

IT'S OUT: THE LATEST DRAFT PERMIT FOR CALIFORNIA INDUSTRIAL STORM WATER DISCHARGERS



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The State Water Board is moving closer to reissuing the Industrial General Storm Water Permit (IGP) with the release of a draft for public review and comment. This lengthy draft differs substantially from current requirements and contains significant revisions from the draft circulated in 2011.

The new draft is the latest in a series of efforts in the last decade to replace the 1997 permit currently in effect. The prospect of numeric effluent limits (NELs) made early proposals highly contentious, prompting the State Water Board to pull back and engage a panel of experts to evaluate the feasibility of enforceable numeric standards for storm water. After the panel found NELs feasible for industrial and construction discharges, the State Water Board first issued numeric standards in the Construction General Storm Water Permit in 2009, but they were shot down by a California court as the sun set on 2011. Not surprisingly, the NELs proposed in the 2011 draft IGP have been removed from the new draft, to the relief of many dischargers.

Instead, Numeric Action Levels (NALs) now play a prominent role in monitoring. NALs are mostly drawn from U.S. EPA's multisector industrial storm water permit. Exceedance of either an annual average or an instantaneous maximum NAL triggers response actions, beginning with operational source controls at "Level 1" and advancing, with subsequent exceedances, to treatment controls at "Level 2." In brief, if, after one exceedance, improved operational Best Management Practice (BMPs) do not prevent further exceedances, the discharger must construct or install structural or mechanical methods to prevent pollutants from contacting storm water. While exceedance of an NAL is not enforceable, the failure to undertake the prescribed response actions is. Fortunately, the draft contains an off ramp when exceedances are attributable to natural background or non-industrial sources, but the technical analysis and reports necessary to demonstrate this to the agency are likely to be quite involved.

The draft IGP contains other changes and new requirements that permittees should be aware of now if they want to take this opportunity to offer their comments to the State Water Board. For example, individuals implementing various aspects of the permit must be qualified industrial storm water practitioners (QISP) at level I, II or III, so dischargers will have to determine whether to fully train their on-site personnel, or engage third parties, or both. All dischargers will have to implement a prescribed set of minimum BMPs. Monitoring plans will have to be revised to include quarterly sampling of specified parameters during qualifying storm events, but dischargers may combine samples, sample fewer locations, or reduce the sampling frequency under certain conditions and with adequate documentation.

Overall, the draft permit contains far more detail than before. Clarifications are welcome in many cases, though they can sometimes limit a discharger's options or create unanticipated square peg/round hold difficulties. Many are particularly concerned about the time and personnel required to satisfy extensive record keeping, reporting, certification and other paper requirements on top of BMPs and monitoring.

Dischargers are sure to notice an incremental cost increase, which the State Water Board estimates to range from 5 to 12% for small and larger facilities respectively, with no NAL exceedance. While indicating that the cost of this draft is far less than the 2011 draft, the State Water Board's own figures nevertheless project a cost increase of 41% for large facilities with NAL exceedances reaching Level 2.

With regard to logistics, it comes as no surprise that industrial dischargers will be required to submit permit registration documents and reports electronically. The result is that far more facility-specific information will be publically available than ever before, causing some to fear greater vulnerability to citizen suits.

Finally, a note to current group monitoring participants under the current permit: after eliminating group monitoring altogether in the 2011 draft, the State Water Board has created a new "compliance group" option in this draft. Participating dischargers of the same industry with similar types of industrial activities, pollutant sources and pollutant characteristics, may join together to receive assistance with permit compliance from a compliance group leader. Under this arrangement, they may benefit from economies of scale in such tasks as SWPPP preparation, training, and exceedance response reporting.

Those with industrial facilities subject to the IGP will want to take a look at the new draft, but be forewarned: this edition consists of nearly 370 pages. Fortunately, only half of that warrants a close reading; attached excerpts from the federal rules setting out effluent limit guidelines apply to only certain industries. The State Board has provided 60 days for review and digestion, and during that time will hold two workshops in early August. Your comments are welcome until noon, September 21, 2012. After considering comments (last round, over 250 individuals and organizations weighed in), the State Board is tentatively scheduled to adopt a final permit in early 2013. Check the website for updates:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml