

#13

October 22, 2012

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



Re: Comment Letter – Draft Industrial General Permit issued July 2012

Dear Ms. Townsend:

These comments are offered on behalf of the California Construction and Industrial Materials Association (CalcIMA). CalcIMA is a statewide trade association representing the construction aggregate, ready mix concrete and industrial minerals industries in California. Our members operate over 500 facilities statewide providing the raw materials to fuel California's infrastructure needs as well as the needs of the construction, manufacturing and industrial sectors. We recognize the importance of protecting our waters but also need a regulatory structure that can be complied with and that achieves the objective of protecting our waters in an efficient yet cost achievable manner.

We are appreciative of many of the changes that have been made to the permit which seem to directly address comments we and others made on the previous drafts. However, many issues remain that need to be clarified and addressed.

Implementation Timeline and Actions:

One of the first issues/questions we have relates to the implementation timeline of the revised draft. We understand that it is the intent of the State Water Resources Control Board (Board) staff to have the permit approved with an effective date of July 1, 2013. What we find unclear are the precise obligations of permittees during this transition. As the Draft is currently written it would seem to require existing dischargers to submit NOI's, PRD's SWPPP'S, etc. by July 1, 2013 Section II. D3.

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*"3. Existing Dischargers shall implement necessary revisions to the SWPPP and Monitoring Program in accordance with Sections X and XI no later than the **July 1, 2013.** Dischargers may either continue to implement the existing SWPPP in compliance with*

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State Water Board Order No. 97-03-DWQ until June 30, 2013, or may implement a SWPPP revised in accordance with Section X prior to July 1, 2013.”

This is in contrast with section II. G1, which provides until July 1, 2014 for certification of the SWPPP:

“Annual Monitoring Reports and SWPPPs (other than SWPPPs for Inactive Mining): by **July 1, 2014**, or seven (7) days prior to commencement of industrial activities, whichever comes last, all Annual Monitoring Reports and new or revised SWPPPs shall be:

- a. Prepared by a QISP I, II or III
- b. Certified and submitted by the Discharger’s LRP via SMARTS.”

First we note that with an Early 2013 adoption date, the submittal of SWPPPs that meet the requirements of the revised permit is prohibitively difficult, particularly for businesses with many facilities. While the current SWPPPs have similar required elements, the level of detail required by the new permit has increased substantially. II.G.1 seems to recognize this, providing until 2014 when trained QISP’S will be available. It was stated in the workshop, that QISP training would be available within a year. Industry will need at least 12 months from the adoption date to submit applications and SWPPPs, which means a delay in the permit’s effective date.

Industrial dischargers with multiple facilities which have installed and developed SWPPP’s over years will need to undergo complete SWPPP revisions and review to adapt them to the substance and content of the new permit. In some cases we have members that will have to do this for dozens to nearly a hundred industrial facilities. At the same time the State will also need time to ensure the Electronic Reporting system is fully functional to the permit.

The existing draft clearly does recognize some of these challenges by allowing operators to delay SWPPP certification as well as not having the NAL’s be applicable in the first year as the transition occurs. This flexible approach is warranted.

NAL Applicability First Year

2 The Text of the Draft Permit needs to be clarified to match the language of Staff’s presentations as well as the Exceedance Response Schematic in regards to NAL applicability in year 1. We are appreciative that the Board has recognized the implementation timeline challenges of this process in both their Exceedance Response Actions Schematic contained in the Fact Sheet and the Presentation that has been given at outreach events. These two documents respectively indicate that “NALs do not take effect until 1 year after the effective date of permit and “NAL exceedances do not apply until July 1, 2014.”

The permit as currently drafted could be read to only remove the obligation for the Level 1 ERA report. Section Below:

“C. Level 1 Status - Operational Source Control

1. In the event that sampling results indicate an NAL exceedance, the Discharger’s Baseline status immediately and automatically changes to Level 1 status for all parameters exceeded.
2. Within 60 days of obtaining Level 1 status, Dischargers shall complete an evaluation of the facility’s SWPPP and all the industrial pollutant sources at the facility. The evaluation shall identify whether additional operational source control BMPs and/or SWPPP implementation measures are necessary to prevent or reduce all industrial pollutants in industrial storm water discharges in compliance with BAT/BCT. This evaluation shall not be limited to the parameter(s) exceeding the NAL(s).
3. Based upon the above evaluation, the Discharger shall, as soon as practicable, but no later than October 1 of the following reporting year:
 - a. Implement any additional operational and/or source control BMPs and SWPPP implementation measures;
 - b. Revise the SWPPP; and,
 - c. Certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes the following:
 - i. A summary of the Level 1 ERA evaluation required in Section XII.C.2;
 - ii. An implementation schedule and detailed description for additional operational and/or source control BMPs and SWPPP revisions for each parameter that exceeded an NAL; and,
 - iii. An implementation schedule and general description for additional operational and/or source control BMPs and SWPPP revisions for any other industrial pollutants identified in the Level 1 ERA evaluation.

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The language of the Draft Permit itself does not seem to fully explain the intent of not applying the NALs in year one and fails to note that Operations will remain at baseline status in the first year. To clarify this, the Board should change XII A. 2 as follows:

“2. Dischargers are not required to initiate Level 1 ERAs for storm water samples collected prior to July 1, 2014 **and will stay at Baseline Status for storm water samples collected prior to July 1, 2014.**”

QISP Training / Eligibility:

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We are appreciative that the provisions of the permit have changed and certain registered professions are recognized as eligible to serve as QISP’s automatically. Because, as the permit footnote indicates, these professionals and other registered professionals are obligated to

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function within their areas of expertise, we believe other licensed professionals should also be recognized as QISP's. We are aware of professionals such as registered chemical engineer's which work in this area and have significant expertise which should be recognized.

Likewise, there are already a group of trained professions who have professional certifications which have been trained through the Construction Stormwater Permit as QSPs and QSDs. Particularly for Construction and Industrial material mine sites within the State of California, which are a majority of the mine sites, these professionals should also be eligible to serve as QISPs. The management of issues of construction sites starts with large area disturbances, storage piles of construction materials, equipment storage and processing and progresses to finish work similar to other industrial manufacturing processes. These professionals have already been trained to read SWRCB permits and undertake the required steps that result from those permits and also are required to have additional stormwater specific professional certifications.

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As a result we believe QSP's should be eligible to serve as a QISP 1 and 2 while QSD's should be eligible to serve as QISP1, 2 or 3's. Having these professionals go to an additional training class to read this permit does not make a lot of sense when they have already taken a SWRCB approved course and maintain professional certifications as a CPESC (Professional Exam, and Appropriate BS degree or 7 years applicable work experience as well as 60 Professional development units every three years), a CPSWQ (Qualifying Exam and Variable Education to Professional Experience as well as 60 Professional development Units over a three year period) or a NICET certified in erosion and Sediment Control (Exam and work experience/education). These professionals should not be required to undertake additional training under the permit.

As such we believe IX. A 1 should be modified as follows:

"1. A Qualified Industrial Storm Water Practitioner (QISP) is a person that is either the Discharger or is designated by the Discharger to perform compliance activities specified in this General Permit and has completed a State Water Board sponsored or approved QISP training course. A California Board for Professional Engineers, Land Surveyors and Geologists licensed professional civil engineer, registered geologist, and a certified engineering geologist (Licensee) is a QISP (level I,II, or III) and does not need to complete a State Water Board-sponsored or approved QISP training course. **Likewise, QSPs certified in accordance with the Construction Stormwater Permit shall be eligible to act as a QISP (Level 1 or 2) and QSDs shall be eligible to act as QISP (Level1,2, or 3) and do not need to complete an additional State Water Board-sponsored or approved QISP training course.**"

In addition we believe there is merit to professionals holding CPESC and CPSWQ designations being eligible to serve as QISPs. Substantive controls are already included within the permit in terms of what level of analytical work may be conducted by various professionals. Limiting the most challenging functions to QISP 3s and, if required by state law, licensed engineers.

QISP 1 Clarification:

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The Draft Permit notes, "a QISP I can only perform the QISP actions for 1 type of industrial activity".

Our member's industrial facilities can contain multiple activities which may be governed under different SIC codes. For example a construction aggregate operation may also have a ready mix concrete and/or asphalt production facility. In many cases these plants are interconnected with the aggregate plants supplying gravel to the asphalt and ready mix concrete plants. Further, one facility under common ownership may at one site have only one of these activities or a different combination of them.

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From meeting with Board staff our understanding is this level is intended for the certification of people who work in a specific industry. We recognize staff seems to be inherently recognizing that people who work in an industry develop knowledge necessary to manage these issues at their types of facilities. Therefore, we believe this should be clarified to make it certain QISP 1s can operate at the "industrial facilities" they have familiarity with, instead of basing it on "single industrial activity". As such the comment should be modified to, a QISP I can only perform the QISP actions for 1 type of industrial facility which may conduct multiple industrial activities".

Design Storm Standards and Existing Sediment Retention Basins

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Under section X.H.2.g.iv the Draft Permit would seem to require facilities to certify existing sediment retention basins to meet the Design Storm Standards, and possibly to require retrofit to this standard, though this is unclear. We appreciate that going forward there is a design storm standard facilities will be able to utilize, however, we do not feel it is appropriate to require facilities to re-engineer these existing structures at this time.

In the case of the construction and industrial materials industry we absolutely recognize the importance of sediment retention basins as a component of our erosion and sediment control. We have also been regulated under the Surface Mining and Reclamation Act since 1976, and sediment and erosion control is one issue we address within our reclamation plans. As a result our industry has many such basins that have been installed as components of reclamation plans and as mitigation within environmental documents. In many cases these structures may have been set to space constraints but certainly not universally to a design storm standard.

Recognizing that sediment retention basins are one component of erosion and sediment control BMP's we believe it is more appropriate the Board take an, "If it isn't Broke, Don't fix it," approach to existing sediment retention basins upon the effective date of the rule. We would suggest doing that by adding the following clarification to this minimum BMP:

“Design sediment basins to ensure compliance with the design storm standards in Section X.H.7. **This section does not require sediment basins installed prior to the effective date of this order to be redesigned to meet the design storm standards (Section X.H.7), if a facility reaches Level 2 Status as defined in Section XII. 2 for TSS. At that/this time, such preexisting basins will be evaluated as part of the Level 2 ERA Technical Report required under Section XII.2 b.**”

We see no reason that facilities whose overall BMPs are preventing exceedances of the NALs be required to engineer their controls retroactively to this design storm standard. At the same time we recognize that if the existing BMPs are not achieving the NAL targets, re-evaluation and potential re-engineering of this aspect of the facility should be evaluated as part of the Level 2 BMP evaluation.

Intermittently Operating Facilities:

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From our operators’/members’ point of view, The Draft Industrial permit is unclear on how intermittently operating facilities with irregular operating hours should be handled. In the case of the construction and industrial materials industry we have two types of facilities which fall into this category. Some remote facilities have scheduled non-operating periods often due to winter weather and elevation. These facilities seem to be considered under the minimum BMP’s for temporary suspension of industrial activities.

“h. Temporary Suspension of Industrial Activities

For facilities that have planned to temporarily suspend industrial activities for ten (10) or more consecutive calendar days during a reporting year, Dischargers shall include in the SWPPP the BMPs necessary to assure compliance with BAT/BCT during the temporary suspension of the industrial activity.”

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The other types of facilities that operate intermittently, do so in response to market forces. They tend to be construction aggregate facilities and ready mix concrete facilities in remote portions of the state which are only open and operating when servicing jobs and contracts. The operating hours during these periods are often dependent on the contract being serviced. Providing materials for a road project will often occur at night while the mining and stockpiling of the material occurs during the day. Our belief is that this section of the BMP process clearly enables us to specify appropriate BMPs to be installed when these facilities are not operating, and we would appreciate clarification on whether that is correct? Suspensions at these facilities may occur more than once in a year and also may stretch over months to even whole quarters. The permit is largely silent on how industry is to deal with these issues under the permit. We suggest some modifications to the Temporary Suspension of Industrial Activities Section as follows:

“h. Temporary Suspension of Industrial Activities

For facilities that have planned to temporarily suspend industrial activities for ten (10) or more consecutive calendar days during a reporting year, Dischargers shall include in the SWPPP the BMPs necessary to assure compliance with BAT/BCT during the temporary suspension(s) of the industrial activity. Facilities that operate intermittently on an unpredictable basis will include reference to the recordkeeping associated with tracking the implementation of these BMPs in accordance with X.H.2.f. ii"

We believe it is also necessary to clarify the definition of "scheduled facility operating hours" in regards to such facilities. When these facilities have temporarily suspended industrial activities and implemented the appropriate SWPPP specific BMPs, they would clearly be outside scheduled facility operating hours. We believe that should be clarified within the definition of scheduled facility operating hours as follows:

Scheduled Facility Operating Hours

The time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed. A facility that has undertaken a Temporary Suspension of Industrial Activities is outside Scheduled Facility Operating Hours.

Inactive Mine Site SWPPP and Annual Monitoring Report Development

We appreciate that the Draft Permit includes a similar inactive mine exclusion from the monitoring, sampling and inspection requirements of the general permit, as does the federal MSGP. This is appropriate and warranted.

8 However, we disagree with the Draft Permit's requirement that a California Licensed Civil Engineer be the only person authorized to develop a SWPPP for these facilities. With the careful steps Board staff has taken within this draft permit to require training of QISPs, and while we recognize that components of a SWPPP may require a licensed engineer's services, the entire SWPPP will not.

As such we would request that two sections be modified. First, II.G. 9

9. SWPPPs and Annual Monitoring Report for Inactive mining operations as described in Section XIII shall be prepared by a California-licensed professional civil engineer-QISP II or III. **Any portions of the SWPPP that require hydrologic calculations shall be certified by a California licensed professional engineer in accordance with the Professional Engineers Act (Bus. & Prof. Code § 6700 et seq).** The Discharger shall designate an LRP to certify and submit via SMARTS.

In addition, The table 1 and Table 2 Role Specific requirements would also need to be modified to reflect this change.

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Inactive Mining Operation Certification

Our review of the Inactive Mine Operation Certification has led us to conclude that the wrong party is being requested to certify the facility as an inactive mine. An engineer or QISP cannot certify that a site is inactive. The definition of inactive is:

“Inactive mining operations are mined sites where **operations have discontinued and which have an identifiable owner**. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.”

Section II.G.9, addressed above, specifies who may develop the SWPPP and Annual Monitoring report. **Only the discharger would seem eligible to submit that a site is an inactive mining operation.**

We therefore request that Section XIII. A, be modified as follows:

“Inactive mining operations are defined in part 3 of Attachment A of this General Permit. Where implementing the monitoring requirements in this General Permit is impracticable, **Dischargers who are responsible for inactive mining operations may, in lieu of complying with the General Permit requirements described in Section XIII.B, certify and file obtain an Inactive Mining Operation Certification prepared by a California licensed professional civil engineer** that:

1. A site-specific SWPPP has been prepared and is being implemented in accordance with the requirements of this General Permit; and
2. The facility is in compliance with this General Permit, except as provided in Section B.”

In addition we request that section XIII C. 3. Be modified as follows:

“The Inactive Mining Operation Certification shall be re-certified annually by a California licensed professional civil engineer the Discharger and submitted with the Annual Report.”

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pH Sampling:

Section XI.B.8 of the draft permit requires that pH samples be taken with a portable calibrated device or if at a laboratory in accordance with 40 C.F.R. section 136. The Board staffs’ cost estimate correctly recognizes that this really means purchasing and maintaining a portable calibrated device as the draft is currently written.

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We believe the Board should include Litmus Paper as an acceptable field analytical tool. This appears to be consistent with the practice in both Washington State and Oregon State based upon a review of their Stormwater Sampling Guides. The Washington State, “How to do

Stormwater Sampling A guide for industrial facilities, 2010 revision,” notes “You must measure pH in the field using either a calibrated pH meter or pH paper rather than sending it to a lab.” It further clarifies, “You can also ask your lab to send narrow range pH paper (with a resolution not greater than ± 0.5 SU).” The USEPA Industrial Stormwater Monitoring and Sampling Guide (EPA 832-8-09-003) 2009, lists under sampling supplies, “pH paper and appropriate chemical preservatives for adding to sample bottles (obtain from your laboratory).”

We request that the referenced section be adjusted as follows:

“8. Dischargers shall ensure that all field measurements for pH are conducted using a calibrated portable instrument in accordance with the accompanying manufacturer’s instructions **or narrow range pH paper (with a resolution not greater than ± 0.5 SU).** Samples from different drainage areas shall not be combined or composited prior to field measurements or laboratory analysis. The Discharger shall ensure that all laboratory analyses are conducted according to test procedures under 40 C.F.R. section 136, including the observation of holding times, unless other test procedures have been specified in this General Permit or by the Regional Water Board.”

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Sampling Safety Exclusions:

We appreciate and support that the Draft Permit includes Sampling Safety Exclusions in section XI.C.5. However, this exclusion does not go far enough, providing protection only for dangerous weather conditions. There are many things which may make taking a sample dangerous placing employees in jeopardy of injury. The construction and industrial materials industry operates complex facilities that are sometimes very large in area. Some companies operate not only extraction and processing operations but also manufacturing facilities that can operate 3 shifts 24 hours a day. For these operations, depending on the location of an outfall needing sampling, darkness may be an unacceptable risk.

In order to address this issue the Permit needs to let employers in developing their MIP specify a sampling location(s) which will not be safe to sample during for example nighttime conditions. To incorporate such activities into the permit we would suggest two changes. First, modifying the X.I.3 Monitoring Implementation Plan section as follows:

“3. A description of sampling locations and sample collection and handling procedures in accordance with the sample collection and handling instructions in Attachment B. This shall include detailed procedures for sample collection, storage, preservation, and shipping to the testing lab to assure that consistent quality control and quality assurance is maintained. **It shall also include a discussion of any identified sampling locations which will not be sampled at night for employee safety reasons and discussion of the availability of any alternate sampling location for those locations if they exist.** ~~This~~ It shall also include the list of parameters to be tested by the analytical laboratory. Team members conducting sampling shall follow the calibration instructions,

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including calibration intervals specified by the manufacturer, provided with the field instrument; and,”

In addition, changes to section XI.C.5 as follows:

“5. Sample Collection and Visual Observation Exceptions

a. Sample collection and visual observations are not required under the following conditions:

i. During dangerous ~~weather~~ conditions such as flooding, fire, electrical storm or other disaster; or,

ii. Outside of scheduled facility operating hours. However, Dischargers are not precluded from collecting samples or conducting visual observations outside of scheduled facility operating hours if they choose to do so.

iii At night, if sampling location identified as unsafe to sample during the night within the facilities monitoring implementation plan where the discharge occurred at night.”

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Electronic Filing:

This Draft Permit requires the electronic filing of all reports and submittals by specific deadlines. However, it provides for no exceptions for failure to file as a result of technical electronic difficulties on either the discharger/LRP internet connectivity or the connectivity of the SMART data system. We must point out that the internet is not the US postal service and we get no post date or guaranteed delivery options for electronic submittal. LRP's could be travelling anywhere in the world when the need for them to click submit on a NOI or other mandated document occurs.

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It is incumbent on the Board to develop language for inclusion in the electronic submittals section that specifically protects dischargers from being in violation of the permit as a result of such technical difficulties.

This was not an issue within the federal system as dischargers have the option of filing by paper and mail.

To our knowledge California is the first state going to a fully electronic system yet no thought seems to have been given to the possible electronic communications issues and failures which could prevent a discharger from being known to have met its obligations.

We request that language be added to the permit, providing that when electronic communication with the SMARTS system is unavailable to meet any applicable submittal deadline within the permit, the discharger will not be in violation of the permit for failing to have met that applicable deadline.

Trade Secret/Proprietary Information Protections:

The draft permit fails to provide dischargers the opportunity to submit information requested within the permit under separate cover as trade secrets/proprietary information. This is of great concern to industry as the level of detail required under the permit specifies facility maps, industrial material quantities and locations within these facilities. This is a great level of detail for facilities whose competitive advantage in the marketplace is based upon their product's formulas which will be listed within the materials handled and diagramed to location within their industrial processes within the SWPPPs.

We understand and respect the need for this general type of information. However, we object to the Board providing no provision under which dischargers may submit proprietary confidential data regarding the materials used so as to protect their proprietary information and formulas.

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Periodic SWPPP and Map Updates:

Multiple sections of the permit require dischargers to resubmit their SWPPP and facility map when significant changes to the facility occur. This is challenging and ambiguous guidance for dischargers, and could actually deter facility staff making helpful changes to the SWPPP. CalCIMA requests that these sections be changed to require SMARTS updating, if necessary, of these documents annually with the annual report. This will enable the pollution prevention teams and QISPS to focus on on-the-ground implementation during the year, and to reliably schedule submissions of updates capturing all relevant changes during the year.

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NONA Clarification:

CalCIMA understands that California Water Code (CWC) section 13399.30(a)(2) is the basis for some of the language in Finding 22, which has been included in lieu of the no discharge exclusion contained in the draft Industrial General. However, the new Finding 22 text is unclear and infeasible, and provides a disincentive for dischargers to contain water on their site. The draft Industrial General text goes further to state that a NONA will certify that a facility will never discharge. We request that a specific threshold be provided that will provide certainty for dischargers, regulators, and environmental groups, as well as civil engineers that are being asked to stamp hydrology reports certifying "no discharge ever." The 2011 Draft IGP analysis of its selection of the 100-year, 24-hour storm as the threshold for the no discharge certification, correctly stated that this storm event had a 1% chance of occurring in a given year. We assert that this is a sufficiently small probability to protect water quality and provide certainty for engineers and dischargers. CalCIMA requests this provision be included in the permit.

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Using an analogy to the NEC certification which allows a discharger to qualify for the exclusion, and later obtain full permit coverage in the event of an exposure, it stands to reason that a similar

off-ramp should be included for facilities with a vanishingly small chance of ever discharging. Because a facility like this is unlikely to ever discharge, and therefore will never reach ERA Level 2 and have a chance to redefine BAT/BCT, it is essential to provide an opening for these facilities to provide justification that they present no threat to water quality. Because the CWC does not define the criteria for establishing a NONA, we also request that guidance be provided for public review prior to permit adoption.”

Pre-Storm Visual Observation:

We can certainly appreciate the Board’s desire to require attention to conditions affected by storms. However, we believe that the requirement for daily tracking of National Weather Service predictions is overly burdensome and complex for some facilities, as is allowing the resultant observations to be good for less than 30 days. We would suggest adding some additional flexibility to this section XI.A.2.d for operators as follows:

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“d. Prior to an anticipated precipitation event, visual observations of all storm water drainage and containment areas shall be conducted to identify any spills, leaks, or improperly controlled pollutant sources, and appropriate BMPs must be implemented prior to rainfall. The visual observations are required during scheduled facility operating hours and are not required more than once within in any ~~14~~ **30** day period. An anticipated precipitation event is any weather pattern that is forecasted by the National Weather Service Forecast Office to have a 50% or greater probability of producing precipitation in the facility’s weather zone. Dischargers shall ensure that a QISP **or a specified member(s) of the pollution prevention team** reviews precipitation forecast information from the National Weather Service Forecast Office (e.g., by entering the zip code of the project’s location at <http://www.srh.noaa.gov/forecast>). **The MIP will specify a timeframe within which the forecast will be checked and recordkeeping for the time and prediction. Alternatively, dischargers may instead specify within their MIP that they will conduct monthly visual observations to satisfy the pre storm visual observation requirement of this permit.**”

Weather predictions change with time and it is more than theoretically possible that a discharger could check the prediction and record a sub 50% prediction that is alter adjusted to a more than 50% prediction. This makes compliance by the discharger extremely difficult and subject to debate. Having the discharger specify a timeframe for checking and appropriate recordkeeping of the data will provide protection for the discharger and certainty for the regulator.

Likewise facilities may find it far more effective and much less subject to oversight to simply conduct these observations on a monthly basis. That flexibility should be allowed.

Significant Spills and Leaks

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We wanted to note that the second sentence of X.G.1.d, "Significant Spills and Leaks", contradicts the definition of Significant Spills within the glossary in Appendix H. They should be the same.

Sample Frequency Reduction

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We appreciate that Sample Frequency Reduction is available within the permit; however we believe the 8 consecutive quarters standard in XI.C.6.a.i is too lengthy of a time period. We would request the standard be changed to 4 consecutive quarters with a QSE during at least 2 consecutive reporting years. This would ensure demonstration of multi-year attainment of the benchmarks.

Suggested language revision:

- a. Dischargers are eligible to reduce the number of QSEs sampled each reporting year in accordance with the following requirements:
 - i. The Discharger has taken samples in ~~eight (8)~~ **four (4)** consecutive quarters where QSEs occurred that produced a discharge over at least two (2) consecutive reporting years;
 - ii. Sampling results from the eight (~~8~~ **4**) QSEs did not exceed any NALs as defined in Section XII.A; and,
 - iii. The Discharger is in full compliance with the requirements of this General Permit and has updated, certified and submitted via SMARTS all documents, data, and reports required by this General Permit during the same ~~eight~~ **four (4)** consecutive quarters in which samples were collected from QSEs. Dischargers subject to enforcement actions by the Regional Water Boards may be excluded from eligibility.

Natural Background Demonstration

We, among many others, had commented on the importance of having this process. We want to thank the Board staff for including it. However as currently worded we believe it could be confusing.

"5. Natural Background Demonstration Technical Report

The Natural Background Demonstration Technical Report shall at a minimum, include the following:

- a. A statement that the Discharger has determined that the exceedance of the NAL is attributable **solely** to the presence of the pollutant in the natural background;"

Our concern with this section is that it may be read to imply that Natural background is the sole/only contributor of the applicable pollutant to a facilities stormwater.

We would request that the Board strike the word "solely" as contained in both of these reports, as they will only create confusion and potential litigation. The issue analysis should focus on whether non-industrial and/or natural sources cause the exceedance ,as reflected in the discussion of loading within the non-industrial pollutant demonstration technical report and fact sheet for the same.

Findings 70 and 71 also use the term "solely" in regards to these activities.

Respectfully,



Adam Harper
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CalCIMA