



# California Regional Water Quality Control Board

## Lahontan Region




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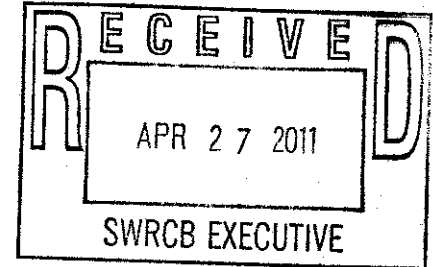
### MEMORANDUM

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

FROM: Alan Miller, PE   
Senior Water Resource Control Engineer  
Storm Water Program Manager  
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: April 27, 2011

SUBJECT: COMMENT LETTER – DRAFT INDUSTRIAL GENERAL PERMIT



The California Regional Water Quality Control Board, Lahontan Region (Water Board) staff has reviewed the above-cited draft Order of the State Water Resources Control Board (State Water Board) dated January 28, 2011, which Order has also been provided for public review. Our review of the attachments and related materials has been limited so that we could focus on the Order. The following comments are provided, and are principally intended for State Water Board staff consideration. The State Water Board may publicize the comments or not, at its discretion. In any case, the Water Board would like to know the manner in which the comments are considered, and so a written response is requested, formal or otherwise.

#### Comments with Discussion

1. In reviewing the State Water Board's proposed updated NPDES permit for industrial activities (IGP), a particular omission from the current IGP and proposed draft IGP must be addressed. Correction will require changes to the appropriate findings and fact sheet discussions, and the Order provisions.

A. The IGP applies in the Lake Tahoe Basin (Hydrologic Unit No. 634.00). However, the current IGP does not include effluent limits other than those established in federal regulations "subchapter N" for certain industries. However, the Lahontan Basin Plan does contain such limits. In the Lahontan Basin Plan citation below, the acronyms USFS and TRPA are used to mean United States Forest Service and Tahoe Regional Planning Agency, respectively. The "208 Plan" reference is to section 208 of the Clean Water Act and the water quality requirements of the USEPA-approved 208 Plan of the TRPA, which is the designated section 208 planning authority for the bi-state Tahoe region. The Basin Plan (p. 5.6-3) includes the following excerpt from the Lake Tahoe Chapter subsection entitled **Storm Water Problems and Control Measures**:

*California Environmental Protection Agency*

There is no heavy manufacturing industry in the Lake Tahoe Basin. However, certain Tahoe dischargers (e.g., recycling facilities, transportation facilities such as the airport and some marinas, and the South Tahoe Public Utility District wastewater treatment plant) are classified as "industrial" for purposes of the statewide industrial stormwater NPDES permit (see the summary of "industrial" categories and the explanation of the statewide NPDES permitting process in Chapter 4). Because of the sensitivity of affected waters, the Regional Board generally adopts and maintains individual stormwater waste discharge requirements for such facilities; individual stormwater NPDES permits may also be issued.

Some of the areas which need surface runoff management systems are on federal land. The sites are operated under special use permits from the USFS, Lake Tahoe Basin Management Unit. The USFS requires, and should continue to require, compliance with BMPs as a condition of these special use permits. The Regional Board may issue individual stormwater NPDES permits to projects on National forest lands if necessary to protect water quality.

The 208 Plan (Vol. 1, page 112) directs the State of California to continue to set effluent limitations and issue discharge permits for stormwater in accordance with the federal Clean Water Act and the Porter-Cologne Act. TRPA considers large parking areas, the South Tahoe airport, golf courses and ski areas high priorities for retrofitting with BMPs because of their potential for significant water quality impacts from runoff. The 208 Plan encourages the states to issue WDRs or NPDES permits to these facilities. After 1991, TRPA will work the states to require establishment of BMP retrofit schedules for such facilities for which retrofit schedules have not been established.

**TABLE 5.6-1**  
**Stormwater Effluent Limitations**

These limits shall apply in addition to any more stringent effluent limitations for the constituents below, or to limitations for additional constituents,

which are necessary to achieve all applicable water quality objectives for specific receiving waters.

#### **Surface Discharges**

Surface water runoff which directly enters Lake Tahoe or a tributary thereto, shall meet the following constituent levels:

<u>Constituent</u>	<u>Maximum Concentration</u>
Total Nitrogen as N	0.5 mg/l
Total Phosphate as P*	0.1 mg/l
Total Iron	0.5 mg/l
Turbidity	20 NTU
Grease and Oil	2.0 mg/l

See the text for discussion of the application of these limits to runoff generated on a discharge site in relation to the quality of runoff entering the site.

#### **Runoff Discharged to Infiltration Systems**

Waters infiltrated into soils should not contain excessive concentrations of nutrients which may not be effectively filtered out by soils and vegetation. See the text for further discussion of the application of these limits:

<u>Constituent</u>	<u>Maximum Concentration</u>
Total Nitrogen as N	5 mg/l
Total Phosphate as P*	1 mg/l
Total Iron	4 mg/l
Turbidity	200 NTU
Grease and Oil	40 mg/l

Note: \*Total phosphate is measured as "total phosphorus."

B. The revised IGP must include the above-cited tabulated effluent limitations for industrial discharges in order to implement the Basin Plan requirements, and to level the playing field among marinas and other industrial dischargers subject to the limits as imposed in other permits and waste discharge requirements applicable in the Lake Tahoe watershed. The related text can assist with developing findings. (The Lahontan Water Board recently rescinded individual WDRs containing effluent limits for Lake Tahoe Airport on the assertion that the effluent limits would be incorporated into the Statewide IGP update so as to again apply the effluent limits to the airport, which as a result of the rescission is now covered under the IGP (only).) The justification is that the NPDES permit must implement the Basin Plan (and 208 Plan) requirements. The recommendation is to handle incorporation into the permit as for subchapter N effluent limitations as at Order VI.A.

C. These are likely water quality-based effluent limitations required to meet water quality standards and State requirements pursuant to 40CFR122.44(d). The above-cited limitations for runoff discharged to infiltration systems is not strictly applicable within the NPDES permitting

context, which context is regulation of "discharges" to surface waters of the U.S., absent a direct hydrologic connection between surface and ground waters. These discharge-to-land limitations should be implemented as WDR requirements under Porter-Cologne Water Quality Control Act authority but within the NPDES permit (IGP). The requirements are to protect ground water quality from pollutant discharges in "runoff," which in staff's opinion includes runoff with pollutants from both storm water and authorized non-storm water discharges under the IGP. These Basin Plan requirements support anti-degradation policies for "existing high quality waters" such as in State Water Board Res. No. 68-16, and the Lahontan Basin Plan, and may support CCR title 27 section 20090 exemptions from prescriptive waste control requirements for discharges of wastes to land (as have been applied implicitly in the past).

D. Following on certain court decisions, the USFS has been advised by the State Water Board that the IGP is considered to be a suitable NPDES permit for regulating pollutants in storm water discharges associated with industrial forestry operations (i.e., operation of forest-industry roads). Industrial forestry-associated discharges at Lake Tahoe and elsewhere in the Lahontan region are not currently being regulated under NPDES permits, despite the current designation by Standard Industrial Classification, so this would be a significant change to the existing regulatory program. The USFS or private forest product industrialists could seek coverage under the IGP at any time, and would need to meet the above-cited Basin Plan effluent limitations for industrial activity in the Lake Tahoe watershed, and the additional permit requirements elsewhere in the State.

## 2. The Lake Tahoe Total Maximum Daily Load

A. The TMDL regulation has been adopted as a Basin Plan amendment by the Lahontan Water Board, pending final approval anticipated before or within the NPDES IGP five-year term. The draft IGP, finding 54, indicates: "Dischargers located within the watershed of a 303(d) impaired water body, for which a Total Maximum Daily Load (TMDL) had been adopted by the Regional Water Board or US EPA, may be required by a separate Regional Water Board action to implement additional BMPs, conduct additional monitoring activities, and/or comply with an applicable waste load allocation and implementation schedule. Attachment G of this General Permit provides links to the applicable TMDLs." It is unclear what "separate Regional Water Board action . . . to comply with an applicable waste load allocation" could be taken to substitute for that which is required to be developed and established under the NPDES permit process (Clean Water Act Section 303(d)(4)(A) requires NPDES permits to include effluent limitations based on the TMDL and the waste load allocation in the TMDL). It is unclear how or whether the Regional Water Board could establish and enforce a waste load allocation, as stated in the IGP, associated with the Lake Tahoe TMDL as required, for example, for the loading from forest-industry roads (which comprises part of the load from the "Upland Runoff - Forest (undeveloped)" source category identified in the TMDL).

B. At a minimum, a re-opener clause should be included for this TMDL allocation in the IGP in the event the Lake Tahoe TMDL is enacted into law; the reopener clause for "silvicultural activities required to get NPDES permits" at Order XXVI is noted. Please clarify if that latter reopener is the same as for activities under SIC 2411 (Logging), as we understand some "silvicultural activities" (e.g., not associated with roads) may be exempt from NPDES as non-point sources.

C. The following are findings recently adopted by the Lahontan Water Board in an NPDES IGP for Lake Tahoe marinas ([http://www.waterboards.ca.gov/lahontan/board\\_decisions/adopted\\_orders/2011/docs/r6t2011\\_0024.pdf](http://www.waterboards.ca.gov/lahontan/board_decisions/adopted_orders/2011/docs/r6t2011_0024.pdf)). We recommend a similar approach for similar industrial discharges (under different permits).

**Discharges to Impaired Waters.** Lake Tahoe is listed on the CWA section 303(d) list as being water quality limited due to fine particulates, nitrogen and phosphorus. The Lahontan Water Board adopted a Total Maximum Daily Load (TMDL) for Lake Tahoe on November 16, 2010. The TMDL must be approved by the State Water Board, the Office of Administrative Law and USEPA before it is effective. If the TMDL becomes effective, the Marina General Permit may be reopened in the future to incorporate waste load allocations (WLAs) or other applicable requirements as specified in the TMDL implementation plan.

The Tahoe TMDL identifies the largest sources of pollutants contributing to the impairment of deep water transparency as: (1) runoff from upland urban and forest lands; (2) atmospheric deposition (nitrogen); (3) stream channel erosion; and (4) ground water (nitrogen). Storm water runoff from existing Marina facilities is part of the urban upland pollutant load identified in the TMDL and Marina operators are responsible for reducing pollutant loads from storm water discharges. At a minimum, Marina Dischargers must provide and maintain permanent storm water infiltration facilities designed to infiltrate runoff generated by the 20-year, 1-hour storm (which equates to approximately one inch of runoff during a 1-hour period) or the meet alternative requirements described below.

In the event that site conditions do not provide opportunities to infiltrate the runoff volume generated by a 20-year, 1-hour storm, Marina operators must either (1) meet the numeric effluent limits in Table 5.6-1 of the Basin Plan, or (2) document coordination with the local municipality or state highway department to demonstrate that shared storm water treatment facilities treating Marina discharges and public right-of-way storm water are sufficient to meet the municipality's average annual fine sediment and nutrient load reduction requirements.

D. The above Findings support thhe following requirements (see our Order at p. 36): "If Total Maximum Daily Loads (TMDLs) are adopted by the Lahontan Water Board, and are approved by the State Water Board, the Office of Administrative law, and USEPA, the Lahontan Water Board may reopen the Marina General Permit to establish new discharge requirements to

interpret wasteload allocations into effluent limits and/or to assign load allocations and/or to implement prescribed measures or monitoring requirements as specified in the TMDL implementation plan.”

3. Effluent monitoring is to be conducted to verify compliance with the effluent limits pursuant to 40CFR(d)(vi)(C)(3), so a monitoring requirement will need to be developed. Modifications will likely be needed to Orders X.H. and XIV, including monitoring of discharges to land. There is discretion on the part of the permitting agency as to when and where to require monitoring for effluent limits compliance, with annual reporting at a minimum.

4. In a general permitting context, there must be a requirement in the permit for the Discharger to disclose and identify the specific discharge locations (e.g., on a suitable map in the application or management plan) where the limits are applicable, and monitoring can or must be conducted. The requirements as stated may not be specific enough as to these mapping needs. Many NPDES permits include GPS coordinates and specific alpha-numeric identifiers for all outfalls, and a similar degree of specificity should be required for this IGP. Where discharges are to lands or land-based treatment systems (e.g., storm water retention basins) that may overflow to surface waters and municipal separate storm system sewers that are “a tributary thereto” of Lake Tahoe, the specific monitoring locations will need to be provided in a clear manner by the Discharger.

5. Order X.G requires sampling at “all discharge locations” but this may be excessive in some cases, (e.g., for large facilities or all forest roads). A suggestion is to allow the discharger to identify and propose monitoring locations, and any locations recommended to be excluded from monitoring because insignificant in relative size, not representative, mixed with run-on, parking only/no industry, etc. Regional Board Executive Officers have flexibility to require monitoring at all or a subset of the identified outfalls, based on the IGP application, as some outfalls may not be significant contributors of pollutants and therefore less important to monitor, or may be monitored at different times, frequencies, occasions, etc. Dischargers should implement their proposed outfall monitoring program unless other requirements are imposed by the Executive Officer.

6. Attachment A appears to be duplicated verbatim in Order findings numbered 16 -25, thus adding approximately 2+ pages of text to an already lengthy permit. The need for such duplication is questioned, as Attachment A is also discussed at some length in the Fact Sheet. The findings provide no additional information beyond what is in Attachment A. Attachment A, no. 5, indicates the IGP is applicable to: “...sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).” The reference to “five acres or more” appears to be a carryover from Phase I storm water rules, and should be reduced to “one acre or more” based on Phase II storm water rules. This error is reproduced also in Finding 21 of the Order.

7. Using floating, or non-calendar compliance dates as in Orders II.Q.3., and VIII.B.2., for examples, should be very limited. Floating compliance dates are troublesome to code into databases. It would be better to specify a date after the permit is adopted. Requirements like to be a QSP “within one year” may okay if we don’t need to track compliance with same in a database.

8. Order IV.B.6 should be clarified. It says a condition to discharge non-storm water is that: "Dischargers report and describe all non-storm water discharges in their Annual Reports." A general reading would indicate they just have to report what may occur (like the various types of potential discharges), not what actually occurs. Suggested rewording: "Dischargers report and describe in their Annual Reports each non-storm water discharge and when it occurred." Order IX.B visual monitoring requirements do not address this, and should require periodic monitoring not only for unauthorized discharges, but must include requirements to monitor on a daily or other appropriate frequency basis, and report on those non-storm water discharges that are allowed. This appears to be overlooked.

9. Order XII.D. does not require sampling or visual monitoring outside of operating hours. That's acceptable, but Dischargers should understand they can monitor during these times and use the results to comply with requirements. It's something that could be done rather than must be done, and the IGP should allow it to qualify to evaluate compliance if done.

10. The IGP does not appear to reference, cite, or contain the Standard Conditions codified by federal regulation for all NPDES permits; the required Standard Conditions are important in a number of respects and can be obtained in Microsoft Word from the NPDES Permit writer's template, Attachment D. The omission should be corrected and duplicative Standard Provision-like requirements (i.e., concerning record retention, for example) should be eliminated from the Order wherever found. (Contact Phil Isorena, NPDES Program Manager, if needed to get the template.)

#### Tabulated Comments

Additional comments are tabulated below. In general these are typos, and issues of writing, with a few suggestions and questions added.

Page No.	Section	Comments
10	L	Typo: top of p 10, "... will greatly improve the our regulatory. . ." (delete "our").
12	II.S.1	Incomplete sentence at bottom of the page.
13	II.S.4	Shouldn't this say fees will accrue until NOT "approval" rather than "denial"?
14	IV.B.1	Should add "... or Basin Plan prohibition."?
16	VII.B.1.	QSD definition is not consistent with Order 2009-0009-DWQ, specifically for CPESC-qualified individuals. Are no others qualified?
17	VIII.A.1.	The people supporting the QSD/QSP are to be identified; there must also be a requirement for the QSD and QSP personnel to be identified.
17	VIII.B.1	Two periods at the end of the sentence.
28	IX.A	"The monitoring requirements of this section shall be implemented. . ." should be followed with: "pursuant to section 13383 and/or 13267 of the CWC. . ." and continue as is. Important for enforceability in some cases.

Page No.	Section	Comments
28	IX.A.1	Suggest to add to "...when the facility changes dischargers" the following: "... associated with a change in ownership or operation." Would be better clarified in the context of "New dischargers."
36	XII.D.2	Two periods at the end of the sentence.
40	XVII.C.2.	"...shall employ a [missing] to evaluate..." suggest deleting "employ a to"
41	XVII.D	This part reads poorly; use of "the discharger shall" does not seem to work with the listing that follows in this section. For example "[from above] . . . the discharger shall: 1. The applicable NAL(s) will become an NEL(s), Effective October 1 of the following compliance year" [missing period]. Reword, correct typos, too.
41	XVII.D.5,6,7,8	Outline error. Indent 5,6,7,8 to i, ii, iii, iv
42	XVII.E.3,4,5	Outline error. Indent 3,4,5 to a, b, c; note corresponding changes under 5 (or c) from a, b, c, to i, ii, iii
42	XVII.E.6,7,8,9,10	Outline error? Consider d, e, f, g & h.
43	X.VIII.E. 11	Outline error? Consider 3.
43	XVIII	3 <sup>rd</sup> line – "monitoring s", typo; should be "monitoring"
43	XIX	Has redundant text: "The discharger shall retain, for a period of at least five years, either a written or electronic copy of all storm water monitoring information, records, and reports (including the Annual Reports) required by this General Permit shall be retained." (delete latter, "shall be retained")
36, 44, 46, 47	various	Use of wording like "dischargers shall submit" is recommended to be replaced with "dischargers must provide" throughout.
45	XXI.C.a,b,c,d,e	Outline error. Should be C.1, 2, 3 . . .

Thank you for considering these comments. Please contact me at (530) 542-5430 for questions concerning these comments.





Linda S. Adams  
Acting Secretary for  
Environmental Protection

# State Water Resources Control Board

## Executive Office

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Edmund G. Brown Jr.  
Governor

## REVISED NOTICE OF OPPORTUNITY TO COMMENT

### DRAFT STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR THE DISCHARGE OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES (INDUSTRIAL GENERAL PERMIT)

### EXTENDED DEADLINE TO SUBMIT WRITTEN COMMENTS

**NOTICE IS HEREBY GIVEN THAT** the State Water Resources Control Board (State Water Board) will extend the deadline for comments on the draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit).

The Notice distributed on January 28, 2011 required comment letters to be received no later than 12:00 Noon on April 18, 2011. **This notice extends the deadline to 12:00 Noon on April 29, 2011.** State Water Board staff will not accept additional comment letters after this deadline unless the State Water Board determines otherwise. Please send comment letters to Jeanine Townsend, Clerk to the Board, by email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) (15 megabytes, or less, in size); by fax: (916) 341-5620; or by mail, addressed to:

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

Please indicate in the subject line: **Comment Letter – Draft Industrial General Permit**

#### AVAILABILITY OF DOCUMENTS AND PROGRAM INFORMATION

The draft Industrial General Permit and the existing Industrial General Permit are available to view or download on the Storm Water Web site:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml)

For information regarding future public notices or status of the Industrial General Permit, please sign up for the "Storm Water Industrial Permitting Issues" electronic mailing lists at the State Water Board's Lyris List Web site:

[http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)

April 4, 2011  
Date

  
Jeanine Townsend  
Clerk to the Board

*California Environmental Protection Agency*