

Department of Water and Power



the City of Los Angeles

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September 19, 2013

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Ms. Townsend:

Subject: Comment Letter – Draft Industrial General Permit

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the 2013 Draft Industrial General Permit (Draft Permit). LADWP recognizes and appreciates the work of the State Water Resources Control Board (Board) staff in developing this final draft. It is particularly appreciated that the Board reached out to the stakeholders and convened informative workshops and technical webcasts in order to better incorporate sound science and recommendations.

- 1 LADWP supports the Board's decision in Section II of the order which added language allowing for the redaction of trade secrets and sensitive infrastructure information that would have been required for electronic submittal into the Storm Water Multi-Application Reporting and Tracking System (SMARTS). The Homeland Security Act, state regulations, and company security confidentiality requirements may preclude providing detailed information on transmission and distribution facilities. This new language allows dischargers to provide the general Permit Required Document (PRD) requirements and un-redacted paper copies of information to the Regional Water Quality Control Board within 30 days.
- 2 In addition, LADWP supports the Board staff's decision not to establish numeric effluent limitations (NELs) for the 2013 Draft Permit. LADWP agrees with and supports the Board finding that "... the State Water Board does not have the information (including monitoring data, industry specific information, BMP performance analyses, water quality information, monitoring guidelines, and information on costs and overall effectiveness of control technologies) necessary to promulgate NELs at this time", and concluded it is infeasible to include NELs in this statewide General Permit (p. 19 in the 2013 Draft Fact Sheet).

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- 3 LADWP also appreciates and supports the Board's decision to allow sampling from discharge locations to commence within four (4) hours of the start of discharge or within the previous 12-hour period of the start of facility operations. As with most of LADWP's generating stations, only trained Laboratory personnel and select operations staff are available to collect Stormwater samples during daylight operating hours. This change provides the best opportunities to ensure Qualified Sampling Events (QSEs) are sampled in accordance with this permit.

These revisions have improved this latest Draft permit from the previous 2012 version. However, there are still a few key issues LADWP believes require additional revision, as detailed below.

LADWP respectfully submits the following comments on the Draft Permit:

- 4 **1. Numeric Action Levels and Exceedances, Order Section I.M. Paragraph 63 page 11.**

LADWP is concerned that the Numeric Action Levels (NALs) were developed from a national data base and derived from EPA's 2008 Multi-sector General Permit and not from data collected within California, and that an exceedance of a NAL could be construed as a violation if the discharger does not comply with Level 1 or Level 2.

The NALs included in this Permit may not be appropriate to determine the adequacy of the Best Management Practices (BMPs). The NAL values were established without the consideration of factors affecting stormwater quality such as variables associated with storm events, natural background/ambient conditions, and most importantly, performance of currently available BMP technology specific to industrial stormwater discharges. Without the information on the efficiency and consistency of the currently available BMP performance, it is uncertain that any capital investment for the BMPs will result in reduction of the concentration to meet the NAL values in stormwater discharge.

For instance, a study conducted in various undeveloped and natural watersheds in Southern California demonstrated that natural contribution alone exceeded the proposed NALs for TSS and metals in storm water (see Table 1 below).

**Table 1. Levels of TSS, copper, and zinc in storm water from natural undeveloped watersheds in Southern California (Stein and Yoon 2007)**

	No. samples	Minimum	25th percentile	Median	75th percentile	Maximum	Annual NALs proposed in the Draft Permit
TSS	212	0	4	22	170	103,000	100
Copper	212	0	0.001	0.002	0.008	0.132	0.0332
Zinc	209	0	0.003	0.006	0.022	0.596	0.26

As concluded by the expert panel formed by the Board, NALs should be based on California site-specific data. Storm water sampling from California facilities have been done since the 1990's, and it appears that this data has not been utilized to determine NALs. Nationwide data is not relevant since the pollutant background concentrations, rain events, and weather patterns from other areas of the nation are very different from California. In some areas of the country, certain pollutants may not be ubiquitous or naturally occurring as may be the case in California. In addition, California is a very large state, and conditions in Northern California are much different than that in Southern California; and therefore, a NAL for Northern California may not be appropriate for Southern California and vice versa. NALs should be regionally determined, and the draft IGP should allow for this variation.

For these reasons, LADWP believes the shift from a performance-based approach to a numeric method is not reasonable for stormwater discharges.

- 5 LADWP strongly recommends that the Board continue implementing the current performance-based approach and commence special studies to determine common pollutants and their natural background and ambient levels, to research different types of technologies and pollutant reduction methods, and to examine the efficiency of BMPs at industrial facilities in California.
- 6 In addition, LADWP supports the clarification that "NAL exceedances defined in this General Permit are not, in and of themselves, violations of this General Permit. However, a Permittee that does not fully comply with the Level 1 status and/or Level 2 status Exceedance Report Action (ERA) requirements, when required by the terms of this General Permit, is in violation of this General Permit." (p. 11 in the 2013 Draft Permit; emphases added).
- 7 LADWP requests that the Board clarify the self-reporting requirement for any violation. The 2013 Draft Permit requires a permittee to self-report any violation via SMARTS (p. 9 in the 2013 Draft Permit). LADWP requests that the Board confirm that a permittee

is not required to report an exceedance of NALs via SMARTS, since an NAL exceedance does not, by itself, constitute a permit violation.

**2. Section IX. Training Qualifications, Order Sections IX.A. Paragraphs 1-3 page 23.**

- 8 LADWP acknowledges and appreciates the attempt to simplify the Qualified Industrial Storm Water Practitioner (QISP) to only one type of QISP; however, LADWP still believes the new requirements fail to recognize qualified individuals who have the knowledge and expertise to implement the permit, which are not licensed by The California Department of Consumer Affairs Board for Professional Engineers, Land Surveyors, and Geologists (CBPELSG).

The Draft Permit proposes that a QISP is not needed at the Baseline status of the permit. However, a discharger will need a QISP if they reach Level 1 status at which time a QISP is needed for the ERA evaluation and ERA report. A non-CBPELSG who has been working in the field developing storm water plans and implementing BMPs for at least 7 years should be considered a storm water professional and qualified to be a QISP if that person also holds certain certifications. Due to the professional experience, this person is just as knowledgeable, if not more so, than the newly licensed Professional Engineer who may only have two to four years of professional experience. A Certified Professional in Storm Water Quality (CPSWQ) requires mandated professional experience, related education, references, an examination, and continued education credits, and should be considered qualified to meet the QISP requirements.

LADWP recommends that a CPSWQ be added to the list of professionals allowed to pursue the self-guided option.

- 9 In addition, there is currently no timeline for establishing the State required classes and State administered exam for the QISP. At the workshop on August 14, 2013, Board staff explained that the Board was still in the process of developing the training program. Furthermore, the current language in this Draft Permit is vague and provides little information of the intended training for non-CBPELSG. LADWP is concerned that the training program may not be available in time to comply with the Permit. Since these classes are not developed or available, LADWP recommends delaying the QISP requirement until the training program has been developed and available to the permittees.

**3. Section XI. Sampling and Monitoring, Order Sections XI.A.1. Paragraph b page 36, Order Sections XI A.2 Paragraphs 2a, 2d pages 36-37.**

- 10 The draft permit Section XI A.1.b. states "Monthly visual observations shall be conducted during daylight hours of scheduled facility operating hours..." However, Section XI A.2. states "Sampling event visual observation shall be conducted at the same time sampling occurs at a discharge location..." It is feasible that QSE events can

and will occur outside of daylight hours for a 24 hour operating facility that can safely sample a QSE outside of daylight hours, but is unable to obtain visual observations, it is unclear if this would be considered a violation of the permit. Sections XI. A. 2.d. reflects that the discharger shall provide an explanation in the Annual Report for uncompleted sampling event observations; however, it is unclear if an additional sampling event will be needed to capture the missing QSE visual observations.

LADWP recommends clarifying the language to allow a discharger who can safely sample a QSE outside of daylight hours be allowed to do so, and complete the visual observations during daylight hours, without threat of violation of the permit.

- 11 In addition, at the IGP workshops on August 9 and 14, 2013, the Board staff explained that no violation would result if samples were not collected because no QSEs had occurred. The staff also explained that if a permittee was unable to sample two QSEs due to a lack of QSEs in the first 6 months of the reporting year, the permittee would not be required to sample additional QSEs but would be required to sample only two QSEs in the second 6 months of the reporting year (i.e., no roll-over).

LADWP recommends that Board staff add language to the permit to clarify these two issues, that 1) the failure to sample due to a lack of QSEs is not a permit violation, and 2) there will be no roll-over of the missed sampling into the subsequent half of the report year due to the lack of QSEs.

4. Sampling for a facility operating 24 hours, Order, Section XI.C. Paragraph 6 page 44.

- 12 The 2013 Draft Permit requires that sampling be conducted at the time of discharge for facilities that operate 24 hours. Exceptions are granted only for dangerous weather conditions such as flooding or electrical storms (p. 44 in the 2013 Draft Permit). LADWP believes the exceptions are too limited. Conducting sampling at night during a storm event is deemed unsafe regardless of the intensity of the storm. For instance, there may be a potential slip-and-fall hazard on the approach to the sample discharge location; or the sampling point may be located in a very remote location that is physically challenging to access during the night time hours.

LADWP recommends a night-time exemption where warranted in the opinion of site operators that allows site personnel to conduct the required sampling and inspection activities during daylight hours the following day for a facility that operates 24 hours.

- 13 5. TMDL implementation, Order Sections I.F. Paragraphs 38-42 pages 6-7, Order Section XX. Paragraph A page 64.

The 2013 Draft Permit requires stakeholders to work with the regional boards (RWQCBs) to implement Total Maximum Daily Load (TMDL) specific requirements:

"This General Permit may be reopened and amended to incorporate TMDL-related provisions." (p. 64 in the 2013 Draft Permit)

"TMDL specific monitoring requirements for the TMDLs listed in Attachment E will be proposed by the Regional Water Boards...by July 1, 2015" (p. 24 in the 2013 Draft Fact Sheet)

The 2013 Draft Permit also allows RWQCBs to offer the option of using a BMP-based approach in complying with TMDLs:

"The Regional Water Boards shall submit to the State Water Board the following information for each of the TMDLs listed in Attachment E  
c. Where a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable WLAs." (p. 7 in the 2013 Draft Permit)

LADWP appreciates the recognition that BMPs may be used to comply with TMDL waste load allocations (WLAs); however, clarification is needed so it is understood that the BMP-based approach complies with the permit. Therefore, LADWP recommends that this language be strengthened in order to specify that, where a permittee provides sufficient information, the RWQCB shall allow the permittee to use a BMP-based approach.

1.4 **6. Natural background and non-industrial activity BMP demonstration options.**  
**Order, Sections XII.D. Paragraphs a,b,c pages 49-51.**

The 2013 Draft Permit allows a permittee at Level 2 to make BMP demonstration options for 1) industrial activity BMPs, 2) non-industrial pollutant source BMPs, and 3) natural background pollutant source BMPs. There is no way for a permittee to return to the Baseline status if demonstration options other than the industrial activity BMPs are chosen, and thus the permittee would remain in Level 2 forever (p. 50 in the 2013 Draft Permit). Consequently, the discharger would be ineligible for a reduction in the required sampling frequency and would be subject to additional requirements and restrictions that could be imposed by the RWQCB. For the reasons listed below, LADWP believes that this approach would be unfairly penalizing the permittee even after compliance has been demonstrated.

At the workshop on August 14, 2013, Board staff explained that a permittee at any level, including Baseline and Level 1, could select either of the non-industrial or natural background source BMP demonstration options. However, once the permittee selected one of these two options, the permittee would automatically be moved to Level 2 and would be subject to Level 2 requirements. LADWP believes that it is unfair to penalize a permittee at Baseline or Level 1 by imposing Level 2 requirements just because these

options are not available for Baseline and Level 1; and in cases where it has been established that pollutants are present not from the permittee's industrial operations, but from sources beyond the permittee's control or influence, such as run-on from neighboring sources or atmospheric deposition.

LADWP also notes that it is possible that the combination of industrial, non-industrial, and natural background sources contribute to NAL exceedances. Under this scenario, even if a permittee reduced its industrial contribution to negligible levels by implementing advanced BMPs, the non-industrial/natural sources would continue to cause NAL exceedances.

At the workshop on August 14, 2013, Board staff explained that the idea was to give neither penalty nor reward (i.e., sampling frequency reduction) to permittees who opt out for the BMP demonstration options other than the industrial BMP demonstration option. LADWP believes the 2013 Draft Permit could actually penalize the permittee because the 2013 Draft Permit allows the RWQCB to impose additional requirements on Level 1 and 2 permittees.

"Dischargers...remain with Level 2 status but are not subject to any additional ERAs unless directed by the Regional Water Board." (pp. 58 -60 in the 2013 Draft Fact Sheet emphasis added)

This is in contrast with the approach in EPA's 2008 Multi-Sector General Permit (MSGP) (the source of the 2013 Draft Permit's NALs) that does not require a permittee whose exceedance is due to natural background sources to implement any corrective actions (e.g., ERAs):

"...if the average concentration of a pollutant exceeds a benchmark value, and you determine that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, you are not required to perform corrective action or additional benchmark monitoring..." (p. 37 of the 2008 MSGP)

LADWP recommends allowing a permittee to return to the Baseline status if all ERAs are met, even if the exceedances are due to non-industrial pollutant sources or natural background conditions.

- 15 LADWP also recommends that the Board require the RWQCB to provide detailed justification whenever additional requirements are imposed on permittees at Level 1 and Level 2.
- 16 Finally, LADWP requests that the Board clarify whether "aerial deposition from man-made sources," which is listed as a non-industrial pollutant source (p. 50 in the 2013

Draft Permit), includes wildfire or whether wildfire is identified as a natural background source.

**7. Receiving water limitations, Order Sections I.E. Paragraph 37 page 5.**

- 17 The Board should clarify that the statement “WQS apply to the quality of the receiving water, not the quality of the industrial storm water discharge” (p. 5 –Section I.E.37 in the 2013 Draft Permit) means that the compliance point for the receiving water limitation is in the receiving water; the receiving water limitations are not and should not be considered de facto water quality based numeric effluent limitations. In addition, the statement that “compliance with WQS may, in some cases, require Dischargers to implement controls that are more protective than the controls that are necessary to meet the technology-based requirements in this General Permit” is highly ambiguous. LADWP suggests Staff delete this sentence; the point that meeting applicable WQS may require more stringent controls than needed to meet BAT/BCT already is made in Finding No. 31.

LADWP recommends the Board clarify, as outlined in the Fact Sheet (p. 21 – Section II.E), that a permittee shall not be considered in violation of the receiving water limitations as long as the permittee follows a BMP based approach with procedures such as a pollutant source evaluation, assessment of SWPPP implementation measures for pollutant reduction/prevention, and evaluation of additional BMPs/SWPPP implementation measures as specified in Section XX.B.1 (pp. 64-65 in the Draft Permit).

LADWP suggests that, if receiving water standards are exceeded, the appropriate regulatory mechanism to bring those receiving waters into compliance is the TMDL. TMDLs are intended to attain ambient water quality standards through the control of both point and nonpoint sources of pollution. Rather than placing on individual IGP Dischargers the burden of determining how to bring a receiving water into compliance with water quality standards, LADWP respectfully suggests that this burden should be placed upon the RWQCBs and/or other regulatory agencies who are responsible for developing TMDLs, and who would be responsible for assigning wasteload allocations (WLAs) for industrial dischargers pursuant to the terms of those TMDLs.

**LADWP therefore recommends that the 2013 Draft Permit receiving water limitations language be modified to read as follows:**

“37. This General Permit requires all Dischargers to comply with all applicable WQS for waters of the United States that may be affected by their industrial storm water discharges and authorized NSWDS. WQS apply to the quality of the receiving water, not the quality of the industrial storm water discharge. Therefore, compliance with the receiving water limitations can generally not be determined solely by the effluent water quality characteristics. ~~Compliance with WQS may, in~~

some cases, require Dischargers to implement controls that are more protective than the controls that are necessary to meet the technology-based requirements in this General Permit. Compliance with WQS can be met utilizing the BMP approach to comply with the applicable Total Maximum Daily Load (TMDL) requirements. If an adopted TMDL does not specify waste load allocations (WLAs) that would be applicable to an industrial discharger, or if the Regional Water Quality Control Board does not impose additional permit requirements derived from the TMDL's WLAs for the industrial discharger, any such industrial discharger shall be considered in compliance with the applicable water quality standards for the receiving water."

18 **8. Design storm for treatment BMPs, Order Sections X.H.46. Paragraphs a,b pages 34-35.**

The 2013 Draft Permit incorporates design storm standards for treatment control BMPs in order to:

"... minimize the regulatory uncertainty and costs concerning treatment control BMPs in order to encourage the implementation of treatment control BMPs when appropriate." (p. 37 in the 2013 Draft Fact Sheet).

The 2013 Draft Permit uses the 85<sup>th</sup> percentile, 24-hour storm event as the basis for design storm requirements for both volume-based and flow-based treatment controls.

LADWP supports this feature of the 2013 Draft Permit and believes that a design storm is necessary to minimize regulatory uncertainty and costs for all types of BMPs, including both minimum and advanced BMPs.

19 **9. Compliance storm event**

LADWP supports the design storm concept for treatment BMPs. It would be costly and unfeasible to design a treatment BMP for storms of all sizes. For the same reason, LADWP recommends that a compliance storm be defined for this permit such that samples collected during extraordinarily large storm events (i.e., events larger than the compliance storm) would not be considered when comparing analysis results to the NALs specified in the permit. This is appropriate because BMPs would not be designed to handle and treat all flows from events larger than the design storm. With this adjustment, permittees would be allowed stay in the compliance level associated with storm events for which the BMPs are designed, and additional ERAs would not be required based on extreme events.

20 **10. LID/green infrastructure**

At the hearing on August 21, 2013, both the Non-Governmental Organizations (NGOs) and the regulated community requested that the permit include Low Impact Development (LID) and green infrastructure methodologies/BMPs. LADWP is aware that there have been considerable efforts to implement LID, green infrastructure methods, and infiltration basins in order to reduce stormwater discharge to waterbodies state- and region-wide. Other permits adopted within the State allow this type of approach. For instance, the recently adopted Los Angeles County MS4 2012 Permit allows an enhanced watershed management program (EWMP). Under the EWMP approach, regardless of water quality, a drainage area within a project that retains stormwater runoff from the 85<sup>th</sup> percentile, 24-hour storm event would be in compliance with the permit requirements (p.45 in Order No. R4-2012-0175).

LADWP believes that a credit should be provided for reducing the volume of stormwater runoff and the associated pollutant load via LID or green infrastructure methods/BMPs at industrial facilities.

21 **11. Permit effective date, Order, Cover Sheet**

At the hearing on August 21, 2013, numerous commenters expressed concerns that the proposed permit effective date of January 2015 would be in the middle of a storm season, such that permittees would have to comply with one set of permit requirements for the first half of the storm season and then the new requirements for the remainder of the storm season.

LADWP requests that the permit effective date be changed from January to July 2015 and that stormwater monitoring in the winter of 2014/2015 be conducted pursuant to the current permit requirements.

**12. Section XVI Annual Report, Order Section XVI Paragraph A. page 56.**

22 The 2013 Draft Permit requires a submission of an annual report by July 15 annually. At the workshop on August 9, 2013, the Board staff stated that only a compliance checklist should be submitted annually. Board staff also added that the compliance checklist was under development.

LADWP recommends 1) adding language to clarify that only the compliance checklist is required to be submitted annually, and 2) allowing public review of and comment on the draft compliance checklist.

23 In addition, LADWP believes it is infeasible to have an Annual Report uploaded and certified into SMARTS by the proposed July 15<sup>th</sup> date. The reporting period is currently until June 30<sup>th</sup> of each year. This does not allow adequate time to receive data back in

the event of a late season storm, or internal review and discussion immediately after the reporting period ends.

LADWP recommends the Permit Annual Report be submitted at a minimum of 45 days following the end of the annual reporting period.

24 **13. BAT/BCT Requirements, Order Sections I.A. Paragraph 1 page 1.**

Currently, the permit requires the implementation of Best Available Technology (BAT)/ Best Control Technology (BCT). However, BMPs serving as BAT/BCT are not known at this time. The regulator would be second guessing and may be requiring unnecessary costly BMPs that may not meet the NALs when there could be a more practical cost effective solution.

LADWP believes required BMPs should be practical and cost effective that provide maximum environmental benefits. LADWP recommends that the Board commence data collection in order to identify BAT/BCT BMPs that are also the most practical and cost effective.

**14. Storm water pollution prevention plan (SWPPP), Order Section X. Paragraph F. page 26.**

25 The 2013 Draft Permit requires a detailed description of "significant materials" on page 26. This term is undefined and unclear.

LADWP requests that the Board provide a definition of "significant materials," and allow public comment on this definition prior to permit adoption.

26 At the workshop on August 14, 2013, the Board staff mentioned that the entire SWPPP would not need to be prepared by a CA licensed professional engineer; rather only specific sections that contain engineering work should be prepared and certified by a CA licensed engineer.

LADWP recommends adding language stating that only SWPPP sections that contain engineering work should be prepared and certified by a CA licensed engineer.

**15. No discharge certification (NDC), Order Sections XX. C. pages 65-66.**

27 In the 2013 Draft Permit, eligibility requirements for NDC are too vague, as they are based on the "historic maximum precipitation event" (p. 65 in the 2013 Draft Permit), which is undefined. At the workshop on August 9, 2013, the Board staff explained that the historic maximum precipitation event would be determined using precipitation records that were readily available to a permittee. LADWP is also uncertain what defines "readily available records".

LADWP recommends that the historical maximum precipitation event be defined as the 10-year, 24-hour storm event, consistent with the compliance storm that applies to the ATS under the CGP.

**16. Implementation schedule extension**, Order Sections XII. Paragraphs A-D pages 46-52.

- 28 The 2013 Draft Permit allows schedule extensions only for Level 2 implementation actions, even though the 2013 Draft Permit allows a permittee to propose an implementation schedule for both Levels 1 and 2. The extension for the proposed implementation schedule may be granted only at Level 2 in light of unforeseen circumstances such as difficulty acquiring a construction permit.

LADWP recommends allowing an implementation extension for Level 1, as well as Level 2, should there be any unforeseen delays.

**17. Compliance group**, Order Sections XIV. A. Paragraphs 1 – 5, page 54.

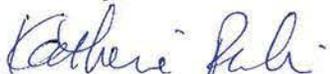
- 29 The 2013 Draft Permit requires appointing a compliance group leader who is a QISP and requiring the leader to conduct annual site inspections of member facilities. This requirement may result in security issues among facilities in a similar industrial type.

LADWP has four facilities that could be used for the formation of a compliance group, which would facilitate LADWP's efforts to enhance stormwater quality while also adequately protecting security information.

LADWP requests that the Board clarify whether multiple facilities within the same company may form a compliance group.

In closing, LADWP looks forward to working with the Board staff on the renewal of this permit. Should you have any questions regarding this letter, please contact Ms. Charlynn Rachell of the Wastewater Quality and Compliance Group at (213) 367-2976.

Sincerely,



Katherine Rubin  
Manager of Wastewater Quality and Compliance

CR:ki

c: Ms. Charlynn Rachell