**RESPONSE TO COMMENTS**
PROPOSED AMENDMENTS TO ORDER NO. 2009-0009-DWQ AS MODIFIED BY 2010-0014-DWQ [NPDES NO. CAS000002] GENERAL PERMIT FOR DISCHARGES OF STORM WATER ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES
(CONSTRUCTION GENERAL PERMIT)
**ORDER NO. 2012-XXXX-DWQ**
**NPDES PERMIT NO. CAS000002**

The State Water Board's Response to Comments is responsive to all comments received by the May 14, 2012 deadline for comments concerning modifications to Order No. 2009-0009-DWQ General Permit for Discharges of Storm Water Associated with Construction and Land Disturbance Activities. All written comments are available to view at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/construction/comments051412/comments051412.shtml

| Number | Company | Representative |
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| **1** | Brash Industries | Marvin Sachse |
| **2** | California Building Industry Association | Richard Lyon |
| **3** | California Coastkeeper Alliance<br>Heal the Bay<br>San Francisco Baykeeper | Sara Aminzadeh<br>Kirsten James<br>Ian Wren |
| **4** | California Council for Environmental and Economic Balance | Robert Lucas<br>Gerald Secundy |
| **5** | California Stormwater Quality Association | Richard Boon |
| **6** | Cardno Entrix | Robert Mijares |
| **7** | Construction Industry Coalition on Water Quality | Mark Grey |
| **8** | General Public | Joyce Dillard |
| **9** | Los Angeles Department of Water and Power | Katherine Rubin |

| 1. Marvin Sachse – Brash Industries | |
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| **Comment Summary** | **Comment Response** |
| Clarify whether the Permit requires three samples per discharge point versus three samples per site. | The Construction General Permit does not require three samples per discharge point, only three samples minimum per day for averaging purposes. However, each discharge point must be sampled, and the calculated daily average must be characteristic of the discharge off the site. |
| Last sentence of Paragraph 56, Page 13. "An exceedance of a NAL does not constitute a violation of this General Permit." Should that be “NEL?” An NAL exceedance never was a Permit violation. | No change. This statement reiterates the fact that Numeric Action Level (NAL) exceedances are not violations of the Construction General Permit. |
| Page 15, Footnote 5 should be deleted | The footnote has been moved to Section V.C of the Order (“Receiving Water Monitoring Triggers”) to maintain the definition of “high risk of pH discharge”. |
| The term "direct discharge" for purposes of clarification could be replaced with the term, “discharges without commingled discharge water.” | Revising the definition of “direct discharge” in the Glossary is outside the scope of the proposed Amendments. |
| Is Receiving water sampling to be triggered by an instantaneous exceedance or a daily average exceedance? | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring trigger values are expressed as daily averages. |
| Will all existing SWPPPs require updating to the new Draft? | The State Water Board will not require that all dischargers update their existing (storm water pollution prevention plans) SWPPPs. However, if a discharger is amending their SWPPP for other reasons, then it would be beneficial to include updates to those portions of the SWPPP where the proposed Amendments are relevant. |

| 2. Richard Lyon – California Building Industry Association (CBIA) | |
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| **Comment Summary** | **Comment Response** |
| CBIA has reviewed the comprehensive comments developed by the Construction Industry Coalition on Water Quality (CICWQ) and believe | Comment noted. |

| 2. Richard Lyon – California Building Industry Association (CBIA) | |
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| that they accurately portray our primary concerns and issues with the proposed amendments to the CGP.<br>We urge the State Water Resources Control Board to consider the comments and concerns identified in CICWQ's comment package. | |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| **Comment Summary** | **Comment Response** |
| Following the judgment and peremptory writ of mandate in California Building Industry Ass'n v. State Water Resources Control Board, the Board amended the Construction Permit by removing the NELs. While the court ordered the Board to temporarily suspend the adopted NELs for turbidity and pH, the court also made clear that the Board could re-adopt NELs provided it conducted the requisite Clean Water Act analysis when adopting them. Rather than completely abandoning many years of hard work, we ask the Board to temporarily suspend the NELs, and set a timeline of no longer than one year for developing and reincorporating NELs into the permit. | Comment noted. |
| The Clean Water Act, its implementing regulations, and case law, require the Board to regulate discharges with NELs whenever feasible.<br><br>Not only do NELs increase accountability and provide dischargers with clear requirements to meet, the Clean Water Act, its implementing regulations, and case law interpreting the establishment of technology-based effluent limitations in NPDES permits, all require that NPDES permits contain numeric effluent limitations when feasible. The Clean Water Act prohibits the discharge of pollutants to waters of the United States unless in compliance with an NPDES permit adopted pursuant to Section 402.[3] The regulations implementing the NPDES permit scheme require that all NPDES permits include technology-based effluent limitations applicable to a particular category of pollutants.[4] Effluent limitations for toxic and non-conventional pollutants must be set at levels | In *California Building Industry Association v. State Water Resources Control Board* (*Cal. BIA*) (Super. Ct. Sacramento County, 2011, No. 34-2009-80000338-CU-WM-GDS ), the Superior Court ordered the State Water Board to set aside those portions of the Construction General Permit which impose an NEL for turbidity and pH on Risk Level 3 construction project sites.<br><br>It is not feasible for the State Water Board to develop NELs at this time. As staff resources and additional data become available in the future, the State Water Board will consider reintroducing NELs into the Construction General Permit. |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| attainable through application of the "best available treatment economically achievable" (BAT).[5] The Board must also determine, for conventional pollutants including TSS/turbidity and pH, "the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (BCT)." Discharges of conventional pollutants must contain no more pollutants than can be achieved through application of BCT.[6] Absent EPA-promulgated limitation guidelines, the State Board is empowered under the Clean Water Act to use its best professional judgment to develop NELs.<br><br>[3] 33 U.S.C. § 1311(a).<br>[4] See 40 C.F.R. § 122.41, 122.42, 122.43(a), 122.44(a)(1), and 123.5.<br>[5] 33 U.S.C. § 1311(b)(2)(A).<br>[6] 33 U.S.C. § 1311(b)(2)(E). | |
| NPDES permits authorizing the discharge of storm water associated with construction activities must include technology-based effluent limitations that achieve BAT and BCT, as applicable.[7] [8] The Clean Water Act does not purport to provide an alternative to imposing numeric effluent limitations. Case law interpreting the permitting authority's duties with respect to setting technology-based effluent limitations establishes that "[n]onnumeric limits are allowed only when numeric limits are infeasible."[9] Conversely, "when numerical effluent limits are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels."[10]<br><br>[7] 33 U.S.C. § 1342(p)(3)(A).<br>[8] In contrast, permits for the discharge of municipal storm water are required to include management practices to reduce pollutants to the maximum extent practicable ("MEP"), which is distinct from the technology-based effluent limitations required by Section 301(b).<br>[9] Citizens Coal Council v. EPA, 447 F.3d 879, 897 (6th Cir. 2006)(emphasis added).<br>[10] NRDC v. Costle, 568 F.2d 1369, 1380 (DC Cir. 1977). | It is not feasible for the State Water Board to develop NELs at this time. As staff resources and additional data become available in the future, the State Water Board will consider reintroducing NELs into the Construction General Permit.<br><br>The proposed Amendments do not change or eliminate the Construction General Permit's existing narrative effluent limitations, |
| Rather than committing to conduct the analysis the court directed the Board to undertake prior to adopting NELs, the Board is proposing to | Under 40 C.F.R. section 122.4(k), NPDES permits shall contain BMPs to control or abate the discharge of pollutants when NELs are infeasible. |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| simply remove the NELs from the permit and revert back to a BMP-based permitting scheme. However, the authority the State Board has to include BMP requirements in NPDES permits is limited.[11] The Board's authority to impose BMPs is supplemental to its duty to impose numeric, technology based effluent limitations – a point the regulations themselves make clear when allowing for BMPs when they are "reasonably necessary to achieve effluent limitations," (i.e., to supplement the effluent limitations by ensuring measures are taken to meet them).[12] The allowance for BMPs in NPDES permits is separate and distinct from the requirement that permits contain numeric, technology-based effluent limitations.<br><br>[11] See 40 C.F.R. § 122.44(k).<br>[12] Id. | It is not feasible for the State Water Board to develop NELs at this time. As additional staff resources and data become available in the future, the State Water Board will consider reintroducing NELs into the Construction General Permit. |
| In November 2010, U.S. EPA issued a memo that formally recognized the need for clearer permit requirements to address water quality impairments, and recommended that: "NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling storm water discharges."[13] As EPA made clear, these recommendations reflected the fact that "the use of numeric effluent limitations no longer is a novel or unique approach to storm water permitting."[14]<br><br>[13] James Hanlon, Office of Wastewater Management and Denise Keeher, Office of Wetlands, Oceans and Watersheds, U.S. EPA to Water Management Division Directors, U.S. EPA Regions 1-10, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'," (Nov. 12, 2010), available at http://www.epa.gov/npdes/pubs/establishingtmdlwla_revision.pdf.<br>[14] Id. | Comment noted.<br><br>State Water Board staff agree with the recommendations made by EPA. |
| The Board's proposal to simply remove the NELs in response to the Court's order from the Construction Permit is illegal. Granted the Court ordered the Board to suspend the NELs because the analysis required to | It is not feasible for the State Water Board to develop NELs at this time. As additional staff resources and data become available in the future, the State Water Board will consider reintroducing NELs into the Construction |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| support them had not been completed. However, the law is clear, when NELs are feasible, they must be imposed in NPDES permits. To follow the law, and not take further, illegal action, the Board must commit to conducting the required analysis and revising the Construction Permit to include NELs. | General Permit. |
| NPDES permitting authorities must impose NELs in NPDES permits when feasible. In the context of discharges of storm water associated with construction activity, both the U.S. EPA and the State of California have determined that NELs are feasible. In 2009, the EPA recognized the feasibility and importance of employing NELs with respect to construction activities, stating:<br><br>"Numeric effluent limitations are feasible for discharges associated with construction activity. Numeric effluent limitations… are the best way to quantifiably ensure industry compliance and to make reasonable further progress toward the CWA goal of eliminating pollutants into the nation's waters. Numeric effluent limitations are an objective and effective way for the permitting authority to implement, and the regulated community to comply with, the technology-based requirements for this point source category."[15]<br><br>[15] Effluent Limitations Guidelines for Construction and Development Point Sources, 74 Fed. Reg. 63,024 (Dec. 1, 2009), available at http://www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-28446.htm. | Comment noted.<br><br>State Water Board staff agrees that NELs are the best way to quantifiably ensure industry compliance and to make further progress towards achieving the goals of the CWA. However, it is not feasible for the State Water Board to develop NELs at this time. As staff resources and additional data become available in the future, the State Water Board will consider reintroducing NELs into the Construction General Permit. |
| California has also long recognized the feasibility and necessity of applying NELs to discharges associated with construction activities. In 2006, a panel of storm water experts convened by the State Water Board to examine the feasibility of developing numeric limits for stormwater permits, found that "active treatment technologies make Numeric Limits technically feasible for pollutants commonly associated with stormwater discharges from construction sites for larger construction sites."[16] In 2009, U.S. EPA relied on California's numeric limit when setting the turbidity | Comment noted.<br><br>The proposed Amendments do not remove the NELs for active treatment system discharges. |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| numeric limit in the Effluent Limitations Guideline for Construction and Development point sources, recognizing that "California has recently established effluent limitations for some sites within the state, and dischargers within the Lake Tahoe basin have been subject to numeric limitations for some time."[17] In years past, it may have been difficult to set NELs for discharges associated with construction activities. However, new data, and progress in scientific understanding and technical capabilities have made it feasible to establish and implement NELs.<br><br>[16]Report on the Feasibility of Numeric Effluent Limitations Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities ("Blue Ribbon Panel Report").<br>[17] Effluent Limitations Guidelines for Construction and Development Point Sources, 74 Fed. Reg. 63,025 (Dec. 1, 2009), available at http://www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-28446.htm. | |
| The studies and data in the Administrative Record indicate that the BCT for controlling turbidity can achieve concentrations well below that established by the 500 NTU limit in the Permit. We maintain that NELs can, and should be, established at levels lower than those previously adopted.[20] Dr. Richard Horner, a nationally renowned stormwater engineering expert, summarized his own research showing that blanket materials and mulch achieve effluent turbidity levels of 21 to 73 NTUs.[21] Additionally, studies completed by Caltrans[22] and the Texas Transportation Institute[23] provide data to determine BCT and set a NEL. This evaluation was submitted to the State Water Board in a detailed letter by Dr. Horner on May 4, 2007.<br><br>[20] Setting sediment NELs at 500 NTUs [fails to protect] numerous clean, cold streams that would require limits of 20-25 NTUs to maintain salmon and other aquatic life uses." CCKA August 26, 2009 Letter to State Board at p. 8.<br>[21] Horner, Guedry, and Kortenhof, Improving the Cost Effectiveness of Highway Construction Site Erosion and Pollution Control (1990), available at http://www.wsdot.wa.gov/Research/Reports/200/200.1.htm.<br>[22]California Department of Transportation, District Seven, District Seven Erosion Control Pilot Study, Doc. No. CTSW-RT-00-012 (2000), available at | Comment noted.<br><br>All studies and data in the Administrative Record were considered in establishing the invalidated NELs in the Construction General Permit. |

| 3. Sarah Aminzadeh, Kristen James, Ian Wren - California Coastkeeper Alliance, Heal the Bay & San Francisco Baykeeper | |
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| http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-00-012.pdf.<br>[23] Texas Transportation Institute, Test on Erosion Control Products. | |
| The docket provided in support of the Construction Permit revisions does not reflect a full analysis of readily-available data regarding treatment performance and the cost of BMPs. Table 1 (http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/construction/comments051412/sara_aminzadeh.pdf) summarizes just a few of the studies available regarding treatment efficiency and costs associated with construction storm water BMPs. The collection of studies provided in Attachment 1 (http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/construction/comments051412/sara_aminzadeh.pdf) provides extensive additional information regarding the applicability, performance and cost for a range of construction BMPs, in support of the establishment of NELs for turbidity and pH. Combined, these studies can, and should be used by the State Board to satisfy the court's direction to support the NELs. | Comment noted.<br><br>State Water Board staff appreciates the identification of studies and available data regarding treatment efficiency and costs associated with construction storm water BMPs.<br><br>Some of the studies identified in Appendix 1 are for the evaluation of storm water treatment through the use of flocculation and coagulation. The proposed Amendments do not remover the NEL for active treatment system discharges. |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| There is no difference between the proposed receiving water monitoring triggers and the CGP's NELs as the same threshold concentrations for the direct discharge of storm water to surface water exists. The only distinction between the terms is that the proposed amendments state on Page 3 that an "an exceedance of receiving water monitoring trigger does not constitute a violation of this General Permit." Although an exceedance of receiving water monitoring trigger does not constitute a violation, an exceedance will give an impression to the general public that an environmental injustice has been committed, which will be highly scrutinized and damage an entity's image. | Similar to NALs, the receiving water monitoring triggers are benchmark values which, when exceeded, will prompt additional actions by the discharger. An exceedance of a receiving water monitoring trigger is not a violation of the permit. |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| **Comment Summary** | **Comment Response** |
| The proposed receiving water monitoring triggers are effluent limits and as such, the technical capabilities and cost benefit of using the applicable measures and practices have not been assessed pursuant to 33 V.S.C 1314(b)(4) and 40 C.F.R.125.3(d)(3). In addition, there is no scientific support or regulatory rationale on why the threshold concentrations for the receiving water monitoring triggers were chosen, which is why the Sacramento County Superior Court invalidated the NELs. CCEEB therefore objects to adoption of the proposed receiving water monitoring triggers until such time that the SWRCB has conducted the appropriate analysis to establish the triggers. | The proposed Amendments' receiving water monitoring triggers are not effluent limits. An exceedance of a receiving water monitoring trigger is not a violation of the permit.<br><br>The permit factsheet has been revised to address this comment. |
| The existing permit requires receiving water monitoring for Risk Level 3 and Risk Type 3 projects when an effluent monitoring result exceeds the turbidity NEL or is outside the NEL range for pH. Further, it provides exceptions to this requirement when the exceedance occurs during a "Compliance Storm Event" or if the exceedance results from run-on that is caused by a forest fire or any other natural disaster. If receiving water monitoring would not have been triggered by these events under the current permit. it should not be triggered by these events by the new Receiving Water Monitoring Trigger.<br><br>The Proposed Amendments should include the same receiving water monitoring exceptions for large storms and run-on that is caused by a forest fire or any other natural disaster. | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is also exempt for run-on caused by a forest fire or any other natural disaster. |
| On Page 3 (2nd full paragraph) of the Proposed Amendments, revise the sentence cited above to state:<br>"The State Water Board determined that it was appropriate to require receiving water monitoring for these types of sites with direct discharges to surface waters that exceeded the receiving water monitoring triggers, except when the exceedance is a Receiving Water Monitoring Trigger Exception *(i.e.,* the exceedance is from a storm equal to or greater than | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements. |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| the 5-year 24-hour storm (expressed in tenths of an inch of rainfall) or from run-on from a forest fire or any other natural disaster)". | |
| On Page 10 of the Proposed Amendments, after the revised paragraph in "Fact Sheet, Section 11.1.3, Receiving Water Monitoring, Page 26-27", add the following paragraph:<br><br>"Receiving Water Monitoring Trigger Exception - the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:<br>*http://www.*wrcc.dr.edu/pcpnfreq/nca5y24.gif<br>http://www.wrcc.dr.edu/pcpnfreq/sca5y24.gif; or<br><br>Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster." | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is also exempt for run-on caused by a forest fire or any other natural disaster. |
| On page 13 of the Proposed Amendments (Order, Section I.H, Findings – Effluent Standards, Page 9-10), retain Finding 55 and revise it as follows:<br><br>"This General Permit establishes a 5-year, 24-hour (expressed in inches of rainfall) exception from the Receiving Water Monitoring Trigger for Risk Level 3 and Risk Type 3 dischargers." | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements. |
| On page 13 of the Proposed Amendments (Order, Section I.H, Findings – Effluent Standards, Page 9-10) retain Finding 58 and revise it as follows:<br><br>"If run-on is caused by a forest fire or any other natural disaster, then the Receiving Water Monitoring Trigger does not apply." | Edits have been made so that receiving water monitoring is not required when run-on is caused by a forest fire or any other natural disaster. |
| On page 16 of the Proposed Amendments (Order, Section V, Effluent Standards & Receiving Water Monitoring, Page 28-29) add the following | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| paragraphs to the new Section C-Receiving Water Monitoring:<br><br>"3. Receiving Water Monitoring Trigger Exception - the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:<br>*http://www.*wrcc.dr.edu/pcpnfreq/nca5y24.gif<br>http://www.wrcc.dr.edu/pcpnfreq/sca5y24.gif; or<br><br>Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster." | requirements.<br><br>Edits have also been made so that receiving water monitoring is not required when run-on is caused by a forest fire or any other natural disaster. |
| On page 19 of the Proposed Amendments (Attachment A, Section F, Effluent Standards & Receiving Water Monitoring, Page 14-1S), add the following paragraphs to the new Section 3-Receiving Water Monitoring Triggers:<br><br>"c. Receiving Water Monitoring Trigger Exception - the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:<br>*http://www.*wrcc.dr.edu/pcpnfreq/nca5y24.gif<br>http://www.wrcc.dr.edu/pcpnfreq/sca5y24.gif; or<br><br>Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster."<br><br>On page 20 of the Proposed Amendments (Attachment A, Section M.4, LUP Type 2 & 3 Storm Water Effluent Monitoring and Reporting Requirements, Page 36-38), add the following paragraphs to Section d. LUP Type 3 Receiving Water Monitoring Requirements: | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is not required when run-on is caused by a forest fire or any other natural disaster.<br><br>Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have also been made so that receiving water monitoring is not |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| "iv. Receiving Water Monitoring Trigger Exception - the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:<br>*http://www.*wrcc.dr.edu/pcpnfreq/nca5y24.gif<br>http://www.wrcc.dr.edu/pcpnfreq/sca5y24.gif; or<br><br>Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster." | required when run-on is caused by a forest fire or any other natural disaster. |
| On page 26 of the Proposed Amendments (Attachment E, Section I.4.f, Risk Level 3 Water Quality Sampling and Analysis, Page 13) add the following paragraphs to Receiving Water Monitoring Requirements:<br><br>"j. Receiving Water Monitoring Trigger Exception - the Receiving Water Monitoring Trigger does not apply to a storm event that is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using these maps:<br>*http://www.*wrcc.dr.edu/pcpnfreq/nca5y24.gif<br>http://www.wrcc.dr.edu/pcpnfreq/sca5y24.gif; or<br><br>Effluent monitoring results that are the result of run-on that is caused by a forest fire or any other natural disaster." | Edits have been made to the proposed Amendments establishing the 5-yr 24-hour storm as an exemption to the receiving water monitoring requirements. The proposed language was not added to this particular section. |
| The Proposed Amendments need to be clear that the Receiving Water Monitoring Triggers are based on daily averages. Since the existing permit expresses the NELs as daily average limits, it is important to ensure that it is clear in the Proposed Amendments that the receiving water monitoring triggers are also expressed as daily average limits. This clarification should be made in all of the places in the Proposed Amendments where the receiving water monitoring triggers are stated. | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring trigger values are expressed as daily averages. |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| On page 18 of the Proposed Amendments, Section 3.a in Attachment A, Section F, Effluent Standards & Receiving Water Monitoring, P 14-15 should be revised to state:<br><br>"a. The receiving water monitoring triggers for LUP Type 3 dischargers with direct discharges to surface waters are triggered when daily average effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when daily average effluent turbidity exceeds 500 NTU. | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring trigger values are expressed as daily averages. |
| On page 26 of the Proposed Amendments, the revisions to "Receiving Water Monitoring Requirements g." in Attachment E, Section I.4.f, Risk Level 3 –Water Quality Sampling and Analysis, Page. 13 should be revised to state:<br><br>"g. In the event that a Risk Level 3 discharger's effluent exceeds the daily average receiving water monitoring trigger of 500 NTU turbidity or the daily average receiving water monitoring trigger of pH range 6.0-9.0 during any site phase when there is a high risk of pH discharge contained in this General Permit and has a direct discharge into receiving waters, the ..." | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring trigger values are expressed as daily averages. |
| The Proposed Amendments should be clear that if the pH monitoring results is outside of the receiving water monitoring trigger range for pH, only pH is required to be monitored in the receiving water. Similarly, if the turbidity monitoring results exceeds the receiving water monitoring trigger for turbidity, only turbidity and ssc is required to be monitored in the receiving water. This clarification should be made in all of the places in the Proposed Amendments where receiving water monitoring requirements are stated. | Edits have been made to the proposed Amendments to clarify that pH receiving water monitoring is required only when the pH receiving water monitoring trigger is exceeded, and that turbidity and SSC receiving water monitoring are required only when the turbidity receiving water monitoring trigger is exceeded. |
| The existing permit only requires receiving water monitoring in the event the ATS turbidity effluent limit is exceeded on a Risk Level or Risk Type 3 | In the draft proposed Amendments, State Water Board staff included language which would impose receiving water monitoring requirements on |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| project. Specifically, it does not require receiving water monitoring when an ATS exceeds its turbidity limits on a Risk Level or Risk Type 1 or 2 project. However, the Proposed Amendments include a new trigger in Attachment F that would require receiving water monitoring when an ATS effluent limit is exceeded for all Risk Level or Risk Type projects. This new requirement goes beyond the limited scope of revising the permit in accordance with the Superior Court's Writ of Mandate and it should be revised to only apply to Risk Level or Risk Type 3 projects. | all Risk Level/Type sites utilizing ATS with direct discharges to receiving waters in the event of an exceedance of the applicable NEL. Due to the limited scope of this proposed Amendments, however, these proposed additions have been withdrawn. The Regional Water Boards retain their authority under the existing Construction General Permit to require receiving water monitoring on a case-by-case basis. |
| In sections where the whole section or whole subsections are deleted, replace the section and subsection titles with "Reserved" and retain the numbering system. This will eliminate the need to renumber and revise numerous references throughout the permit and Fact Sheet. | Comment noted. This proposed edits were not made. |
| On Page 10 of the Proposed Amendments, revise the first paragraph in "Fact Sheet, Section II.I.3, Receiving Water Monitoring, Page 26-27" to clarify that this requirement applies to each of these discharge types when they have a direct discharge to a receiving water, to state:<br><br>"In order to ensure that receiving water limitations are met, discharges subject to<br>~~numeric effluent limitations~~ receiving water monitoring triggers or numeric effluent limitations (i.e., Risk Level 3, LUP Type 3, and ATS with direct discharges into receiving waters) must ...." | Comment noted. This section of the Fact Sheet has been modified. |
| On Page 11 of the Proposed Amendments in "Fact Sheet, Section II.I.3, Receiving Water Monitoring, Page 26-27", revise "~~b. NEL Violation Report~~" to "~~a. NEL Violation Report~~." | Edit made. |
| On Page 15 of the Proposed Amendments in "Order, Section V, Effluent standards and Receiving Water Monitoring, Page 28-29", revise "Table 7" to "Table 1." | Edit made. |

| 4. Robert Lucas – California Council for Environmental and Economic Balance (CCEEB) | |
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| **Comment Summary** | **Comment Response** |
| On Page 17 of the Proposed Amendments in "Attachment A, Section F, Effluent standards and Receiving Water Monitoring, Page 14-15" revise "Table 8" to "Table 1." | Edit made. |
| On Page 18 of the Proposed Amendments in "Attachment A, Section F, Effluent standards and Receiving Water Monitoring, Page 14-15" revise "3. Receiving Water Monitoring Triggers" to "2. Receiving Water Monitoring Triggers." | The numbering included in the proposed Amendments is correct. The existing NAL section will be "2. Numeric Action Levels (NALs)". |
| On Page 20 of the Proposed Amendments in "Attachment A, Section M.4, LUP Type 2&3 Monitoring and Reporting Requirements, Page 36-38" revise the reference in "Section d.iii3. from "Section M.4.d" to "Section M.4.c." | Edit made. |
| On Page 21 of the Proposed Amendments in "Attachment A, Section M.4, LUP Type 2&3 Monitoring and Reporting Requirements, Page 42-43", revise the upper pH Receiving Water Monitoring Trigger from "9.0a" to "9.0." | Edit made. |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| CASQA does not support the incorporated receiving water monitoring triggers given that the State Water Board has not provided scientific support or regulatory rationale for the receiving water monitoring trigger concentrations. The technical background information in the Fact Sheet, which established the rationale for the NELs, has been removed from the permit, and analogous sections to provide the regulatory and technical justification for the receiving water monitoring triggers have not been added.<br>Receiving water monitoring represents a significant cost for Risk Level 3 and LUP Type 3 site operators, especially as they are proposed to extend | Comment noted.<br><br>The proposed Amendments to the permit factsheet have been revised to address this comment. |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| for the duration of the project once a trigger has been exceeded. CASQA recommends that the State Water Board eliminate in its entirety the receiving water monitoring provisions of the CGP. | |
| CASQA does not support the addition of Receiving Water Monitoring for ATS discharges. This change represents a new requirement in the CGP and is outside the scope of the limited reopener of the notice. This new monitoring is not required to respond to the court order and no explanation is provided for its addition to the CGP. The State Water Board chose not to include receiving water monitoring for ATS discharges originally, after the extensive proceedings associated with adoption of the order in 2009. | In the draft proposed Amendments, State Water Board staff included language which would impose receiving water monitoring requirements on all Risk Level/Type sites utilizing ATS with direct discharges to receiving waters in the event of an exceedance of the applicable NEL. Due to the limited scope of the proposed Amendments, however, these proposed additions have been withdrawn. The Regional Water Boards retain their authority under the existing Construction General Permit to require receiving water monitoring on a case-by-case basis. |
| Effluent limitations for ATS discharges are set significantly below the proposed receiving water monitoring triggers for sites that implement traditional erosion and sediment controls. The justification for receiving water monitoring does not extend to ATS discharges: these sites may not be Risk Level or Type 3 sites and excursions above the ATS NEL of 10 NTU, which is based solely in a measure of technical performance of ATS, is unlikely to represent a threat to receiving water quality. The fact sheet does not provide any justification for this monitoring or for the relationship between excursions of the NEL and threat to receiving water.<br><br>CASQA recommends deferring consideration of additional receiving water monitoring requirements for ATS discharges until the next permit term when data collected from this permit term can be evaluated and assessed. | Comment noted. The receiving water monitoring requirements for non-Risk Level 3/LUP Type 3 sites utilizing ATS in the event of an NEL exceedance have been removed. |
| CASQA recommends that language regarding the use of daily averages and the statement that pH monitoring is only required during periods of high risk of pH discharge be incorporated into the new section C. This language was part of the NEL section that is being deleted. | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring triggers are expressed as daily average values, and that pH monitoring is only required during periods of high risk of pH discharge. |
| **Suggested Revision for Order Section V.C.1** | Edits have been made to the proposed Amendments to clarify that the |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| 1. The receiving water monitoring triggers for Risk Level 3 dischargers with direct discharges to surface waters are triggered when the daily average effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when the daily average effluent turbidity exceeds 500 NTU. | receiving water monitoring triggers are expressed as daily average values, and that pH monitoring is only required during periods of high risk of pH discharge. |
| **Suggested Revision for Attachment A Section F.3.a**<br>a. The receiving water monitoring triggers for LUP Type 3 dischargers with direct discharges to surface waters are triggered when the daily average effluent pH values during any site phase when there is a high risk of pH discharge fall outside of the range of 6.0 and 9.0 pH units, or when the daily average effluent turbidity exceeds 500 NTU. | Edits have been made to the proposed Amendments to clarify that the receiving water monitoring triggers are expressed as daily average values, and that pH monitoring is only required during periods of high risk of pH discharge. |
| CASQA recommends that the State Water Board clarify the parameter triggers for receiving water monitoring. State Board staff guidance, which has been incorporated into QSD/QSP training and the CASQA Construction Handbook, provides the clarification that when the pH trigger is exceeded, the receiving water is monitored for pH, and when the turbidity trigger is exceeded the receiving water is monitored for turbidity and SSC. This connection of receiving water parameters to the specific effluent monitoring triggers is not clear in the permit language. The first occurrence of this issue is in Order Section V.C.2, but similar changes and clarifications are needed in Attachment A Section F.3.b; Attachment A Table 5; Attachment E.I.4.g; Attachment E Table 3. | Edits have been made to the proposed Amendments to clarify that pH receiving water monitoring is required only when the pH receiving water monitoring trigger is exceeded, and that turbidity and SSC receiving water monitoring is required only when the turbidity receiving water monitoring trigger is exceeded. |
| **Suggested Revision for Order Section V.C.2**<br>2. Risk Level 3 dischargers with direct discharges to surface waters shall conduct receiving water monitoring whenever their effluent monitoring results exceed the receiving water monitoring triggers. If the pH trigger is exceeded, the receiving water shall be monitored for pH. If the turbidity trigger is exceeded, the receiving water shall be monitored for turbidity and SSC. | Edits have been made to the proposed Amendments to clarify that pH receiving water monitoring is required only when the pH receiving water monitoring trigger is exceeded, and that turbidity and SSC receiving water monitoring is required only when the turbidity receiving water monitoring trigger is exceeded. |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| **Suggested Revision for Attachment A Section F.3.b**<br>b. LUP Type 3 dischargers with direct discharges to surface waters shall conduct receiving water monitoring whenever their effluent monitoring results exceed the receiving water monitoring triggers. If the pH trigger is exceeded, the receiving water shall be monitored for pH. If the turbidity trigger is exceeded, the receiving water shall be monitored for turbidity and SSC. | Edits have been made to the proposed Amendments to clarify that pH receiving water monitoring is required only when the pH receiving water monitoring trigger is exceeded, and that turbidity and SSC receiving water monitoring is required only when the turbidity receiving water monitoring trigger is exceeded. |
| CASQA recommends that the State Water Board take this opportunity to clarify the definition of direct discharge in Appendix 5 of the CGP as this definition has a direct bearing on the receiving water monitoring triggers.<br><br>Shortly after the CGP was released the State Water Board posted FAQ 26 that clarified the definition of direct discharge to align with the intended use of the term in connection with receiving water monitoring in the CGP. The definition in Appendix 5 should be revised to reflect the additional information in the FAQ. | Revising the definition of "direct discharge" in the Glossary is outside the scope of the proposed Amendments. |
| CASQA recommends that the State Water Board include exceptions to receiving water monitoring similar to those that were provided for NELs and the actions triggered when NEL were exceeded. Specifically, CASQA requests that the State Water Board include a "storm event receiving water monitoring trigger exception" and a "run-on receiving water monitoring trigger exception". These exceptions would be similar to the current NEL Compliance Exceptions but would shield the dischargers from the liability for unnecessary actions as result of exceeding the receiving water monitoring trigger due for forces beyond their control.<br><br>While the threat of mandatory fines and penalties has been eliminated with the removal of NELs from the permit, the Discharger is still required to undertake site evaluations and undertake resource intensive receiving water monitoring, which may not be warranted when the cause of the exceedance is the size of the storm event or in the case of run-on from a forest fire or any natural disaster. | Edits have been made to the proposed Amendments establishing the 5-year 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is also exempt for run-on caused by a forest fire or any other natural disaster. |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| **Revise the deleted Order Findings to read**<br><br>55. This General Permit establishes a 5 year, 24 hour (expressed in inches of rainfall) as the receiving water monitoring trigger exemption for Risk Level 3 and LUP Type 3 dischargers.<br><br>58. If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply. | Edits have been made to the proposed Amendments establishing the 5-year 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is also exempt for run-on caused by a forest fire or any other natural disaster. |
| **Order Section V.C.2 and Attachment A Section F.3.b** (add two new items)<br><br>Dischargers shall initiate receiving water monitoring when the receiving water monitoring triggers are exceeded unless the storm event causing the exceedance is determined after the fact to be equal to or greater than the 5-year 24-hour storm (expressed in tenths of an inch of rainfall), as determined by using NOAA Atlas 14, Volume 6 and can be accessed at this site: http://hdsc.nws.noaa.gov/hdsc/pfds/.<br>Verification of the storm event receiving water monitoring trigger exception shall be done by reporting on-site rain gauge readings as well as nearby governmental rain gauge readings.<br>If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply. | Edits have been made to the proposed Amendments establishing the 5-year 24-hour storm as an exemption to the receiving water monitoring requirements.<br><br>Edits have been made so that receiving water monitoring is also exempt for run-on caused by a forest fire or any other natural disaster. |
| CASQA recommends limiting the duration of the receiving water monitoring. CASQA recommends that receiving water monitoring triggered by the exceedance of the receiving water monitoring trigger cease once pH and/or turbidity levels are demonstrated to be below the NAL indicating the discharge is no longer a significant threat to the receiving water. | State Water Board staff disagree. The receiving water monitoring criteria will remain consistent with existing Construction General Permit requirement, where, once triggered, the receiving water monitoring will continue "for the duration of coverage under this General Permit." (2009-0009-DWQ Attachment E, Section I.4.g) |
| **Suggested revision to Attachment E, Section I.4.g**<br><br>g. In the event that a Risk Level 3 discharger's effluent exceeds the | State Water Board staff disagree. The receiving water monitoring criteria will remain consistent with existing Construction General Permit requirement, where, once triggered, the receiving water monitoring will |

| 5. Richard Boon – California Stormwater Quality Association (CASQA) | |
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| **Comment Summary** | **Comment Response** |
| receiving water monitoring trigger of 500 NTU turbidity or pH range 6.0-9.0 contained in this General Permit and has a direct discharge into receiving waters, the Risk Level 3 discharger shall subsequently sample receiving waters (RWs) as applicable for turbidity, pH ~~(if applicable),~~ and SSC ~~for the duration of coverage under this General Permit~~ until the discharger demonstrates the effluent quality is below the NAL. | continue "for the duration of coverage under this General Permit." (2009-0009-DWQ Attachment E, Section I.4.g) |
| **Attachment A, Section M.4.i**<br><br>i. In the event that an LUP Type 3 discharger's effluent exceeds the receiving water monitoring triggers of 500 NTU turbidity or pH range of 6.0-9.0, contained in this General Permit and has a direct discharge to receiving waters, the LUP discharger shall subsequently sample Receiving Waters (RWs) as applicable for turbidity, pH ~~(if applicable)~~ and SSC until the discharger demonstrates the effluent quality is below the NAL. | State Water Board staff disagree. The receiving water monitoring criteria will remain consistent with existing Construction General Permit requirement, where, once triggered, the receiving water monitoring will continue "for the duration of coverage under this General Permit." (2009-0009-DWQ Attachment E, Section I.4.g) |

| 6. Robert Mijares – Cardno Entrix | |
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| **Comment Summary** | **Comment Response** |
| 1. Page 20 of Attachment E<br>"Risk Level 3 NAL Exceedance Report<br>a. In the event that any effluent sample exceeds an applicable NAL, Risk Level 3 dischargers shall electronically submit all storm event sampling results to the State Water Board no later than ~~10 days~~ 5 days after the conclusion of the storm event. The Regional Boards have the authority to require the submittal of an NAL Exceedance Report."<br><br>OR<br><br>2. Page 27 of the Fact Sheet<br>"b. NAL Exceedance Report<br>All Risk Level 3 and LUP Type 3 dischargers must electronically submit all | Edits have been made to the proposed Amendments to clarify that Risk Level 3/LUP Type 3 dischargers shall submit all storm event sampling results to the State Water Board no later than 10 days after conclusion of the storm event. |

| 6. Robert Mijares – Cardno Entrix | |
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| **Comment Summary** | **Comment Response** |
| storm event sampling results to the State and Regional Water Boards, via the electronic data system, no later than ~~5 days~~ 10 days after the conclusion of the storm event. In the event that any effluent sample exceeds an applicable NAL, all Risk Level 2 and LUP Type 2 dischargers must electronically submit all storm event sampling results to the State and Regional Water Boards no later than 10 days after the conclusion of the storm event. The Regional Water Boards have the authority to require the submittal of an NAL Exceedance Report." | |
| If no change is made beyond the existing proposed changes, the order states all Risk Level 3 sampling results shall be submitted in 5 days and if there is a NAL Exceedance then sampling results shall be submitted in 10 days. There are two concerns with this.<br><br>1. 10 day submittal for NAL exceedances is redundant since ALL samples are already required to be submitted within 5 days.<br><br>2. NAL exceedances should be reported either before or at the same time that non significant sampling results are required. | Edits have been made to the proposed Amendments to clarify that Risk Level 3/ LUP Type 3 dischargers shall submit all storm event sampling results to the State Water Board no later than 10 days after conclusion of the storm event. |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| **Comment Summary** | **Comment Response** |
| CICWQ opposes the establishment of the numeric triggers for the receiving water monitoring because the numeric triggers are without a sound scientific basis.<br><br>It appears that no additional analysis was conducted to establish the numeric triggers independently from the NELs, and that no effort has been made to address issues raised previously by CICWQ and other stakeholders regarding the derivation of these values. As detailed below, CICWQ believes these values were developed using incorrect | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| assumptions and calculations, and using limited and non-representative data. | the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The numeric trigger at plus or minus three standard deviations from the mean is not an appropriate metric.<br><br>The State Water Board staff appear to have assumed that the Caltrans data in the dataset used to derive the numeric trigger for pH are normally distributed; however, the data are neither normally nor log-normally distributed according to the normality test (i.e., Kolmogorov-Smirnov test) conducted by Flow Science at the request of CICWQ. When data are not normally distributed, the use of a mean and a standard deviation based on the normal distribution would over- or under-estimate pH values that could occur within the normal variation of data. In addition, even if the data were normally distributed, the calculated values cannot be reproduced—our calculation yields a range corresponding to the mean ± 3 standard deviations of 5.4 – 9.4 (not 6.0 - 9.0). | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The numeric trigger was developed without consideration of receiving water quality.<br><br>pH values outside the range of the numeric trigger occur naturally in some streams (see Section 4 of Flow Science (2008)). For example, some areas of California include alkaline soils, and pH in runoff from these soil types may be higher than average values. Background receiving water pH ranges as high as 8.9 in the Trinity River near Weitchpec (see Figure 1 and Section 4 and Table 18 at p. A-20 of Flow Science (2008)) and as high as 9.5 in San Diego Creek [see p. A-23, Flow Science (2008)]. Because of regional variations in natural or | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| **Comment Summary** | **Comment Response** |
| background pH levels, it is inappropriate to apply a uniform numeric trigger statewide. Where natural or background pH levels fall outside or at the margins of the numeric trigger range, the numeric trigger should not apply.<br><br>The pH of rainfall falls outside the numeric trigger range.<br><br>Data collected by the U.S. Geological Survey (USGS) indicate that rain in California has a long-term average pH that varies between 5.3 and 6.0, depending upon location (Figure 2). For individual storms, pH values as low as 4.5 have been observed (see, e.g., http://nadp.sws.uiuc.edu/ads/2003/CA45.pdf). If storm water runoff includes water that has not had significant contact time with soil or earth, it is possible for runoff pH values to be low and outside the range of the numeric trigger. Samples with a pH value below 6.0 (i.e., below the numeric trigger) should not be considered to trigger the receiving water monitoring if insufficient contact time with the ground surface is the cause of the exceedance. | maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values.<br><br>In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| Regional variability in pH should be considered in establishing the pH numeric trigger.<br><br>The Blue Ribbon Report recommended that in establishing NELs for discharges from construction sites, the SWRCB should consider "the site's climate region, soil condition, and slopes, and natural background conditions (e.g., vegetative cover) as appropriate and as data are available" (p. 17 of Blue Ribbon Report). Although the numeric trigger is not a NEL, the same logic should be applied to establish a scientifically defensible numeric trigger and to obtain information which will lead to enhanced water quality in California. The Caltrans data used to establish the numeric trigger for pH were taken from six of the eleven Caltrans Districts (Caltrans 2002) and may not be fully representative of conditions | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| **Comment Summary** | **Comment Response** |
| throughout the state. Because soil alkalinity varies regionally, local conditions may be an important influence on pH levels of stormwater runoff. The State Water Board should evaluate regional and local variations in soil chemistry and receiving water pH. The numeric trigger should not apply in any region or local area where natural conditions would cause or contribute to exceedances of the numeric trigger. | made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The eco-region data used to develop the numeric trigger for turbidity are limited and not suitable to describe stormwater quality from a construction site.<br><br>Simon et al. (2004) estimated suspended sediment concentrations (SSC) that were median values for 1.5-year flow events; these data were provided "for the purpose of defining long-term transport conditions" of sediment. The Simon et al. (2004) dataset did not characterize event-scale variability, even though data for individual storms would be used to assess exceedances of the proposed numeric trigger. Even using staff's estimate of 1:3 ratio for turbidity:SSC (which is faulty, as described below), more than 50% of the data in more than 40% of the State would greatly exceed the numeric trigger of 500 NTU. For example, median values of SSC in ecoregions 6 and 14 for a 1.5-year flow event are 1530 and 5150 mg/l, respectively (Figure 3). The state-wide "area-weighted average" median SSC concentration provided in the Fact Sheet (p. 16) is 1633 mg/l, far higher than the proposed numeric trigger of 500 NTU, and appears to indicate that at least 50% of samples from across the state would exceed the numeric trigger. In addition, the ecoregion data clearly indicate that some regions of the state experience greater erosion than others. For example, the median SSC concentration from ecoregion 5 (8.8% of California's land area) is 35.6 mg/l, while the median SSC concentration from ecoregion 14 (21.7% of the state's land area) is 5150 mg/l. These data indicate that a blanket, "one-size-fits-all" numeric trigger is inappropriate for the state. | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The SWCRCB enforcement data used to develop the turbidity numeric | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| **Comment Summary** | **Comment Response** |
| trigger are not representative, and it appears that the calculation has significant errors.<br><br>The enforcement data cited in the Fact Sheet (Table 3 at p. 17; reproduced as Table 1 in this letter) include 19 data points from seven construction projects located within two regions of California [Central Valley (Region 5) and Lahontan (Region 6)]. In fact, 13 of the 19 data points are from a single construction project (i.e., Northstar Village). All of these projects are located in the northern part of the state, where conditions are significantly different than in the more arid environments of southern California. These data also are not representative of the broad range of soil types that occurs throughout the state. The hydrologic conditions under which the data were collected (e.g., rainfall amount, storm intensity) are unknown, and the conditions that led to Regional Water Board enforcement at these locations are not specified by State Water Board staff in the Fact Sheet.<br>Further, the calculation for the 95% confidence interval for the mean turbidity of the enforcement data appears to contain significant errors | contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The proposed NEL does not consider background conditions in receiving water.<br><br>Background turbidity and/or suspended sediment levels in stormwater runoff vary considerably both within different areas of the state and in response to different storm conditions (e.g., rainfall intensity, rainfall amount, and antecedent conditions). Thus, it makes little sense to adopt a single numeric trigger for turbidity that is applied uniformly throughout the state. Numeric triggers established for sediment must be site- or watershed-specific, and must consider natural conditions.<br><br>Numerous studies demonstrate that turbidity in receiving water often exceeds the numeric trigger of 500 NTU | In its ruling in *Cal. BIA,* the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| No scientific basis exists for the 1:3 relationship between turbidity (NTU) and suspended sediment concentrations.<br><br>In our June 24 2009 comment letter, we also noted concerns with the conversion between TSS/SSC and turbidity. These concerns have not been addressed. In summary, it appears that many general and erroneous assumptions were made in the calculation of the turbidity trigger. Because conditions vary significantly within a region, from region to region, and from one individual storm event to another, we believe that it is indefensible to establish any single statewide numeric trigger for sediment.<br><br>If and when it is developed, a significantly larger dataset will be required to properly establish a numeric trigger, and it may be necessary to calculate a numeric trigger for areas smaller than an ecoregion and in consideration of various environmental characteristics found throughout California and at individual construction sites. | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." In addition, the court noted that, "[e]xceedance of a NEL provides a clear indication that storm water and authorized non-storm water discharges directly from a construction project to receiving waters potentially threaten the quality of the receiving waters and trigger corrective action by the project to manage the exceedance and to achieve compliance with the NEL and its CWA goal and function of protecting water quality." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| The Amendment contains a new requirement which is clearly not within the scope of the limited reopener of the Notice of Availability of Draft Documents. The new monitoring requirement for ATS discharges is not required to respond to the court order. The State Water Board chose not to include receiving water monitoring for ATS discharges in the adopted 2009 order, and has provided no justification for doing so in connection with the Amendment. NELs for ATS discharges (i.e., 10 NTU for daily weighted average and 20 NTU for any single sample) are based solely on measured technical performance of ATS and were not associated with receiving water quality. Both the Amendment and the Fact Sheet completely lack any explanation for how the ATS NELs are associated with a threat to water quality in the receiving water. CICWQ recommends removal of the receiving water monitoring requirement for ATS discharges. | In the draft proposed Amendments, State Water Board staff included language which would impose receiving water monitoring requirements on all Risk Level/Type sites utilizing ATS with direct discharges to receiving waters in the event of an exceedance of the applicable NEL. Due to the limited scope of the proposed Amendments, however, these proposed additions have been withdrawn. The Regional Water Boards retain their authority under the existing Construction General Permit to require receiving water monitoring on a case-by-case basis. |

| 7. Mark Grey – Construction Industry Coalition on Water Quality | |
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| **Comment Summary** | **Comment Response** |
| The Amendment appears to suffer from many of the same shortcomings that were criticized by the Superior Court (Hon. Lloyd Connelly, County of Sacramento, Case No. 99CS1929) in its December 27, 2001 Order Enforcing Writ of Mandate concerning receiving water monitoring, at page 3 thereof. There, the superior court criticized the State Water Board for uncritically requiring receiving water monitoring and cited the State Water Board's failure to conform to the analytical prescripts of the Code of Federal Regulations, Title 40, Part 136. These federal regulations are intended to assure that receiving monitoring requirements are rational, understandable, beneficial, and logically related to consideration of anthropogenic pollution in naturally variable contexts.<br><br>Therefore, CICWQ urges the State Water Board to consider and take into account the federal requirements for analytical monitoring, or to otherwise provide a logical rationale for the requirements imposed. | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." Edits have been made to the proposed Amendments to reincorporate the rationale for the receiving water monitoring trigger values. |
| CICWQ believes that stormwater monitoring program should be carefully designed to collect data with a specific purpose in mind.<br><br>Stormwater discharges are intermittent and highly variable, both in terms of flow rates/volumes and constituent concentrations. Storm flow characteristics and constituent concentrations can vary from facility to facility, from storm to storm, and from sample to sample. As detailed in Flow Science (2008), available data are insufficient to support development of scientifically valid numeric limits such as numeric triggers and NELs. Collection of a dataset to support numeric limit development will require a well-designed, carefully-planned program of data collection over a period of years. Data should be collected to characterize variability in flow and concentration within a storm and from storm-to-storm; variability by region and soil type; relationship to rainfall amount and storm intensity; and BMP effectiveness. | Comment noted. |

| 8. Joyce Dillard – General Public | |
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| **Comment Summary** | **Comment Response** |
| These are ministerial procedures without regard to discretionary actions that may be part of the Municipal responsibility under the General Plan and Its Elements.<br>It may remove monitoring responsibility under CEQA that is part of the Municipal responsibility under the General Plan and Its Elements.<br>This may also change discretionary actions for the project itself and the monitoring responsibilities under CEQA. | Comment noted. |
| Fact Sheet, Section II.F, Effluent Standards for All Types of Discharges, Page 13-19<br><br>Technology-Based Effluent Limitations<br><br>You use the term "narrative" but what is the basis for the guidelines? How did you conclude? How is the integrated approach used, or not used? How is BPJ Best Professional Judgment exercised?<br><br>Effluent Limitations refer to Point Sources. We are not clear if this meaning applies in the same way. | The term "narrative" refers to the narrative effluent limitations included in Order Section V.A. to ensure that storm water discharges and authorized non-storm water discharges do not contain a hazardous substance equal to or in excess of reportable quantities, and to minimize or prevent pollutants to achieve BAT/BCT for conventional pollutants. |
| Determining Compliance with Numeric Limitations<br>56.<br><br>An exceedance of a NAL (NAL Numeric Action Levels) does not constitute a violation of this General Permit.<br><br>What does trigger a violation? This negates the ministerial approach, if there is no violation. This is a blank check. | Non-compliance with any requirement of the Construction General Permit would constitute a violation of the permit. An exceedance of an NAL creates an enforceable obligation to perform certain actions under the pertmit. NALs can be considered warning benchmarks that indicate potential non-compliance on the site. As a result of exceedances of the NALs, the Regional Boards may inspect a project site to determine whether there are violations of other provisions of the Construction General Permit (such as lack of BMP maintenance, good housekeeping, erosion & sediment controls, etc). |
| Order, Section I.J, Findings – Sampling, Monitoring, Reporting and Record Keeping, Page 11 | Non-compliance with any requirement of the Construction General Permit would constitute a violation of the permit. An exceedance of an NAL creates an enforceable obligation to perform certain actions under the |

| 8. Joyce Dillard – General Public | |
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| **Comment Summary** | **Comment Response** |
| 64. Risk Level 3 and LUP Type 3 sites with effluent that exceeds the Receiving Water Monitoring Triggers contained in this General Permit and with direct discharges to receiving water are required to conduct receiving water monitoring. An exceedance of a Receiving Water Monitoring Trigger does not constitute a violation of this General Permit.<br><br>Again, what does trigger a violation? This negates the ministerial approach, if there is no violation. This is a blank check. | pertmit. NALs can be considered warning benchmarks that indicate potential non-compliance on the site. As a result of exceedances of the NALs, the Regional Boards may inspect a project site to determine whether there are violations of other provisions of the Construction General Permit (such as lack of BMP maintenance, good housekeeping, erosion & sediment controls, etc). |
| d. LUP Type 3 Receiving Water Monitoring Requirements<br>i. In the event that an LUP Type 3 discharger's effluent exceeds the receiving water monitoring triggers of 500 NTU turbidity or pH range of 6.0-9.0, contained in this General Permit and has a direct discharge to receiving waters, the LUP discharger shall subsequently sample Receiving Waters (RWs) for turbidity, pH (if applicable) and SSC.<br><br>How was the monitor established, i.e., what science is applied. | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. |
| Attachment E, Section I.4.f, Risk Level 3- Water Quality Sampling and Analysis, Page 13<br>Receiving Water Monitoring Requirements<br><br>Again, how was the monitor established, i.e., what science is applied.<br><br>What burden will there be for the taxpayer for remediation or fines down the road. | In its ruling in *Cal. BIA*, the Superior Court wrote: "[c]ontrary to petitioners' contention, substantial evidence in the administrative record supports the Board's determination that the monitoring requirement is reasonable and necessary to ensure compliance with receiving waters limitations by the Risk Level 3 construction projects subject to the requirement." The proposed Amendments maintain the 500 NTU turbidity and 6.0-9.0 pH range as levels that potentially threaten the quality of the receiving waters. |

| 9. Katherine Rubin – Los Angeles Department of Water and Power | |
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| **Comment Summary** | **Comment Response** |
| LADWP supports the removal of NELs from the CGP and also suggests that the SWRCB consider the removal of the Numeric Action Levels (NALs) since, to date, there is not any data that substantiates and | Removal of the Construction General Permit's NALs is outside of the scope of the proposed Amendments. |

| 9. Katherine Rubin – Los Angeles Department of Water and Power | |
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| **Comment Summary** | **Comment Response** |
| supports NALs stated in the CGP. LADWP suggests that a database be developed so that appropriate NALs may be established. | |
| LADWP believes that NALs could serve as guideposts to permittees to adjust practices at their sites and should be treated only as action levels, not enforceable limitations. | Removal of the Construction General Permit's NALs is outside of the scope of the proposed Amendments. |
| LADWP believes to require a discharger to reduce pollutants to levels consistently below the NALs when proper BMPs are in place is to require the implementation of technology based practices that are not yet readily available to industry. LADWP believes data is needed to determine which technologies will be able to reduce the pollutants, such as, turbidity and pH, to the appropriate NAL. In order to do so, a technology based study needs to be performed in each Region due to the site specificity of the Regions. The SWRCB should identify available technologies, gather data in order to characterize the performance of the technologies under various site conditions, and derive an NAL for turbidity consistent with the performance data. The SWRCB should not base a turbidity NAL on theory and inferences drawn from limited or inconclusive studies. | Removal of the Construction General Permit's NALs is outside of the scope of the proposed Amendments. |
| LADWP believes that the very premise the Superior Court of California, County of Sacramento ruled in the California Building Industry Association, et al. v. State Water Resources Control Board, Sacramento County Superior Court Case No. 34-2009-80000338 regarding the NELs would also apply to the NALs. | State Water Board staff disagree. The Superior Court clearly limited the scope of its judgment to invalidate only the numeric effluent limitations for turbidity and pH on Risk Level 3 construction sites. |
| LADWP believes to require a discharger to submit an NAL exceedance report when there is no justification of the applicable limits for pH and turbidity is construed as an enforcement action. LADWP believes monitoring and changes to the appropriate BMPs as directed by the Qualified SWPPP Practitioner (QSP) is an acceptable practice. | Removal of the Construction General Permit's NALs is outside of the scope of the proposed Amendments. |
| LADWP supports the comments of California Council for Environment and | Comment noted. |

| 9. Katherine Rubin – Los Angeles Department of Water and Power | |
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| **Comment Summary** | **Comment Response** |
| Economic Balance (CEEB). | |