

Comments on the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity

Presented by California Coastkeeper Alliance , Los
Angeles Waterkeeper and San Francisco Baykeeper
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Key Interests Regarding the Draft Industrial Permit

Generally, objective permit terms that provide clarity to dischargers and the public

1. Avoid self-regulation by dischargers
2. Sampling and monitoring to ensure collection of data to assess compliance and inform development of future permits
3. Improvement to pollution control measures and protection of water quality



1. Avoid Self-Regulation by Dischargers

Self-Regulation by Dischargers

- Permit terms must be written and adopted by permitting agency
- Allowing dischargers to self-regulate violates key provisions of the Clean Water Act and has repeatedly been struck down by the courts.
 - *Environmental Defense Center v. EPA*, 344 F.3d, 832, 854-56 (9th Cir. 2003)
 - *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 498-504 (2d Cir. 2005)

How does the Permit allow self-regulation?

- State Water Board claims no self-regulation by “requiring dischargers to implement minimum BMPs and meet NALs”. Fact Sheet Section I.D.1.
- But does not require either
 - Section X.H.2 authorizes dischargers to not implement BMPs found, **by the discharger**, to be inapplicable, infeasible, or inappropriate
 - Compliance with NALs is not mandatory and non-compliance is not, per se, a violation. See Findings 64-73; Fact Sheet Section II.K.

How does the Permit allow self-regulation?

- Allows permittees to certify compliance and rewrite permit terms with “Demonstration Technical Reports”
 - Section XII.E.2 provides that once a Demonstration Technical Report is submitted, the discharger “automatically returns to Baseline Status”
 - Section XII.E.2 exempts dischargers from certain permit terms
- Allows permittees to certify compliance and rewrite permit terms

BAT/BCT Compliance

Demonstration Technical Report

- Section XII.E.3.c., f., and g. allows dischargers who have exceeded NALs to define BMPs “already” constituting BAT/BCT.
 - Not obtaining information from dischargers meeting NALs (the best performers)
- Section XII.E.3.g. allows discharger to set an “Alternate NAL” which becomes the NAL applicable to that individual discharger.
 - Discharger are in compliance with BAT/BCT unless exceed self-imposed Alternate NAL

Non-Industrial Pollutant Source Demonstration Technical Report

- Allows Permittee to exempt pollutants in discharge if claim from run-on, aerial deposition, or non-industrial source
 - See Draft Order Section XII.E.4., at 49-50; Finding #70, at 11; Fact Sheet Section II.K.4.b., at 50.
 - 1997 Permit properly requires BMPs for pollutants in discharges from industrial sites
 - Exempts pollutants exceeding NALs even if commingled with site's stormwater

Natural Background Demonstration Technical Report

- Infeasible to make technically defensible report
 - What is non-human impacted reference site?
- “Background” pollutant can be associated with site’s industrial activities and in the discharge
- By merely submitting the report, the Permittee exempts its discharges from permit terms.
 - See Draft Order Section XII.E.5., at 49-50; Finding #71, at 11; Fact Sheet Section II.K.4.c., at 50.

How to avoid self-regulation in the Permit

- Remove any reference to self-demonstration or self-certification of “compliance”
- Do not allow dischargers to exempt pollutants in discharges from the Permit
- Remove ability to set Alternate NALs, BAT/BCT and other effluent limitations without NPDES permitting process



2. Ensure collection of data through sampling and monitoring.

Sampling & Monitoring Requirements

- Shared goal of collecting more and better data
- Proposal: Require collection of data and information necessary to achieve goals
 - Must ensure effluent characterization data collected is useful for future permit development
 - Must provide feedback on effectiveness of pollution control measures

Problems with Sampling and Monitoring Requirements

- Does not require minimum number of samples be collected by limiting to QSE
- Changes 1997 Permit term by allowing reduction in sampling locations without assurance that samples will be representative
- Allow unwarranted combination of samples
- Result: incomplete data that fails to provide necessary feedback

Improvements to Sampling Requirements

- Solution #1: Prioritize sample collection during QSE but require sample collection each quarter
 - Modify Section XI.B.4 to require dischargers to complete a minimum number of samples per year

Improvements to Sampling Requirements

- Solution #2: Continue 1997 Permit scheme for sampling location identification and potential reduction
 - Modify Section XI.C.3.a. to reflect language in 1997 Permit to require any reduction be based on substantially “identical” industrial activities, BMPs, and physical characteristics

Improvements to Sampling Requirements

- Solution #3: Eliminate option to combine samples
 - Combining samples allows for dilution which undermines feedback

The Permit Must Incorporate Applicable WLAs as WQBELs

- Many Applicable TMDLs are missing from Attachment D
- The Draft Permit Illegally Delays Incorporation of WLAs as WQBELs
 - 40 C.F.R. 122.44 (d)(1)(vii)(B)
 - *Communities for a Better Environment*
- Many TMDLs With Expired Compliance Deadlines

3. Protection of water quality through improvements to pollution control measures.

Establishment of Technology-Based Effluent Limitations (TBELs)

- Clean Water Act is technology forcing
- Including TBELs in NPDES Permits is mandatory. See 40 C.F.R. 122.44(a)
 - Finding 32 “it is not feasible at this time for the State Board to establish numeric or narrative technology based effluent limitations for discharges covered by this General Permit.”

Establishment of TBELs

- To establish TBELs the State Board must:
 - identify candidate technologies
 - determine whether candidate technologies are BAT or BCT based on specific factors in CFR
 - establish numeric effluent limitation unless State Board finds it is infeasible
- Findings and Fact Sheet do not explain State Board's consideration of factors

Water-Quality Based Effluent Limitations

- The Clean Water Act requires industrial storm water discharges strictly comply with all applicable water quality standards
- 1997 Permit and law is clear that applicable water quality standards apply according to their terms
 - CTR applies end of pipe unless there is a mixing zone
 - Basin plans provide specific requirements for different pollutants

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Questions? Comments? Thank you.

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