

Solid Waste Industrial Stormwater Partnership

#86

***Butte County Public Works
City of Mountain View
City of San Diego
CR&R Incorporated
Kern County
Recology
Riverside County Waste Management Department
Rural Counties Environmental Services Joint Powers Authority
Ventura Regional Sanitation District
Waste Connections, Inc.
Waste Management
Wheelabrator***

October 22, 2011

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



Email: commentletters@waterboards.ca.gov

Subject: Comment Letter – Draft Industrial Storm Water NPDES General Permit issued July 16, 2012

Dear Ms. Townsend and Members of the Board:

Thank you for the extended opportunity until 12 pm on Monday, October 22, 2012 to submit comments to you regarding the draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit or IGP). The Solid Waste Industrial Stormwater Partnership (SWISP) is an informal coalition of public and private solid waste facility owners, operators and consultants that seek balanced regulations and permits regarding stormwater quality from facilities we own, operate or are otherwise responsible. We support the implementation of continuous stormwater quality improvement measures that are:

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

We are appreciative of the numerous changes and improvements that have been made to the proposed permit since it was initially proposed on January 28, 2011. This letter documents our continuing concerns and recommendations regarding several issues of the State Water Resources Control Board's (SWRCB) revised draft permit.

1 **Numeric Action Levels**

SWISP agrees with and supports the State Water Board's conclusions that "it is infeasible to require compliance with NELs at this time." SWISP recognizes that the methodology the EPA utilizes to establish effluent limit guidelines is comprehensive and that the State Water Board does not have sufficient data to complete a similar methodology to establish NELs. SWISP supports the continued collection of meaningful storm water discharge data to enable the future establishment of NELs, when technically feasible and economically justified.

Incorporation of TMDLs into the Permit

2 SWISP agrees with Findings 36-41 and TMDL Requirements Section VII.A., in that many existing TMDLs do not provide sufficient clarity as to requirements applicable to industrial stormwater dischargers. Once those TMDLs are further clarified and refined by the Regional Water Boards in accordance with the process outlined in Finding 38, SWISP also agrees that industrial stormwater-related TMDL-specific requirements must first be incorporated into the permit before those requirements are enforceable against permittees, as prescribed by Section VII.A. However, SWISP believes that Effluent Limitation V.C. is in direct conflict with Findings 38-40 and TMDL Requirements Section VII.A. by requiring blanket incorporation by reference and immediate compliance with existing and/or future approved TMDLs in violation of Water Code sections 13000 and 13263.

More importantly, the language included in Section V.C. exposes permittees to premature and inappropriate administrative or third party actions to enforce TMDL requirements before the TMDLs are clarified for application to specific industrial stormwater dischargers, and before those refined requirements are incorporated into the permit. Further Section V.C. is not supported by the express findings of the permit, or the evidence in the administrative record.

3 Finally, Section V.C. would result in the Regional Water Boards and State Water Board abdicating their responsibility under 40 C.F.R. §122.44(k), to determine whether a BMP approach, rather than numeric effluent limitations, is appropriate given the site-specific TMDL and the scope and impact of industrial storm water discharges. SWISP recommends the following alternative language in Section V.C. (page 22):

"After TMDL-specific permit requirements are incorporated into this General Permit following the process outlined in Section VII.A., dischargers subject to one or more identified Total Maximum Daily Loads (TMDLs) shall comply with the applicable requirements listed in Attachment D."

~~“Dischargers located within a watershed for which a Total Maximum Daily Load (TMDL) has been approved by US EPA, shall comply with the approved TMDL if it identifies “industrial activity” or industrial-related activities as a source of the pollution and has an adopted Waste Load Allocation (WLA) and/or implementation language. Attachment D contains a reference list of potential TMDLs that may apply to Dischargers subject to this General Permit.”~~

4 As with municipal stormwater discharges, the SWISP believes that all TMDL Waste Load Allocations (WLA) incorporated into stormwater permits should be implemented as BMPs. SWISP recommends that the State Water Board recognize BMP based compliance in the Industrial General Permit findings and recommends the addition of the following language into or following Finding 39.

“Compliance may include, but is not limited to, implementation of BMPs and control measures contained in TMDL implementation plans sufficient to achieve the WLA, or a demonstration that the numeric WLA has been achieved.”

5 **Receiving Water Limitations**

The draft Industrial General Permit substantially changes the receiving water limitations in the current permit (WQO 97-03-DWQ, Section C). The Draft Permit language (Section VI [p. 22] of the Draft Permit, together with Section XX.B [p. 65]) eliminates from the receiving water limit section a description of a process to allow a Discharger to follow clear steps to ensure it is in compliance with those limits. The draft Industrial General Permit should include such a process and also take the opportunity to clarify and improve the language of the limits.

Incorporating Compliance Requirements into Receiving Water Limits. The receiving water limits in the current permit (WQO 97-03-DWQ) read as follows:

“C. RECEIVING WATER LIMITATIONS:

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

2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

3. *A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:*

a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an

implementation schedule. The Regional Water Board may require modifications to the report.

b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;

b. Submit a report that is approved by the Regional Water Board; or

c. Revise its SWPPP and monitoring program as required by the approved report.”

Section C.3’s statement from the *current* permit (above text) that following proscribed steps constitutes compliance is consistent with law. The law is clear that water quality-based limitations can be expressed in the form of best management practices, where numeric limits are infeasible;¹ the use of best management practice requirements as limits is not limited to imposition of technology-based limits. 40 C.F.R. § 122.44(k); *see also*, USEPA, Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996). Since federal regulations authorize the use of BMPs in lieu of numeric limits, and the draft General Permit continues to regulate discharges by use of BMPs, *it may express receiving water limits (water quality-based limits) as a defined process of BMP selection.*

The reporting provisions in the *current* permit Section C.3 have admittedly been disputed and under used, but this has resulted from confusion over the meaning of Section C.2, and a lack of agency engagement and information, not because permittees are intransigent. For example, many facilities have faced third party claims that the only way not to cause or contribute to an exceedance is *not to exceed the in-stream water quality standards at the actual discharge outfall*. This is clearly wrong, and this misconception will be mitigated by adoption of Fact Sheet and receiving water limit language in the Draft Permit, confirming that the limits are designed to address *in-stream* water quality impacts. Determining receiving water impacts is challenging, given the variability and nature of storms and stormwater, and the commingling of discharges in municipal storm sewer systems. *Surprising dischargers with a sudden “gotcha” enforcement claim based on numeric end of pipe findings converts receiving water limits into virtual numeric limits.*

¹ California’s State Implementation Plan defines “infeasible” as “not being capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” *See* SIP at pg. Appendix 1-3.

The Fact Sheet also notes that meeting other sections of the permit is expected to typically achieve water quality necessary to avoid causing in-stream exceedances, and emphasizes the BMP study and adoption process in Section XX.B as the mechanism to address the less common instances where this is not the case. However, the receiving water limits in Section VI of the Draft Permit are not clearly linked to the process in Section XX.B, and risks the type of “gotcha” surprise enforcement, or de facto numeric limit effect, described above.

The Draft Permit should clearly incorporate a process of BMP selection into the receiving water limit section, to avoid this problem.² Draft Permit Section XX.B describes a corrective action procedure to be followed if receiving water limitations are not being met. To avoid confusion and to integrate this procedure into receiving water limit compliance, we request that it be incorporated into the receiving water limitations, as shown below. (Also, there is a typographical error in the introduction to Section XX.B, referring only to Section VI.C. Either this should be changed to “VI.A,” as noted in the copy of Section XX.B below, or the entire provision should refer to “Section VI,” applying the corrective actions to all three receiving water limitations.)

6 Language for Receiving Water Limit VI.A: Turning to the specific language in the receiving water limit, we request deletion of the phrase “or contribute to” in Section VI.A, in addition to the modification suggested above as to the compliance process. In the MSGP, EPA deliberately chose to move away from the vague and undefined approach of prohibiting discharges from “causing or contributing” to an exceedance of water quality standards. Finding 36 correctly points out that “compliance with receiving water limitations can generally not be determined solely by the effluent water quality characteristics.” The requirement to control actual causes of an in-stream exceedance, based on finding an actual connection between effluent impacts and the receiving water, is most logical given the differing opinions on what the word “contribute” means in a binding permit limit.

Use of the phrase “cause or contribute” in receiving water limits is not required by regulations, and has not been specifically defined by any legal authority. The explanation of the MSGP water quality based limits on page 55 of its Fact Sheet³ notes:

“ EPA has reworded the water quality-based effluent limitation to use the phrase “control[led] as necessary to meet applicable water quality standards,” rather than the phrase do not “cause

² We note that the approach of expressing compliance as clear steps is used in EPA’s 2008 Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity (“Multi-Sector General Permit,” or “MSGP”), 73 Fed. Reg. 56572 (September 29, 2008). Under Section 2.2 of the MSGP, the end point is described as “control[ling] the discharge as necessary to meet applicable water quality standards in the receiving waterbody,” and the MSGP requires that the permittee comply with any additional, more stringent requirements EPA determines are necessary to meet an applicable wasteload allocation or to further control discharges to impaired waters that do not yet have an EPA approved or established TMDL. In this way, the entire exercise of determining the needs of the water body involves communication from the permitting agency as appropriate. This makes a general permit approach workable, while leaving the possibility of individual permitting if the agency determines that is needed for sites posing a greater threat to water quality.

³ http://www.epa.gov/npdes/pubs/msgp2008_finalfs.pdf

or contribute to a violation of water quality standards.” This change was made because the “cause or contribute” phrase derives from EPA’s regulation specifying how the permit authority should determine *whether* there should be a water quality based effluent limitation, 40 CFR 122.4(d)(1)(i) and (ii). This decision is often referred to as the “reasonable potential” determination. ...”

Here, the State Water Board has clearly decided to include receiving water limits. The reasonable potential phrasing is not required as the measure of compliance. We request revisions to Section VI to correct this issue, as shown below.

suggested
language for
comment 5
and 6

Suggested Revisions to Section VI and Section XXI

The following revisions to Sections VI and XXI.B address our requests for integrating a process for compliance into the receiving water limits, and our suggestions for language of Section VI.A:

VI. RECEIVING WATER LIMITATIONS

A. Dischargers shall ~~control pollutants in~~ ~~ensure that~~ industrial storm water discharges and authorized NSWDS so as not to ~~do not~~ ~~cause or contribute to~~ an exceedance of any applicable WQS in any affected receiving water. A Discharger will not be in violation of this Receiving Water Limitation VI.A. as long as the Discharger complies with the following procedure: *[Insert the procedure now found in Draft Permit Section XX.B.1, as edited below.]*

B. Dischargers shall ensure that industrial storm water discharges and authorized NSWDS to any surface or groundwater do not adversely affect human health or the environment.

C. Dischargers shall ensure that industrial storm water discharges and authorized NSWDS to any surface or groundwater do not contain pollutants in quantities that threaten to cause pollution or a public nuisance.

...

~~XX.B.~~ [NewVI.A.1:] Water Quality Based Corrective Actions

1. Upon determination by the Discharger or written notification by the Regional Water Board that industrial storm water discharges and/or authorized NSWDS contain pollutants that are in violation of Receiving Water Limitations (Section VI.~~CB~~), the Discharger shall:

a. Conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether BMPs described in the SWPPP have been properly implemented;

b. Assess the facility’s SWPPP and its implementation to determine whether additional BMPs or SWPPP implementation measures are necessary to prevent or reduce pollutants in industrial storm water discharges to meet the Receiving Water Limitations (Section VI); and,

c. Certify and submit via SMARTS documentation based upon the above facility evaluation and assessment that:

i. Additional BMPs and/or SWPPP implementation measures have been identified and included in the SWPPP to meet the Receiving Water Limitations (Section VI); or,

ii. No additional BMPs or SWPPP implementation measures are required to reduce or prevent pollutants in industrial storm water discharges to meet the Receiving Water Limitations (Section VI).

2. The documentation, evaluation, and assessment above shall be completed by a QISP II or III.

These revisions will go far to reduce the ambiguity of the receiving water limits, and will result in clearer and more proactive compliance measures and fewer unnecessary disputes.

7 Solid Waste Landfill Dual Permit Coverage

The fact sheet should be clarified to clearly confirm, consistent with longstanding EPA guidance and prior California IGP language, that operating landfills are subject to the Industrial General Permit (IGP), and not the Construction General Permit (CGP). Page 16 of the Fact Sheet suggests that either the Industrial General Permit (IGP) or the Construction General Permit (CGP) may apply at various points in the life of the landfill – largely at the discretion of the individual regional boards. This is inconsistent with EPA guidance and past IGP language and could create an inconsistency in the manner in which landfills are regulated by the State and Regional Boards in California.

It is clear from the historical EPA guidance on this matter that the CGP was only intended to apply to the initial original construction of the landfill *before* industrial waste was ever accepted. However, *after* industrial waste has been accepted all further activities at the landfill are subject to the IGP including lateral expansions, closure and another landfill stormwater generating activities. EPA, in its Question and Answer guidance, wrote,

22. If construction of cells at a landfill disturbs greater than five acres of land, is coverage under EPA's construction general permits required?

A. No. EPA considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and five or more acres of land are being disturbed, such activity would need to be covered under EPA's construction general permit until the time that initial construction is completed and industrial waste is received. Please note that NPDES authorized States may address this situation differently.

EPA, NPDES Storm Water Program - Question and Answer Document, Volume II (July 1993)
<http://www.epa.gov/npdes/pubs/owm0250.pdf>. Thus, the only time that the CGP would apply is during the initial landfill construction before any industrial waste is accepted.

Although EPA acknowledges that NPDES authorized states may handle this situation differently, California has followed EPA's position for years and should not suggest any change from this position. For example, the existing IGP states,

Category 5 Dischargers

Inactive or closed landfills, land application sites, and open dumps that have received industrial wastes (Category 5) may be subject to this General Permit unless the storm water discharges from the sites are already regulated by an NPDES permit issued by the appropriate Regional Water Board. Facility operators of closed landfills that are regulated by waste discharge requirements (WDRs) may be required to comply with this General Permit. In some cases, it may be appropriate for closed landfills to be covered by the State Water Board's General Permit during closure activities. The Construction Activities General Permit should cover new landfill construction. Facility operators should contact their Regional Water Board to determine the appropriate permit coverage.

http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf

We would encourage the SWRCB in adopting this IGP to reconfirm its position and require that landfills be treated in a consistent manner statewide and consistent with US EPA's original and ongoing intent. Further, we strongly suggest the following guidance be clearly and unambiguously added to the final IGP fact sheet:

- Original new construction of a SW landfill: CGP
- Once industrial waste is first placed into a landfill, then further regulatory control is transferred, in total, to the IGP. This will include future expansions, lateral expansions and closures of the landfill that is contiguous to the original landfill.
- A new non-contiguous LF unit would be subject to a determination by the RWQCB as to whether it is a new construction subject to CGP or an expansion of an existing LF subject to the IGP.
- New construction on top of a *closed* LF (i.e., in the post closure care period) would be subject to CGP. However, once the new construction is completed, then any further stormwater controls would be through the IGP if the new constructed activity is subject to the IGP.

8 ***pH Meters and Monitoring for pH***

The proposed permit provides that discharger must use pH meter to measure pH in stormwater dischargers. This does not make sense for discharges that may only occur infrequently. The expense of maintaining and calibrating pH meters is not justified. The final permit should allow the use of pH papers to measure pH in stormwater discharges. pH papers with different value ranges can be used to reasonably *and* accurately measure pH.

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. As the draft is currently written (based on Board staffs cost estimate) it correctly recognizes (in our opinion) that this really means a portable calibrated device. This is an extremely expense proposition for the solid waste industry, particularly for such potentially infrequent monitoring events. Quality portable pH meters are quite expensive and require frequent calibration. If not properly calibrated before a storm event the data may not be accurate. Further, many solid waste & recycling industry entities have multiple locations throughout California. One, solid waste enterprise has more than 70 locations that is subject to the IGP. The current draft permit could require *each of these sites* to maintain and calibrate portable pH meters.

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).”

SWISP requests 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.”

9 ***Implementation Timeline***

The effective date of the IGP is referenced in numerous places in the 2012 Draft IGP. SWISP suggests that the effective date of the IGP be contingent upon the adoption date of the IGP. SWISP recommends that the IGP effective date be one calendar year from the date of IGP adoption or July 1 the year

following IGP adoption, whichever occurs later. This will allow Permittees sufficient time to plan, change or modify operations/procedures, and allocate resources to comply with the IGP. In addition, a new training requirement is part of the 2012 Draft IGP. The State Water Board will be required to prepare IGP training curriculum under a limited timeline in order to meet the requirements of the IGP.

10 ***Training***

This section of the permit (Section IX) specifies the training requirements for personnel designated by the Discharger to perform IGP compliance activities. SWISP concurs that training or licensure as a Professional Engineer or Geologist allows an individual to become designated as a Qualified Industrial Storm Water Practitioner (QISP).

SWISP supports the training or licensure requirement to function as a QISP. However, SWISP does not agree that three different levels of QISP are necessary. This causes unnecessary confusion regarding the differing roles and responsibilities of the QISP. SWISP suggests that training be consolidated into a single QISP designation and that the different levels should be eliminated. Thus, all the roles specified in Table 1, except for those that require a Professional Engineer, should be completed by a QISP. The QISP should be allowed to direct non-QISP trained employees or representatives of the Discharger to conduct the activities required by the permit.

11 ***Pre-Storm Inspections***

SWISP appreciates the incorporation of the NOAA forecast as a trackable and consistent indicator of rain event predictions. However, SWISP remains concerned about the concept of predicted rain event inspections because of the effort involved in tracking and documenting the weather to demonstrate compliance. SWISP recommends the deletion of predicted rain event inspections in lieu of regular inspection of facilities. We believe that a regular monthly inspection is preferable to the constant tracking of predicted rain events. These monthly inspections could encompass both the quarterly non-stormwater inspections and the predicted storm event inspections.

12 ***Removal of Conditional Exclusion – No Discharge Certification***

The previous 2011 Draft of the IGP included the following No Discharge Certification conditional exclusion:

“Dischargers who have facilities designed to contain a 100 year 24-hour storm event and three (3) consecutive 20 year 24 hour storm events in a month are not found to have a potential to discharge pollutants, and therefore pose no threat to water quality.”

This conditional exclusion provided a benefit and the removal is completely contradictory to the goal of the IGP intention. It is SWISP’s recommendation that this conditional exclusion be put back into the IGP.

Miscellaneous Comments and Concerns

13 **Page 7.** Section 1. I. Training. The agency should clearly link training requirement to Section IX.

14 **Page 10.** Clarify that pH is not exceeded if within range -- not an average. The current permit language is not written clearly. It is suggested that the permit eliminate the annual pH limit on Table 5, page 42. Once an instantaneous pH is exceeded, the annual limit mathematically will most likely exceed due to the logarithmic function of pH. This would unfairly result in an exceedance due to one result or multiple exceedances on both instantaneous and annual limits. Clarify the Level 1 triggers.

Example:

Result 1 = pH 5.9

Result 2 = pH 6.1

Result 3 = pH 6.0

Result 4 = pH 6.0

The average is not arithmetically 6.0.

$\text{pH} = -\log(\text{H}^+)$

For pH 5.9; $\text{H}^+ = \text{antilog}(-5.9) = 1.259 \times 10^{-6}$

For pH 6.0; $\text{H}^+ = \text{antilog}(-6.0) = 1 \times 10^{-6}$;

For pH 6.1; $\text{H}^+ = \text{antilog}(-6.1) = 7.94 \times 10^{-7}$

The hydronium ion has significantly less impact for each pH unit on the average.

Average pH = $-\log(\text{average of H}^+)$

Average pH = $-\log \left(\frac{1.259 \times 10^{-6} + 7.94 \times 10^{-7} + (2 \times 10^{-6})}{4} \right) = -\log(1.065 \times 10^{-6}) = 5.99$

The annual average is exceeded.

If result 1 = pH 5.0 and the rest of the results the same, the average would be 5.5. At some point, the pH might have to exceed 9.0 to allow for an average to meet the average limit. The intent of satisfying an effluent range no longer has any meaning.

15 **Page 11.** "... when the second analytical result from any sample taken at a facility for the same parameter in Table 5 of this General Permit (TSS, O&G, or pH) exceeds the instantaneous maximum NAL ..." This is ambiguous. What does it mean? What is the "second analytical result from any sample." An analytical result taken of the same sample? The second sample taken in the season? The second sample that exceeded the NAL? We think that you intend the last, but it is very ambiguous.

16 **Page 33.** The requirement to update the SWPPP on SMARTS within 30 days is burdensome and will create a disincentive to making minor changes to the SWPPP. The IGP should require annual updates in SMART if any changes have been made and periodic updates when any significant changes have been made.

- 17 **SIC Codes.** California should consider moving away from the use of SIC codes for defining IGP applicability since the federal government no longer uses SIC codes, but has moved to NAICS codes.
- 18 **Page 17.** Why are existing dischargers who have not submitted NOIs given one year longer to submit NOIs than those that have submitted NOIs? This seems backwards.
- 19 **Page 32.** The requirement to cover waste disposal containers should not apply to waste disposal containers that are new or have been cleaned. Since WM will store hundreds of new or cleaned containers at its facilities, it can be a storage problem to require that they all be covered. Obviously, this requirement applies to containers that are being actively used for waste disposal, and not those that are stored at a facility prior to distribution to customers.
- 20 **Page 23.** IX.A. General Training Qualifications allow for a California licensed Civil Engineer to be a QISP level I, II or III. The general permit should allow for any state licensed Civil or Environmental Engineer to be a QISP. The educational qualifications for a PE QISP seem to be satisfied regardless of your State. Additionally, Professional Engineering ethics for work activities govern those of a licensed PE. This will provide flexibility for companies with internal Professional Engineering staffing resources outside of the state and familiar with the CA General Permit to provide support to smaller staffed facilities within the state. The PE can then easily be the company QISP designee and conduct companywide training and other functions to satisfy the General Permit. This is consistent with the Agencies allowance for a facility to have QISP designee, but not necessarily be required to be on-site at all times.
- 21 **Page 23.** Replace “and” with an “or” in “A California Board of Professional Engineers, Land Surveyors and Geologist licensed professional civil engineer, registered geologist, and a certified engineering geologist...” Additionally, a Board of Examiners for Professional Engineers and Land Surveyor endorsed licensed Professional Engineer in Civil or Environmental Engineering for any state should be included on page 7 & 23.
- 22 **Page 12, #72.** Existing treatment control devices a Demonstration Technical Report. This can be costly. Under pre-existing standards if these structures have been incorporated into a SWPPP under a PE stamp, this condition may require undue financial burden on the discharger.
- 23 **Page 20.** Ensure municipal systems sources are included as a “potable water source” and are authorized Non-stormwater discharges (NSWDS).
- 24 **Page 22.** VI. Receiving Water Limitations. There are no detailed or prescriptive guidelines to ensure discharges do not affect limitations other than following the NPDES permit. Clarify intent to limit discharges affecting water quality of receiving waters. Recommend shielding the discharger that following the general permit will meet this condition. Is this section necessary since Clean Water Act

regulations govern this requirement? Site specific permit requirements should be provided on a case by case basis.

25 **Page 26.** A Paper copy of SWPPP is required to be maintained on site. The general permit should allow for an electronic copy to be maintained. This should be the burden of the discharger. If a company's current or future Environmental Management Systems relies on maintaining an electronic copy to be available on computer systems, then this would be in accordance with usual and customary business practices. This is also consistent with the concept of a company maintaining electronic copies of MSDSs, which is endorsed by OSHA.

26 **Page 28.** The SWPPP should prescribe the period of time past spills must be included/marked on the site plan. This should be consistent with EPA's MSGP that requires the last 3 years.

27 **Page 34.** Should incorporate following Section XII D. Clarify that new or modified BMPS to be implemented or installed per Level 2 will require meeting this design criterion. Shield existing BMPS from this design criterion if meeting benchmarks (NALs).

28 **Page 36.** Including an example of a Chain of Custody (COC) is too prescriptive. Contents required for a COC should be included; therefore, allowing facilities to choose a different laboratory. This will allow for flexibility for the discharger and prevent undue burden to update the SWPPP for a change of COC use.

29 **Page 44.** Sampling Frequency Reduction (SFR). Recommend an allowance for SFR on individual parameters, not all NALS as defined in Section XII. A.

30 **Page 48.** Level 2 Structural/Treatment Control must implement within 1 year. Recommend that Structural/treatment control BMPs installation deadline should be extended to 18 months. Reports/SWPPP can adequately be revised in a timely fashion. Structural projects take time based on weather, consulting and contractor availability, design and installation as well as financial budgeting requirements for business corporations.

31 **Page 57.** The Annual Evaluation is required by June 30th. The Annual report submitted via SMARTS is due by July 15th. Given the allowance time for the evaluation, the annual report should be allowed to be submitted by July 31st to allow for report preparation and signatory requirements of the duly authorized individual.

32 **Throughout.** Many administrative edits are needed for spelling, etc.

Please contact any of the undersigned parties to this letter if you have any questions or require further information.

Sincerely,

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Attachment: Survey of EPA and State Requirements for Landfill Construction vs Industrial
Stormwater Permits for Solid Waste landfills

Attachment A

Survey of USEPA and State Requirements for Solid Waste Landfill Industrial and Construction Permits

EPA

22. If construction of cells at a landfill disturbs greater than five acres of land, is coverage under EPA's construction general permits required?

A. No. EPA considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and five or more acres of land are being disturbed, such activity would need to be covered under EPA's construction general permit until the time that initial construction is completed and industrial waste is received. Please note that NPDES authorized States may address this situation differently.

EPA, NPDES Storm Water Program - Question and Answer Document, Volume II (July 1993)
<http://www.epa.gov/npdes/pubs/owm0250.pdf>

EPA

EPA has clearly recognized that on-going landfill cell construction and landfill development is part of the normal operations of a landfill. EPA's description of the landfill sector in the MSGP reinforces this point:

A typical MSWLF is a constantly evolving facility which is constructed over its operating life as received wastes are spread, compacted, and covered. Most modern landfills contain one or more separate "units," planned final waste containment areas. Active units continue to receive wastes until they have reached disposal capacity. When capacity is reached, a unit is capped with a final cover, and additional wastes must be placed in other active units. As a result, a landfill may consist of multiple inactive and active units at various stages of completion.

Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities, 60 Fed. Reg. 50804, 50938 (Sep. 29, 1995).

EPA

Listing various activities subject to the Industrial Permit, including

- Waste transportation
- Waste tracking on-site and haul road, solids transport on wheels and exterior of trucks or other equipment
- Landfill operations
- Exposure of waste at open face
- Exposed soil from excavating cells/trenches
- Exposed stockpiles of cover material
- Inactive cells with final cover but not finally stabilized
- Daily or intermediate cover placed on cells or trenches
- Haul roads (including vehicle tracking of sedimentation)

Table 1A. Common Activities, Pollutant Sources, and Associated Pollutants at Landfills

Activity	Pollutant Source	Pollutant
Cover crop management	Applied chemicals	Fertilizers, pesticides, and herbicides
Outdoor chemical storage	Exposure of chemical material storage areas to precipitation	Various chemicals stored
Waste transportation	Waste tracking on-site and haul road, solids transport on wheels and exterior of trucks or other equipment	TSS, total dissolved solids (TDS), turbidity, floatable
Leachate collection	Uncontrolled leachate (commingling of leachate with runoff or run-on)	Iron, TSS, biochemical oxygen demand (BOD), ammonia, alpha terpineol, benzoic acid, p-Cresol, phenol, zinc, pH
Landfill operations	Exposure of waste at open face	BOD, TSS, TDS, turbidity
Exposed soil from excavating cells/trenches	Erosion	TSS, TDS, turbidity
Exposed stockpiles of cover material		
Inactive cells with final cover but not finally stabilized		
Daily or intermediate cover placed on cells or trenches		
Haul roads (including vehicle tracking of sedimentation)		
Vehicle/equipment maintenance	Fueling activities	Diesel fuel, gasoline, oil
	Parts cleaning	Solvents, oil, heavy metals, acid/alkaline wastes
	Waste disposal of oily rags, oil and gas filters, batteries, coolants, degreasers	Oil, heavy metals, solvents, acids
	Fluid replacement including hydraulic fluid, oil, transmission fluid, radiator fluids, and grease	Oil and grease, arsenic, lead, cadmium, chromium, chemical oxygen demand (COD), and benzene

Industrial Stormwater Fact Sheet Series – Sector L: Landfills and Land Application Sites

http://www.epa.gov/npdes/pubs/sector_l_landfills.pdf

NEW YORK

48. If the construction of cells at an existing landfill disturbs greater than one acre of land, is coverage under DEC's construction general permits required?

A: No. DEC considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and one or more acres of land are being disturbed, such activity would need to be covered under DEC's construction general permit until the time that initial construction is completed and industrial waste is received.

http://www.dec.ny.gov/docs/water_pdf/constrfaq.pdf

INDIANA

327 IAC 15-5-2 Applicability of general permit rules

Sec. 2. (a) The requirements under this rule apply to all persons who:

- (1) do not obtain an individual NPDES permit under 327 IAC 15-2-6;
- (2) meet the general permit rule applicability requirements under 327 IAC 15-2-3; and
- (3) are involved in construction activity, except operations that result in the land disturbance of less than one (1) acre of total land area as determined under subsection (h) and are not part of a larger common plan of development or sale.

(b) The requirements under this rule do not apply to persons who are involved in:

- (1) agricultural land disturbing activities; or
- (2) forest harvesting activities.

(c) The requirements under this rule do not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

- (1) Landfills that have been issued a certification of closure under 329 IAC 10.
- (2) Coal mining activities permitted under IC 14-34.
- (3) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the department under 329 IAC 10 that contains equivalent storm water requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

The following soil disturbing activities do not require a general, Rule 5, or individual NPDES construction-related storm water discharge permit:

....

IDEM permitted municipal solid waste landfills or landfills certified for closure.

<http://www.in.gov/idem/5912.htm>

CALIFORNIA

Category 5 Dischargers

Inactive or closed landfills, land application sites, and open dumps that have received industrial wastes (Category 5) may be subject to this General Permit unless the storm water discharges from the sites are already regulated by an NPDES permit issued by the appropriate Regional Water Board. Facility operators of closed landfills that are regulated by waste discharge requirements (WDRs) may be required to comply with this General Permit. In some cases, it may be appropriate for closed landfills to be covered by the State Water Board's General Permit during closure activities. The Construction Activities General Permit should cover new landfill construction. Facility operators should contact their Regional Water Board to determine the appropriate permit coverage.

http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf

NEW JERSEY

5G3 – CONSTRUCTION ACTIVITY STORMWATER (GP)

a. Except as provided in 2.b. below, this permit may authorize all new and existing stormwater discharges associated with industrial activity and small construction activities as defined in N.J.A.C. 7:14A-1.2, and that are from the following facilities:

i. Construction activities including clearing, grading and excavation activities. In regard to landfills such construction activities are limited to:

- A landfill under construction which has not received any solid waste or hazardous waste as defined at N.J.A.C. 7:14A - 1.2; or
- A landfill that has been closed in compliance with N.J.A.C. 7:26-2A.9 (the Solid Waste rules) or N.J.A.C. 7:26G (the Hazardous Waste rules), the appropriate certifications have been submitted in accordance with N.J.A.C. 7:26 or N.J.A.C. 7:26G, and the landfill is not disrupted.

http://www.state.nj.us/dep/dwq/pdf/5g3_finalpermit.pdf

ILLINOIS

"Storm Water Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related

to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. ...

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

GEORGIA

Note: Construction Permit Required

As stated in a memorandum dated January 20, 2004 (copy attached [not attached]), EPD has determined that storm water discharges from the construction of new cells at landfills require the submittal of an NOI for coverage under Georgia's NPDES General Permit No. GAR100001 for Storm Water Discharges Associated with Construction Activity for Stand Alone Projects (Construction Storm Water General Permit), provided the total planned disturbance for the entire landfill project is equal to or greater than one acre.

http://www.gaepd.org/Files_PDF/techguide/wpb/Storm_Water_Permitting_Landfills.pdf

TENNESSEE

22. If construction of cells at a landfill disturbs greater than five acres of land, is coverage under EPA's construction general permits required?

No. EPA considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and five or more acres of land are being disturbed, such activity would need to be covered under EPA's construction general permit until the time that initial construction is completed and industrial waste is received. Please note that NPDES authorized States may address this situation differently.

<http://www.tn.gov/environment/wpc/stormh2o/epastormwater.pdf>

TEXAS

Comment 38: CAS Engineering requests that Part II.B.3. of the permit be revised to clarify that construction activities associated with Sector L (Landfills and Land Application Sites) are authorized under this general permit. CAS Engineering requests that a sentence be included in this section that reads, "Construction activities associated with Sector L facilities are excluded from the requirements of Part II.B.3."

Response 38: In addition to the MSGP, any industrial facility that performs regulated construction activities must meet the requirement of the TPDES CGP. TCEQ considers construction of new cells at a landfill to be routine landfill operations that are covered by the landfill's industrial storm water general permit. For this activity, the SWP3 for the landfill must incorporate BMPs that address sediment and erosion control for new cells. However, where a new landfill is being constructed and one or more acres of land are disturbed, such activity is covered under the CGP until such time that the initial construction is completed and industrial waste is received.

TCEQ General Permit No. TXR050000, Executive Directors Response To Public Comment at 17 (2006).

<http://www.tceq.texas.gov/assets/public/permitting/stormwater/2006txr05edcomments.pdf>