CASQA
California Stormwater Quality Association®
Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attn: Christine Boschen

Subject: Comments on the TMDL-specific permit language for the Napa River Sediment TMDL and the Sonoma Creek TMDL

Dear Ms. Boschen:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to offer comments on the proposed incorporation of Total Maximum Daily Load (TMDL)-specific requirements into the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities (Order No. 2014-0057-DWQ), hereafter Industrial General Permit or IGP.

The CASQA Industrial Subcommittee includes a broad representation of the entities that are affected by the Industrial General Permit, including municipalities, regulated industries, stormwater professionals, academics, and attorneys. CASQA has been involved with each issuance of California's Industrial General Permit, and has been an advocate for industrial stormwater permits that protect water quality and are practical for industrial operations.

The process of amending the Industrial General Permit to address each of the thirty-five TMDLs listed in Attachment E to the permit is multifaceted and complex. CASQA is providing comments on the following general topics, suggesting overarching principles for incorporating TMDL-based requirements into the IGP, rather than complete, detailed comments on each proposal. These principles are discussed below along with comments on the draft Region 2 TMDLs.

1. Maintain consistency with the IGP pollutant source assessment and BMP selection process.
2. Provide a clear statement of required actions, especially actions that go beyond the requirements of the IGP.
3. Establish that compliance with TMDL-related requirements is compliance with receiving water limitations for the applicable pollutant.
4. Establish how compliance with the TMDL-related requirements will be determined.
5. Provide options for compliance paths that may offer equivalent or more appropriate forms of control, such as:
    a. Onsite volume reductions of stormwater to reduce pollutant loads.
    b. Participation in or watershed/waterbody restoration and evaluation plans.

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For the Napa River and Sonoma Creek sediment TMDLs, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) proposes that dischargers in compliance with the IGP also meet the requirements of the TMDL.

CASQA supports this proposal as it is technically justified and uses the existing requirements in the IGP to appropriately meet the requirements of the TMDL. The proposed Napa River and Sonoma Creek sediment TMDLs satisfy several general principles that should be considered when adopting watershed specific TMDL requirements into the IGP.

1. Maintain consistency with the IGP pollutant source assessment and BMP selection process.

The IGP applies to a wide variety of industrial facilities that have different industrial pollutant sources specific to their operations. The IGP recognizes that not all potential industrial pollutants are present in the industrial operations of all facilities and that not all best management practices (BMPs) will be effective at each facility. The IGP requires dischargers to conduct a pollutant source assessment of the industrial operations and industrial materials and wastes (X.G). Based upon this assessment, BMPs are selected and implemented (X.H) and a monitoring program (X.I) is designed for the industrial pollutants identified.

The proposed Napa River and Sonoma Creek Sediment TMDLs find that the Erosion and Sediment BMPs prescribed in the IGP (X.H.1.e), in combination with facility-specific BMPs selected after the pollutant source assessment, are sufficient and consistent with the assumptions of the TMDL. CASQA supports this approach that appropriately uses the IGP pollutant source assessment and BMP selection process to address pollutant sources that may be unique at each facility.

2. Provide a clear statement of required actions, especially actions that go beyond the requirements of the IGP.

In cases where the Basin Plan Amendment and assumptions in the TMDL staff report require actions beyond those required in the IGP to be consistent with the assumptions underlying TMDL waste load allocations, these additional requirements need to be clearly and explicitly defined in the TMDL-related language and supported in the permit fact sheet. Changes to General Permits, which affect a large number of dischargers, need to provide clear direction to dischargers and establish a common understanding of the compliance expectations for dischargers, regulators, and other stakeholders.

CASQA supports the Napa River and Sonoma Creek Sediment proposals because they clearly specify that no additional actions, beyond those required in the IGP, are necessary to meet the TMDLs. The Regional Water Board may require additional actions, if necessary, on a case-by-case basis, consistent with Part XIX of the IGP.

3. Establish how compliance with TMDL-related requirements and any interim milestones will be determined.

CASQA recommends that each set of TMDL-related requirements incorporated into the IGP have a statement of how compliance with the TMDL-based requirements will be assessed.

CASQA supports the Napa River and Sonoma Creek Sediment proposals because they clearly provide for assessment of compliance via the processes laid out in the IGP, which is

appropriate given findings that existing IGP controls are appropriate to address TMDL requirements.

4. **Establish that compliance with TMDL-related requirements is compliance with receiving water limitations for the applicable pollutant.**

TMDL-based permit requirements are intended to satisfy Clean Water Act requirements for provisions necessary to attain water quality objectives. As is recognized in other California NPDES permits, compliance with the TMDL-based permit requirements satisfies receiving water limits for the relevant constituent.

CASQA recommends that the TMDL-related language state that compliance with these TMDL-related requirements constitutes compliance with Receiving Water Limitations of IGP Section VI.A, as well as Effluent Limitation Section V.C with respect to the particular constituent involved.

5. **Provide alternative compliance paths for pollutants that may not reasonably be controlled via source controls or treatment systems.**

Many stormwater pollutants are not easy to control through traditional stormwater source control or treatment control practices. Stormwater programs implemented by industrial facilities can go a long way in reducing pollutant concentrations in stormwater but may not completely eliminate the pollutant or reduce the concentration to NAL concentrations.

CASQA is concerned with the achievability of some of the TMDL-based NALs, where neither treatment control nor source control BMPs appear to be available, feasible, or capable of achieving NAL low concentrations. There is a larger issue of the appropriateness of these levels as NALs measured against widely varying and periodic stormwater discharges. Ideally, achieving these levels in-stream should be harmonized with the pollutant load reduction measures in watershed planning at the municipal level.

CASQA recommends the Regional Water Board to think broadly about how industrial facilities can achieve compliance consistent with assumptions underlying TMDL waste load allocations. One compliance path would be to allow facilities credit for volume reduction BMPs when comparing sample results to NALs or other performance measures.

Significant load reductions can be achieved by facilities that have the ability collect and infiltrate, and/or use, stormwater on-site or facilities that can discharge a large portion of runoff volumes from most events to a sanitary sewer system. For facilities that can reduce the load of pollutants, concentration TMDL-based NALs may not be appropriate.

CASQA recommends that compliance options should include the ability for industrial facilities to coordinate with municipal permittees watershed planning efforts including watershed/ waterbody restoration plans and/or regional BMPs that are designed to achieve load reductions at the watershed level.

The details of such a plan are difficult to develop in this format, CASQA encourages the Regional Water Board to include language that allows for this option and leave the details of such a plan to be developed and submitted for approval. To this end we suggest the following language:

> *The Regional Water Board may approve proposals to substitute an acceptable watershed-based TMDL compliance program if it determines that participation in watershed-based program will provide customized strategies, control measures, and BMPs that would be implemented in coordination with municipalities and/or other TMDL responsible parties to achieve the required load reductions at a watershed scale. Dischargers participating in a watershed-based TMDL compliance program shall continue to implement the site specific BMPs and monitoring program in compliance with the requirements of this General Permit.*
>
> *The Regional Water Board may approve proposals to substitute, or provide an appropriate offsetting credit for, an acceptable site-specific load reduction program that provides load reductions through reduction of stormwater and non-stormwater runoff volume through collection and infiltration, use, or diversion to sanitary sewers.*

In particular, in the Napa River Watershed, locally led efforts to reduce sediment discharges and conduct in-channel effectiveness evaluations are underway. CASQA supports coordinated efforts by all parties that will accelerate the sediment waste load reductions required in the TMDL and achieve the ultimate goal of improving water quality. CASQA suggests that language be included in this TMDL-related proposal encouraging industrial dischargers to coordinate with the MS4s and other Responsible Parties to meet the TMDL requirements using an adaptive implementation approach.

In closing, CASQA would like to thank the Regional Water Board for the opportunity to comment on the proposed TMDL-specific Industrial General Permit Requirements that are under consideration. Feel free to contact our Executive Director Geoff Brosseau with any questions at (650) 365-8620.

Sincerely,

Jill Bicknell, Chair
California Stormwater Quality Association

cc: Laurel Warddrip, State Water Board
CASQA Board of Directors and Executive Program Committee

CALIFORNIA COASTKEEPER ALLIANCE

March 31, 2016

Ms. Christine Boschen
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Sent via electronic mail to: Christine.boschen@waterboards.ca.gov

RE: Comments on the TMDL-specific permit language for the Napa River Sediment TMDL and the Sonoma Creek TMDL

Dear Ms. Boschen:

In order to legally incorporate TMDL waste load allocations (WLAs) into the Industrial General Permit (IGP or Permit), any BMP-based water quality based effluent limitations (WQBELs) must be sufficient to meet WLAs as demonstrated by discharger monitoring.

California Coastkeeper Alliance (CCKA) is a network of twelve Waterkeeper organizations working to protect and enhance clean and abundant waters throughout the state, for the benefit of Californians and California ecosystems. We appreciate the opportunity to provide comments to the Regional Water Board on the proposed WLAs from various TMDLs for incorporation into the IGP. This letter is intended to outline our major concerns with regional boards' proposed IGP TMDL incorporation. We reserve the right to submit additional comments when the State Board takes up the matter.

The Clean Water Act's TMDL program represents the Act's "safety net."[1] It is the bedrock component of the Clean Water Act, the backstop to ensure that the goals of the Act can be achieved when initial efforts fail. CCKA supports the importation of the numeric WLAs from the TMDL directly into the Permit. However the proposed incorporation of WLAs as Numeric Action Levels (NALs) or TMDL Action Levels (TALs) rather than WQBELs is inconsistent with the requirements of the Clean Water Act, and creates an illegal compliance schedule. Further, because the WLA is incorporated into an adaptive management process rather than as an effluent limitation, the submission fails to meet the data and analysis requirements set out in the Permit.

While the current proposals to develop a trigger for an adaptive management process leading to additional BMPs might ultimately play some useful role in implementing the TMDLs, it cannot be the exclusive approach taken, as is now the case. NALs and TALs are not lawful substitutes for WQBELs. For these reasons, CCKA requests that staff revisit the proposed WLA incorporation, and apply the straightforward process contemplated by the TMDL and the Clean Water Act to submit numeric effluent limitations consistent with the concentration based WLA in the applicable TMDL.

I. TMDLS SHOULD BE INCORPORATED INTO THE PERMIT AS EFFLUENT LIMITATIONS—NUMERIC ACTION LIMITS OR TMDL ACTION LIMITS ARE NOT APPROPRIATE ON THEIR OWN.

The use of NALs or TALs as the exclusive method of WLA incorporation is unlawful. Permitting agencies must ensure that NDPES permits authorizing storm water discharges associated with industrial activities include both 1) technology based protections *and* 2) water quality based effluent protections in the form of WQBELs. As the

[1] Houck, Oliver A., The Clean Water Act TMDL Program 49 (Envtl. Law Inst. 1999).

State Board has recognized, the inclusion of WQBELs consistent with WLAs is non-discretionary.[2]

Regional Boards' current proposals relying on NALs or TALs represent neither a technology based nor a water quality based effluent limitation. TALs have the same permitting status as NALs.[3] The State Water Board has held that NALs are neither technology based nor water quality based effluent limitations.[4] Moreover, a NAL or TAL is used as a trigger for an adaptive management and monitoring program leading to development of BMPs, and only after a minimum of 10 months past incorporation must a discharger demonstrate that the facility's Stormwater Pollution Prevention Plan (SWPPP) is revised to include BMPs to prevent an exceedance of the TAL.

NALs or TALs create an illegal compliance schedule for metals and toxics, and may create schedules conflicting with existing Basin Plans for other pollutants, necessitating Basin Plan Amendments at a minimum. Since the WLAs are incorporated as triggers for an adaptive management process eventually requiring compliance with the numeric limits indirectly, rather than as a simple effluent limitation, the proposed incorporation creates impermissible compliance schedules, and also fails to meet the data and analysis requirements set out in the General Permit.

While the use of NALs or TALs might be an appropriate adaptive management measure, they can never be the sole, or even primary, approach to incorporating WLAs for TMDL constituents into the Permit—WQBELs must be an element of the WLAs. We urge the Regional and State Water Boards to incorporate the proposed WLAs, currently expressed as NALs or TALs, into the Permit as WQBELs—as the Clean Water Act requires. This direct approach should be coupled with the requirement that permittees implement BMPs necessary to achieve the numeric effluent limitations.

II. IF BMP-BASED EFFLUENT LIMITATIONS ARE INCORPORATED INTO THE PERMIT, THE STATE WATER BOARD MUST REQUIRE THE DISCHARGER TO IMPLEMENT BMPS SUFFICIENT TO ACHIEVE THE WASTE LOAD ALLOCATION THROUGH DEMONSTRATED MONITORING.

The Clean Water Act requires the permitting agency to adopt monitoring requirements in NPDES permits that will produce the information necessary to make efficient compliance determinations.[5] As the Permit dictates, the Regional Water Boards will submit to the State Water Board the following information for each of the TMDLs listed in Attachment E:

- Proposed TMDL-specific permit requirements, including any applicable effluent limitations, implementation timelines, additional monitoring requirements, reporting requirements, an explanation of how an exceedance of an effluent limitation or a violation of the TMDL will be determined, and required deliverables consistent with the TMDL(s);
- An explanation of how the proposed TMDL-specific permit requirements, timelines, and deliverables are consistent with the assumptions and requirements of applicable waste load allocation(s) to implement the TMDL(s);
- Where a BMP-based approach is proposed, an explanation of how the proposed BMPs will be sufficient to implement applicable waste load allocations; and
- Where concentration-based monitoring is required, an explanation of how the required monitoring, reporting and calculation methodology for an exceedance of an effluent limitation or a violation of the TMDL(s) will be sufficient to demonstrate compliance with the TMDL(s).[6]

[2] General Permit Fact Sheet, pp. 23-26.
[3] Regional Board Notice, footnote 10, p.8.
[4] CAS000001 at 11.
[5] *Sierra Club*, 813 F.2d at 1491-92; *County of Los Angeles*, 725 F.3d at 1208-1209 (discussing the necessity and purpose of self-monitoring in context of general NPDES permits).
[6] Fact Sheet at p. 25.

Clean Water Act implementing regulations set forth the monitoring requirements that must be in NPDES permits.[7] Among these requirements is the express mandate that NPDES permits include provisions "to assure compliance with permit limitations" through the monitoring of the amount of pollutants discharged, the volume of effluent discharged from each outfall, and "other measurements as appropriate."[8] Thus, the State Water Board must adopt NPDES permits that include requirements to collect the data and information necessary to effectively determine compliance with the terms of the permit—including compliance with a WLA based effluent limitation.[9]

If Regional Boards are to incorporate BMP based WQBELs to represent TMDL WLAs, then the Region and State boards should require the discharger to implement BMPs sufficient to meet WLAs as demonstrated by monitoring.

***

The TMDL program is the essential means to achieving the Clean Water Act's goal of restoring waters so that they are safe for swimming, fishing, drinking, and other "beneficial uses" that citizens enjoy, or used to be able to enjoy. We look forward to working with you to ensure clean, abundant water for California.

Sincerely,

Sean Bothwell
Policy Director
California Coastkeeper Alliance

[7] *See* 40 C.F.R. §§ 122.44(i), 122.48.
[8] 40 C.F.R. § 122.44(a)(1)(i)-(iii).
[9] *See County of Los Angeles*, 725 F.3d at 1207.

22 March 2016

San Francisco Bay Regional Water Quality Control Board
c/o Christine Boschen
1515 Clay Street
Oakland, CA 94612

Subject: **Submission of Public Comment on Draft TMDL-Specific Permit Requirements for the State Water Resources Control Board's Industrial General Permit – NAPA River Sediment TMDL and SONOMA Creek Sediment TMDL**

Dear Ms. Boschen:

Environmental Pollution Solutions, LLC (EPS) is pleased to provide written comments regarding the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board) Draft TMDL-Specific Permit Requirements for the State Water Resources Control Board's (State Water Board) Industrial General Permit – Napa River Sediment TMDL and Sonoma Creek Sediment TMDL.

Resolutions R2-2008-0103 and R2-2009-0064 address urban contributions to sediment loads in the Sonoma Creek and Napa River, respectively. Both resolutions find that urban contributions to sediment loads, including those from industrial storm water dischargers are not a major source to sediment loads.

The Regional Water Board concluded that the existing and enforceable Minimum Best Management Practices in the State Industrial General Permit (2014-0057-DWQ) are sufficient and adequate.

EPS agrees and commends Regional Water Board staff with making a practical and prudent proposal to the State Water Board.

However, of continuing concern are inconsistencies within the language in specific Regional Water Board Basin Plans. Case in point is Table 3 in TMDL Implementation Discussion for the Sonoma Creek Sediment and Table 9b in the TMDL Implementation Discussion for the Napa River Sediment. Both tables are excerpted from the previously mentioned Regional Water Board resolutions. For example, units for current loads in Table 9b are in metric tons/year, while in Table 3 they are in tons/per year. Table 9b contains NPDES permits for Wastewater Treatment Plant Discharges in the Napa River watershed, while Table 3 does not include those located in the Sonoma Creek watershed. Urban storm water is defined in Table 3, but not in Table 9b. These seemingly small anomalies between documents authored by the same Regional Water Board make it unnecessarily difficult to understand, a situation which is further amplified by inconsistent language in Basin Plans and other documents authored by the other eight autonomous Regional Water Boards.

(707 322-2015 fax (707) 387-0505 **www.epsh2o.com** 2513 Deep Harbor Lane, Santa Rosa, CA 95407

It would be helpful to the end users of your work product for you to use similar language, nomenclature, definitions, units and table formatting in all documents prepared by the State Water Board and its nine Regional Water Boards to the extent possible.

The opportunity to provide these comments is greatly appreciated. Please contact me (707-322-2015 or aedeicke@epsh2o.com)

Sincerely,

Arthur Deicke
Owner
Environmental Pollution Solutions, LLC
Santa Rosa, California

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Napa County Flood Control and Water Conservation District

PHILLIP M. MILLER, P.E.
DISTRICT ENGINEER

NCSPPP Participants

A Tradition of Stewardship
A Commitment to Service

March 31, 2016

Ms. Christine Boschen
San Francisco Bay Regional Water Quality Board
1414 Clay Street, Suite 1400
Oakland, CA 94612
Submitted via email to Christine.boschen@waterboards.ca.gov

Subject: **Comments on the draft TMDL-specific permit requirements for the Napa River Sediment TMDL for the Industrial General Permit.**

Dear Ms. Boschen:

On behalf of the Napa Countywide Stormwater Pollution Prevention Program (NCSPPP), thank you for the opportunity to provide comments on proposed incorporation of Napa River Sediment Total Maximum Daily Load (TMDL)-specific requirements, into the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities (Order No. 2014-0057-DWQ), hereafter Industrial General Permit or IGP.

The NCSPPP is a joint effort of the County of Napa, the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville, facilitated by the Napa County Flood Control and Water Conservation District. Our program goals are to prevent stormwater pollution, protect and enhance water quality in the Napa River, local creeks and wetlands, preserve beneficial uses of local waterways, and comply with State and Federal regulations.

NCSPPP municipalities are named in the Napa River Sediment TMDL and have been working diligently to implement its requirements and reduce sediment loads associated with municipal activities.

The Napa River Sediment TMDL Basin Plan Amendment (BPA) describes a monitoring program to assess progress toward achievement of numeric targets and load allocations for sediment. The BPA identifies monitoring and evaluation that will be conducted by the Regional Water Board (upslope effectiveness monitoring) and those that will be conducted by "local government agencies with scientific expertise" (in-channel effectiveness monitoring).

The Napa County Resource Conservation District (RCD) came forward in the winter of 2012-2013 to lead the in-channel effectiveness monitoring, conducting a pilot study funded by a USEPA 319(h) grant and a San Francisco Bay Water Quality Enhancement Fund grant. Future funding of the monitoring program by grants is uncertain and alternate funding sources are needed to create a sustainable monitoring program.

Prompted by interest and with funding from NCSPPP municipalities the RCD has proposed a continuation of this Napa River Sediment TMDL Monitoring Program. This program was designed to address the adaptive implementation questions identified in the BPA. The 3-year monitoring effort will cost approximately $158,000 per year.

TOTAL ANNUAL MONITORING BUDGET

Monitoring Parameter	Year 1	Year 2	Year 3*
Rotary Screw Trap	55,000	55,000	55,000
Adult Salmonid Survey	12,500	12,500	12,500
Gravel Permeability	45,000	45,000	40,000
Streambed Scour	45,000	45,000	40,000
TOTAL	**$157,500**	**$157,500**	**$147,500**

* Costs in year 3 and beyond for streambed scour and gravel permeability may decrease slightly over time once the sites are established. Costs for adult salmonid surveys may increase if additional monitoring sites are needed.

As stewards of water quality in the Napa watershed and as named sources in the TMDL, NCSPPP municipalities have agreed to fund the Napa River Sediment TMDL Monitoring Program consistent with their portion of the waste load allocation, which equals 32%. NCSPPP permittees have committed to contributing $55,000 per year, which is approximately 35% of the monitoring program costs.

If the Regional Board believes this monitoring is needed, NCSPPP requests that the Regional Board take this opportunity to help identify the funding to make it happen. The Regional Board could also include language in the IGP that requires industrial permittees to coordinate with other TMDL responsible parties and contribute their proportional share (approximately 20% collectively) to the total cost of the Napa River Sediment TMDL Monitoring Program. We believe the Napa River Sediment TMDL Monitoring Program would be useful to verify ongoing progress towards achieving sediment load reductions and improving habitat quality of the Napa River.

NCSPPP permittees disagree with the assertion in the TMDL Staff Report that "***industrial discharges are minor contributors of sediment to the Napa River.***" The waste load allocation for industrial dischargers is 500 metric tons per year. By comparison, this amount is equivalent to the allocation assigned to construction projects greater than 1 acre (500 metric tons per year) and is 63% of the waste load allocation assigned to municipalities (800 metric tons per year).

Currently only Napa's municipalities have voluntarily agreed to contribute to the Napa River Sediment TMDL Monitoring Program. This is notable given the limitations the municipalities have to generate revenue to fund water quality programs. Absent the participation of other responsible parties, it is difficult to see how a monitoring program as defined above could occur. Given the leadership by the RCD, participation in the monitoring program would be a simple process for the IGP dischargers, similar to contributing to regional monitoring programs that exist in other parts of the Bay Area.

To this end we request the inclusion of the following language in the TMDL along with a requirement for the IGP permittees collectively to contribute their proportional share to the Napa River Sediment TMDL Monitoring Program as the municipalities have committed to doing.

Watershed Coordination

MS4s in the Napa River basin are implementing a program to reduce sediment discharges in the Napa River Basin and contributing to a monitoring program to assess the receiving water quality and habitat improvements. Coordinated efforts by Responsible Parties will accelerate the achievement of sediment waste load reductions required in the TMDL and help reach the ultimate goal of improving water quality as soon as possible. Industrial dischargers are required participate in the Napa River Sediment TMDL Monitoring Program and coordinate with the MS4s and other Responsible Parties to meet the Sediment TMDL WLA requirements using an adaptive implementation approach. Industrial dischargers shall contact the Storm Water Program Manager for the Napa Countywide Stormwater Pollution Prevention Program to collaborate.

We appreciate your consideration of our comments on the draft TMDL-specific Industrial General Permit Requirements that are under consideration. If you have any questions or require additional information please contact me or Jamison Crosby at (707) 259-8600.

Sincerely,

Phillip M. Miller, PE
District Engineer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 30 2016

Christine Boschen
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Proposed TMDL Requirements for General Permit No. CAS000001

Dear Ms. Boschen:

The following are EPA Region 9's comments on the San Francisco Bay Regional Board's proposals for incorporating the requirements of the following TMDLs into the State Water Board's industrial general permit (IGP) for stormwater discharges associated with industrial activity (NPDES permit No. CAS000001).

- Napa River Sediment TMDL
- Sonoma Creek Sediment TMDL

The Regional Board's proposals were released for the public review on February 29, 2016.

For both of the above TMDLs, the sole requirement is for industrial dischargers to comply with the requirements of the current IGP, although the Regional Board may require additional actions on a case-by-case basis. We believe this is reasonable for these TMDLs since neither TMDL requires an actual reduction in existing sediment discharges from industrial facilities; the wasteload allocations for industrial discharges are set at 100% of existing loads.

We further note that the above TMDLs were adopted in the 2008-2009 timeframe when the previous 1997 IGP was still in effect. The various upgrades in the requirements of the 2014 IGP should ensure that current controls are at least as effective as the controls already considered adequate when the TMDLs were adopted. This should also ensure consistency with NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) which require effluent limits consistent with assumptions and requirements of applicable TMDLs. As such, we support the Regional Board's proposals for incorporation of the sediment TMDLs into the IGP.

We appreciate the opportunity to provide our views on the proposals. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Section at (415) 972-3510.

Sincerely,

David Smith, Manager
NPDES Permits Office (WTR-2-3)

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STATE OF CALIFORNIA AUTO DISMANTLERS ASSOCIATION

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March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
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San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: Comments on Draft TMDL IGP Requirements

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

On behalf of the State of California Auto Dismantlers Association (SCADA), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

SCADA represents approximately 150 small and medium sized businesses throughout California. SCADA was formed in 1959 to serve its members in the area of government relations, education, and business. SCADA members are licensed by the state Department of Motor Vehicles and take responsibility for recycling and disposing of End-of-Life Vehicles using environmentally responsible practices.

With many of the requirements proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

- Sonoma Creek

- Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

- Los Angeles River
- Long Beach City Beaches & Los Angeles River Estuary
- San Gabriel River
- Los Cerritos Channel
- Santa Clara River
- Calleguas Creek & Watershed
- Oxnard Drain #3
- Ventura River/Ventura Coastal
- Colorado Lagoon
- Santa Monica Bay
- Marina Del Rey
- Ballona Creek, Estuary & Sepulveda Channel
- Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel
- Los Angeles Area Lakes

Region 8 – Santa Ana Regional Water Quality Control Board

- San Diego Creek
- Newport Bay
- San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

- Chollas Creek
- Los Penasquitos Lagoon
- Rainbow Creek
- Shelter Island Yacht Basin
- Baby Beach in Dana Point Harbor and Shelter Island Shoreline
- Twenty Beaches and Creeks in SD Region

SCADA appreciates your consideration of the following overarching comments and recommendations.

Baseline Status for New Constituents

With a number of the TMDL monitoring requirements to be incorporated into the IGP being new, permittees will not have existing data to rely upon for assessing potential for exceedances or if additional BMPs might be warranted to prevent the exceedances. Because some of the constituents are new, IGP permittees may not have historically measured concentrations of these constituents in discharges from their facilities. As such, they are not likely going to have data to base determinations about control measures on nor will they be clear about what measures would be necessary to manage these constituents.

In this regard, SCADA recommends that all dischargers be placed at baseline for any new constituent where monitoring data is not available. Responsible dischargers, like those that are SCADA members, should have the opportunity to begin at baseline status.

Compliance Options

Consistent with its previous comments to the State Water Resources Control Board (SWRCB), SCADA strongly recommends the IGP be amended with the incorporation of the TMDL provisions to allow various options for dischargers to demonstrate compliance with overall IGP and specific TMDL requirements. Some of the regional board provisions allow for multiple options to achieve compliance if receiving water bodies are in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements based on flexibility to meet those requirements.

Background Pollutant Source Demonstrations

SCADA has long been concerned that there is not a broader review of the various background sources that contribute to background pollutant sources that are often inappropriately attributed to individual dischargers. In this regard, SCADA urges the state and regional boards to consider supporting a regional approach to addressing issues related to non-industrial pollutant sources and background pollutant source demonstrations whereby regional permittees could collaborate to conduct an assessment of the various background sources in a particular region that may be inappropriately attributed to IGP permittees. This would be of great assistance to permittees who find themselves in Level 2 with the need to bear the burden and cost of demonstrating that an exceedance(s) of a Numeric Action Level (NAL) is related to the presence of non-industrial pollutant sources or the source is tied to natural background not disturbed by industrial activities.

SCADA would also urge consideration of the possibility that establishing numeric limits does not account for pollutant loading differences among permittees. One discharger might be responsible for significant pollutant loading into the waterway annually, while another may load a de minimis amount. Under the proposed TMDL scenarios, however, they are treated equally because the limits are concentration-based rather than a mass-based limit. This assessment does nothing to account for risk and the differences among permittees who are attempting to be in compliance versus those that choose to ignore regulatory requirements in their totality.

On behalf of SCADA, I appreciate the opportunity to provide these comments. If you have questions regarding the points raised in this letter, please contact Gavin McHugh with McHugh, Koepke & Associates at (916) 930-1993. Thank you.

Sincerely,

Greg Pirnik

Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Kevin Buchan
Manager, Bay Area Region

VIA ELECTRONIC MAIL

March 31, 2016

San Francisco Bay Regional Water Quality Control Board
Attention: Christine Boschen
1515 Clay Street, Suite 1400
Oakland, CA 94612.
Via email: Christine.boschen@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Attention: Pavlova Vitale
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Via email: losangeles@waterboards.ca.gov

Santa Ana Regional Water Quality Control Board
Attention: Barbara Barry
3737 Main Street, Suite 500
Riverside, CA 92501
Via email: barbara.barry@waterboards.ca.gov

San Diego Regional Water Quality Control Board
Attention: Erica Ryan
2375 Northside Drive, Suite 100
San Diego, CA 92108
Via email: sandiego@waterboards.ca.gov

Subject: WSPA Comments on Draft TMDL-Specific Industrial General Stormwater Permit Requirements

Dear Ms. Boschen, Ms. Vitale, Ms. Barry, and Ms. Ryan:

On behalf of the Western States Petroleum Association (WSPA), I am pleased to provide comments in response to the recent notices regarding the incorporation of Total Maximum Daily Load (TMDL)-specific permit requirements for the State Water Resources Control Board's Industrial General Storm Water Permit (IGP).

WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California, Arizona, Nevada, Oregon, and Washington.

Given many of the requirements are proposed to be applied to implement TMDL provisions in other watersheds, we respectfully request that the comments outlined in this letter be considered for all TMDL implementation proposals noticed and the overarching reopener of the IGP later this year, including:

Region 2 – San Francisco Regional Water Quality Control Board

-Sonoma Creek

-Napa River

Region 4 – Los Angeles Regional Water Quality Control Board

-Los Angeles River

-Long Beach City Beaches & Los Angeles River Estuary

-San Gabriel River

-Los Cerritos Channel

-Santa Clara River

-Calleguas Creek & Watershed

-Oxnard Drain #3

-Ventura River/Ventura Coastal

-Colorado Lagoon

-Santa Monica Bay

-Marina Del Rey

-Ballona Creek, Estuary & Sepulveda Channel

-Los Angeles & Long Beach Harbors, Machado Lake, Dominguez Channel

-Los Angeles Area Lakes

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Region 8 – Santa Ana Regional Water Quality Control Board

-San Diego Creek

-Newport Bay

-San Gabriel River and Impaired Tributaries

Region 9 – San Diego Regional Water Quality Control Board

-Chollas Creek

-Los Penasquitos Lagoon

-Rainbow Creek

-Shelter Island Yacht Basin

-Baby Beach in Dana Point Harbor and Shelter Island Shoreline

-Twenty Beaches and Creeks in SD Region

The following key points are put forth as overarching comments and recommendations with specific examples of TMDL sector-specific permit requirements that speak to the core issues raised.

Dischargers should be assigned Baseline Status for new constituents.
The Los Angeles Regional Water Quality Control Board (Los Angeles Regional Board) proposes to incorporate each TMDL waste load allocation (WLA) as a numeric "TMDL Action Level (TAL)," which would be treated in the same manner as a Numeric Action Level (NAL) in the IGP.

The Los Angeles Regional Board also proposes that Responsible Dischargers would be assigned Level 1 compliance status four months after the TMDL-specific requirements are incorporated into the IGP. However, as indicated in the IGP at p. 49, "At the beginning of a Discharger's NOI Coverage, all Dischargers have baseline status for all parameters." A Discharger's Baseline status for any given parameter "shall change Level 1 status if sampling results indicate an NAL exceedance."

Because these TMDL-derived monitoring requirements will be new to IGP Responsible Dischargers, the Responsible Dischargers would have no data upon which to determine if discharges from their facility are likely to exceed TALs, or if additional BMPs (and which BMPs) might be required to prevent TAL exceedances.

For example, dischargers within the Los Angeles River watershed will be subject to requirements for metals (cadmium, copper, lead, zinc, selenium), nitrogen compounds (ammonia; applicable to specific SIC codes), and indicator bacteria. IGP permittees have

typically not measured concentrations of these constituents in discharges from their facilities, and thus have no basis for assessing whether control measures would be needed for these constituents. In addition, the choice of control measures may vary depending upon which constituents require control, and the potential source(s) of those constituents at each facility.

Placing Responsible Dischargers in Level 1 status immediately imposes requirements to complete an Exceedance Response Action (ERA) Evaluation, which would be inappropriate, and which imposes a potentially unnecessary burden, if an exceedance has not occurred. For this reason, WSPA requests that all dischargers be assigned Baseline Status for any new constituent for which monitoring data do not exist.

Metals TMDLs for the Los Angeles River should be implemented in the IGP in consideration of the WER for copper and the recalculated criteria for lead.
On April 9, 2015, the Los Angeles Regional Board adopted site-specific objectives (SSOs) for copper and lead (Order No. R15-004). The SSO for copper was based upon an extensive water effect ratio (WER) study, for which extensive sample collection and toxicity testing was conducted. The WER study found that copper was less toxic in ambient water in the Los Angeles River and its tributaries than in the laboratory water used to establish the default water quality criteria of the California Toxics Rule (CTR).

The WER study also found that dry weather was the critical condition (i.e., that wet weather conditions had lower potential to cause toxicity than dry weather conditions). The SSO for lead was based upon a study that incorporated updated toxicity data for lead, and that considered the species present in the Los Angeles River watershed.

Both SSOs indicated that the default water quality criteria of the CTR, which had been used to develop the original Metals TMDLs for the Los Angeles River, were conservative, and that higher copper and lead concentrations could be present in waters and provide an equivalent level of protection of aquatic species.

Although it appears that the SSOs for lead and copper have not yet been approved by the State Water Resources Control Board, the Office of Administrative Law, or USEPA, the proposed IGP amendments do not reference these SSOs. In fact, the proposed IGP amendments state that, "…WER(s) have a default value of 1.0 unless site-specific WER(s) are approved. No site-specific values have been approved for industrial storm water discharges" (proposed amendments for Los Angeles River and Tributaries Metals TMDL at p. 7).

This language leaves the impression that WER(s) must be approved for individual discharges or types of discharges. However, the Los Angeles Regional Board's adopting resolution for these SSOs indicated that the SSO study "was to determine WERs for copper that would apply to all sources in Reaches 1, 2, 3, and 4 of the LA River, as well as select tributaries: Compton Creek, Rio Hondo, Arroyo Seco, Verdugo Wash, Burbank Western Channel and Tujunga Wash" (Resolution No. R15-004 at p. 2; emphasis added). Because

the SSOs developed by the WER and recalculation studies apply to receiving waters for both wet and dry weather conditions, the IGP TMDL requirements should be written to acknowledge these studies and to facilitate the incorporation of the applicable SSOs for copper and lead into the TALs proposed for the IGP, at such time as the SSOs become fully approved.

Requirements from metals TMDLs should implement TALs using the dissolved fraction of the metal, and should provide several ways of demonstrating compliance. Because the dissolved phase of a metal is the bioavailable fraction, and because water quality criteria for metals (e.g., CTR criteria) are expressed as dissolved metals, the proposals should be modified to implement the TALs for metals in the form of dissolved metals.

The Los Angeles Regional Board has previously taken this approach in the Ballona Creek Metals TMDL, which provides as follows: "Alternatively, permittees may be deemed in compliance with WQBELs if they demonstrate compliance with dissolved numeric targets in dry and wet-weather in the applicable receiving water." (Attachment A to Resolution R13-010 at pp. 10-11) Thus, WSPA requests that the IGP revisions allow metals concentrations to be measured in the dissolved form.

The SWRCB should consider a regional approach to addressing issues related to non-industrial pollutant source demonstrations and natural background pollutant source demonstrations.
Currently, the IGP allows Level 2 dischargers (i.e., those dischargers that have entered Level 2 status due to the exceedance of NALs) to make findings that "the exceedance of the NAL is attributable solely to the presence of non-industrial pollutant sources" or that "the NAL exceedance is attributable solely to the presence of the pollutant in the natural background that has not been disturbed by industrial activities."

However, the Los Angeles Regional Board has found that "industrial sources are generally not expected to be significant sources of bacteria," (see proposed amendments for Long Beach City Beaches and Los Angeles River Estuary TMDL for Indicator Bacteria at p. 5); it is also well established that wildlife, including birds, are significant sources of bacteria.
Similarly, atmospheric deposition is a documented source of metals to storm water.

Thus, if exceedances of these constituents occur, it cannot be assumed that the source is the industrial facility—but the burden of conducting studies to establish a non-industrial or background pollutant source demonstration may be significant. For this reason, we encourage the Los Angeles Regional Board and the State Water Board to consider allowing IGP Responsible Dischargers to team with each other, or with other permittees within the Region (e.g., MS4 permittees), to conduct these studies and make these demonstrations if they are needed.

The IGP should be amended to provide several ways of demonstrating compliance with TMDL requirements.

Recent permit requirements adopted by the Los Angeles Regional Board recognize that water quality based effluent limitations (WQBELs) derived from TMDLs for metals can be met in one of three ways: (i) Final metals WQBELs are met; or (ii) CTR total metals criteria are met instream; or (iii) CTR total metals criteria are met in the discharge (see, e.g., p. N-8 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175, describing the incorporation of the metals requirements of the Harbor Toxics TMDL into MS4 permit).

If the receiving water body is in attainment of TMDL requirements and water quality objectives, IGP permittees should also be considered to be in compliance with TMDL requirements. For this reason, WSPA requests that similar language be incorporated into the TMDL requirements added to the IGP, such that IGP Responsible Dischargers will be determined to be in compliance with TMDL requirements, for all constituents, if the receiving water is in compliance with TMDL requirements.

TALs for indicator bacteria should be applied only to discharges that drain directly to the receiving waters covered by the TMDL; water quality criteria for marine waters should not be applied to discharges to freshwater bodies.

The proposed amendments indicate that the IGP amendments for bacteria would apply to "Responsible dischargers…that are within the direct drainages to the Long Beach City Beaches, as does the Los Angeles River Estuary direct drainage, as well as those dischargers within adjacent and upstream drainages, since discharges from those adjacent and upstream drainages are ultimately conveyed to the Long Beach City Beaches and the Los Angeles River Estuary."

The proposed amendments further indicate that "the San Gabriel River, Los Angeles River, and Alamitos Bay watersheds (collectively termed "adjacent drainages") discharge not directly to, but in close proximity to" the water bodies to which the TMDLs apply.

Thus, it appears that the Los Angeles Regional Board is proposing that monitoring requirements and TALs for total coliform, fecal coliform, and enterococcus would apply to all IGP Responsible Dischargers within the watersheds of the Los Angeles River, San Gabriel River, and Alamitos Bay. However, most dischargers within these watersheds discharge to freshwater receiving water bodies (e.g., the Los Angeles and San Gabriel River), in many cases dozens of miles upstream from the TMDL water bodies, where freshwater water quality objectives for bacteria are expressed in the form of *E. coli*.

To our knowledge, such an approach has not been previously applied. For example, the Los Angeles MS4 permit applies the requirements of the same Long Beach City Beaches and Los Angeles River Estuary Bacteria TMDLs to only those MS4 permittees who discharge directly to those water bodies; the 2012 MS4 permit does not apply marine bacteria objectives to MS4 permittees whose discharges flow to freshwater water bodies (see Table K-5 at p. K-5 of the 2012 Los Angeles MS4 permit, Order No. R4-2012-0175).

It is inappropriate to require the analysis of total coliform, fecal coliform, and enterococcus for freshwater discharges, and inappropriate to apply TALs for marine water quality requirements upstream of discharges to marine water bodies. WSPA requests that the proposal be modified to clarify that TALs for marine water quality objectives only apply to direct discharges to the TMDL-specified water bodies.

We thank you for the opportunity to provide these comments. If you have any questions, please contact me at my office information below. Thank you.

Sincerely,

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