductions to bringing each site into compliance with the final WQBELs within the life of the permit.

State Board members and staff have expressed concerns that : 1) development and implementation of numeric water quality based effluent limits will require separate, individual NPDES permits for each permittee; and 2) incorporating compliance schedules, mixing zones, or other measures to mitigate the impact of WQBELs on industrial dischargers will also require individual permits. The Waterkeepers disagree.

Based on explanations from Staff relating to the working of both the General Industrial Permit and the Construction Storm Water Permit, in order to determine whether the receiving water limitation prohibiting discharges that cause or contribute to violations of Water Quality Standards is complied with, dischargers must undertake the following steps:

- 1) Establish the receiving waters of the storm water discharge, and determine whether that water is 303(d) listed as impaired, and what pollutants are causing that impairment.
- 2) Determine whether the site discharges those pollutants.
- 3) Determine whether discharges are above Water Quality Standards, or for bioaccumulative /persistent pollutants, whether any of the pollutant is being discharged.
- 4) If so, implement BMPs to prevent the impairment, and report to the RWQCB

Thus the determination as to which WQS (including for example CTR) apply to an individual site is already part of the General Permit, although only by implication. The Waterkeepers recommend that this process become express, rather than implied, in the General Permit, and that the necessary source documents to make the determination, including tables of the applicable WQS, be attached. Since this analysis is already included in the General Permit, Waterkeepers do not understand why articulating the applicable limits in the Permit will trigger a requirement for individual permits.

Similarly, the General Permit can articulate in detail the criteria to be applied when evaluating applications by permittees for mixing zones. This criteria could then be

applied in staff evaluations of the applications to determine if any of these exceptions to the strict application of WQS applies to an individual site. This process is currently being applied in the Washington State General Permit for Industrial Storm Water for mixing zones. Regional Boards have for years written permits that provide a criteria for reducing monitoring requirements, and reserved that decision to staff rather than the Board itself. The current draft of the General Permit provides for staff rather than Board determinations on the No Exposure Certifications. We see no distinction between these types of staff determinations and mixing zone analyses. So long as the interested public is given notice and opportunity to comment on the proposed mixing zones and compliance schedules for individual sites, the General Permit could incorporate these analyses.

D. Numeric Effluent Limits Will Streamline the Permit, Compliance Reporting by Permittees, and Oversight and Enforcement by RWQCB Staff

State Board staff argue that because developing numeric effluent limits for storm water permits is “particularly difficult,” and because it will be costly for permittees to conduct meaningful sampling, the current “judgment” based General Permit is appropriate. Fact Sheet, p. 16. In doing so, however, State Board staff proposes to simplify the drafting of the permit in exchange for creating an extremely onerous oversight requirement for the Regional Boards. Thus rather than streamlining, the draft General Permit merely transfers the administrative burden to the Regional Boards and spreads it over the life of the Permit, while it significantly increases the total staffing requirements Statewide. Similarly, while a meaningful sampling program will cost permittees money, the tremendously simplified reporting and compliance determination requirements of a numeric effluent limit based permit would at the minimum balance the costs of the sampling program, and would likely save money for permittees.

Utilization of numeric effluent limitations for determinations of permit compliance will allow the elimination of much of the permit requirements. For example, the minimum BMP requirement of the draft General Permit could be eliminated and moved to a Guidance Document describing BMPs that may help the discharger achieve the numeric limits. General Permit, pp. 12-15. Similarly, the requirements relating to the SWPPP could be eliminated from the Permit, and put into Guidance Documents. General Permit, pp. 8-12; 15-17. The vast majority of the Monitoring Program section could be eliminated, while retaining the sampling methods, analytic methods and reporting requirements. Oversight of the sampling can be tremendously simplified by requiring electronic submission of the data in a standardized format. Finally, the Group Monitoring Program can be eliminated. General Permit pp. 26-29. Since Permit compliance will be determined by sampling results, reduction of sampling would be inappropriate. Groups can be discussed in Guidance Documents designed to facilitate compliance.

Focusing the General Permit on compliance with numeric effluent limits will eliminate at least 12 pages of the permit itself, virtually the entire 22 pages of the Fact

Sheet, cutting the length of the Permit in half, and simplifying the process compliance for both the Regional Boards and the permittees tremendously. Regional Board staff time (Person Years) could be put to use reducing pollutant discharges from other sources, and dollars saved by industry could be used for reducing pollutants in storm water rather than generating documents.

III. The Draft General Permit Does Not Adequately Comply With Cal. Water Code Section 13383.5

Whatever scheme the State Board uses for the General Permit, the monitoring program must fully comply with the monitoring and reporting standardization requirements of Cal. Water Code Section 13383.5 (SB 72, 2001 Kuehl). Unfortunately, the draft General Permit merely pays lip service to the requirements of Cal. Water Code Section 13383.5.

A uniform and comprehensive monitoring and reporting program is critical to the success of the state's storm water programs. Currently, every county or municipality covered under the municipal storm water permit requirements has different monitoring programs--this is the reason why no one can complete a status and trends analysis of storm water in the state. The data are not comparable from permittee program to permittee program, and often not even from year to year. Since the current changes to the draft General Permit do not adequately address Cal. Water Code Section 13383.5, the draft General Permit fails to solve the historical monitoring and reporting shortcomings of the state's industrial permitting scheme.

Cal. Water Code Section 13383.5 standardizes storm water monitoring. Specifically, the law requires:

- (1) Standardized methods for collection of storm water samples.
- (2) Standardized methods for analysis of storm water samples.
- (3) A requirement that every sample analysis under this program be completed by a state certified laboratory or by the regulated municipality or industry in the field in accordance with the quality assurance and quality control protocols established pursuant to this section.
- (4) A standardized reporting format.
- (5) Standard sampling and analysis programs for quality assurance and quality control.
- (6) Minimum detection limits.
- (7) Annual reporting requirements for regulated municipalities and industries.

Cal. Water Code Section 13383.5 also sets out considerations for the Regional Boards when determining constituents to be sampled for, sampling intervals, and sampling frequencies, to be included in a municipal storm water permit monitoring program. SB 72 states that on or before July 1, 2008, the requirements prescribed

pursuant to this section shall be included in all storm water permits for regulated municipalities and industries that are reissued following development of SB 72 standards. Cal. Water Code Section 13383.5 required that the standards be developed by January, 2003, *over two years ago*.

A. Recent Studies Corroborate that Complete Compliance With Cal. Water Code Section 13383.5 is Critical to Obtaining Meaningful Monitoring Data

Recent studies demonstrate that accurate and complete monitoring and reporting standardization as required by Cal. Water Code Section 13383.5 is critical to a functioning General Permit monitoring program. Under contract with EPA, the State Board had UCLA recently prepare a report on storm water data: *Industrial Storm Water Monitoring Program, Existing Statewide Permit Utility and Proposed Modifications*, Michael K. Stenstrom and Haejin Lee, January 2005 (attached and herein incorporated in full.) This report reviews more than twenty storm water monitoring programs and datasets in California and nationally, and determines that the industrial monitoring data sets have limited reliability. Significantly, the industrial storm water data sets have coefficients of variability 2-60 times of those observed in drinking water and wastewater monitoring programs.

The main reasons for the data variability according to the researchers are due to the use of grab samples, untrained sampling personnel, and a limited selection of monitored pollutant parameters. The data variability is so great that increasing the number of storm events sampled per year from two (2) to ten (10) would make no difference in precision.

The report proposes new monitoring requirements to make the program useful in decision-making and improving receiving water quality. These include a broadened suite of pollutant parameters, use of composite samples and certified labs, joint sampling programs, and a web-based reporting system.

A journal article was also prepared by the same parties to review Los Angeles County storm water data from wet seasons from 1998 to 2001: "Utility of Storm Water Monitoring," Michael K. Stenstrom and Haejin Lee, *Water Environment Research Journal*, Vol, 77, No. 1., January/February 2005. This article (attached and herein incorporated in full) assessed the ability of the current industrial program to accurately estimate the emission for different classes of land-use. The article looked at eight (8) industrial categories, and parameters such as pH, TSS, SC, TOC, and O&G and metals. The researchers found "a weak or almost no relationship between the industrial categories based upon the SIC code, and the available water quality data."

This article is further proof that, absent the monitoring standardization required by Cal. Water Code Section 13383.5, under the current General Permit, industry is currently failing to monitor for the pollutants that correctly characterize the relevant discharge. Moreover, this article points out that the large number of outlier values indicates the need for a quality assurance and control program specifically (Quality Assurance/Quality Control is standardization required by Cal. Water Code Section 13383.5 (c)(5).)

B. The draft General Permit Does Not Adequately Address Collection and Analysis of Storm Water Samples and Does Not Adequately Set Standardized Minimum Detection Limits

Rather than adequately comport with the law, the General Permit impermissibly glosses over the requirements of Cal. Water Code Section 13383.5(c)(1) and (2). Although the State Water Resource Control Board (SWRCB) staff seem to be recommending composite sampling, they are recommending the absolutely incorrect kind of composite sampling; rather than *spatially* composite sampling, we recommend *temporally* composite sampling. Without temporal composite sampling, it is impossible to know whether a given discharger is in fact ever in violation.

Moreover, the General Permit's discussion of standardized for analysis of storm water samples is wholly incomplete given that only analysis methods for metals are addressed, and not analysis methods for organics. Since EPA already has developed and established analysis methods for organics, and since organics are constituents often found in industry discharge, the General Permit should incorporate the relevant organics analysis methods.

Further, although there are 126 priority pollutants under the Clean Water Act, there are vast portions of minimum detection limits missing from the General Permit. Omission of MDLs for common industrial storm water constituents is a violation of Cal. Water Code Section 13383.5(c)(6). For example, the MDLs for semi-volatiles (common industry discharge constituents) should be included.

C. The Draft General Permit Does Not and Must Address Standardization of Quality Assurance and Quality Control

The General Permit completely fails to address the requirement for a standard sampling and analysis program for quality assurance and quality control. (Cal. Water Code Section (c)(5).) Just requiring that water samples must be analyzed by a State Certified Laboratory (or even by on-site facility operators) does not insure that all monitoring programs are using comparable Quality Assurance/Quality Control (QA/QC) methods. SWRCB staff seems hesitant to impose QA/QC on "mom and pop" dischargers, but we point out that every non-profit organization or other entity that applies for a 319 grant from the state to do watershed monitoring or the like, is required to submit a QA/QC plan. There should be no exemption from this requirement for industries.

D. In Addition to Compliance with the Standardization Requirements of Cal. Water Code Section 13383.5, the General Permit Should Identify Industrial Storm Water Constituents for Monitoring

Although SB 72 only addressed consideration of constituents to be sampled for in the *municipal* context, we feel it is imperative that the state likewise identify industrial constituents to be included in an industrial storm water permit monitoring program. The report and paper discussed above indicate that the identification of additional parameters is critical to the effective functioning of an industrial monitoring program in order to address the sources of the variability found in study results. Currently, many industries do not monitor for priority pollutants that are discharged from their site; for example, some auto scrap yards get away without monitoring runoff for heavy metals, Polycyclic Aromatic Hydrocarbons (PAHs) and other pollutants dangerous to aquatic life and human health. BTEX and PCBs are known toxins which do not degrade quickly, but very few scrap yards monitor runoff for PCBs (a prominent scrap yard in the Port of L.A. has monitored for and found high concentrations of PCBs in their runoff.) Also, monitoring for fecal indicators, which is relevant to human health, is not required under the draft General Permit, but should be required for industries likely to contribute fecal bacteria (food processing, for example). Further, monitoring for toxicity is not required under the draft General Permit. Toxicity is an issue for both aquatic life, and it can be a human health hazard if it goes into drinking waters, either through the groundwater, or directly, through runoff to receiving waters with a MUN beneficial use designation. Also, the draft General Permit also does not, and should, require monitoring for semi-volatiles, which account for a large portion of the pollutants regulated in the California Toxics Rule and Inland Waters.

E. Storm Water Monitoring Data Must Be Submitted on a Standardized report Form

As per the requirement of Cal. Water Code Section 13383.5(c)(4), the state should be implementing a standardized reporting format. Although the current draft permit does provide a form, the draft General Permit allows dischargers to use others, hence the goal of Cal. Water Code Section 13383.5(c)(4) has not been fulfilled. Review of storm water data can be onerous, and it is imperative that the data submission format be standardized. Also, as indicated by the studies discussed above, preferably, all data will be submitted in an electronic format which would enable the State and Regional Boards to analyze the data in an efficient manner, and to facilitate easy accessibility by all.

IV. The draft General Permit in Internally Inconsistent and Contrary to the Clean Water Act

By continuing with the BMP based permit scheme, the draft General Permit is obligated to provide 71 pages of Fact Sheet, Findings, permit requirements, and attachments, to set forth the documents, internal reviews, and vague criteria the dischargers and the Regional Boards must apply to evaluate compliance. Both because the scheme itself is contrary to the requirements of the Clean Water Act, and because a “judgment” based permit will inevitably be complicated, the draft General Permit is internally inconsistent and violates the requirements of Federal Law. In addition to those problems identified in the 23 June 2003 Comment Letter, problems with the Permit include the following:

- 1) The General Permit has not conducted a Reasonable Potential Analysis for the pollutants identified as discharged by the permittees. No use has been made to date of the ten (10) years of data collected under the General Permit, and staff has not responded to the Waterkeeper analysis of data from the Los Angeles region.
- 2) The Permit provides no method for determining compliance with Water Quality Standards. The Fact Sheet acknowledges that Benchmarks are only to be used for reviewing the BAT/BCT requirements, yet the Permit provides no other compliance measure. In fact, the Permit does not even articulate what Water Quality Standards apply, or where to find them.
- 3) The rationale for the Group Monitoring Program directly conflicts with the excuses given by staff for failing to develop numeric effluent limits in this Permit. At page 17, the Fact Sheet states: “The basic purpose of group monitoring is based on reducing monitoring requirements while obtaining representative monitoring from similar facilities.” Yet the Fact Sheet also defends the lack of numeric criteria by citing the extreme difficulty in actually collecting representative samples. Fact Sheet, p. 16. The Permit cannot have it both way-if representative samples cannot be collected, then the Group Monitoring Programs have no purpose.
- 4) While the General Permit states that group members or group leaders may be decertified by the Regional Boards, the Permit provides no meaningful criteria for evaluating when to do so. Without an objective criteria established in the Permit, the Permit invites lawsuits from Group Leaders who lose business if they are “de-certified.” Given that no Group Leader has been de-certified since 1997, it is more likely that this lack of a criteria reflects that fact that the State Board never anticipates actually using this provision.

- 5) The “Representative Sampling” provision allows for combined samples from multiple drainage areas at a site, to be analyzed together. Fact Sheet, p. 18. Yet the Permit also describes the purpose of the Monitoring Program as “...to provide useful, cost-effective, timely, and easily obtained information to assist dischargers to identify pollutant sources, implement corrective actions, and revise BMPs.” Obviously allowing a discharger to intermingle samples from the entire site into a single analysis completely defeats this purpose, as the discharger will be unable to identify either pollutant sources or failed BMPs from the combined sample. This suggests that because sampling will not be used to evaluate compliance, staff are unclear what its purpose really is.
- 6) The General Permit provides a list of pollutants to be sampled for by SIC code, a list taken directly from the Federal Multi-Sector Permit. As indicated above, recent studies have demonstrated that there is little correlation between SIC codes and pollutants discharged. Sampling results from Consent Decrees in Waterkeeper enforcement actions confirms this observation. Data collected at the Mid-City scrap facilities and wrecking yards indicated high levels of ten (10) pollutants, including PCBs. Under the General Permit, sampling for cadmium, copper, nickel, BOD, and PCB would not be required. Unfortunately, rather than reviewing the ten (10) years of data already collected from construction sites, staff rely on a table of parameters developed by EPA over ten (10) years ago.
- 7) The purpose of the one time sampling for VOCs, COD and metals is described as “to develop a database of the constituents of concern ...to develop numeric effluent limitations.” Fact Sheet, p. 4. Yet the sampling is delayed until 2008-09, which will make development of numeric limits by 2010, when this permit expires, extremely difficult or impossible. Further, it is unclear why the data already collected cannot be used, rather than waiting until 2009, unless staff is seeking reasons to further delay development of real effluent limits.
- 8) The General Permit’s rationale for rejecting the use of sampling data to determine permit compliance reflects the distance of State Board staff from implementation of the General Permit in the field. The Fact Sheet’s litany of “difficulties” in collecting and utilizing samples are completely misplaced. For example, the Fact Sheet states that the multiple discharge points, as well as sheet flow, from a site make sample collection and use difficult and expensive. The Fact Sheet then states that dischargers will have to construct discharge points to direct flows for sampling—which could be costly and may violate building codes. Finally, the Fact Sheet asserts that calculating mass loading of pollutants will require flow

metering at every discharge point at every industrial permittee. Fact Sheet, p. 16.

Dischargers and their consultants address these “difficulties” in collecting and using samples for Permit compliance review as a matter of course. Obviously the General Permit contemplates “representative samples” and a sampling regime that does not capture every molecule discharged from a site may still establish the pollutants discharged from a site. Facilities implementing monitoring plans as a result of enforcement by the Waterkeepers regularly install berms on their sites to direct flows for ready sampling, and where necessary treatment. These simple asphalt or concrete berms are inexpensive, do not interfere with operations, and do not violate building codes. Calculation of mass loading is readily accomplished by using the square feet of a site exposed to storm water and rain intensity data from local rain gauges, and multiplying by the pollutant concentration in storm water discharges.

9) Receiving Water Limitation III(1) States:

“Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not **contain pollutants that cause a nuisance.**”

The receiving water limitation in the 1997 permit stated:

“Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not **adversely impact human health or the environment.**”

Thus, under the new General Permit, discharges must rise to the level of a legal nuisance to violation the Receiving Water Limitations. The Permit includes no explanation for this illegal backsliding.

Respectfully submitted,

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