Allied Waste Industries, Inc.
California Waste Association
California Refuse Removal Council
County of Orange Integrated Waste Management Department
Inland Empire Disposal Association
Los Angeles County Sanitation Districts
Los Angeles County Waste Management Association
Monterey Regional Waste Management District
Norcal Waste Systems, Inc.
Onyx Environmental Services
Republic Waste Services
Solid Waste Association of North America, California Chapters
Solid Waste Association of Orange County
Waste Management

February 3, 2005

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, California 95812-0100

Subject: California Waste Industry Coalition Comments on the Reissuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Draft dated December 15, 2004 (Draft Permit)

Dear Ms. Irvin:

The undersigned representatives of the letterhead organizations are part of a broad coalition of California waste industry interests that are very concerned about certain provisions of the NPDES general permit for discharges of storm waster associated with industrial activities (dated December 15, 2004).

Our coalition would like to thank the State Board for the tremendous effort its Staff put forth in creating the Draft Permit and providing the opportunity to comment on the Draft Permit. However, the purpose of this letter is to provide the State Water Resources Control Board ("State Board") with our coalition's concerns regarding this Draft Permit. In addition to this letter, we have attached a tabular summary of principle concerns. While we can support many provisions of the Draft Permit, such as clarification and enhancement of SWPPP requirements and certain monitoring provisions, our industry has significant concerns in a number of areas which we

believe warrant revision to provide an appropriate permit for industrial stormwater dischargers and particularly for waste operations such as those conducted by the undersigned parties.

Our industry coalition recognizes the State Board's desire to consider moving towards numerical limits for storm water discharges. We also understand that the State Board is desirous of a mechanism for evaluating Best Management Practices ("BMPs"). As the State Board has previously recognized, the existing iterative process for demonstrating permit compliance already provides this mechanism. However, we must disagree with the State Board's use of the U.S. Environmental Protection Agency ("EPA") bencharks in the Draft Permit in a way that essentially employs them as numeric limits, as a rigid measure of a discharger's compliance. The draft Industrial General Permit abandons the existing reasonable iterative process for a new, potentially never-ending corrective action loop triggered by exceedance of EPA benchmarks. We strongly feel that without additional research and a more solid basis for these benchmark standards -- it is premature and inappropriate to establish numeric discharge limits.

This aspect of the Draft Permit represents a storm water policy that, by the State Board's own admission, is inappropriate for the protection of California's water quality. The Fact Sheet and Draft Permit concede that the continued attempt to develop numeric effluent limits for storm water at the point of discharge as a measure of receiving water quality is flawed, and that an end-of-pipe command and control approach is inappropriate. Nonetheless, the Draft Permit proposes to employ an end of the pipe command and control approach to compliance, by assigning numeric compliance standards to storm water discharges. This is technically and legally inappropriate, and inherently unfair to dischargers. In order to effectively manage and enforce storm water management, the State Board must develop standards through a supportable scientific and regulatory analysis, subject to public review and comment, rather than by selecting numeric standards which by EPA's and the State Board's own admission, are "generic and not intended to be numeric limits or protective of any particular receiving water." It is simply unrealistic to assume that a single numeric value for a particular constituent can possibly be reasonably applied to all forms of industrial discharges in a wide variety of watersheds and conditions throughout the state.

The Draft Permit language moves far beyond what is contained in the federal stormwater Multi-Sector Group Permit and will be nearly impossible to meet in many situations and will surely result in unintended consequences. For example, in arid or semi-arid environments experienced in much of California where receiving waters are ephemeral or intermittent and natural vegetative cover is not full, ***natural*** sediment loadings in streams would far exceed the 100 mg/L benchmark for TSS which appears essentially as an effluent limitation in the Draft Permit. Even in the relatively pristine Lake Tahoe Basin, the State and Regional Board has extensive information in your files documenting that natural runoff from relatively undisturbed watersheds can easily exceed the proposed 100 mg/l TSS standard.

Requiring dischargers to reduce their sediment loadings below natural levels (if implemented in a substantial area of the contributing watershed) would result in a net reduction in sediment loadings in the receiving waters. Since these streams have evolved based on the natural levels of sediment load, reductions in sediment loading will result in a "sediment starved" flow which will seek to re-establish the natural levels of sediment flow by stream bed erosion when an erodible stream bed is encountered. This is one of the reasons that the municipalities in some of California's more arid neighboring states have consistently opposed the implementation of

numeric limits for stormwater discharges when the initial municipal NPDES permits were promulgated in the early 1990's. It is also one of the problems with stormwater detention policies that attempt to establish "one size fits all" numeric standards.

We believe that if the State Board were to review runoff data from many natural areas of the state during the first hour of significant storm events you would find that there would be many situations that natural conditions far exceed the proposed benchmark standards.

RECEIVING WATER LIMITATIONS

Section III of the Draft Permit states:

> 1. Storm water discharges and authorized non-storm water discharges to any surface or ground water *shall not contain* pollutants that cause a nuisance.
>
> 2. Storm water discharges and authorized non-storm water discharges *shall not contain* pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable RWQCB's Water Quality Control Plans (Basin Plan). (Emphasis added).

This language changes the current permit and previous Draft Permit language that the storm water discharge itself cannot "cause or contribute" to a nuisance or exceedance of water quality standards. The new language is unclear and appears to imply that discharging any level of pollutants may be a violation of the permit if that type of pollutant from multiple other sources is at a level exceeding standards or causing nuisance. If so interpreted, this language places an excessive and unwarranted burden on industrial stormwater discharges. This burden would not only be disproportionate to the burden on other sources, such as residential communities, recreational sources, and construction sites – or even natural conditions -- but it is also legally inappropriate.

We request that the State Board retain the current permit's phrasing of receiving water limits, that the discharge may not "cause or contribute" to nuisance or exceedance of water quality standards.

DRAFT PERMIT'S USE OF EPA BENCHMARKS

a. Inappropriate Selection of Benchmarks as a Compliance Measure

Our industry coalition agrees that the EPA benchmarks may be useful as an indicator that a discharger has implemented effective BMPs. However, we completely disagree with the State Board's use of the benchmarks as a numeric measure of permit compliance. The Fact Sheet (page VII) describes benchmarks as "representative of what is minimally achievable through a properly developed and implemented SWPPP designed to BAT/BCT." There is no evidence provided that this is actually true for all industries covered by the permit, and in particular for waste facilities. Setting numerical limits that are merely "representative" of inapplicable control technologies is inherently arbitrary and places an undue burden on categories of industrial stormwater dischargers.

To assess the infrastructure required by the Draft Permit to achieve the EPA benchmarks, one group of landfill owners in our coalition has estimated that they would need to expend approximately $381 million in an attempt to achieve the EPA benchmarks – for which there is no guarantee of success. If this were to be extrapolated to all landfills in California, the cost of compliance would exceed $5 billion. Many waste facilities, including those operated by members of our coalition, have inadequate property to construct these treatment facilities, and would typically need to condemn or otherwise secure additional property and potentially destroy precious native habitat. Some sites abut freeway and road right-of-ways making construction of such facilities nearly impossible. This one example emphasizes the inappropriate use of the benchmarks in the Draft Permit.

Even though the permit states that benchmarks are not intended to be effluent limits and that exceeding benchmarks is not a permit violation, the Draft Permit and Fact Sheet fail to clarify that exceeding a benchmark does not mean the discharger has failed to meet BAT/BCT requirements. The State Board must clarify this point to prevent environmental enforcement from being inappropriately based on this unclear language.

As noted in detail below, the permit imposes punitive measures where the benchmarks are exceeded, despite the fact they were not intended to be numeric limits. Finally, the Draft Permit fails to consider background pollutant levels or offsite pollutant sources that impact onsite discharges. By failing to consider these other sources of pollutants, the discharger becomes responsible for pollutant sources over which it has no control. For example, many landfills have natural background levels far in excess of the chosen landfill benchmark for iron (1.0 mg/l). This proposal would cause some landfills to be perpetually in a "corrective action" state by exceeding a benchmark that does not account for natural background levels. Requiring dischargers to achieve EPA benchmarks, while not considering background and offsite sources, is infeasible and is an economic burden, which will create an incentive for businesses to leave the state.

b. Requirements Triggered by Benchmark Exceedance

The Fact Sheet and the Draft Permit section V.7. are in conflict. The Fact Sheet states that benchmarks will not be used as numeric limits. Permit section V.7. states that when analytical results exceed the benchmarks, the discharger will implement corrective actions. The Draft Permit must be amended to remove "corrective actions" from the permit language to support the State Board's assertion in the Fact Sheet that the benchmarks are not numeric limits.

The Draft Permit does not consider the potential for false positives. At a minimum, dischargers should be given the opportunity to confirm an exceedance by sampling the next qualified storm event. Only after an exceedance of an *appropriate standard* is confirmed, should the corrective actions be required.

- ***Section V.7.c.v.*** Even if the discharger determines that no additional BMPs or SWPPP implementation measures are necessary in response to the exceedance of the benchmarks to meet the BAT/BCT standards, the discharger is still required to certify why the exceedance occurred and why it will not occur again under similar circumstances. In this circumstance, it is entirely inappropriate to require that the exceedance not be repeated, by requiring that the discharger "certify that it will not happen again." How can a discharger ever certify such a thing given California's dramatic range of storm events? In

addition, as detailed in Attachment A, no available technologies can guarantee that EPA benchmarks will be achieved. Consequently, it is also inherently impossible to provide the proposed certification. In addition, impacts from offsite pollutants sources and background pollutant levels make this certification impossible.

- ***Section V.7.c.*** also requires the discharger to certify that there are "no sources" of the pollutant for which a benchmark is exceeded in discharges from the facility, to avoid an automatic requirement to revise its SWPPP or to make an impossible certification. Again, it is not possible for the discharger to do so, especially with respect to natural minerals present in soil or ubiquitous ambient constituents, natural conditions with unstable soil, or areas of the state with highly ephemeral stormwater events.

- ***Section V.7.e-g*** requires that following an exceedance of a benchmark, a discharger must implement corrective BMP's within 90 days, submit a written report to the Regional Board within 30 days, and update the SWPPP within 14 days of the Regional Board's approval. These requirements are clearly excessive, going well beyond the use of the benchmarks to simply trigger consideration of whether improvements are actually needed. They present two other serious problems. First, a discharger may not be able to implement certain corrective actions within 90 days. Second, there is no time limit placed on the Regional Board's response to the written report, such that a discharger cannot be assured the opportunity to meet the 90-day deadline with even a slight delay in Regional Board review. The State Board must revise the permit language to address these two issues. If retained at all, the 90-day compliance period (or, preferably, a period allowing for reasonable extension where 90-day implementation is impracticable) should be triggered only after the Regional Board has approved the correction action report.

  Likewise, the additional sampling requirements following an exceedance should be triggered only after any new BMP's have been implemented; otherwise, sampling is a moot point. Logically, if the State Board chooses to require sampling prior to new BMP's being implemented, and the samples meet the discharge standards, then BMP's and the SWPPP should be deemed adequate and corrective actions not required. This only emphasizes the need for a verification sampling process, to ensure that there is a meaningful exceedance of an *appropriate standard* before actions are required.

  The requirement to sample incessantly following exceedance of a benchmark, until two samples show no exceedance of the benchmark, is inappropriate and overly burdensome. As described above, certain EPA benchmarks cannot be achieved using BAT/BCT for certain industries and in certain areas of the state where natural background conditions would exceed the benchmark. Therefore, the Draft Permit would needlessly require continued sampling indefinitely. Further, it may well be that the exceedance has nothing to do with the discharger's industrial operations. Yet the discharger will be required to sample every storm into the indefinite future, with no end in sight. This is an inappropriate, punitive measure as written, and can be remedied by simply deleting it.

- ***Section V.7.h.*** states "nothing in this section shall prevent the appropriate Regional Water Quality Control Board ("RWQCB") from enforcing any provisions of this General Permit while dischargers prepare and implement the above report." The Draft Permit removes the "safe harbor" formerly available to dischargers under the current permit.

Section V.7. and section III together propose to throw out the BMP iterative process approach entirely. As we outlined in the introduction, the Draft Permit's use of benchmarks as numeric limits is inappropriate. Without additional research to develop industry-specific or site specific numeric limits that can be achieved using BAT/BCT, setting the benchmarks as numeric limits is premature and unsupported by appropriate technical analysis and regulatory findings.

c. The Use of Benchmark in this permit constitute inappropriate effluent limits

The provisions of the Draft Permit clearly treat the benchmarks as effluent limitations, because a discharger's choices do not include any option that would allow constituent levels above the benchmarks lawfully to continue to be discharged. Any time a discharge tends to exceed one of the benchmarks, the industrial facility is, therefore, essentially required to reduce the pollutants to levels below the benchmark.

In addition, as long as a discharge continues to exceed any benchmark, a discharger must bear the burden of incessant monitoring of every subsequent storm, even where permit compliance has been confirmed by determination that BMPs meet applicable standards, and where the discharge is not causing exceedance of receiving water standards.

The findings of the Draft Permit do not provide legal or technical support for the manner in which it employs the benchmarks. Only one relevant finding is included. Finding 10 simply describes that BMP revisions are mandated following an exceedance of a benchmark, as follows: "This permit contains benchmarks for the indicator parameters and facility specific pollutants, which, if exceeded will require dischargers to identify and implement additional controls." (Draft Permit, Finding 10)

To legally adopt the benchmarks as technology-based effluent limitations, as the Draft Permit does in actual effect, would require findings by the State Board that the BMPs actually represent BCT for conventional pollutants and BAT for other pollutants. Although the Fact Sheet suggests that the EPA Benchmarks "generally approximate" levels which represent BCT and BAT standards, evidence is not provided that they actually correspond to the application of BCT and BAT for any of the constituents for waste facilities, or other industries. Clearly, they have not been justified with an appropriate analysis finding that the benchmark of, for example, 100 mg/l Total Suspended Solids represents the application of BCT. Under the Clean Water Act, Total Suspended Solids is a conventional pollutant subject to control using Best Conventional Technology (BCT), a standard that considers cost effectiveness. There appears to be no possible basis, and the Draft Permit does not provide explanation of any basis, to conclude that the benchmark represents this level of control technology at waste facilities. Given that the attainment of the Benchmark standards for landfills alone is roughly estimated to exceed $5 billion in California, there needs to be a serious and legitimate effort by the State Board to determine if this expenditure is cost-effective.

Even if numeric effluent limitations were feasible and the standard methodology for imposing numeric limitations applied, imposing numeric limits where there is insufficient information to determine BCT and BAT, or to determine reasonable potential to cause exceedance of receiving water quality objectives, or to calculate appropriate limits is premature and violates federal law. *See* 33 U.S.C. § 1311; 40 CFR §§ 122.44(d), 125.3. Imposing technology-based or numeric water quality-based effluent limitations without sufficient information, data, and technical

reasoning in the record to support such imposition is arbitrary and capricious, violates federal and state law, and potentially constitutes an abuse of the State Board's discretion.[1]

SAMPLING

The Draft Permit requires that dischargers sample for "parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a Water Quality Standard in the facility's receiving waters." As written, this requirement is unjustifiably burdensome. Read literally, it appears to require that dischargers sample for an unlimited set of parameters each wet season, costing thousands of dollars. The State Board staff admits that there is no standardized process for assessing impacts on receiving waters from industrial storm water discharges at the point of discharge. This coupled with the fact that representative surface water sampling is inherently difficult, therefore, makes this requirement unreasonable. The State Board must either remove this requirement or modify it so that dischargers are obligated to sample only those site and industry specific pollutants under the discharger's direct control that can reasonably be expected to cause or contribute to an exceedance.

The current existing permit contains provisions allowing reduced sampling under appropriate conditions. The Draft Permit eliminates these provisions. Consistent with EPA policy and past permits, when a site demonstrates over a specified time period that the BMP's are effective in meeting and maintaining BAT/BCT, there must be an opportunity for relief. The Draft Permit gives no consideration or incentive to dischargers who are proactive and achieve and maintain permit compliance. The State Board must insert a reduced sampling provision.

The Draft Permit requires the discharger to sample the next two qualified storm events following an exceedance, regardless of the cause. This is punitive and excessive. There is nothing in the corrective action process that suggests that sampling the next two storm events will improve water quality. This requirement conflicts with the Ninth Circuit's ruling that the purpose of storm water sampling is to assess the effectiveness of BMP's. A reasonable time period between rain events must pass to demonstrate BMP performance.

Section VIII.7. states that "dischargers shall visually observe and collect samples of storm water discharges from all drainage areas associated with industrial activity." Most waste facilities, but Landfills in particular, will be heavily burdened by this requirement. Landfill properties are vast -- often greater than five hundred (500) acres. Because of the typical size, landfills typically have multiple storm water discharge locations. To visually observe and sample each location within the first hour of discharge, landfills operators would be required to hire additional staff. Due to the burdensome nature of this requirement, this Waste Industry Coalition request that the permit be revised to allow sampling and visually observation of representative discharge locations at facilities with more than three discharge locations.

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[1] Violations of state law by this action would include failure to base administrative action on findings based on evidence in the record, and violations of Water Code Sections 13000 (requiring a reasonable program of regulations considering the full range of demands and the total values involved), 13263 (requiring consideration of multiple factors in Section 13241 not addressed in the Draft Permit proposal) and 13377 (requiring compliance with federal regulation).

CONFLICT WITH LAWS REGULATING LANDFILL OPERATIONS

Many of the parties to this letter operate waste landfills, while others do not. However, we all would like to point to the following example as to why "one size fits all" requirements do not work with stormwater given the myriad of different background and industrial configurations that exist in California. Stormwater limitations must be specifically geared to what is feasible at a particular location and which does not conflict with other legal obligations imposed on the facility operator.

Specifically, with respect to landfills, the Draft Permit conflicts with California Code of Regulation, Title 27, governing landfills.

- Section 20653 specifies that: "...drainage structures shall be designed and constructed to limit, to the greatest extent possible, ponding, infiltration, inundation, erosion, slope failure, washout, and overtopping."
- Section 20260 requires that landfills be "...designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return period."
- Section 20950 states that the "goal of closure, including but not limited to the installation of a final cover, is to minimize the infiltration of water into the waste, thereby minimizing the production of leachate and gas."
- Section 20650 provides that "...covered surfaces of the disposal area shall be graded to promote lateral runoff of precipitation and to prevent ponding. Grades shall be established of sufficient slopes to account for future settlement of fill surface."

These regulations illustrate that landfills are and have historically been required to avoid ponding of storm water and restrict infiltration. In fact, the objective has been historically to remove stormwater from the surface of the landfill as quickly and efficiently as possible to limit ponding and potential infiltration. The BMP's that would be necessary to attempt benchmark achievement, afforded to other industries, would increase the potential for infiltration and ponding, in direct contradiction of Title 27. To compound the matter further, state and federal regulations require use of silty and clayey soils for cover materials over refuse. The difficulty of removing such fine-grained solids from storm water illustrates the burdensome nature of the total suspended solids limit proposed in the Draft Permit. These regulations combined with the typical construction features of a modern sanitary landfill, typically large open unpaved areas with significant topographic relief, create unique regulatory conflicts. Consequently, maintaining required landfill drainage to accommodate the 100-year storm and simultaneously achieving the benchmarks is simply not feasible for many landfills in most areas of the state. The State Board should remove the benchmarks from the permit to avoid these regulatory conflicts.

Our waste industry coalition appreciate the opportunity to provide these comments on the Draft Permit and look forward to working with the State Board to achieve our mutual goal of improving storm water quality. If you have any questions regarding this transmittal, please do not hesitate to contact any of the undersigned at their listed phone numbers.

Very truly yours,

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Attachment

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Waste Industry Coalition Comments Revised NPDES General Permit for Dischargers of Industrial Storm Water	
Section/Topic	**Comments/Recommendations**
BMP Effectiveness and Iterative approach	Support the application of assessing BMP effectiveness and the existing iterative approach for demonstrating permit compliance. However, this approach is not emphasized and the draft permit instead relies upon placing dischargers in an unachievable loop of corrective action implementation.
Storm Water Policy	Current approach to storm water management and compliance enforcement does not work. The Board's attempt to apply an "end of the pipe command and control" approach storm water compliance is technically not supported and inherently unfair to the discharger. The fact sheet/permit admits that the continued attempt to develop numeric effluent limits for storm water at the point of discharge as a measure of receiving water quality is flawed and the process to determine compliance under the command and control approach is, at this point, technically inappropriate. However, this permit continues to pursue the flawed command and control/end of the pipe approach by attempting to assign numeric compliance standards to storm water discharges, both indirectly and directly. The state must recognize the impracticality of the command and control approach to storm water compliance assessment and develop, through the public review processl an applicable standard to measure compliance and a fair and realistic process by which to achieve compliance.
Effluent Limitations	Section III of the draft permit states: 1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not contain pollutants that cause a nuisance. 2. Storm water discharges and authorized non-storm water discharges shall not contain pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable RWQCB's Water Quality Control Plans (Basin Plan). This is a change from the current permit language, and previous draft language, which states that the storm water discharge cannot "cause or contribute". This language change establishes one-molecule liability to dischargers. Unless storm water discharge from all potential sources of pollution (construction sites, residential communities, recreational facilities, etc.) is permitted in a similar fashion, this change places a disproportionate burden upon industrial facilities. The language must be changed back.

Waste Industry Coalition Comments Revised NPDES General Permit for Dischargers of Industrial Storm Water	
Section/Topic	**Comments/Recommendations**
EPA Benchmarks	In general support concept of performance benchmarks as a tool to measure BMP effectiveness but not as a measure of compliance and only if applied in the same manner and same intent that EPA applies the benchmarks.
	The fact sheet (page VII) describes benchmarks as "representative of what is minimally achievable through a properly developed and implemented SWPPP designed to meet BAT/BCT." This statement highlights the proposed arbitrary application of benchmarks and the need for a comprehensive review of appropriate BMPs for specific industries. For example, the solid waste industry would be required to expend billons of dollars constructing treatment facilities in an attempt to comply with the 100 mg/l TSS and metals benchmarks. Many facilities have inadequate property to construct such facilities and could be required to condemn private property in an attempt to comply with this benchmark. Moreover, due to the variability of individual storm intensities, the construction of large-scale treatment facilities would not achieve benchmarks during prolonged or intense storm events. This example denotes that the generic application of benchmarks is inappropriate and must be removed from the proposed permit.
	Section II.3: Effluent limits - States that developing and implementing a SWPPP that meets SWPPP requirements that includes BMPs that achieve BAT/BCT constitute compliance with the permit's effluent limitations. However, the fact sheet (page VII) erroneously equates the EPA Benchmarks to a measure of BAT/BCT. While the permit states benchmarks are not intended to be serve as effluent limits and exceeding benchmarks is not a violation of the permit, no language exists that clarifies that exceeding the benchmark does not mean that the discharger has failed to meet BAT/BCT. This clarifying language is necessary to prevent watchdog groups from taking advantage of the permit, and its lack of clarity. It is a simple legal challenge to claim that the benchmarks represent BAT/BCT and failure to meet BAT/BCT, and consequently failure to meet effluent limitation requirements, is a violation of the permit.
	There is no consideration of background levels or offsite pollutant sources that impact onsite discharges. This lack of consideration is punitive to the discharger and makes the discharger responsible for sources of pollutants that the discharger has no control over. To force dischargers to achieve EPA benchmarks without consideration of background and offsite sources or whether the technology is economically available is economically infeasible and will cause business to leave the state in order to survive.
Benchmark Exceedance Process (Section V.7)	Fact sheet language and actual permit requirements are in conflict. The permit language needs to support the intent stipulated in the fact sheet that benchmarks will not be used as numeric limits.

Waste Industry Coalition Comments Revised NPDES General Permit for Dischargers of Industrial Storm Water	
Section/Topic	**Comments/Recommendations**
	The process is punitive and excessive to the discharger without justification. Nothing in the process even suggests that the punitive process will improve water quality. It is accepted that due to the nature of storm events' variability, that there are innumerable factors that effect a site's storm water discharge that are beyond the control of the discharger. In order to meet the requirement of sampling the next two consecutive storm events, the discharger must assume that a benchmark will be exceeded and must provide for expedited sample turn-around, increasing the cost of storm water sampling up to 500%.
	V.7: The proposed permit does not consider the potential for false positives. Before placing a discharger into a corrective action program, sample results from the following qualifying storm should be used for confirmation.
	V.7.c: Certification Process: Again equates benchmarks to BAT/BCT. Requires the discharger to certify that BMPs meet BAT/ACT, yet the state admits that there is no process to assess what that means.
	V.7.c: Requires that the discharger certify there are no sources of the pollutants at the facility. The discharger cannot make this certification. For example there are always sources of suspended solids. The dischargers' obligation is to control the discharge of site-specific and industry specific pollutants, that the discharge has control over, to economically achievable levels. If the discharger is required to certify that the BMPs meet BAT/BCT, then the certification must be limited to certifying that site-specific and industry specific pollutants that the discharge has control over to economically achievable level does not cause or contribute to an exceedance, since not causing or contributing to a WQS exceedance defines BAT/BCT.
	V.7.c.v.: Requires that the certification show how the benchmark exceedance occurred and why it will not occur again under similar circumstances. This is impossible to do because of the impacts to storm water discharges from offsite pollutant sources and background levels.
	V.7.e-g: Requires corrective BMPs be implemented within 90 days. Requires the discharger to submit written report to regional boards within 30 days for approval. Within 14 days of the regional boards "approval" of the report, the discharger is to update/revise the SWPPP. What is the purpose of the regional boards' approval of the BMPs before the discharger updates the SWPPP? There must be a time limit placed on the regional boards to respond. In addition, depending upon the complexity of a facility, evaluating the potential effectiveness of corrective BMPs within 30 days and implementing corrective BMPs within 90 days may not be possible. The permit should be revised to address the potential for such a scenario.

Waste Industry Coalition Comments Revised NPDES General Permit for Dischargers of Industrial Storm Water	
Section/Topic	**Comments/Recommendations**
	The compliance period must only apply once the regional board has approved the corrective action report and the additional sampling requirements must only apply once the corrective BMPs have been implemented, otherwise sampling is mute. If it is concluded that additional BMPs or corrective actions are required, then requiring additional sampling before the corrective measures are identified and implemented serves no purpose and is only punitive in nature. If sampling of the next two storm events are in compliance with the permit and the corrective measures have not been identified or implemented, that would indicate that the BMPs and SWPPP are adequate without implementation of additional BMPs or corrective action. As described above, verification sampling should be incorporated into the permit to minimize false positives.
	V.7.h: States that "Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this General Permit while dischargers prepare and implement the above report". This language makes it clear that there is no longer any "safe harbor" and kills the BMP iterative process approach. As described above, the use of benchmarks as effective numeric limits is inappropriate and premature without additional research. It is recommended that research should be conducted to determine appropriate industry-specific numeric limits that can be achieved using BAT/BCT.
	The proposed permit will conflict with the California Code of Regulation, Title 27 for landfills. Section 20653 specifies that drainage structures shall be designed and constructed to limit, to the greatest extent possible, ponding, infiltration, inundation, erosion, slope failure, washout, and overtopping. Section 20260 specifies that landfills shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return period. Section 20950 states the goal of closure, including but not limited to the installation of a final cover, is to minimize the infiltration of water into the waste, thereby minimizing the production of leachate and gas. Section 20650 states covered surfaces of the disposal area shall be graded to promote lateral runoff of precipitation and to prevent ponding. Grades shall be established of sufficient slopes to account for future settlement of the fill surface. As illustrated by these regulations, landfills have historically been required to avoid ponding of storm water and restrict infiltration. However, BMPs needed in an attempt to achieve benchmarks would increase the potential for infiltration and ponding at landfills. Moreover, landfills are typically large open unpaved areas with significant topographic relief. Consequently, it is impossible to simultaneously achieve benchmarks and maintain landfill drainage facilities to accommodate the 100-year storm. To avoid this regulatory conflict, it is recommended that benchmarks be excluded from the permit.

Waste Industry Coalition Comments Revised NPDES General Permit for Dischargers of Industrial Storm Water	
Section/Topic	**Comments/Recommendations**
Sampling	New requirement that dischargers must sample for "Parameters indicating the presence of pollutants that may be causing or contributing to an existing exceedance of a WQS in the facility's receiving waters". This requirement, as written, is unjustifiably overly burdensome and will require dischargers to sample for an unlimited set of parameters at the cost thousands of dollars per wet season. This requirement is unreasonable since the state admits that there is no standardized process for assessing impacts on receiving waters from industrial storm water discharges at the point of discharge. This requirement must be removed or significantly revised to limit the dischargers' sampling obligations to only those site/industry specific pollutants that are under the direct control of the discharger and that can responsibly be expected to cause or contribute to an exceedance to an impaired body of water.
	The reduced sampling provisions of the current permit have been eliminated from this permit. Consistent with past permits and current EPA policy, when a site can demonstrate, over a specified period of time, that the BMPs are effective in meeting and maintaining BAT/BCT then there must be an opportunity for relief. The draft permit is punitive, and provides no consideration or incentive for proactive efforts of dischargers in achieving and maintaining permit compliance.
	Requirement to collect samples from the first two consecutive storm events does not support the Ninth District Court's ruling that the purpose of storm water sampling is to assess the effectiveness of BMPs. For storm water sampling to be useful for assessing BMP effectiveness, a reasonable period of time between rain events must be allowed to demonstrate BMP performance during the wet season. Failure to collect samples from the first two consecutive storm events must not be considered a permit violation. The focus of the permit must be on assessing storm water.
	VIII.7: States that dischargers shall visually observe and collect samples of storm water discharges from all drainage areas associated with industrial activity. This requirement is burdensome for many industries and especially at landfills. Landfill properties are vast, often greater than five hundred acres. Due to the size of typical landfills, multiple storm water discharge locations are often required to comply with Title 27, as described above. In order to visually observe and sample each location within the first hour of discharge, landfill operators would be required to retain additional staff. Due to the burdensome nature of this requirement, it is requested that the permit be revised to allow representative discharge locations be designated for facilities with similar discharge characteristics.