Response to Written Comments on the Preliminary Designation and Revised Preliminary Designation of Stormwater Discharges from Certain Commercial, Industrial, and Institutional Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County

(Response to Comments document)

November 2024

I. Introduction

This Response to Comments document addresses written comments submitted to EPA concerning the 2022 Preliminary Designation and the 2023 Revised Preliminary Designation.

The scope of EPA's 2024 Final Designation is for stormwater discharges from certain Commercial, Industrial, and Institutional (CII) sources located in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner[1] Harbor Watershed in Los Angeles County.

Public Process and Overview of Comments submitted to EPA

To address questions and concerns about the proposed action, EPA and the RWQCB engaged in outreach with a wide variety of stakeholders. This included three public workshops held jointly with the RWQCB on December 6, 2021, December 17, 2021 and August 30, 2022.[2] EPA participated in meetings with the following entities within either watershed: City of Los Angeles (September 2021); LA County Flood (September 2021); Dominguez Channel Watershed Management Group (November 2019) and Los Cerritos Watershed Management Group (October 2019, November 2021, November 2023). EPA also presented overviews of the Preliminary Designation at quarterly meetings of the California Stormwater Quality Association in January 2022 and 2023 and met with CASQA subcommittee in September 2021, December 2021, March 2022. In addition, multiple meetings were held with the Petitioners between 2019 and 2022. In April 2022, EPA held conference calls with the California Council for Environmental and Economic Balance and the Los Angeles County Business Federation. EPA also met with Pacific Merchant Shipping Association in April 2024.

U.S. EPA originally proposed its Preliminary Designation on July 26, 2022. The comment period for the July 26, 2022, Preliminary Designation was originally set at 45 days. Several commenters requested that EPA extend this comment period to 90 days and provide modeling data referenced in the Preliminary Designation. On August 16, 2022, EPA extended the public comment period by 45 days (until October 24, 2022) and

[1] For the Final Designation, EPA removed "Outer Harbor" from the scope since the Final Designation does not include CII facilities at the Ports of Los Angeles and Long Beach, so there are no designated facilities at this time whose stormwater discharges flow into the Outer Harbor. The Final Designation includes CII sites in non-port areas of the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed whose stormwater discharges flow offsite, through storm drains and into various waterbodies in the watershed, including Inner Harbor. See also Attachment 1 for a map showing waterbodies addressed by the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL (2012).

[2] Preliminary Designation Power Point presentation for the August 30, 2022 workshop, Administrative Record II.G.; Preliminary Designation Power Point presentation for the December 7 and December 16, 2021 workshops for CII owners/operators, Administrative Record II.L.

posted the modeling data on EPA's website at: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific.

On November 2, 2023, EPA re-opened the public notice and comment period with a notice in the *Federal Register* describing certain proposed revisions and clarifications to the July 26, 2022 Preliminary Designation.[3] Several comments requested an extension of the comment period for the Revised Preliminary Designation of November 2, 2023, originally set for 30 days.[4] On November 29, 2023, through a notice in the *Federal Register*, EPA extended the comment period to a total of 60 days until January 3, 2024.[5]

EPA received written comments on the Preliminary Designation published on July 26, 2022 from the following, listed alphabetically:

1. California Stormwater Quality Association (October 24, 2022)
2. Environmental Law Group LLP (October 12, 2022)
3. Federal Water Quality Association/Federal StormWater Association (October 24, 2022)
4. GHD (October 13, 2022)
5. International Transport Service LLC (October 24, 2022)
6. Pacific Merchant Shipping Association and Yusen Terminals LLC (October 24, 2022)[6]
7. Petitioners (Los Angeles Waterkeeper, American Rivers, NRDC, California Coastkeeper Alliance, Heal the Bay) (October 24, 2022)
8. Port of Long Beach (October 24, 2022)
9. Port of Los Angeles (October 24, 2022)
10. TraPac (October 24, 2022)

EPA also received written comments on the Revised Preliminary Designation noticed on November 2, 2023 from the following, listed alphabetically:

1. Alta Environmental LP an NV5 Company (January 3, 2024)
2. Briscoe Ivestor & Bazel, LLP (December 12, 2023)
3. California Stormwater Quality Association (January 3, 2024)
4. Construction Industry Coalition on Water Quality (December 18, 2023)
5. Environmental Law Group LLP (December 18, 2023)
6. Federal StormWater Association (January 2, 2024)

[3] 88 Fed. Reg.75282 (November 2, 2023), Administrative Record I.B.
[4] 88 Fed. Reg.75282 (November 2, 2023), Administrative Record I.B.
[5] 88 Fed. Reg. 83405 (November 29, 2023), Administrative Record I.A.
[6] The comments from Yusen Terminals LLC are substantively the same as comments submitted by the Pacific Merchant Shipping Association. As such, the responses to PMSA also address the comments from Yusen Terminals.

7. Long Beach Container Terminal (January 3, 2024)
8. Macerich Lakewood LP (December 18, 2023 and December 29, 2023)
9. Pacific Merchant Shipping Association (January 3, 2024)
10. Petitioners (Los Angeles Waterkeeper, American Rivers, NRDC, California Coastkeeper Alliance, Heal the Bay) (December 18, 2023)
11. Port of Long Beach (January 3, 2024)
12. Port of Los Angeles (January 3, 2024)
13. Richard Watson & Associates, Inc. (January 3, 2024)

EPA also received late comments after the close of the comment period on January 3, 2024. EPA has opted to respond to the late comments submitted by the following and these are located at the very end of this document:

- Briscoe Ivestor & Bazel, LLP (January 23, 2024)
- Pacific Merchant Shipping Association (April 15, 2024)
- Pacific Merchant Shipping Association (April 16, 2024)
- Port of Long Beach (June 6, 2024)

Readers can find the late comments and EPA's responses at the very end of Part III.

<u>Comments submitted to the Los Angeles Regional Water Quality Control Board (Regional Board)</u>

On July 26, 2022, the Regional Board proposed Waste Discharge Requirements for Stormwater Discharges from Commercial, Industrial and Institutional Facilities in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed (Order R4-2022-XXXX, General NPDES Permit No. XXXXXX) (Draft CII Permit).

The following commenters submitted separate comments in 2022 to EPA and the Regional Board but the comments to the Regional Board included additional comments on the Preliminary Designation that were not submitted to EPA:

1. California Stormwater Quality Association (October 24, 2022)
2. Pacific Merchant Shipping Association (October 24, 2022)
3. Port of Long Beach (October 24, 2022)
4. Port of Los Angeles (October 24, 2022)

The following commenter copied EPA on comments it submitted in 2022 to the Regional Board regarding the Draft CII Permit that also included comments on the Preliminary Designation.

1. Los Angeles County Business Federation (October 24, 2022)

The following commenters submitted comments only to the Regional Board but included comments on the 2022 Preliminary Designation:

1. Alta Environmental, LP an NV5 Company (October 24, 2022)
2. California Council for Environmental and Economic Balance (October 24, 2022)
3. City of Long Beach (October 24, 2022)
4. Gold Bond Building Products (October 24, 2022)
5. International Paper (October 24, 2022)
6. Total Terminals International, LLC (October 24, 2022)
7. Western States Petroleum Association (October 24, 2022)

In some cases, EPA has summarized the comments below. For the full content and context of the comments, refer to the comment letters which can be found in the Administrative Record, Section IV.

The commenters that submitted comments on both the July 26, 2022, Preliminary Designation and the November 2, 2023, Revised Preliminary Designation repeated many of their comments. In some cases, however, additional issues were raised and responses to such comments are provided below.

Abbreviations and Acronyms

APA	Administrative Procedures Act
APT	Airport
BizFed	Los Angeles County Business Federation
BLM	Biotic ligand model
BMP	Best management practices
C.F.R.	Code of Federal Regulations
CASQA	California Stormwater Quality Association
CCEEB	California Council for Environmental and Economic Balance
CICWQ	Construction Industry Coalition on Water Quality
CII	Commercial, Industrial, and Institutional
COL	Public college/university
COM	Commercial
CWA	Clean Water Act
DC	Dominguez Channel
DDT	Dichlorodiphenyltrichloroethane
DWQ	Department of Water Quality
EDU	Education
EPA	Environmental Protection Agency
EWMP	Enhanced Watershed Management Program
FR	Federal Register
FSWA	Federal Stormwater Association
FWQC	Federal Water Quality Coalition
GOV	Government
HARB	Harbor
HRU	Hydrologic Response Units
HUC	Hydrologic Unit Codes
IGP	Industrial General Permit
IND	Industrial
INST	Institutional
kg/yr	Kilograms per year
LAs	Load allocations
LAX	Los Angeles International Airport
LARWQCB	Los Angeles Regional Water Quality Control Board
LiDAR	Light Detection and Ranging
LPSC	Loading Simulation Program in C++
MS4	Municipal Separate Storm Sewer System
NAICS	North American Industrial Classification System
NEC	No exposure certification
NONA	Notice of non-applicability
NPDES	National Pollution Discharge Elimination System
NRDC	Natural Resources Defense Council
NSQD	National Stormwater Quality Database

OEHHA	Office of Environment Health Hazard Assessment
PAH	Polycyclic aromatic hydrocarbons
PCB	Polychlorinated biphenyl
POLA	Port of Los Angeles
POLB	Port of Long Beach
PMSA	Pacific Merchant Shipping Association
RAA	Reasonable Assurance Analysis
RDA	Residual Designation Authority
RWL	Receiving water limits
SCH	Public school
SIC	Standard Industrial Classification
SQO	Sediment Quality Objectives
SUSTAIN	System for Urban Stormwater Treatment Analysis and INtegration
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	California's State Water Resources Control Board
TMDL	Total Maximum Daily Load
USEPA	U.S. Environmental Protection Agency
WBPC	Water Body Pollutant Combination
WDD	Permitted IGP facilities
WLAs	Wasteload allocations
WMMS2	Watershed Management Modeling System
WMP	Watershed Management Plan
WPSA	Western States Petroleum Association
WQS	Water quality standards
WRAP	Water Resource Action Plan

II. Common Comments and Responses

In reviewing all the comments, EPA identified several common concerns that were raised by multiple commenters. Below we provide a summary of the common comments and a response to each common issue. Responses to each specific comment submitted by individual commenters can also be found further below after this section of Common Comments and Responses.

Common Comment 1

Common Comment 1**:** *Which discharges are covered by this Final Designation in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Greater Los Angeles/Long Beach Harbor Watershed?*

Common Response 1: Stormwater discharges from the following CII sites:[7]

- Any privately owned and unpermitted CII parcels[8] with five or more acres of impervious surface;

- Any unpermitted portion of a privately owned facility for which the total facility acreage is five or more acres, and the facility is subject to NPDES permitting under 40 C.F.R. §122.26(b)(14), including facilities that have submitted a no exposure certification (NEC)[9] under California's Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, (NPDES permit No. CAS000001, known as Industrial Stormwater General Permit); and

- Any privately owned facility for which the total facility acreage is five or more acres, and the facility is subject to NPDES permitting under 40 C.F.R. §122.26(b)(14), and the facility has submitted a notice of non-applicability (NONA) [10] under the Industrial Stormwater General Permit (NPDES permit No. CAS000001) due to containment of all stormwater associated with industrial activity. Only the portion (if any) of such facilities not covered by the NONA

[7] CII sites or CII sources includes two sub-categories: parcels – a term associated with Los Angeles County Tax Assessor's Office, and facilities – a phrase for an IGP facility.

[8] For purposes of the designation of CII sites, designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. For a more detailed description, see Appendix 1 to the Memorandum regarding the Final Designation.

[9] As authorized at 40 C.F.R. § 122.26(g); see Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) at Appendix 2 for more information concerning no exposure certifications.

[10] See Industrial Stormwater General Permit (NPDES permit No. CAS000001, the current permit is California Order 2014-0057-DWQ) at section XX.C for more information concerning requirements for facilities claiming that they do not discharge stormwater associated with industrial activity and the NONA process. Administrative Record X.D.

would be designated.

Examples of CII facilities covered by the Final Designation include but are not limited to: shopping centers, auto dealerships, hotels/motels, distribution centers, warehouses, office complexes, supermarkets, parking lots, racetracks, stadiums, greenhouses, refineries, manufacturers, power plants, scrap and waste material facilities, private schools, churches, hospitals, nursing homes, and cemeteries. Only privately owned parcels or facilities are included in this designation.

Common Comment 2

Common Comment 2**:** *Several commenters questioned EPA's selection of five acres as the size threshold for CII sources that were included in the Preliminary Designation. Concerns were raised that this would leave smaller sources unpermitted and would not be responsive to the Petitions. Other comments recommended a threshold higher than five acres.*

Common Response 2: EPA considered several options in responding to the Petitions, including evaluating unpermitted CII parcels with size thresholds of 10 acres, 5 acres, 1 acre, along with designation of all CII parcels. EPA's initial analysis, completed in 2021, considered the number of parcels and zinc loading estimates associated with these parcel size thresholds for both impervious surface and total acreage.[11]
These initial results showed a range from CII parcels equal to or greater than 10 (impervious) acres (135 sites with zinc load of 2,700 kg/yr) to all CII parcels (20,000 sites with zinc load of 12,200 kg/yr). [12]

EPA also evaluated the zinc loads associated with unpermitted portions of IGP facilities since they were described in the Petitions. For these IGP facilities EPA used total facility information acreage for the size threshold because impervious surface acreage information for the unpermitted portion of such facilities was incomplete for many of the IGP facilities in these two watersheds.[13]

For unpermitted CII parcels, EPA selected the 5-acre impervious size threshold which is associated with 430 parcels and an estimated zinc load of 4,100 kg/yr. For the

[11] The 2021 analysis and results are included in the "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021, Administrative Record XIII.C.1.
[12] The Preliminary and Revised Preliminary Designations presented the initial results for the numbers of unpermitted parcels and the estimated zinc loadings by parcel size threshold: equal to or greater than 10 impervious acres (n = 135 and 2,700 kg/yr); equal to or greater than 5 impervious acres (n = 450 and 4,700 kg/yr); equal to or greater than 1 impervious acre (n = 3,100 and 9,200 kg/yr) and all parcels (n = 20,000 and 12,200 kg/yr). See Appendix 1, Part A of those Preliminary Designation memos.
[13] For the final designation, EPA evaluated information within the Regional Board's spreadsheet, which is consistent with the State's IGP (or SMARTS) database, that contains available information on impervious and total acreage of IGP facilities in these two watersheds. Administrative Record XIII.C.8.

unpermitted portions of IGP facilities, EPA selected 155 such facilities of five or more total acres in the watersheds with an estimated zinc load of 3,500 kg/yr.[14] These values are presented in final designation memo, Appendix 1, Part A and B. EPA selected the same numerical value for the size threshold (five acres, either impervious acres for unpermitted parcels or total acreage for IGP facilities), in part, because this allows for overall simplicity and consistency in the CII source size threshold.

In summary, EPA determined that using a five-acre size threshold will result in the designation and permitting of approximately 600 sources that account for a zinc load of about 7,600 kg/yr, or roughly 22% of the total zinc load from all stormwater sources in both watersheds. [15]

As described in the Final Designation, EPA is responding to the Petitions with a phased approach to address the stormwater pollutant contribution from CII sites focusing initially on the largest stormwater sources of pollutant loads in the watersheds. EPA may designate stormwater discharges from additional CII sources in the future. Given that the scope of this designation addresses 22% of the total zinc load to impaired waters, this is a manageable first step in progress towards addressing the existing water quality impairments in these two watersheds.

EPA notes that courts have upheld agencies using a phased, stepwise approach to resolving legal issues. For example, in a 2021 decision, the D.C. Circuit Court noted that "[E]qually reasonable was the Commission's decision to address the problem incrementally." Agencies need not solve a problem in a single action. *See Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.,* 498 U.S. 211, 231,(1991); *Nat'l Postal Pol'y Council v. Postal Regul. Comm'n*, 17 F.4th 1184, 1197 (D.C. Cir. 2021). *See Ctr. for Biological Diversity v. EPA*, 722 F.3d 405,410 (D.C. Cir. 2013).

Common Comment 3

Common Comment 3: *Appendix 1 of both the 2022 Preliminary Designation and the 2023 Revised Preliminary Designation provided summary estimates for the amount of zinc that could be discharged annually in stormwater from CII sources under consideration for designation. Several commenters expressed concern that neither the 2022 Preliminary Designation nor the 2023 Revised Preliminary Designation adequately explained how EPA derived the estimates for the zinc loadings. Some commenters also expressed concern that the WMMS2 model used in deriving the loading estimates was*

[14] The Preliminary and Revised Preliminary Designations had included CII facilities at Port of Los Angeles and Long Beach, so the results therein were different than values in the Final Designation (n = 190 IGP facilities of 5 or more total acres and zinc load 6,300 kg/yr). See Appendix 1, Part B of those Preliminary Designation memos.

[15] "Request for Final Designation of Certain Commercial, Industrial, and Institutional Stormwater Discharges in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County" [hereinafter Final Designation Memo], Appendix 1, Administrative Record III.A.

overly simplistic considering the diversity of the Los Angeles County watersheds. In addition, several commenters raised questions about the use of zinc loads to address the impairments caused by other pollutants.

Common Response 3: For the 2022 Preliminary Designation, EPA provided a summary explanation for its derivation of the estimates for the zinc loadings in a document entitled "Procedure for Estimating the Zinc Loads from Certain CII Sources in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)." This document, along with multiple data files used by the Procedure, was posted in August 2022 and is still available on Region 9's website at: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific.

In response to comments submitted for the 2023 Revised Preliminary Designation, EPA has prepared a new "Revised Procedures" document to clarify how it estimated zinc loads for the various CII categories. This document, titled "Revised Procedures for Estimating the Zinc Loads from Certain CII Sources in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)" (herein referred to as "Revised Procedures") is Attachment 2 to this Response to Public Comment document. The Revised Procedures further explains the methods and information used to generate the zinc estimates presented in the Final Designation, Appendix 1. The Revised Procedures provide several tables to show the different categories of CII sources and the associated zinc loading estimates with these categories. The Revised Procedures also includes a cross reference table between values presented in the Final Designation memorandum, Appendix 1, and the calculations for zinc load estimates.

EPA disagrees with comments that the Watershed Management Modeling System (WMMS2) model is overly simplistic and that its loading estimates cannot be relied upon. WMMS2 is a hydrology and water quality model for the Los Angeles County coastal watersheds, including the two watersheds at issue. The Los Angeles County Flood Control District released the WMMS model in 2009 using local data and the EPA LSPC and SUSTAIN models.[16] The model was developed, and then peer reviewed by a technical advisory committee and prepared to be consistent with model guidance from the Regional Board. This model has also been subject to public review and comment. The WMMS model was updated in 2020 to become the WMMS2 model. The WMMS2 model incorporates over 3,000 square miles, 2,655 sub-watersheds, and has over 117 calibration points. The WMMS2 model evaluates stormwater runoff from 19 different

[16] The LSPC (Loading Simulation Program in C++) is an EPA watershed hydrology model that provides water quality and quantity information for a watershed and its receiving streams. EPA's SUSTAIN (System for Urban Stormwater Treatment Analysis and Integration) model is a support tool to assist in the selection and placement of stormwater control measures for a watershed management program to achieve water quality goals in a cost-effective manner.

land uses, including CII uses, and is consistent with the Los Angeles Assessor Land Use categories provided in the scope of this designation.

The 2020 WMMS2 update incorporated the latest local stormwater monitoring data and remote sensing (e.g., Light Detection and Ranging [LiDAR]) information to further calibrate and validate the model, thereby using the most recently available data and characteristics and hydrologic and water quality information.[17] This sophisticated model can also evaluate various scenarios, including optimizing the location and size of stormwater control measures designed to capture stormwater runoff and pollutants therein.

The Dominguez Channel Watershed Management Group and the Los Cerritos Watershed Management Group relied on the WMMS2 model as a decision support tool to produce separate Watershed Management Programs (WMPs) that demonstrate how the collection of existing and proposed stormwater control measures (e.g., best management practices including stormwater capture devices) will reduce zinc loads in stormwater runoff and also meet the zinc wasteload allocations in applicable Total Maximum Daily Loads (TMDLs).[18] These WMPs also use the WMMS2 model to evaluate compliance with the corresponding zinc and other water quality-based effluent limitations in the Los Angeles Regional Municipal Separate Storm Sewer System (MS4 Permit).

With regards to the use of zinc in the analysis, EPA estimated zinc loads since it is considered a "limiting pollutant,"[19] meaning that stormwater controls implemented to

[17] WMMS2 Phase I Report: Baseline Hydrology and Water Quality Model, May 2020, Administrative Record XIII.D. (describing the model in detail and explains the sources used for the loading data. The 2020 model report also describes the general consistency between modeled and observed results and further indicates the model is a valid tool for estimating the loads from CII sources in the watersheds).

[18] Dominguez Channel Enhanced Watershed Management Program, February 2016, Administrative Record XI.G. (identifying zinc and bacteria as the wet weather limiting pollutants in the watershed); *see also* Dominguez Channel Enhanced Watershed Management Program – Revised, June 2021, Administrative Record XI.D. (identifying zinc and bacteria as the wet weather limiting pollutants in the watershed and explaining that copper, the other main constituent of concern in the Petitions, was not identified as a limiting pollutant given the ongoing implementation in California of Senate Bill 346 limiting the amount of copper in brake pads. As noted in the revised EWMP, control measures are first sized to meet the required zinc reductions and then additional capacity is added (if needed) for bacteria. Together, adequate controls for zinc and bacteria are expected to be sufficient for all pollutants of concern (e.g., copper, lead, PAHs, PCBs and legacy pesticides such as DDT); *see also* Los Cerritos Channel Watershed Management Program, September 2017, Administrative Record XI.F. (determining zinc to be the limiting wet weather pollutant)*; See also* Los Cerritos Channel Watershed Group Watershed Management Program, Attachment A, January 2024*,* Administrative Record XI.A. (explaining that metals overall, as well as bacteria, were determined to be limiting pollutants, but with zinc again selected as the limiting metal rather than copper given the ongoing implementation of the SB 346).

[19] "Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program Including an Enhanced Watershed Management Program," Los Angeles Regional Water Board. Dated March 2014, Administrative Record XVI.H. (explaining that the limiting pollutant approach was developed

achieve adequate zinc reductions will lead to adequate pollutant reductions for other pollutants of concern as well. Zinc, along with copper, are cited in the Petitions.

EPA and its contractor, Paradigm Environmental, used this WMMS2 updated model to generate estimates of zinc loads from CII sources as part of its analysis in support of this designation. Given the reasons described above, EPA finds using the WMMS2 model to be reasonable and appropriate. Based on all the factors and inputs in the model, including water quality data that is representative of existing pollutant levels in stormwater discharges and ambient waters, EPA does not see it as simplistic. Furthermore, EPA notes that no comments were submitted regarding a different model, nor were there comments submitted providing an alternative estimate of zinc loads for CII sites or port facilities within the watersheds.

Common Comment 4

Common Comment 4**:** *Several commenters expressed concern that CII facilities at the Ports of Long Beach and Los Angeles in the Dominguez Channel and Los Angeles/Long Beach Watershed) were included in the 2022 Preliminary Designation and in the 2023 Revised Preliminary Designation, but not CII facilities at airports within the two watersheds. The commenters noted that CII facilities at both ports and municipal airports are privately operated sources on publicly owned land and that the Petitions had requested designation of only privately-owned facilities.*

Common Response 4: First, EPA agrees the Petitions requested designation of privately owned CII sites[20]; those are appropriately included in the Final Designation. The

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by the Regional Board in 2014 to guide MS4 permittees in preparing reasonable assurance analyses (RAA) for compliance with the water quality-based effluent limits in the 2012 Los Angeles County MS4 permit. Since common stormwater BMPs such as stormwater capture will work equally well in controlling all pollutants of concern, ensuring sufficient capture for the limiting pollutant (i.e. the one requiring the greatest amount of capture). A "limiting pollutant" as used in the 2012 Los Angeles County MS4 permit is essentially the same as an indicator pollutant authorized at 40 CFR 122.44(d)(1)(vi)(C). The 2021 Los Angeles County MS4 permit (NPDES Permit No. CAS004004, Administrative Record X.A) also includes refinements (p. 82) to the RAA requirements that ensure consistency with the requirements at 40 CFR 122.44(d)(1)(vi)(C)(*1*) through (*4*). Compliance option 1 in the Regional Board's revised draft CII permit (p. 8) (Administrative Record X.C) provides for compliance with the CII permit via an implementation agreement with a Watershed Management Group under the MS4 permit, and Watershed Management Groups commonly use the limiting pollutant approach to comply with the MS4 permit. For example, see the Dominguez Channel Enhanced Watershed Management Program – Revised, June 2021, Administrative Record XI.D, p. 3-8.

[20] "Petition for a Determination That Stormwater Discharges from Commercial, Industrial, and Institutional Sites Contribute to Water Quality Standards Violations in Dominguez Channel and the Los Angeles/Long Beach Inner Harbor (Los Angeles County, California) and Require Clean Water Act Permits.", September 2015, Petition for a Determination That Stormwater Discharges from Commercial, Industrial, and Institutional Sites Contribute to Water Quality Standards Violations in the Alamitos Bay/Los Cerritos Watershed (Los Angeles County, California) and Require Clean Water Act Permits.", September 2015, Administrative Record VI. A & B [hereinafter the Dominguez Channel Petition and Los Cerritos Petition,

Petitions are less clear concerning designation of CII sources at ports and airports. Petitioners appeared to request designation of at least privately-operated CII sources at two particular types of publicly owned facilities, namely ports and airports. [21]

EPA reviewed and fully considered numerous comments submitted regarding the inconsistency of proposing to include privately operated facilities at the ports, but not privately operated facilities at airports. As logical outgrowth of comments received and as described in the Final Designation memo, EPA decided not to include any privately operated, publicly owned CII facilities at the ports or any privately operated, publicly owned CII facilities at the municipal airports in these two watersheds at this time. As described in Common Response 2, EPA is taking a phased approach to this designation; therefore, EPA may designate stormwater discharges from additional CII facilities in the future.

Common Comment 5

Common Comment 5: *The designation is a rulemaking under the Administrative Procedure Act (APA) (5 USC §551 et seq.) and thus EPA must comply with rulemaking procedures, including providing notice in the Federal Register.*

Common Response 5: EPA disagrees with the commenters' assertions that the Agency has failed to comply with the Administrative Procedure Act (APA), either by failing to conduct rulemaking under section 553 of the APA or by not conducting adjudication under sections 554-557 of the APA.

Section 402(p)(2)(E) of the CWA prescribes no procedural mechanism by which EPA is to determine residual designations. Without "express congressional direction… agencies are free to choose their procedural mode of administration." *Davis v. EPA*, 348 F.3d 772, 785 (2003) citing *SEC v. Chenery Corp*., 332 U.S. 194, 203 (1947) ("[T]he choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency."); *Pfaff v. HUD*, 88 F.3d 739, 747 (9th Cir. 1996) (recognizing, as an established principle of administrative law, that the choice between rulemaking and adjudication lies in the first instance within the agency's discretion). An agency's discretion in choosing its procedural mode is "very broad." *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017); cf. also *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) (absent constitutional or statutory limitations or otherwise "extremely compelling circumstances," agencies "should be free to fashion their own rules of procedure and to pursue methods of

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respectively] (requesting designation of ". . . currently unpermitted stormwater discharges from privately-owned commercial, industrial and institutional sites that are contributing to violations of water quality standards . . .").

[21] Dominguez Channel Petition, Administrative Record VI.A. at p.11, n.57 (describing the categories of CII sites that should be covered by the designation, including sites at "LA/LB Harbor."); *see also* Los Cerritos Petition, Administrative Record VI.B. at p. 11, n.59 (describing the CII sites to be designated includes sites that are "Airport Related.").

inquiry capable of permitting them to discharge their multitudinous duties."). EPA is making this residual designation under section 402(p)(2)(E) via informal adjudication, which is governed by section 555 of the APA. See *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 655 (1990) ("The determination in this case, however, was lawfully made by informal adjudication, the minimal requirements for which are set forth in the APA, 5 U.S.C. § 555….").

Here, EPA has exceeded the APA's minimum procedural requirements for adjudications by posting a notice and materials on the Preliminary Designation on EPA's website on July 26, 2022, and November 2, 2023. EPA also conducted outreach in the form of stakeholder meetings on December 6, 2021, December 17, 2021, and August 30, 2022.[22] Nonetheless, in response to public comment on the Preliminary Designation, EPA voluntarily published a notice of the Revised Preliminary Designation in the *Federal Register* on November 2, 2023 (88 FR 75282) with a notice of comment period extension on November 29, 2023 (88 FR 83405), and EPA is also exercising its discretion to voluntarily publish a notice of the Final Designation in the *Federal Register.*

See response to *Alta Environmental Comment 2, 2022* below for more information.

III. Individual Comments and Responses

The comments are listed under each commenter and organized alphabetically.

ALTA ENVIRONMENTAL, LP

Alta Environmental, LP Comments submitted October 24, 2022

Although the following comments from Alta Environmental, LP were submitted only to the Regional Board and relate to provisions in the Draft CII Permit proposed by the Regional Board, the Draft CII Permit reflects requirements found in EPA's Preliminary Designation. As such, EPA is providing a response.

Alta Environmental, LP Comment 1, 2022: *"The Draft CII General NPDES Permit is intended to minimize stormwater and non-stormwater discharges of zinc and copper from CII sites. The primary sources of zinc and copper pollution are tire wear and brake pad usage, respectively from transportation sources. Thus, in order to achieve its intended purpose, a Draft CII Permit should be narrowly focused on regulating parking lots and other areas with significant vehicular traffic."*

Response: The Draft CII Permit was proposed by the Regional Board in response to EPA's Preliminary Designation and the sources covered by the Permit reflect those

included in the Preliminary and Revised Designations of 2022 and 2023. As described in the Preliminary and Final Designations, a variety of commercial, industrial and institutional sources subject to designation all have impervious surfaces, including parking lots, which are exposed to stormwater. As such, these CII sources are significant sources of the principal pollutants of concern, including copper and zinc. However, as pointed out in the Preliminary and Final Designations, the watersheds subject to the Petition are also impaired for other pollutants such as bacteria, trash, nutrients, and various toxic organic constituents. Areas at CII facilities, including but not limited to rooftops, shipping/receiving areas, and material and waste storage areas, are sources of some of these other pollutants as well. Accordingly, limiting the designation to parking lots and other areas with significant vehicular traffic would not fully address other impairments. [22]

Alta Environmental, LP Comment 2, 2022: *"It appears that the U.S. Environmental Protection Agency (EPA) has only used the Residual Designation Authority (RDA) section of the Clean Water Act (CWA) one time in Los Alamos County, New Mexico, where unpermitted undeveloped areas of a Municipal Separate Storm Sewer System (MS4) were identified as impacting receiving waters. Based on inquiry and responses from EPA, RDA's [sic] were also petitioned in 2013 and 2015 in Regions 1, 3, and 9 for CII Facilities specifically. Regions 3 and 9 declined to designate the stormwater discharges for NPDES permitting. Region 1 neither granted nor denied the petition but committed to evaluate specific watersheds to determine whether site specific information will support such designations. EPA is now moving forward with the RDA and related CII Permit in Los Angeles. However, this is premature. EPA must comply with the Administrative Procedure Act (APA) (5 USC §551 et seq. (1946)) when implementing the RDA. The APA requires that agencies publish notices of proposed and final rulemaking in the Federal Register and provides opportunities for the public to comment on notices of proposed rulemaking. In support of its plans to exercise its RDA, EPA has circulated a Preliminary Designation Memorandum, which was not published in the Federal Register. EPA has not made any indication that it plans to prepare separate proposed or final documents which it intends to publish in the Federal Register. EPA has therefore failed to comply with the public notice procedures required by the APA."*

Response: Regarding notice and comment opportunities provided by EPA on this project, see Common Response 5.

As far as timing, Region 9 has been coordinating with the Regional Board in determining the scope and timing of the Preliminary and Final Designation. The simultaneous proposal of the Preliminary Designation and the Draft CII Permit provided stakeholders with additional information early in the process concerning the potential effects of the designation. EPA notes that without this coordination, specifically work on a draft

[22] "The Contribution of Particles Washed from Rooftops to Contaminant Loading to Urban Streams." Chemosphere, 52, 1727–1741. Van Metre, P. C., & Mahler, B. J. (2003), Administrative Record XVI.L.

permit leading to issuance of a final permit close in time with the final designation, any sources subject to the final designation could have been subject to enforcement actions, including citizen suits.

EPA also notes that the Los Alamos County, New Mexico example mentioned by the commenter is not the only example of EPA using the RDA. EPA Region 1 designated certain stormwater discharges in the Long Creek Watershed in Maine (2009), and preliminarily designated discharges from CII sites with over 1-acre impervious surface in the Charles River, Mystic River, and Neponset River watersheds (2022), and EPA Region 9 has designated MS4 discharges on the Island of Guam (2018). States have also used this residual designation authority to address stormwater pollution (e.g., Vermont designated stormwater discharges for NPDES permitting in five watersheds in 2009).

Regarding compliance with the Administrative Procedure Act (APA), EPA's residual designation is an adjudication, not a rule, under the APA.[23] The APA provides agencies with two principal methods to make and implement policy decisions: rulemakings and adjudications.[24] A rulemaking results in the issuance of a rule, while an adjudication results in the issuance of an order.[25] The APA defines "order" as "the whole or a part of a final disposition of an agency in a matter other than rule making . . . ."[26] The Supreme Court explained the "basic distinction between rulemaking and adjudication" as a difference between "proceedings for the purpose of promulgating policy-type rules or standards, on the one hand, and proceedings designed to adjudicate disputed facts in particular cases on the other."[27] The Supreme Court has held that agencies are generally free to decide whether to formulate policies through rulemaking or through adjudication. *See SEC v. Chenery Corp*., 332 U.S. 194, 203 (1947); *N.L.R.B. v. Bell Aerospace Co. Div. of Textron, Inc*., 416 U.S. 267, 293 (1974) (citing *SEC v. Chenery Corp*.). Similarly, the U.S. Courts of Appeals repeatedly held that agencies have "very broad discretion to decide whether to proceed by adjudication or rulemaking."[28] Courts generally defer to an agency's choice between adjudication and rulemaking, except in cases where the statute requires the agency to use one or the other, *see Michigan v. EPA*, 268 F.3d 1075, 1087 (D.C. Cir. 2001), or where the agency is attempting to revise an existing legislative rule, see *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 497 (D.C. Cir. 2015). Neither of these two exceptions applies here. *Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 536 (D.C. Cir. 2007) (holding that "[t]here is no such general principle" that a

[23] *Marathon Oil Co. v. EPA*, 564 F.2d 1253 at 1262 (stating that "the setting of effluent limitations under section 402 of the Control Act is clearly "adjudicatory" in nature . . . .").
[24] *See American Airlines, Inc. v. U.S. Dept. of Trans.*, 202 F.3d 788, 797 (5th Cir. 2000) ("Agencies have discretion to choose between adjudication and rulemaking as a means of setting policy.").
[25] 5 U.S.C. § 551(5), (7).
[26] 5 U.S.C. § 551(6).
[27] *United States v. Fla. E. Coast Ry. Co.*, 410 U.S. 224, 244-45 (1973).
[28] *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017) (citing *Conference Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013)); see *City of Arlington, Texas v. FCC*, 668 F.3d 229, 240 (5th Cir. 2012) (citations omitted).

"broadly applicable order" must be a rule).[29]

The CWA specifies in which instances Congress expected EPA to conduct a rulemaking.[30] Notably, CWA section 402(p)(2)(E) does not state that residual designation be conducted through rulemaking.[31] That said, Congress specifically required EPA to conduct rulemaking regarding permit *application* requirements for industrial and municipal discharges at CWA section 402(p)(4) (which EPA did with its Phase 1 Stormwater Rule in 1990) and again regarding *other* stormwater discharges at CWA section 402(p)(6) (which EPA did with its Phase 2 Stormwater Rule in 1999). Congress did not, however, require EPA to conduct rulemaking when designating stormwater discharges for permitting under CWA section 402(p)(2)(E). In its 1999 Phase 2 Stormwater Rule, promulgated pursuant to CWA section 402(p)(6), EPA included regulations including residual designation authority from its 1990 Phase 1 Stormwater Rule[32], which regulations authorize EPA to designate a "category of discharges within a geographic area." This regulation, among others, was specifically challenged by industry and upheld by the Ninth Circuit in *Environmental Def. Center., Inc. v. EPA*, 344 F.3d 832, 875-76 (9th Cir. 2003). The Ninth Circuit wrote as follows:

> While not a blank check, § 402(p)(6) authorizes a comprehensive program that allows regional designation of polluting discharges that compromise water quality locally, even if they have not been established as compromising water quality nationally at the time Phase II was promulgated. In allowing continuing designation authority, EPA permissibly designated a third category of dischargers subject to Phase II regulation—those established locally as polluting U.S. waters—following all required studies and consultation with state and local officials. EPA reasonably determined that discharges other than those from small MS4s and construction sites were likely to require regulation "to protect water quality" in satisfaction of the § 402(p)(6) mandate. EPA reasonably determined that, although it lacked sufficient data to support nationwide, categorical designation of these sources, particularized data might support their designations on a more localized basis. EPA reasonably interpreted § 402(p)(6) as authorizing regional designation of sources and regional source categories,

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[29] The APA defines two broad, mutually exclusive categories of agency action: "rules" and "orders." See Attorney General's Manual on the APA at 14 ("[T]he entire Act is based on a dichotomy between rule making and adjudication."). Pursuant to the APA, a permit is an adjudication. See 5 U.S.C. §§ 551(6)-(8) (defining an adjudication as "the process for formulation of an order[,]" an order as "including licensing[,]" and a license as "an agency permit"). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. The purpose of the designation is to require NPDES permit coverage for stormwater discharges. Once a permit is issued by the permitting authority, here the State of California, permittees will have a chance to seek coverage under that permit as well as challenge that permit, i.e., adjudication, in the appropriate court if they wish to do so.

[30] *See*, e.g., CWA section 312(f), 33 U.S.C. § 1322(f) and CWA section 402(p)(4) and (6), 33 U.S.C. § 1342(p)(4) and (6).

[31] See CWA section 402(p)(2)(E), 33 U.S.C. § 1342(p)(2)(E).

[32] 40 CFR 122.26(a)(9)(i)(C)-(D).

based on water quality standards including TMDLs.

EPA's action here is consistent with the Ninth Circuit's holding in *Environmental Defense Center* because it involves "regional designation of polluting discharges that compromise water quality locally … to protect water quality … based on particularized data [that] support[s] their designations on a more localized basis."[33] CWA section 402(p), EPA's Phase 1 and 2 Stormwater regulations, and the Ninth Circuit decision all support EPA's view that it may execute residual designation via adjudication, not rulemaking.

Moreover, residual designations are governed by pre-existing statutory provisions (CWA section 402(p)(2)(E)) that are reflected in NPDES regulations that were issued by notice and comment rulemaking (40 CFR 122.26(a)(9)(i)(C)-(D)). As noted in *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017), "[r]ulemaking scenarios generally involve broad applications of more general principles rather than case-by-base individual determinations." For the residual designations under review here, EPA's adjudication is based on an evaluation of a particular set, or category of discharges, described in the Petitions and EPA's analysis of case-by-case sources.

As stated above, the designation is an agency action that requires the designated discharges to obtain NPDES permit coverage; it is an adjudication rather than rule. As the commenters themselves noted, an adjudication concerns whether site-specific information will support the designation. The regulations require that a discharger covered by a Final Designation apply for permit coverage within 180 days of notice of final designation.[34]

Alta Environmental, LP Comment 3, 2022: *Petitioners claimed that "'currently unpermitted stormwater discharges from privately owned commercial, industrial, and institutional (CII) sites are contributing to violations of water quality standards shortly after the Regional Board released the IGP [Industrial General Permit] in September 2015. The subsequent denial for designation by EPA and then the legal challenge that was lost and resulted in the rollout of this CII Permit doesn't seem to have adequately considered the new IGP, the new LA Region MS4 Permit, the EWMPs [Enhanced Water Management Programs], and Measure W which was passed in a parallel timeline as the Petitioners legal challenge occurred."*

Response: The commenter suggests that EPA has not adequately considered the Los Angeles Region MS4 Permit, the EWMPs, and Measure W[35] which were not available

[33] *Environmental Def. Center*, 344 F.3d 832, 875-876 (9th Cir. 2003)
[34] 40 C.F.R. § 122.26(a)(9)(iii) (" Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the r Director (see § 124.52(c) of this chapter)").
[35] Letter from Alta Environmental, LP/NV5 Company dated October 24, 2022, Administrative Record IV.C.1.

when EPA denied the Petitions and a District Court ruled against EPA in *Los Angeles Waterkeeper v. Pruitt*.[36] EPA notes that one of the principal holdings in *Pruitt* is that EPA cannot consider other environmental programs, including permits, when deciding whether a residual designation is appropriate.

EPA considered three factors in its 2016 denial of the Petitions, based on factors in the preamble to the Phase II rule[37], specifically 1) the likelihood for exposure of pollutants to precipitation at sources included in that category; 2) whether sufficient data were available on which to make a determination of potential adverse water quality impacts for the category of sources; and 3) whether such sources were adequately addressed by other environmental programs.[38]

In the 2016 Response, EPA found factors (1) and (2) had been met,[39] and argued that factor (3) had been satisfied based on existing programs that addressed the pollutants of concern in the watersheds at issue.[40] As stated above, Petitioners challenged EPA's decision in U.S. District Court and prevailed. The Court found that it was improper for EPA to rely on the third factor because the relevant CWA text is unambiguous and does not allow for this consideration.[41] In light of *Pruitt*, EPA is not using the third factor in reconsideration of these Petitions.

Instead, the factors used by the Region in reconsideration of the Petitions are:

1. Likelihood of exposure of pollutants to precipitation at sites in the categories identified in the Petitions; and
2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites.
    a. Data with respect to determining causes of impairment in receiving water quality.
    b. Data available from establishment of TMDLs.

EPA disagrees with the commenter that the Preliminary Designation does not adequately reflect current information. The Preliminary Designation described the sources of information that EPA relied upon for the proposed action. This included a 2021 Paradigm Environmental report.[42] The modeling used the Los Angeles County's

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[36] *See Pruitt,* 320 F. Supp.3d 1115 (C.D. CA 2018), Administrative Record VII.B.
[37] 64 Fed. Reg. 68722, 68780 (December 8, 1999).
[38] *Id.*
[39] Enclosure of Region 9's Record of Decision explaining the Final Determination for the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition, October 2016, Administrative Record VII.A.1. at p. 5-7; *see also* Enclosure of Region 9's Record of Decision explaining the Final Determination for the Alamitos Bay/Los Cerritos Channel Petition, October 2016, Administrative Record VII.B.1. at p. 5-7.
[40] *Id.* at 7-15.
[41] *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018), Administrative Record VIII.B.
[42] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021, Administrative

Watershed Management Modeling System that was recently updated in 2020.

Additional sources of information used to support the Preliminary, Revised Preliminary and Final Designations included:

- Applicable TMDLs such as the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDLs, 2012; and the Los Cerritos Channel TMDLs for Metals, March 2010.
- The California 2020-2022 Integrated Report for Clean Water Act Sections 303(d) and 305(b).
- 2016 City of Long Beach Watershed Management Program for Nearshore Watersheds, along with revised version of August 2023.
- Enhanced Watershed Management Program for the Dominguez Channel Watershed Management Area Group, June 2015, along with revised version of June 2021.
- 2017 Los Cerritos Channel Watershed Management Program, along with updated version of January 2024.
- The 2015 Petitions and the supporting information submitted with the Petitions.

These sources are sufficiently recent to provide a reasonably accurate picture of current conditions in the watersheds and support the Final Designation.

Alta Environmental, LP Comment 4, 2022: "*The U.S. EPA concluded that CII facilities are contributors of pollutants and water quality standard violations based on modelling data performed for zinc and copper. The modelling did not review other pollutants in detail. These two pollutants have two primary sources: 1) copper from brake pads and 2) zinc from tire wear, both of which are transportation sources and present a regional constant input to any developed urbanized area. Additionally, atmospheric deposition from local and regional sources likely are comprised of transportation related sources. Because the RDA is intended for sites not covered by an NPDES Permit, the CII Permit should only apply to Commercial or Institutional sites . . . Industrial sites are already covered by the IGP and are already addressing the TMDLs in these watersheds. Additionally, the No Exposure Certification also covers industrial facilities by demonstrating they don't contribute industrial pollutants of concern because of the nature of their covered business operations. Additionally, if the argument is that impervious surface is causing copper and zinc exceedances in receiving waters, the issue suggests that non-point sources are the problem. If a facility simply covers their entire property so no-exposure to pollutants exists, the only source would be buildup and washoff from local and regional atmospheric deposition (suggesting that other source control methods targeting transportation sources should be investigated as opposed to issuing a CII Permit to*

Record XIII.C.1.

control impervious surfaces)."

Response: As explained in the Preliminary, Revised, and Final Designations, the Industrial General Permit (IGP) program only requires permitting of those portions of an industrial facility that are "associated with industrial activity."[43] Runoff from portions of a facility not associated with industrial activity (such as administrative buildings and employee parking lots) are not currently required to be permitted. However, the Preliminary and Final Designation explains that rooftops and parking lots can be sources of the pollutants of concern, such as copper and zinc, in the watersheds. Even facilities submitting No Exposure Certifications (NECs) have such areas. Accordingly, facilities submitting NECs as well the unpermitted portions of other IGP facilities were included in the Preliminary Designation and the Final Designation.

With regards to the comment about investigating source control that targets transportation sources, EPA notes that California has already begun efforts to reduce copper in brake pads (e.g., California's Senate Bill 346 (2010) limiting copper in brake pads). The state has other efforts related to source control related to zinc underway, such as the current proposal by the California Department of Toxic Substances Control to regulate zinc in tires.

The Agency also points out that, as also noted in the Final Designation,[44] EPA initially denied the 2015 Petitions on the grounds that water quality impairments in the two watersheds were already being addressed by existing environmental programs, such as Watershed Management Programs and NPDES stormwater permits issued to municipalities. However, that denial was challenged, and a District Court concluded that the CWA does not authorize EPA to consider other regulatory or non-regulatory programs when determining whether sources are causing or contributing to exceedances (i.e., violations) of water quality standards.[45]

Alta Environmental Comments submitted January 3, 2024

Alta Environmental, LP Comment 1, 2024: ***"****The Preliminary Designation includes a wide category of stormwater discharges (i.e., those from privately owned CII sites) within a large geographic area (i.e., the two watersheds). It therefore relies on the regulatory authority to designate "a category of discharges within a geographic area", rather than on the underlying statutory authority to regulate "a discharge." 40 C.F.R. § 122.26(a)(9)(i)(D); 33 U.S.C. § 1342(p)(2)(E). However, the Preliminary Designation exceeds the intended scope of EPA's statutory authority and is therefore unlawfully inconsistent with the enabling statute. EPA's expansive geographic interpretation of its residual designation authority (RDA directly contrasts with the way the agency*

[43] 40 C.F.R. § 122.26(b)(14)).
[44] Final Designation Memo at pp. 5-6, Administrative Record III.A.
[45] *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018), Administrative Record VII.B.

expresses, in its regulations, the limits of its authority over sources that the statute describes as "a discharge." For example, 33 U.S.C. section 1342(p)(2)(B) refers in the singular to "a discharge associated with industrial activity" and subdivisions (C) and (D) refer in the singular to "a discharge" from large and medium municipal separate storm sewer systems (MS4), respectively. The associated regulations then address large and medium MS4 discharges by saying that "all discharges" require permits. 40 C.F.R. § 122.26(a)(3). Discharges from industrial sources are addressed either individually or as aggregated individual discharges, not as categories within a large geography. 40 C.F.R. §122.26(a)(4) (singular industrial discharge); Id. § 122.26(a)(6) (aggregated individual "discharges associated with industrial activity"). Additionally, elsewhere in the regulations, EPA's use of the term "a discharge" connotes a singular facility, site, or discharge."

Response: EPA's Preliminary, Revised, and Final Designations are based on its statutory and regulatory authority. Clean Water Act Section 402(p)(2)(E) provides that the EPA Administrator require NPDES permits for "a discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." Clean Water Act Section 402(p)(6) required EPA to issue regulations that designate stormwater discharges to "protect water quality" and "establish a comprehensive program to regulate such designated sources."

NPDES regulations provide that EPA may designate discharges from additional sources when EPA ". . . determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."[46] (emphasis added)

The above provision was added to NPDES regulations in 1999 with the promulgation of the Phase II stormwater regulations.[47] The preamble to the regulations provides guidance concerning the regulations.[48] The preamble clarifies that the phrase "within a geographic area" was intended to provide for designation on a watershed basis, as EPA is doing here. [49] The Ninth Circuit Court of Appeals explained that EPA may designate categories of sources based on local water quality impacts.[50] EPA determined that the

[46] 40 C.F.R § 122.26(a)(9)(i)(D).
[47] 64 Fed. Reg. 68722.
[48] 64 Fed. Reg. 68781.
[49] *Id*.
[50] *Environmental Def. Center., Inc. v. EPA* 344 F.3d 832, 875-76 (9th Cir. 2003) (stating that "While not a blank check, § 402(p)(6) authorizes a comprehensive program that allows regional designation of polluting discharges that compromise water quality locally, even if they have not been established as compromising water quality nationally at the time Phase II was promulgated. In allowing continuing designation authority, EPA permissibly designated a third category of dischargers subject to Phase II regulation—those established locally as polluting U.S. waters—following all required studies and consultation with state and local officials. EPA reasonably determined that discharges other than those from small MS4s and

CII sources, as a category, are contributing to violations of water quality standards.

Consistent with the Ninth Circuit's decision in *Environmental Defense Center*, EPA has explained that EPA's designation authority can be applied within different geographic areas to any single discharge (i.e., a specific facility), or category of discharges.[51] The added term 'within a geographic area' in the regulations allows 'State-wide' or 'watershed-wide' designation within the meaning of the terms.[52]

Additionally, the petition authority does not limit a petition to a single discrete source ("a discharge") as suggested by the commenter.[53] CWA § 402(p)(2)(E) provides for case-by-case designation and permitting for "a discharge," CWA 402(p)(6) allows EPA to "designate stormwater discharges … to protect water quality," and the Ninth Circuit noted that this should not be interpreted to restrict case-by-case permitting to a single discharge.[54] EPA interprets 40 C.F.R. § 122.26(f)(2), which similarly provides for petitions for "a discharge" in the same manner as CWA § 402(p)(2)(E), CWA 402(p)(6), and the Ninth Circuit's decision in *Environmental Defense Center* to mean that petitions for residual designation and NPDES permitting would not be restricted to a single discharge. Accordingly, EPA concludes that the Final Designation may apply to categories of discharges within a geographic area.

Alta Environmental, LP Comment 2, 2024: *The commenter indicated that "EPA has failed to comply with the Federal rulemaking requirements for the Preliminary Designation."*

Response: See Common Response 5 and *Alta Environmental Comment 2*, *2022*.

Alta Environmental, LP Comment 3, 2024: *The commenter stated that the revised Preliminary Designation is inconsistent with the underlying Petitions. In particular, the commenter alleged that: "(1) the Preliminary Designation does not designate stormwater discharges of ammonia in the Alamitos Bay/Los Cerritos Channel Watershed, and (2) the Preliminary Designation arbitrarily limits its designation to CII sites with five or more acres of impervious surface."*

Response: As noted in the Revised Preliminary Designation, the Preliminary Designation was intended to address a wide variety of pollutants impairing the watershed, and ammonia is specifically mentioned as one such pollutant in the Alamitos Bay/Los

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construction sites were likely to require regulation "to protect water quality" in satisfaction of the § 402(p)(6) mandate. EPA reasonably determined that, although it lacked sufficient data to support nationwide, categorical designation of these sources, particularized data might support their designations on a more localized basis. EPA reasonably interpreted § 402(p)(6) as authorizing regional designation of sources and regional source categories, based on water quality standards including TMDLs.").

[51] *Id.*

[52] 64 Fed. Reg. 68781.

[53] See 40 C.F.R. § 122.26(f)(2).

[54] *Environmental Def. Ctr., Inc. v. EPA,* 344 F.3d 832, 873 (9th Cir. 2003).

Cerritos Channel Watershed.[55] The Petition for the Alamitos Bay/Los Cerritos Channel Watershed notes that ammonia in stormwater can stem from a wide variety of CII sources (such as those that use fertilizers) and consequently the Petition only requests designation of CII sources in general without singling out any particular CII categories for special attention with regards to ammonia.[56] EPA's Final Designation does cover a broad range of CII sources that EPA believes is consistent with the Petition in this regard. Importantly, as described in EPA's Common Response 3, zinc is considered a key or limiting pollutant, whereby stormwater control measures that reduce zinc loads will also reduce other stormwater pollutants.

With regards to limiting the Revised Preliminary Designation to CII parcels with five or more acres of impervious surface, EPA is adopting a phased approach to addressing the Petitions, beginning with the largest sources first. EPA finds this is a reasonable approach given the large total number of parcels in the watersheds (about 20,000) potentially subject to designation.[57] However, EPA may designate additional sources in the future.

Alta Environmental, LP Comment 4, 2024: *The commenter stated that the zinc loading data in Appendix 1 of the revised Preliminary Designation lacks an adequate explanation for how it was calculated. The commenter also asked several specific questions about the estimates* including:

- *Issues with inconsistent calculations: "Table A appears to cumulatively sum zinc loads for unpermitted CII parcels of varying sizes, while Table B additively sums zinc loads for unpermitted portions of CII facilities regulated pursuant to 40 C.F.R. § 122.26(b)(14)."*
- *Lack of explanation:*
    - *"EPA provides no explanation for how it reaches its total zinc load estimate of 34,300 kg/year, so it is impossible to determine whether this estimate is accurate."*
    - *"Likewise, EPA refers to a 'needed load reduction of 80.9% for sources in the Alamitos Bay/Los Cerritos Channel Watershed and 85.4% for sources in the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed,' but provides no citation or explanation for these percentages."*
    - *"EPA then calculates the necessary reduction in zinc loading at the preliminarily designated CII sites to be 9,300 kg/year. However, it is once again unclear how EPA arrives at this value and it is unknown whether EPA takes into account the regulation of other stormwater discharges in the watersheds in its calculation."*

[55] "Revisions to 2022 Preliminary Designation" October 2023 [hereinafter Revised Preliminary Designation Memo], Administrative Record III.B.
[56] Los Cerritos Petition at p. 12-13, Administrative Record VI.B. at p. 12-13.
[57] Revised Preliminary Designation Memo, Administrative Record III.B.; *see also* Final Designation Memo, Appendix 1, Administrative Record III.A.

Response: Table A of Appendix 1 to the Revised and Final Designation shows the acreage size thresholds, the number of parcels and zinc estimates per size thresholds. These are not cumulative nor additive. In Table A, for example, the value for parcels with more than five acres impervious surface includes parcels with five to ten acres impervious surface and those with more than ten acres impervious surface.

Table B provides loads from different categories of industrial facilities that are all of one size category (five or more total acres). Table B, however, only includes loads from industrial facilities of one size category although several categories of industrial facilities are shown (e.g., those submitting no exposure certifications, those submitting notices of non-applicability as well as those submitting notices of intent for regular permit coverage).

For EPA's explanation of total zinc load of 34,300 kg/yr for all sources, we refer the commenter to Procedure 4 in the Revised Procedures (Attachment 2). The total load includes the load from all sources in the watersheds regardless of acreage and land use category, i.e., including parcels with land use code of residential.

Regarding the percentage zinc loading reductions required for TMDL compliance of 80.9% and 85.4% in the two watersheds, these figures can be found in the 2021 Paradigm Environmental report which was available on EPA's website as of August 2022.[58]

With regards to the value of 9,300 kg/yr. cited by the commenter for the estimated zinc loading reduction, it should first be noted that in the Final Designation, EPA decided to not include CII facilities at ports at this time, so the load reduction estimate is reduced to 6,480 kg/yr.

Briefly, EPA calculated the 6,480 value by assuming a load reduction of 85.4% for the loads from the designated sources in the Dominguez Channel and Los Angeles/Los Beach Inner and Outer Harbor Watershed and an 80.9% reduction for the loads from the designated sources in the Alamitos Bay/Los Cerritos Channel Watershed. As shown in the Table 1 of the Revised Procedures (Attachment 2), the total zinc load from all designated CII sources in both watersheds is approximately 7,660 kg/yr. For the sources in the Dominguez Channel and Los Angeles/Los Beach Inner and Outer Harbor Watershed we multiply their loads by 0.854 to obtain the required load reductions, and for those in the Alamitos Bay/Los Cerritos Channel Watershed, we multiply their loads by 0.809. The resulting total load reduction for both watersheds combined is 6,480 kg/yr.

[58] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 2021 at p.5, Administrative Record XIII.C.1. at p.5.

Alta Environmental, LP Comment 5, 2024: *The commenter expressed concern that although EPA analyzed the impacts of zinc in the Revised Preliminary Designation, a similar analysis for the impacts of the copper load was not conducted. The commenter indicated that copper should not be regulated without such an analysis.*

Response: The Revised Preliminary Designation noted that the watersheds are impaired for numerous pollutants, including metals such as copper and zinc.[59] The Final Designation is intended to help address the water quality impairments in the watershed associated with all the pollutants of concern, including copper, by using zinc as the "limiting pollutant." EPA has added an analysis of copper loads to the Revised Procedures (Attachment 2) referred to in Common Response 3.[60]

Copper would be regulated by the Draft CII Permit that may be issued by the Regional Board to authorize any discharges that may be designated by EPA. As such, it is up to the Regional Board to determine which specific pollutants to regulate based on applicable NPDES regulations. NPDES regulations at 40 CFR 122.44(d)(1)(iii) require permitting of constituents with "the reasonable potential to cause, or contribute to an excursion above any State water quality standard" as well as constituents for which additional controls are necessary for consistency "with the assumptions and requirements of any available wasteload allocation" from a TMDL.[61] The 2021 Paradigm Environmental report estimated that a 90% reduction in copper would be needed in stormwater discharges in order to comply with applicable water quality standards.[62] The 2021 revised Enhanced Watershed Management Program for the Dominguez Channel notes that copper is subject to numerous applicable wasteload allocations (WLAs) from TMDLs.[63] The 2021 Paradigm Environmental report as well as the many applicable WLAs both demonstrate the need to regulate copper in the permit in order to comply with applicable NPDES regulations.

Alta Environmental, LP Comment 6, 2024: *The commenter noted that the revised Preliminary Designation had included unpermitted portions of industrial facilities covered by the state's industrial general permit (IGP). The commenter expressed concern that this may result in the permitting of de minimis sources of the pollutants of concern.*

Response: As noted in the Revised Preliminary Designation, the inclusion of the unpermitted portions of industrial facilities covered by the state's Industrial General

[59] Revised Preliminary Designation Memo at p. 2, Administrative Record III.B.at p. 2.
[60] Revised Procedure for Estimating Zinc Loads, Administrative Record XII.A
[61] 40 C.F.R. 122.44(d)(1)(vii)(B).
[62] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 2021, Administrative Record XIII.C.1.
[63] Dominguez Channel, Enhanced Watershed Management Program, Revised June 2021 at p. 2-8, Administrative Record XI.C. at p. 2-8.

Permit (IGP) was in response to a request in the Petitions.[64] EPA noted that the IGP only covers areas at a facility that are associated with industrial activity and does not include non-industrial areas such as employee parking lots and administrative buildings that may nevertheless be significant sources of pollutants of concerns such as copper and zinc. EPA estimated the zinc load from the unpermitted portions of facilities covered by the state's IGP that have five or more acres total area. As shown in the Final Designation, Appendix 1, Part B of Appendix 1, the estimated zinc load is 3,500 kg/yr for unpermitted portions of IGP facilities. This is about 45% of the total load (3,500/7,660) of CII facilities subject to this designation. Furthermore, the zinc load from unpermitted portions of IGP facilities is about 10% (3,500/34,300) of the total load of *all* sources in these watersheds.

Alta Environmental, LP Comment 7, 2024: *The commenter expressed concern that the Revised Preliminary Designation fails to address the underlying sources of the main pollutants of concern, namely tire wear for zinc and brake pads for copper.*

Response: See response to *Alta Environmental, LP Comment 4*, *2022*.

Alta Environmental, LP Comment 8, 2024: *The commenter expressed concern that the Revised Preliminary Designation would include a wide variety of privately owned CII facilities that the commenter indicated would be minor sources of pollutants such as shopping centers, supermarkets, office complexes, hotels, warehouses, schools, hospitals, and nursing homes. The commenter also expressed concern about the economic effects of the Preliminary Designation on disadvantaged communities that exist in the watersheds.*

Response: EPA disagrees with the commenter that such facilities would be minor sources of pollutants. The Revised Preliminary Designation explained that CII facilities such as these would be significant sources of pollutants that contribute to exceedances of water quality standards.[65]

Regarding comments about effects on disadvantaged communities, EPA recognizes potential impacts of its action on these communities.[66] As noted in our presentations at various stakeholder meetings hosted jointly by EPA and the Regional Board in 2021 and

[64] Revised Preliminary Designation Memo at p. 11, Administrative Record III.B. at p. 11; *see also* Dominguez Channel Petition at p. 11 and Los Cerritos Petition at p. 11, Administrative Record VI. A and B at p. 11.
[65] Revised Preliminary Designation Memo at p. 5, Administrative Record III.B. at p. 5.
[66] "Proposed Action to Address Storm Water Pollution in two Los Angeles Watersheds" fact sheet announcing comment period, November 2023, Administrative Record II.B; "Acción Propuesta para Abordar la Contaminación por Aguas Pluviales en dos Cuencas Hidrograficas de Los Angeles," hoja informativa anunciando periodo de comentario, Noviembre 2023, Administrative Record II.C.

2022,[67] EPA noted that it expects the Revised Preliminary Designation to provide numerous benefits to communities with environmental justice concerns by promoting additional green infrastructure[68] in the watersheds that will provide multiple benefits such as water quality improvement, flood control, recreational opportunities, and reducing urban heat island effects.[69]

Alta Environmental, LP Comment 9, 2024: "*The District Court in Los Angeles Waterkeeper found that because EPA determined there was sufficient data available to demonstrate that stormwater discharges from CII sites are contributing to water quality impairments in the watersheds, EPA is required to engage in the permitting process or prohibit the discharge. Los Angeles Waterkeeper, 320 F.Supp.3d at 1123. The District Court therefore reasoned that any decision not to regulate stormwater discharges "must relate to whether the stormwater at issue contributes to a violation of a water quality standard." Id. at 1125. EPA's Preliminary Designation makes no such finding for the categories of CII facilities it fails to regulate, such as publicly operated CII facilities and all CII facilities of less than five acres."*

Response: As explained in the Preliminary, Revised, and Final Designation, EPA used two factors to determine that the discharges of stormwater described in the Petition contribute to violations of water quality standards. EPA's findings are based on:

1. Likelihood of exposure of pollutants to precipitation at sites in the CII categories identified in the Petitions; and
2. Sufficiency of available data to evaluate the contribution of stormwater discharges to water quality impairment from the targeted categories of sites, including:
    a. Data with respect to determining causes of impairment in receiving water quality, and
    b. Data available from establishment of TMDLs.[70]

[67] Available at: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific

[68] Two of the three compliance options in the Draft CII Permit for potentially designated CII sources that was recently re-proposed in November 2023 by the Los Angeles Regional Water Board involve the use of green infrastructure techniques, either in regional stormwater capture projects or by stormwater capture onsite. Accordingly, the designation should promote additional green infrastructure in the watersheds.

[69] "Poor Neighborhoods Bear the Brunt of Extreme Heat, 'legacies of racist decision-making,'" Los Angeles Times. Dated October 28, 2021, Administrative Record XVI.C.; "Dimensions of Thermal Inequity: Neighborhood Social Demographics and Urban Heat in the Southwestern U.S." International Journal of Environmental Research and Public Health. Dated January 22, 2021, Administrative Record XVI.D.; "Trees Grow on Money: Urban Tree Canopy Cover and Environmental Justice," Plos One. Dated April 1, 2015, Administrative Record XVI.G.

[70] Final Designation Memo at p. 1-5, Administrative Record III.A. at p. 1- 5.

These two factors are explained in detail in the Final Designation.[71] See also response to Alta Environmental, LLP comment 3, 2022.

BRISCOE IVESTER & BAZEL, LLP (comments submitted on behalf of PMSA)

Briscoe Ivester & Bazel, LLP Comment submitted in 2022 (on behalf of PMSA)

Briscoe Ivester & Bazel, LLP Comment 1, 2022: *Writing on behalf of the Pacific Merchant Shipping Association (PMSA), the commenter questioned whether the RDA "is properly considered a rulemaking or a quasi-adjudicatory action under the Administrative Procedure Act." The commenter requested to meeting with the Region 9 Regional Administrator to discuss the matter.*

Response: For further information concerning consistency with the APA, see Common Response 5 and response to *Alta Environmental LP Comment 2, 2022*.[72]

Briscoe Ivester & Bazel, LLP Comment submitted in 2024

Briscoe Ivester & Bazel, LLP Comment 1, 2024*: The commenter raised questions about the timing of the Regional Board's Draft Permit in relation to EPA's Final Designation. The commenter expressed concern that the Regional Board scheduled a permit adoption hearing for February 22, 2024, despite EPA not having issued a Final Designation. The commenter also asked about the coordination between EPA and Regional Board concerning the timing of Regional Board's permit and the Final Designation.*

Response: EPA and the Regional Board have been coordinating the timing of their respective actions in responding to the Petitions. This included simultaneous proposal of the initial Draft CII Permit by the Regional Board in July 2022 and concurrent publication of EPA's Preliminary Designation for public comment.

NPDES regulations applicable to case-by-case designations for stormwater discharges provide only limited guidance concerning the procedures to the followed. The regulations do require that a discharger apply for permit coverage within 180 days of notice of final designation, unless additional time is provided.[73] For this reason,

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[71] Final Designation Memo at p. 6-10, Administrative Record III.A. at p. 6-10.

[72] See Email from EPA Region 9 to Briscoe Ivestor & Bazel, December 26, 2023, Administrative Record XVIII.F.; Email with attachment from Briscoe Ivestor & Bazel to EPA Region 9 Regional Counsel, January 23, 2024, Administrative Record XVIII.E.

[73] 40 C.F.R. § 122.26(a)(9)(iii) ("Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter)").

permitting authorities must prepare for any potential final designation. Otherwise, the newly designated sources could be subject to enforcement actions.

EPA and the Regional Board are coordinating as necessary to ensure that any final CII permit does not precede a Final Designation by EPA and that any final permit accurately reflects the sources that were designated. We note that final adoption of the Regional Board's proposed Draft CII Permit was removed from the Board's agenda for the February 22, 2024, Board meeting, and that on March 11, 2024, the Board announced that it will postpone consideration of its CII permit until any Final Designation is issued by EPA.

CALIFORNIA STORMWATER QUALITY ASSOCIATION (CASQA)

CASQA Comments submitted October 24, 2022

CASQA Comment 1, 2022: *CASQA provides comments here regarding potential future uses of the RDA authority by EPA or California Water Boards. "It is imperative that EPA and the Water Boards use the RDA only when there is sufficient case-by-case or watershed specific evidence that supports a finding that the discharge or category of discharges contributes to a violation of a water quality standard or is a significant contributor of pollutants to a water of the United States. The authorizing statutory provision (CWA § 402(p)(6)) is not a blank check but is designed to allow designation of individual or categories of discharges that may have a local impact. Most importantly, use of such authority must be supported by particularized data. In other words, generalized or summarized data on a large scale (i.e., nationally or statewide) is not sufficient to support the use of RDA."*

Response: As explained in the Preliminary Designation, the residual designation authority is grounded both on CWA § 402(p)(6), which broadly authorizes a comprehensive program to protect water quality, and on CWA § 402(p)(2)(E), which authorizes case-by-case designation of certain polluters and categories of polluters.[74] The requirement that designation of additional stormwater sources be supported by adequate information is implicit within the authority provided by the CWA and NPDES regulations that provide for case-by-case or categorical designations.[75] EPA also notes that any designation must be consistent with the District Court ruling in *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018). Here, the Final Designation has adequate support, as shown in the Administrative Record, which was available

[74] *Environmental Def. Ctr., Inc. v. EPA,* 344 F.3d 832, 873, 875-76 (9th Cir. 2003).
[75] CWA §§ 402(p)(2)(E) and (p)(6); 40 CFR §§ 122.26(a)(1)(v) and 122.26(a)(9)(i)(C) and (D).

during the public comment period and continues to be available now.

The CASQA Comment 2, 2022 below was submitted only to the Regional Board, yet the content relates to EPA's Preliminary Designation. As such, EPA is providing a response.

CASQA Comment 2, 2022 (submitted to Regional Board only): *"On the issue of facility size, the Permit can be interpreted as applying the 5-acre threshold inconsistently to facilities already enrolled in the IGP. As currently written, the threshold for enrollment in the CII Permit is 5 acres of total area versus 5 acres of impervious area for facilities not already enrolled in the IGP. Moreover, facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots), with no specification as to the size of that remaining portion. An IGP-enrolled facility would need to enroll any pervious surface not already enrolled in the IGP, into the CII Permit, regardless of the size. Clarity is needed."*

Response: EPA designated stormwater discharges from unpermitted portions of privately-owned IGP facilities subject to 40 C.F.R. 122.26(b)(14) if total facility area is five or more acres. (rather than using the impervious surface acreage). Given the State Board's IGP database lacked impervious surface data for a substantial number of facilities, EPA used total acres as the best available information. As explained in the Final Designation (p. 13), EPA found that discharges from facilities subject to 40 C.F.R. 122.26(b)(14), stormwater discharges associated with certain industrial activities, are approximately 80% to 90% impervious,[76] consisting of industrial areas, parking lots, interior roadways, and roofed buildings, much of which is not currently subject to NPDES permitting. Because of the high percentage of imperviousness of industrial facilities, the total area of a facility will not differ significantly from its impervious surface acreage. EPA based the Final Designation on total facility area irrespective of the size of the unpermitted portion for overall simplicity and consistency in the size of facilities covered by the Final Designation. See also response to *California Council for Environmental and Economic Balance (CCEEB) Comment 2, 2022*, and response to *Gold Bond Building Products Comment 2, 2022*.

CASQA Comment submitted January 3, 2024

CASQA Comment 1, 2024: "*Further, CASQA encourages EPA and the Water Boards to consult with local agencies, including municipal separate storm sewer systems (MS4s), local industries, and other stakeholders prior to using RDA. By working with local communities and stakeholders, it may be possible to identify alternative solutions that*

[76] California Office of Environmental Health Hazard Assessment. 2008. Impervious Surface Coefficients, A Tool for Environmental Analysis and Management, July 2008. at p.at 2, Administrative Record XVI.K.

are more appropriate and effective in resolving localized water quality conditions. Such alternative approaches would potentially avoid the need to designate new categories of dischargers that are subject to NPDES permits, which would in turn avoid confusion amongst the various state and local jurisdictions and administrative burdens for all involved. Unfortunately, it appears from EPA's Revised Preliminary Designation memorandum that only the State Water Resources Control Board and the Los Angeles Water Quality Control Board were consulted by EPA."

Response: EPA engaged in extensive outreach with a wide variety of stakeholders in the development of the 2022 Preliminary Designation. This included three public workshops held jointly with the Regional Board on December 7, and December 16, 2021, and August 30, 2022.[77] EPA also presented overviews of the Preliminary Designation at CASQA quarterly meetings in January 2022 and 2023.[78] In addition, multiple meetings were held with the Petitioners between 2019 and 2022. Additionally, in April 2022, EPA held conference calls with the California Council for Environmental and Economic Balance and the Los Angeles County Business Federation. EPA participated in meetings with the following entities associated with Watershed Management Groups in both watersheds: City of Los Angeles (September 2021); LA County Flood (September 2021); Dominguez Channel Watershed Management Group (November 2019) and Los Cerritos Watershed Management Group (October 2019, November 2021, November 2023). Furthermore, EPA engaged with stakeholders in identifying alternative actions through the information gathering, and outreach EPA conducted for the 2022 Preliminary Designation along with a review of the comments submitted on the 2022 Preliminary Designation had already provided EPA with extensive information concerning alternative actions as recommended by CASQA and others. While EPA has conducted extensive outreach, the court in *Pruitt* found that if EPA finds certain sources of stormwater pollutants cause exceedances of water quality standards, EPA must designate those sources regardless of the existence of other programs or permits, as explained in the Final Designation.[79]

[77] Preliminary Designation Power Point presentation for the August 30, 2022 workshop, Administrative Record II.G.; Preliminary Designation Power Point presentation for the December 7 and December 16, 2021 workshops for CII owners/operators, Administrative Record II.L.

[78] EPA Stormwater Program Update at CASQA Quarterly Meeting, January 19, 2023, Administrative Record II.E;EPA Stormwater Program Update at CASQA Quarterly Meeting, January 20, 2022, Administrative Record II.J.

[79] *Los Angeles Waterkeeper, et al. v. Pruitt*, 320 F.Supp.3d 1115, (C.D. Cal 2018), Administrative Record VIII.B.

CALIFORNIA COUNCIL FOR ENVIRONMENTAL AND ECONOMIC BALANCE (CCEEB)

California Council for Environmental and Economic Balance Comments submitted in 2022

The following comments from the CCEEB were submitted only to the Regional Board and relate to provisions in the Draft CII Permit, which reflects EPA's Preliminary Designation. As such, EPA is providing a response.

CCEEB Comment 1, 2022 (submitted to Regional Board only): *"Although the language suggests the draft CII Permit is intended to apply to discharges from privately-owned CII sites, the matrix of facilities the Board believes to be in scope includes some public entities. If it is the Board's intention that the draft CII Permit would also apply to certain publicly owned sites, CCEEB requests that the criteria for including these facilities be explained. CCEEB further requests that the notice for the permit be revised and reissued accordingly, so that publicly owned sites are provided clear notice to be able to evaluate the potential impacts to their facilities and operations and to provide comments."*

REVISED Response: The Final Designation does include privately-owned CII sites but does not include privately operated CII sources on publicly owned lands at the ports and airports at this time. See Common Response 4.

CCEEB Comment 2, 2022 (submitted to Regional Board only): *"[T]he draft CII Permit, for permitted facilities, should only apply to those that have 5-acres of unpermitted impervious surface, not to all facilities with a 5-acre parcel that is already covered in some respect by a permit. Additionally, the Draft Permit is unclear as to the scope and applicability relative to sites greater than 5-acres that may have unpermitted wildlife/natural/wetland area. For such sites, the wildlife/natural/wetland area where there is no impact from the CII portion of the facility site should not count towards a responsible entity's 5-acre threshold for applicability."*

Response: The Regional Board's Draft CII Permit is intended to cover the stormwater discharges from the CII sources that are included in EPA's Preliminary Designation. For industrial facilities covered by the State's Industrial General Permit (IGP), the Preliminary Designation was based on total area (as opposed to impervious surface) due to the absence of impervious surface information for some facilities in California's IGP database. Designation based on a total area of five or more acres also provides simplicity and general consistency with the size of designated CII sources (five or more acres impervious surface), that are covered by the Preliminary Designation but not covered by the IGP.

Further, given the high level of impervious surface of most industrial facilities, total area and impervious surface will be similar. In an EPA memorandum titled "Impervious Cover of Industrial Facilities with Five or More Acres Total Area in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County" from July 13, 2022, EPA considered the degree of impervious surface of the industrial facilities that would be subject to the Preliminary Designation.[80] To that end, Appendix 1 to the "Impervious Cover" memorandum contains a list obtained from the Regional Board of the IGP facilities in the watersheds of five or more acres total area.[81] The list in Appendix 1 shows that the industrial facilities that would be subject to the Preliminary Designation are heavily dominated by light and heavy manufacturing, transportation and warehousing facilities, which will have 80-90% impervious surface and will not include significant amounts of natural or wildlife areas. As such, the use of total area is a reasonable factor to consider in the selection of CII sources for the Final Designation.[82]

CITY OF LONG BEACH

City of Long Beach Comment submitted in 2022

The following comment from the City of Long Beach was submitted only to the Regional Board and relates to provisions in the Draft CII Permit yet it also raises certain questions about EPA's Preliminary Designation. As such, EPA is providing a response.

City of Long Beach Comment 1, 2022 (submitted to the Regional Board only): *"Despite the explanation provided in the EPA's public notice documentation on the Preliminary Residual Designation regarding the exclusion of airports in the Draft Permit, clarification is needed on the applicability of the CII Permit on privately owned CII businesses operating at an airport. If a site owner of a CII site is a municipality and the business operator is a private entity, clarification is needed as to whether the site is covered by the MS4 Permit or whether the CII Permit would apply. If the CII Permit applies, clarification is needed as to the party who would need to enroll (i.e., the municipal site owner or the private business operator)."*

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[80] Memorandum to File entitled "Impervious Cover of Industrial Facilities with Five or More Acres Total Area in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County," Dated July 13, 2022 at p. 3-9, Administrative Record XV.B at p. 3-9.

[81] *Id.*

[82] Dominguez Channel Petition at p. 3-8, Administrative Record VI. A. at p. 3-8; Los Cerritos Petition at p. 3-8, Administrative Record VI.B. at p. 3-8.

Response: See Common Response 4. See also CII Draft Permit for information as to the entity expected to enroll in that permit.

CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY (CICWQ)

CICWQ Comment submitted December 18, 2023

CICWQ Comment 1, 2023: *The commenter expressed concern that the inclusion of parcels with Los Angeles County Assessor land use code 1210 (mixed use commercial and residential) could impede conversion to multi-family housing, thereby driving up housing prices at a time when the state is experiencing a housing shortage.*

Response: EPA must base its actions on the authorities and requirements found in the Clean Water Act (CWA) and NPDES regulations promulgated to implement the CWA. Here, EPA's actions must be consistent with *Los Angeles Waterkeeper v. Pruitt.*[83] The sources selected for designation (including those with land use code 1210) are based strictly on water quality considerations as required by the CWA and the decision in *Pruitt*.[84] Nonetheless, EPA reiterates this designation is focusing on commercial, industrial and institutional sites, and clarifies that it does not include sub-categories that are mixed residential or multi-family housing only. The commenter did not provide any information showing that commercial sources with land use code 1210 would not contribute to exceedances of water quality standards, and absent such information, EPA retained CII sources with this land use code in the Final Designation.

ENVIRONMENTAL LAW GROUP for INDUSTRIAL ENVIRONMENTAL ASSOCIATES AND THE BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

Environmental Law Group et al., Comments submitted October 12, 2022

Although the following comments from the Environmental Law Group were submitted only to the Regional Board and relate to provisions in the Draft CII Permit, they also raise certain questions about EPA's Preliminary Designation. As such, EPA is providing responses.

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[83] *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018); Administrative Record VIII.B.
[84] *Id.*

Environmental Law Group, Industrial Environmental Associates and Building Industry Association of San Diego County Comments submitted October 12, 2022

Environmental Law Group et al., Comment 1, 2022: "*The Draft Permit fails to provide any adequate definition for what constitutes a regulated industrial facility. While not clearly stated, the Draft Permit seems to imply that all facilities with SIC codes identified in Attachment A of the Industrial General Permit that have a total footprint of five or more acres will be subject to the Draft Permit. Commentors are concerned that applicability of the Draft Permit based on total area versus impervious area, as applied to Commercial and Institutional CII facilities is not supported by the facts regarding the sources of pollutants and conflicts with the State's goals of conserving and using stormwater as an asset through infiltration. Commenters suggest that industrial facilities be classified in the same way as commercial or institutional facilities as it pertains to consideration of triggering acreage."*

Response: The facilities subject to the draft permit, as noted in Common Response 1, the Final Designation (and hence the draft CII permit) include all industrial facilities that have a footprint of five or more total acres that are subject to NPDES permitting under 40 C.F.R. 122.26(b)(14). All industrial facilities with a footprint of five or more total acres with SIC codes found in Attachment A of the Industrial General Permit would be subject to the permit since the Attachment A list is the same as the list at 40 C.F.R. 122.26(b)(14).

EPA disagrees that designation of industrial facilities based on total area would conflict would the state's goal of using stormwater as a resource. As noted in the response to *CCEEB Comment 2*, industrial facilities have a substantial amount of impervious surface similar to the non-industrial facilities that are included by the Final Designation. Moreover, two of the three options that have been proposed for compliance with the Regional Board's Draft CII Permit for designated facilities involve the use of stormwater capture, either in regional projects or onsite.[85] As such, the designation will promote use of stormwater as a resource. See also response to *CASQA Comment 1, 2022* and response to *California Council for Environmental and Economic Balance (CCEEB) Comment 2, 2022*.

Environmental Law Group et al., Comment 2, 2022: *"The Draft Permit does not specify whether the definition of industrial CII facilities includes facilities with No-Exposure Certifications (NEC) or Notices of Non-Applicability (NONA). Requiring coverage for facilities that have applied for and obtained an NEC or NONA creates a disincentive for industrial facilities to reduce pollution discharges through source control or to capture and use stormwater as a resource. Commenters suggest that the Draft Permit clearly exempt industrial facilities that have obtained either a NEC or a NONA."*

[85] Revised Draft CII Permit, sections 8.1 and 8.2., Administrative Record X.A.

Response: See response to *Environmental Law Group, et al. Comment 1, 2022*. As noted in the Preliminary,[86] Revised Preliminary[87] and Final Designations,[88] industrial facilities generally have a high degree of imperviousness which leads to an increased loading of stormwater pollutants from such sites. Even facilities submitting NECs or NONAs have non-industrial areas, such as employee parking lots or other impervious areas, that are sources of the pollutants of concern in the watersheds and these non-industrial areas may not have controls to reduce stormwater pollutants.[89] As such, the Final Designation continues to include NEC and NONA facilities.

As explained in the Preliminary Designation, EPA decided to designate the unpermitted portions of all sources of five or more total acres if the facility is subject to 40 C.F.R. 122.26(b)(14), but only designated sources that submitted a Notice of Non-Applicability (NONA) under California's IGP if those sources had five or more total acres not covered by the NONA. In the Final Designation, EPA clarified that the unpermitted portions of all sources subject to 40 C.F.R. 122.26(b)(14) that are five or more total acres are designated and required to seek NPDES permit coverage, regardless of whether the source submitted a NONA. EPA will coordinate with Regional Board to ensure that any final CII Permit accurately reflects the source covered by the Final Designation. As explained above, the reason for including NEC and NONA sources is that the unpermitted portions of these sources, i.e., non-industrial areas with impervious surfaces, discharge polluted stormwater discharges that contribute to water quality impairments.[90]

Environmental Law Group et al., Comment 3, 2022: *"The Draft Permit appears to exempt industrial, commercial, and institutional CII sites on municipal airport properties such as big box stores, warehouses, car rental agencies, hotels, private life flight services and CalFire but fails to provide any basis for the exemption while, at the same time, failing to exempt other industrial facilities located on publicly owned land. Commenters suggest that all transport facilities on public land be treated consistently."*

Response: See Common Response 4.

Environmental Law Group et al., Comment 4, 2022: *"In its July 15, 2022, Preliminary Designation Memo, EPA estimates that approximately 640 parcels would be included in its preliminary designation. However, the Memo does not explain how EPA arrived at this estimate. Because of the failure to define which properties are targets of the [preliminary designation], such dischargers do not have fair notice of their obligations and are left to the imagination of the regulators and citizen suit enforcers who the "discharger" might be . . . [W]e assume that the EPA used North American Industrial*

[86] Preliminary Designation Memo at p.11, Administrative Record III.C at p. 11.
[87] Revised Preliminary Designation Memo at p. 11, Administrative Record III.B at p. 11.
[88] Final Designation Memo at p.10, Administrative Record III.A at p. 10.
[89] Dominguez Channel Petition at p. 21-22, Administrative Record VI. A at p. 21-22.
[90] *Id.;* Los Cerritos Petition at p. 3-8, Administrative Record VI.B. at p. 3-8.

Classification System (NAICS) codes or a similar tool to arrive at its estimate that Draft Permit coverage would be limited to approximately 640 parcels. Commentors suggest providing a specific list of covered NAISC codes and parcels listed by APN numbers."

Response: Appendix 1 of the Preliminary Designation Memo, showed the numbers of CII sites subject to the proposed designation. The number of CII parcels in the watersheds with five or more acres of impervious surface was estimated at 450. The number of industrial facilities covered by California's IGP in the watersheds with five or more acres total area was estimated at 190. The sum is 640. For the Final Designation, EPA has revised these values since CII facilities at the ports were not included at this time; thus, there are 430 parcels and 155 IGP facilities for a total of 585 sites.

With regards to which properties are targets of the designation, we refer the commenter to Common Response 1 and Common Response 2 as well as the Final Designation.

Environmental Law Group et al., Comment 5, 2022: *"It is not clear whether [EPA] intended to exempt all commercial, industrial, or institutional discharges at airports or only those that are controlled by a public agency. However, if the drafters intended this broad exemption for airports, the same logic appears to apply to other publicly owned properties such as port facilities. Port facilities, like airports, are regulated by the MS4 Permit fence line to fence line. Port facilities, like airports may have industrial tenants that are subject to the IGP as well as other commercial and institutional dischargers. Neither the Memo nor the Draft Permit provide any information to support the proposition that public airports are somehow unique when it comes to MS4 Permit coverage for public property. Commenters request that all transport facilities on public land be treated consistently and in the same manner as proposed for airports."*

Response: The Final Designation does not include CII sources at the Ports of Long Beach and Los Angeles, nor does it include CII sources at municipal airports at this time. See Common Response 4.

Environmental Law Group et al., Comment 6, 2022: *Before a permit can be issued, "EPA must first use its residual designation authority pursuant to section 402(p)(2)(E) and (6) of the Clean Water Act (CWA), and 40 C.F.R. § 122.26(a)(9)(i)(D). However, as stated by the 9th Circuit Court of Appeal in Environmental Def. Center., Inc. v. EPA, the authorizing statutory provision (CWA § 402(p)(6)) is not a blank check but is designed to allow designation of individual or categories of discharges that may have a local impact. Such designation is an action that implicates the federal Administrative Procedure Act."*

"Commenters believe that strict compliance with APA is a necessary precursor to any residual designation for the effected watersheds in the Los Angeles region."

Response: See Common Response 5, response to *Alta Environmental Comment 2*, *2022*,

and response to *CASQA comment 1, 2022*.

Environmental Law Group et al., Comment 7, 2022*: The commenter expressed concern about the potential costs associated with the Preliminary Designation noting that it is "not clear how smaller minority owned businesses, private schools, churches, and hospitals will be able to absorb these costs in lower income communities. Commenters suggest that these costs and their impacts on environmental justice be carefully analyzed prior to the adoption of this permit."*

Response: Stormwater permits provide important environmental protections to waterbodies within communities, including lower-income and underserved communities. EPA notes that by limiting the designation to industrial facilities of five or more acres total area and to parcels with five or more acres of impervious surface, that the entities affected tend to be large businesses rather than small businesses.

EPA also recognizes that the watersheds include a number of lower-income and underserved communities, as can be seen from the State's CalEnviroScreen tool, that are also among the most heavily impacted by pollution in the State. We also anticipate that green infrastructure retrofits (such as green street conversions, new parks, or additional tree planting) will be among the principal methods employed for compliance with the Regional Board's Draft CII Permit.[91] In addition to bringing water quality improvements to these communities, green infrastructure retrofits will bring multiple benefits such as improved flood control via reduced stormwater runoff, aesthetic benefits (e.g., green streets), groundwater recharge via stormwater infiltration, and a reduction of urban heat island effects via stormwater bioswales or new trees.[92]

Environmental Law Group et al., Comments submitted December 18, 2023

Environmental Law Group et al., Comment 1, 2023: *The commenter expressed concern regarding the potential effects of the Revised Preliminary Designation on the state's housing shortage. In particular, the Revised Preliminary Designation would cover parcels with Los Angeles County Assessor land use code of 1210 (mixed use commercial-residential parcels) and permitting of such parcels could impede conversion to residential uses and the creation of additional housing.*

Response: See response to *CICWQ Comment 1, 2023.*

Environmental Law Group et al., Comment 2, 2023: *The commenter requested that EPA reconsider the inclusion of facilities that had submitted a non-exposure certification (NEC) under the state's industrial general permit.*

[91] Revised Draft CII Permit, Administrative Record X.A.

[92] "Wilmington Greening Project Fact Sheet," City of Los Angeles., October 8, 2020, Administrative Record XVI.E.

Response: EPA's Revised Preliminary Designation included an estimate of zinc loading from facilities that submitted NECs. As shown in Appendix 1 of the Revised Preliminary Designation, the estimated loading from NECs (1,100 kg/yr) is a sizable fraction of the total loading from the unpermitted portions of all industrial facilities (3,500 kg/yr) in the watersheds. Moreover, the number of NECs (approximately 24) is relatively small in comparison to the number of other IGP facilities (approximately 155 total). Given the significant estimated pollutant loading from the NECs, EPA has retained NECs in the Final Designation.

Environmental Law Group et al., Comment 3, 2023: *The commenter expressed concern regarding the inclusion of CII facilities at ports but not airports.*

Response: See Common Response 4.

Environmental Law Group Comment 4, 2023: *The commenter expressed concern that the Revised Preliminary Designation still does not explain the linkage between the pollutant load estimates and the land use codes that are included within the scope of the proposal, particularly for commercial and institutional facilities, noting the land use codes under the new Revised Preliminary Designation. The commenter also noted that the total regulated acreage had not been calculated in the Revised Preliminary Designation. Finally, the commenter also questioned why EPA distinguished between public and private institutional sources such as schools, despite both having considerable impervious areas, and potentially being a significant source of pollutants.*

Response: For the Final Designation, as noted above in Common Response 3, EPA has prepared a detailed explanation for estimating the pollutant loads from different land uses linked to land use codes within the Los Angeles County Tax Assessor's database. As noted in Common Response 3, the WMMS2 model uses stormwater runoff data from 19 land use categories in Los Angeles County and these categories are similar to the land use codes of the CII sites included in the Final Designation. As such, the loading estimates generated by the WMMS2 model will reflect the broad range of CII land uses in the watersheds. See also Procedure 1 in the Revised Procedures (Attachment 2).

In 2022, EPA prepared a separate document, entitled "Procedure for Estimating the Zinc Loads from Certain CII Sources in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)" ("the Procedure"), EPA explained how the estimates for the zinc load were calculated. This document was posted on EPA's website in August 2022 along with multiple other files with supporting data and has been available for public review beginning in August 2022; see: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific. Note this 2022 Procedure document was replaced with the (2024) Revised Procedures document in Attachment 2 to this Response to Comments.

The Revised Preliminary Designation and the Final Designation also list the land use codes that are within the scope of the designation. EPA notes that the land use codes cited by the commenter are within the scope of the proposal.

With regards to the water quality impacts from stormwater discharges from institutional sources, as noted in the Revised Preliminary Designation,[93] EPA concluded in its 2016 initial denial of the Petitions that CII sources were contributing to violation of water quality standards. EPA further clarified in the 2016 responses[94] that all three major categories (commercial, industrial and institutional) were contributing to violations, although institutional sources tended to have lower pollutant loadings than the other categories. Since the commenter did not provide any specific information showing that the sources with the land use codes requested for deletion would not contribute to water quality standards violations, they have been retained in the Final Designation.

With regards to the question of designation of private but not public institutional sources such as schools, this is due to the fact that the Petitions had only requested designation of privately-owned sources.

While EPA did not estimate the total acreage that could be affected, EPA prepared the Revised Procedures document referenced above, which explained how the estimates for the zinc load were calculated.

FEDERAL WATER QUALITY COALITION AND FEDERAL STORMWATER ASSOCIATION (FWQC/FSWA)

Federal Water Quality Coalition and Federal Stormwater Association Comments submitted October 24, 2022

FWQC/FSWA Comment 1, 2022: ***"****EPA can only regulate certain enumerated stormwater point source discharges under the CWA and NPDES permit program and cannot expand its regulatory authority beyond the powers clearly set forth and limited by Congress in CWA. EPA R9's efforts to designate diffuse, non-point source stormwater for NPDES permitting represent unauthorized and impermissible regulatory overreach. EPA's*

[93] Revised Preliminary Designation Memo at p.5, Administrative Record III.B. at p.5.
[94] Enclosure of Region 9's Record of Decision explaining the Final Determination for the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition, October 2016 at p.7, Administrative Record VII.A.1. at p.7; Enclosure of Region 9's Record of Decision explaining the Final Determination for the Alamitos Bay/Los Cerritos Channel Petition, October 2016 at p.7, Administrative Record VII.B.1. at p.7.

designation of sources for NPDES permitting should be withdrawn."

"EPA does not have authority under the NPDES permit program to regulate developed sites that are otherwise exempt from permitting pursuant to CWA Section 402(p)(1). Section 402(p)(1) is a broad exemption from NPDES permitting for all stormwater discharges except those identified in Section 402(p)(2). Developed sites and impervious surfaces are not listed in Section 402(p)(2) or in EPA's Phase I or Phase II regulations implementing the stormwater permitting program. Currently, EPA does not have authority or regulations to control stormwater discharges from developed sites that are not "associated with industrial activity." 40 CFR § 122.26(b)(14)."

"The CWA sets forth specific processes that allow EPA to designate new sources or categories of sources for NPDES permitting. EPA may designate an individual site ('a discharge') that contributes to a violation of a water quality standard or is a significant pollutant discharger on a site-specific basis. Or, as it did for the Phase II expansion, EPA may designate classes or categories of pollutant discharges for permitting through a process Congress laid out in CWA § 402(p)(5)-(6) that requires EPA to study stormwater discharges or classes of stormwater dischargers that currently are not regulated by the NPDES stormwater permit program. To the extent that EPA identifies any such dischargers that it believes should be included in the NPDES permitting program, Congress required EPA to submit a report to Congress containing the results from its study. In CWA Section 402(p)(6), Congress granted EPA authority to develop a regulatory program for those designated dischargers based on the results of the studies and the report it submitted to Congress. During its now discontinued post-construction Federal rulemaking, EPA claimed that it had drafted a Report to Congress. However, the Agency has never released a copy of that draft or provided specific information to support a Phase II-like program expansion. More significantly, without a formal rulemaking process, EPA R9 should be prohibited from designating sites and activities for permitting that the Agency otherwise is prohibited from doing without a rulemaking."

"EPA's Phase I and Phase II rulemakings explain the precise circumstances in which permitting authorities may designate point sources not otherwise regulated by these rulemakings for permitting. In the Phase I rulemaking, EPA specifically recognizes that it lacks CWA authority over certain discharges regardless of their impacts on water quality, including for example certain agricultural stormwater. 55 Fed. Reg. at 48061 (November 16, 1990). The Agency explains how 'case-by-case' designation of point source discharges impacting water quality may be regulated through Section 402(p)(2)(E). Id. at 47993. In its Phase II rulemaking, EPA discusses at great length how states may be able to designate "categories" of sources in a geographic area 'for coverage' because state programs 'are greater in scope of coverage' than federal programs. 64 Fed. Reg. at 68781 (December 8, 1999). After recognizing CWA Section 510's authority of States to adopt and enforce more stringent regulation of point source discharges and recognizing CWA protections for certain agricultural and oil and gas stormwater flows (pursuant to Sections 502(14) and 402(l)), EPA concludes that 402(p)(6) does not expressly limit its

authority to designate point sources for regulation on a case-by-case basis after promulgation of final regulations. Id. at 68782. Nowhere does EPA assert authority to regulate diffuse, non-point discharges from any site."

"With respect to RDA's those seeking additional permitting must follow the outlined procedures and in this case, that was not done. The drafters of the proposed actions intend to expand the stormwater program however, without proper reporting to Congress and a separate rulemaking, this cannot be achieved."

Response: See discussion regarding APA procedure at Common Response 5 and *Alta Environmental, LLC Comment 2, 2022*.

EPA disagrees that the purpose of the designation is to regulate "diffuse, non-point source stormwater for NPDES permitting." As explained in the Preliminary, Revised, and Final Designations, the purpose is to regulate point source discharges of stormwater that contribute to water quality standards violations for specific pollutants, namely zinc as a limiting pollutant, to address the impairments that have been documented in the TMDLs for the watersheds at issue. This is consistent with the CWA and EPA's implementing regulations. The CII sources and their stormwater discharges included in the Designation are "point sources" of "discharges" of these "pollutants" that are not otherwise regulated under an NPDES permit. The purpose of residual designation authority is to allow EPA or a state to capture those point sources to regulate discharges of pollutants (e.g., zinc) and thus work towards attaining water quality standards.[95] Refer to *FWQC/FSWA Comment 2, 2022* for a discussion on stormwater point sources.

As explained in the Preliminary Designation at page 2:

"[The CWA] provides for NPDES permits for any stormwater discharge determined by EPA or an authorized state to contribute to a violation of water quality standards (WQS) or to be a significant contributor of pollutants to waters of the United States. CWA § 402(p)(2)(E), 33 U.S.C. § 1342(p)(2)(E). In 1990, EPA promulgated permit application regulations for these discharges pursuant to § 402(p)(4), 33 U.S.C. § 1342(p)(4). 55 Fed. Reg. 47990 (Nov. 16, 1990) (Phase I rule). The Phase I rule included a provision allowing any person to petition the EPA to require an NPDES permit for a stormwater discharge that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. 40 C.F.R. § I22.26(f)(2). [citations omitted]."

EPA agrees with the commenter that EPA is <u>not</u> asserting control over nonpoint sources and continues to acknowledge other CWA provisions such as Sections 502(14) and 402(l)), which are not relevant here. EPA is simply exercising its residual designation

[95] EPA notes that there is a separate argument that regulated stormwater discharges do not need to contain pollutants because Congress required them to be regulated in CWA section 402(p), but EPA does not need to rely on that argument here because the stormwater discharges at issue contain pollutants such as zinc.

authority under CWA § 402(p)(2)(E), (p)(6), and 40 C.F.R. § 122.26(a)(9)(i)(D) and (f)(2).

Regarding the assertion that EPA first needs to publish a report to Congress, the report is mandated under 402(p)(5) and that report was submitted to Congress in March 1995 and October 1999.[96]

FWQC/FSWA Comment 2, 2022**:** *"EPA's NPDES regulations define the extent to which surface runoff can in certain circumstances constitute point source pollution. The definition of '[d]ischarge of a pollutant' includes 'additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man.' 40 CFR § 122.2 (emphasis added). By implication, surface water runoff which is neither collected nor channeled constitutes nonpoint source pollution and, consequently, is not subject to the CWA permit requirement. . . Impervious surfaces such as roofs, parking lots, and roads do not meet the definition of 'point source.' Impervious surfaces do not channelize water. Instead, sheet flow that travels across impervious surfaces is considered non-point runoff, which cannot be regulated under the NPDES stormwater permitting program . . . Congress did not provide EPA with unbridled authority. Rather, the CWA 'authorizes the EPA to regulate, through the NPDES permitting system, only the discharge of pollutants.' Waterkeeper Alliance, Inc. v. EPA, 399 F.3d 486, 504 (2d Cir. 2005) (emphasis added). As the D.C. Circuit has explained, "[t]he statute is clear" and contains no language that "undercuts the plain meaning of the statutory text;" EPA may not "meddl[e] inside a facility" because it only has authority over the discharge of pollutants from a point source, and "Congress clearly intended to allow the permittee to choose its own control strategy." American Iron and Steel Institute v. EPA., 115 F.3d 979, 996 (D.C. Cir. 1997). EPA 'is powerless to impose conditions unrelated to the discharge itself.' N.R.D.C. v. EPA., 859 F.2d 156, 170 (D.C. Cir. 1988) (EPA cannot regulate point sources themselves, only the discharge of pollutants); Service Oil, Inc. v. EPA, 590 F.3d 545, 551 (8th Cir 2009) ('the Clean Water Act gives EPA jurisdiction to regulate… only actual discharges—not potential discharges, and certainly not point sources themselves.') (emphasis in original) . . . If EPA now interprets "point source" to include impervious surfaces, it renders that term meaningless and clearly contradicts congressional intent to define the term and differentiate 'point sources' from 'nonpoint sources.'"*

Response: EPA disagrees that it has changed its interpretation of "point source" to include impervious surfaces. The full definition of "point source" at 40 CFR § 122.2 is:

> any discernible, confined, and discrete conveyance, including but not limited to,

[96] Storm Water Discharges Potentially Addressed by Phase II of The National Pollutant Discharge Elimination System Storm Water Program. Report To Congress, EPA 833-K-94-002, March 1995, Administrative Record XV.J and Report to Congress on the Phase II Storm Water Regulations, EPA 833-R-99-001, October 1999, Administrative Record XV.I.

any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (emphasis added).

The commenter's excerpted definition of "discharge of pollutant" is incomplete and misleading as the full definition at 40 CFR § 122.2 reads:

(1) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" ….

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

The underlined language explains why stormwater discharges from CII sources are "point sources," as they are similar to animal feeding operations, industrial, or construction sites, and case law supports that these sites are "point sources" from which "pollutants" are "discharged," as those terms are defined by the CWA.[97] "Point sources" must be interpreted broadly to effectuate the remedial purposes of the CWA.[98] **The non-point source designation is limited to uncollected runoff water which is difficult to ascribe to a single polluter.**[99] None of the cases cited here involve channelized discharges. Based on the above, courts have held that "point source" must be interpreted broadly to include many sources that discharge pollutants to waters of the U.S.

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[97] *Northern California River Watch v. City of Healdsburg,* 2004 WL 201502 (N.D. Cal. 2004), *aff'd*, 457 F.3d 1023 (9th Cir. 2006), *vacated*, 496 F.3d 993 (9th Cir. 2007), *cert. denied*, 552 U.S. 1180 (2008) (abandoned gravel pit adjacent to Russian River, which was being used as a discharge point for the city's POTW, held to be point source on the grounds that it was only 50 feet from the river, and rose and fell with the river); *Environmental Defense Center v. EPA*, 319 F.3d 398 (9th Cir. 2003), *vacated and superseded by*, 344 F.3d 832 (9th Cir. 2003) *cert. denied*, 41 U.S. 1085 (2004) (rejecting most challenges by industry and environmentalists to storm water Phase II regulations; EPA had an adequate basis for regulating construction site discharges down to one acre of land disturbed); *Friends of Maha 'Ulepu, Inc. v. Hawai'i Dairy Farms, LLC,* 224 F. Supp. 3d 1094 (D. Haw. 2016) (holding that a farm construction project that involved both construction and farm field/CAFO preparation was a common plan of development, and therefore subject to stormwater NPDES permit requirements; a construction site is a point source); *Gill v. LDI*, 19 F. Supp. 2d 1188, 1196 (W.D. Wa. 1998) (rock quarry discharging silt into nearby pond is a point source and noting that "[t]his Court is persuaded by the reasoning of the Tenth Circuit in *United States v. Earth Sciences, Inc.,* 599 F.2d 368, 373 (10th Cir.1979), adopted by the Ninth Circuit in *Trustees for Alaska v. EPA,* 749 F.2d 549, 558 (9th Cir.1984).

[98] *Earth Sciences*, 599 F.2d at 373.

[99] *Trustees for Alaska,*749 F.2d at 558.

That is precisely the case with the sources included in the Final Designation, as EPA is not designating "impervious surfaces" but the stormwater discharges from the CII sources that discharge pollutants to the watersheds at issue in the Petitions. See Common Response 1 and 2.

This is appropriate based on the Petitions and supporting information, as explained in the Final Designation.[100]

The Petitions, incorporated by reference, state that: (1) portions of the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel, its tributaries, and the Los Angeles/Long Beach Inner Harbor Watershed are impaired by zinc, copper, and/or other pollutants, (2) stormwater discharges from CII sources contain these pollutants, contributing to water quality impairments in the watersheds, and (3) existing programs are not adequately addressing the contributions from CII sources to impairments in the watersheds.[101]

In support, the Petitioners cite EPA guidance and reports in which EPA has concluded that urban stormwater discharges are sources of pollutants. Petitioners also point to various reports and studies, including the National Stormwater Quality Database (NSQD), to illustrate typical pollutant loads in stormwater from different land uses, including CII sites. Finally, the Petitioners cite to TMDLs established by EPA and the State of California to describe the specific sources of pollutants leading to impairments in the watersheds. Specifically, each Petition states at page 2:

For the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition:

- CII sites occupy 36.6% of the land area that flows into Dominguez Channel and the Los Angeles/Long Beach Inner Harbor.
- 71.1 % of this CII area is located within a half-mile of a receiving water.
- Modeled results indicate that, out of all urban stormwater sources, CII sites contribute at least 88% of zinc loadings and 84% of copper loadings in the watershed.
- CII sources likely cover 25.6% of the watershed with impervious surface.

For the Alamitos Bay/Los Cerritos Channel Watershed:

- CII sites occupy 30.6% of the land area that flows into Alamitos Bay/Los Cerritos Watershed Dominguez Channel and the Los Angeles/Long Beach Inner Harbor.
- 93% of this CII area is located within a half-mile of a receiving water.
- Modeled results indicate that, out of all urban stormwater sources, CII sources contribute at least 30% of zinc loadings, 18% of copper loadings, and 26% of nitrogen loadings in the watershed.

[100] Final Designation Memo at p. 6-7, Administrative Record III.A at p. 6-7.
[101] Dominguez Channel Petition, Administrative Record VI. A; Los Cerritos Petition, Administrative Record VI.B.

- CII sources likely cover 21.4% of the watershed with impervious surface.

The Preliminary, Revised Preliminary, and Final Designations are based on appropriate interpretations of the Clean Water Act, supporting regulations, the facts raised in the Petitions, and additional research and analysis by EPA. The Final Designation does not constitute improper regulation of non-point sources.

FWQC/FSWA Comment 3, 2022: "*EPA R9 appears to contend, in issuing the proposed designation, that it can regulate flow from the designated sources, as a "pollutant" under the CWA — But that is clearly not the case. In Virginia Department of Transportation v. U.S. Environmental Protection Agency, 2013 U.S. Dist. LEXIS 981 (E.D.Va. Jan. 3, 2013) [hereinafter referred to as Accotink], the federal district court held that the CWA did not confer authority to regulate stormwater flow because stormwater is not a 'pollutant' under that term's statutory definition. Id. at 5. The court rejected EPA's argument that stormwater flow could be regulated as 'proxy' or 'surrogate' for levels of pollutants already present within a waterbody, while acknowledging that it may be appropriate, in different circumstances, to impose stormwater flow restrictions as a means to regulate specific pollutant levels demonstrated to be discharged into a waterway within the stormwater flow. Id. at 5-6. EPA has responded to Accotink by attempting to limit its applicability to the development of Total Maximum Daily Loads (TMDLs) under CWA §303(d). That argument is unavailing. The Accotink court's logic – based upon the CWA's explicit focus on controlling pollutant discharges into waters of the U.S. – applies with equal force in the context of the NPDES permitting program. Both the NPDES permit program and TMDLs that are incorporated into NPDES permits are expressly limited to the authority conferred by the CWA to regulate the 'discharge of pollutants.' Here, EPA R9 improperly confuses the central issue in Accotink by framing it as a TMDL controversy that is somehow unrelated to NPDES permitting. The critical issue in Accotink relates to the discharge of pollutants (of which 'flow' is not one), which is equally and directly applicable to NPDES permitting as it is to setting TMDLs that must be implemented through effluent limitations in those permits. 33 U.S.C. §§ 1311(a), 1313(d), 1314, 1342(a)."*

Response: EPA disagrees that the purpose of the Preliminary, Revised Preliminary, and Final Designation is to regulate flow as a pollutant. As explained in the response to *FWQC/FSWA Comment 2, 2022* above, the designation is focused on the sources that discharge pollutants in stormwater, specifically zinc as a limiting pollutant, that contribute to water quality standards violations in the watersheds described in the Petitions. EPA is not relying on flow as a pollutant to reach the conclusion that the Petitions should be granted, as neither the Petitions nor EPA make that argument anywhere. Thus, *Virginia Department of Transportation v. U.S. Environmental Protection Agency* is not relevant here.

FWQC/FSWA Comment 4, 2022: "*Another problem with EPA R9's proposed designation is that it appears to claim permit authority over discharges into an MS4 system.*

However, EPA's authority to issue NPDES permits to MS4s cannot be interpreted to provide authority over discharges that enter the MS4. Congress specifically limited that authority to the discharges from MS4s into navigable waters. As explained above, managing stormwater to restore a developed site to its predevelopment hydrology exceeds EPA's CWA authority because it goes beyond the regulation of a point source discharge by regulating "site design" and EPA's limited authority to mandate control strategies. It also raises questions about federal usurpation of local land use planning in violation of constitutional protections. Any federal effort by EPA to compel certain MS4s to make specific choices with regard to post-construction/impervious runoff performance standards is arguably a more direct and unauthorized affront on local land use mandates than [Rapanos and SWANCC] cited above."

Response: EPA agrees with the commenter that the Clean Water Act authorizes the regulation of discharges from MS4s into waters of the U.S.[102] It is unclear whether the commenter is asserting that EPA lacks authority to control discharges to waters of the U.S. from designated stormwater sources via an MS4 prior to discharge. If this is the commenter's argument, EPA disagrees and points out that the Clean Water Act Section 402(p) provides authority to regulate designated stormwater discharges to waters of the U.S. (e.g., small, medium, and large-sized MS4s, certain construction and industrial activities, and other stormwater discharges designated by the permitting authority), regardless of whether they are discharged via an MS4 or are discharged directly to such waters. Similarly, EPA's designation authority addresses the discharge of stormwater pollutants from currently unregulated CII sources to waters of the U.S., regardless of whether it discharges via an MS4.

The intent of the designation, in part, is to address the stormwater pollutants discharged from sources that are not currently covered under an MS4 permit that contribute to water quality standards violations. The Final Designation here is not imposing any additional responsibilities on MS4s; in fact, the opposite is likely true, as it is a way to reduce the burden on MS4s to address water pollution on their own because the designated CII sources will now do more to reduce the pollutants in its stormwater discharges.

As stated in page 12 of the Preliminary Designation:

> While not a factor in EPA's decision, this preliminary designation would result in CII sites and MS4s sharing responsibility for controlling pollutants in urban stormwater rather than the MS4s bearing the responsibility alone. The

[102] As background, MS4s are Municipal Separate Storm Sewer Systems and include certain conveyances or systems of conveyances that transport stormwater. The full definition of MS4 can be found at 40 CFR § 122.26(b)(8). Stormwater often picks up pollutants and transports them into MS4s and are later discharged into local waterbodies. Some, but not all, MS4s are covered under National Pollutant Discharge Elimination Program System permits focused on reducing stormwater pollutants discharged from the MS4 to waters of the United States.

> Petitioners had expressed concern that the MS4 permittees may lack adequate resources to address the impairments and that permitting of discharges from CII sources would more equitably distribute the load reduction responsibility while also improving the chances of addressing water quality impairments in a timely manner. EPA estimates that the preliminary designation would shift approximately 41.5% of the load reduction responsibility to privately owned CII sources in the watersheds (see Appendix 1 and 2).

EPA also disagrees with the commenter's assertion that EPA's action results in improper interference with "site design" as neither the Preliminary, Revised, nor the Final Designations address this issue. Likewise, EPA is not engaging in any effort to "compel certain MS4s to make specific choices with regard to post-construction/impervious runoff performance standards" as the comment suggests, nor interfering in any land use decisions.[103] The designation does not impose any requirements on MS4s.

Finally, EPA disagrees that the Preliminary and Final Designations constitute improper interference with local authorities regarding land use. As explained in *City of Abilene v. EPA,* the MS4 program does not infringe upon the Tenth Amendment.[104]

Federal Water Quality Coalition and Federal Stormwater Association Comments submitted January 2, 2024

FWQC/FSWA Comment 1, 2024: "*Instead of chasing minor sources of copper and zinc from unregulated sites with minimal contributions on a site-by-site basis, if at all, EPA should take a step back and analyze the TMDLs themselves. The TMDLs are driven by the method that California uses in determining whether those water bodies are impaired for those metals through an antiquated water quality standards methodology.*

In short, the current methodology used by California to establish water quality criteria for copper and zinc – the hardness standard – fails to consider the most robust science. Water quality criteria for metals have evolved from simple hardness equations to sophisticated bioavailability models, such as the biotic ligand model (BLM). The BLM is distinct from the existing hardness standard because it appropriately considers the effect of relevant factors such as dissolved organic carbon, pH, calcium, and other water characteristics on copper and zinc bioavailability. These factors are essential to include in setting copper and zinc water quality objectives because they clearly modify the metals' bioavailability and toxicity. Because the BLM considers these additional factors (and their interactions), it is viewed as more representative of how surface water

[103] *See City of Abilene v. EPA*, 325 F.3d 657 (5th Cir. 2003).
[104] *Id.* at 662 (explaining that so long as the "alternative to implementing a federal regulatory program does not offend the Constitution's guarantees of federalism, the fact that the alternative is difficult, expensive or otherwise unappealing is insufficient to establish a Tenth Amendment violation.").

characteristics actually affect zinc bioavailability.

In fact, if California would adopt the BLM, then research predicts that the two watersheds in question would no longer be considered impaired for these metals. This is not new news to California's State Water Resources Control Board (SWRCB). It has been working its way through a regulatory process in order to adopt the BLM, although at a snails pace. For the status of the SWRCB's efforts related to the BLM, see the SWRCB website at https://www.waterboards.ca.gov/water_issues/programs/stormwater/storms/projects/site-specific-water-quality-objectives-for-copper-zinc.html#whats-new."

Response: EPA and the State make permitting decisions based on existing requirements, such as water quality standards and TMDLs that are currently in effect. This comment raises the issue of potential changes to the existing TMDL and is therefore beyond the scope of the Preliminary, Revised Preliminary and Final Designations.

EPA recognizes the current work at the State Water Board concerning the potential for site-specific standards for zinc and copper based on the biotic ligand model (BLM). However, unless and until such revisions are finalized, designation and permitting decisions must be based on current standards.

FWQC/FSWA Comment 2, 2024: *"EPA R9 asserts that the CWA Section 402(p) and EPA's 1990 regulations authorize it to designate 'categories' of dischargers for NPDES permitting. See RDA memo at 6. That is an improper characterization of both CWA Section 402(p)(2)(E) and EPA's 1990 regulations. Section 402(p)(2)(E) clearly is limited to 'a discharge…as the case may be…' and is clearly understood to be a case-by-case determination that a site is discharging significant pollutants or is violating water quality standards, even though not otherwise regulated by the other sections in CWA Section 402(p)(2). EPA R9's memo cites to the 1990 regulations that cannot be more clear that EPA believed its authority under Section 402(p)(2)(E) was a case-by-case determination . . . There quite simply is no discussion about EPA retaining authority for categorical designations under CWA Section 402(p)(2)(E) or EPA's 1990 regulations that it cites as authority for this attempted residual designation within the watersheds."*

Response: See response to *Alta Environmental LP Comment 2, 2024*.

GHD

GHD Comment submitted in 2022

GHD *Comment 1, 2022:* "*Regarding the CII Permit, the EPA Memorandum attached*

appears to indicate in footnote 31 on page 11 the EPA is proposing to require all commercial, industrial and institutional (CII) Port of Long Beach (POLB) facilities greater than 5 acres to comply with the draft CII NPDES stormwater discharge permit (CII Permit), regardless of whether they are privately-owned or are currently under another NPDES (either IGP or individual) permit. Is that true?"

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4.

GOLD BOND BUILDING PRODUCTS

Gold Bond Building Products Comments submitted in 2022

Gold Bond Comment 1, 2022: "*Gold Bond is subject to an array of environmental regulations, including air, water, and waste requirements. We believe that environmental stewardship is of the upmost importance, and we invest staff and financial resources into ensuring that our operation is conducted with the minimal environmental impact possible. In doing so, we feel that environmental regulation must be effective and focused on the source of pollutants. Our non-industrial areas are not significant sources of storm water pollution and as such, this permit will serve as an additional burden on our business without meaningful environmental impact. For example, much of zinc, copper, and other toxic metals are from aerial deposition coming from roads and freeways[1]. Therefore, more effective regulations should be focused on pollutant sources such as road and freeways; passing the burden onto businesses such as IP Carson simply because we are located in an urban area is ineffective, unfair, and it hurts our business. [citations omitted]"*

Response: The Preliminary Designation explained at page 10 that even non-industrial areas at an industrial facility are significant sources of pollutants:

> There are approximately 190 industrial facilities (as defined by 40 C.F.R. § 122.26(b)(14)) over five acres in the two watersheds that have submitted a notice of intent for coverage under the industrial general permit, a no exposure certification, or a notice of non-applicability. Examples of these facilities include light and heavy industry, warehouses, trucking, scrap material handlers, and marine terminal operations. While some facilities may have moved industrial activities under cover to eliminate exposure to stormwater or collect and contain stormwater discharges associated with industrial activity, these facilities also have large areas of impervious surfaces, such as parking lots or rooftops. Such industrial sites are approximately 80% to 90% impervious, consisting of industrial areas, parking lots, interior

> roadways, and roofed buildings, with much of their stormwater discharges not currently subject to National Pollutant Discharge Elimination System permitting. As discussed above, stormwater discharges from impervious areas contain pollutants of concern (pollutants impairing receiving waters) such as zinc and copper. As such, it is reasonable to assume that stormwater discharges from the unpermitted portions of such facilities contribute to exceedances of WQS. Given the high amount of impervious cover at such facilities, EPA is reasonably including larger facilities within this category – those with a total acreage of five or more acres – in the preliminary designation which contribute an estimated zinc load of approximately 6,300 kg/yr.

The Final Designation includes non-industrial stormwater sources located on industrial facilities since they are sources of zinc and copper. While not a basis for the Final Designation, we note that Caltrans roadways are already permitted under a Statewide MS4 Permit (NPDES No. CAS000003) and that other Los Angeles County roadways are covered by the Los Angeles Regional MS4 Permit (NPDES Permit No. CAS004004). Also, California has sought to regulate transportation-related pollutants (for example, Senate Bill 346 limiting copper in brake pads).

It should also be noted that the loading value of 6,300 kg/yr in the excerpted text above is from the Preliminary Designation. The corresponding value in the Final Designation is 3,500 kg/yr and is smaller than the value in the Preliminary Designation due to CII facilities at the ports not being included in the Final Designation at this time.

Gold Bond Comment 2, 2022: ***"****The [Draft CII Permit] Section 3.1 applicability of 'unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area…' is not appropriate. Specifically, permitted IGP sites are already sampling and including industrial areas of their property. The applicability acreage should match the non-industrial acreage that will be subject to monitoring under the CII permit." (citing Section 3.1 of the Draft CII Permit).*

Response: EPA is designating the stormwater discharges from unpermitted portions of industrial facilities because pollutants in stormwater runoff from these non-industrial areas contribute significantly to water quality impairments. See also response to *Gold Bond Building Products Comment 1, 2022*.

EPA is basing the designation on the total acreage of an IGP facility because designation based on total area for these facilities will generally ensure that sources with the greatest potential for pollutant load reduction are included. As noted in the response to the previous comment, industrial facilities generally have a high degree of impervious

surface area.[105] Although for some facilities, data regarding impervious surface acreage was not available from the State's IGP database, given the high degree of impervious surface at industrial facilities, the numerical values for the total area of a facility will not be significantly different from the total amount of impervious surface.[106]

Basing the designation on a total facility size of five or more acres allows for overall simplicity and consistency in the size of facilities covered by the Preliminary Designation. If the designation had been based on unpermitted acreage, this would have reduced the number of facilities subject to the designation and the pollutant load addressed by the designation. As noted in the Preliminary Designation, EPA considers the proposal to be a manageable first step in addressing the stormwater pollutant contribution from CII sources that focuses initially on the largest sources in the watersheds.

Total facility acreage will also ensure more consistency as a means for determining the specific IGP facilities subject to the designation than unpermitted area. IGP facilities are subject to permitting for "stormwater associated with industrial activity" as defined at 40 CFR 122.26(b)(14). These regulations provide a narrative description of areas at an industrial facility that are "associated with industrial activity" and hence subject to permitting. The acreages of the permitted area, as well as the unpermitted area, are subject to a certain amount of judgment, and potentially inconsistent determinations by different facilities. The use of total area will ensure clarity and more consistency in the designation determination.

The Final Designation was revised to include stormwater discharges from Notice of Non-Applicability (NONA) facilities for which the total facility area (permitted and unpermitted) is five or more total acres (as opposed to five acres unpermitted area). This change ensures consistency with other facilities addressed under the industrial general permit (IGP). This minor clarification was provided in the Revised Preliminary Designation and is consistent with the Final Designation that identifies stormwater discharges from one NONA facility. The type of CII sites subject to the Final Designation was subject to public notice and comment, and thus the revision for NONAs is a reasonable outgrowth.

[105] "Impervious Surface Coefficients, A Tool for Environmental Analysis and Management," California Office of Environmental Health Hazard Assessment, July 2008, Administrative Record XVI.K.
[106] *Id.*

INTERNATIONAL PAPER

International Paper Comments submitted in 2022

International Paper Comment 1, 2022: *"Our non-industrial areas are not significant sources of storm water pollution and as such, this permit will serve as an additional burden on our business without meaningful environmental impact. For example, much of zinc, copper, and other toxic metals are from aerial deposition coming from roads and freeways[1]. Therefore, more effective regulations should be focused on pollutant sources such as road and freeways; passing the burden onto businesses such as IP Carson simply because we are located in an urban area is ineffective, unfair, and it hurts our business. [citations omitted]"*

Response: See response to *Gold Bond Building Products Comment 1, 2022.*

International Paper Comment 2, 2022: "*The Section 3.1 applicability of "unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area…" is not appropriate. Specifically, permitted IGP sites are already sampling and including industrial areas of their property. The applicability acreage should match the non-industrial acreage that will be subject to monitoring under the CII permit."*

Response: See response to *Gold Bond Products Comment 2, 2022*.

INTERNATIONAL TRANSPORTATION SERVICE, LLC

International Transportation Service, LLC Comments submitted in 2022

International Transportation Service Comment 1, 2022: *"ITS questions whether a thorough feasibility study has been conducted to ascertain if requirements in the proposed regulation can be implemented, practically… Has the EPA worked out alternatives as to how approximately 40% of the entire United States' container cargo movements will be handled if the marine container terminal operations in Los Angeles and Long Beach are forced to close?"*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4.

International Transportation Service Comment 2, 2022: "*It is concerning to note the EPA failing to adhere to federal administrative requirements under the Administrative Procedure Act, exceeding the statutory authority for Residual Designation under the Clean Water Act, and inadequate and insufficient evidence to support the initial modeling and designations proposed."*

Response: With regards to the comment about the Administrative Procedure Act, see Common Response 5, and the response to *Alta Environmental, LP Comment 2, 2022*.

With regards to Residual Designation authority under the Clean Water Act, see response to *Alta Environmental, LP Comment 1*, *2024*.

With regards to the sufficiency of the evidence supporting EPA's proposed designation, see Common Response 3 that discusses the modeling report and references therein.

EPA also considered other sources of information as noted in the Preliminary, Revised Preliminary and Final Designations; see response to *Alta Environmental, LP Comment 3, 2022.*

LONG BEACH CONTAINER TERMINAL

Long Beach Container Terminal Comment submitted in 2024

Long Beach Container Terminal Comment 1, 2024: *The commenter raised a number of questions concerning implementation of compliance Option 1 in the Regional Board's Draft CII Permit. Option 1 provides for compliance with the permit via an agreement with a local watershed management group to fund a regional project.*

Response: Since the questions in the comment pertain to the requirements and implementation of the Regional Board's Draft CII Permit, the questions should be directed to the Regional Board rather than EPA. EPA has referred the comment to the Regional Board for a response.

LOS ANGELES COUNTY BUSINESS FEDERATION (BIZFED)

Los Angeles County Business Federation (BizFed) Comments submitted in 2022

BizFed Comment 1, 2022: *"We believe EPA's proposed exercise of its residual designation authority constitutes rulemaking under federal law. In seeking to exercise its residual designation authority, EPA has arguably failed to comply with procedural requirements under applicable federal laws and regulation . . . Pursuant to the federal Administrative Procedures Act, general notice of proposed rulemaking must be published in the Federal Register. In the present case, EPA has failed to publish notice of its proposed activity, which not only conflicts with federal legal requirements, but also departs from EPA's past practice. In prior instances where EPA has exercised its residual designation authority, EPA has first published formal notice of its preliminary determinations in the Federal Register. Furthermore, pursuant to 40 C.F.R. Part 25, (Public Participation Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act), EPA rulemaking under the Clean Water Act is subject to specific public notice, information, and rulemaking requirements. Among these requirements, "[e]ach agency shall provide the public with continuing policy, program, and technical information and assistance beginning at the earliest practicable time . . . Whenever possible, consistent with applicable statutory requirements, the social, economic, and environmental consequences of proposed decisions shall be clearly stated in such material." Here, despite the significant foreseeable costs that regulated businesses will incur as a result of EPA's proposed designation, EPA has so far failed to publish any detailed assessment of related economic impacts, which calls into question whether EPA has considered such consequences whatsoever."*

Response: With regards to the comment on the Administrative Procedure Act (APA), see Common Response 5, as well as the response to *Alta Environmental, LP Comment 2*, *2022*.

Regarding publication of notices of preliminary designations by other EPA Regions, we recognize that EPA Regions 1 and 6 published notices of preliminary designations in the *Federal Register*; however, this step was discretionary rather than mandatory. EPA provided public notice of its Revised Preliminary Designation on its website and in the *Federal Register* on November 2, 2023, along with a request for public comment and has conducted substantial outreach to potentially affected dischargers and other stakeholders including public workshops held jointly with the Los Angeles Regional Water Board on December 7, and 16, 2021, and August 30, 2022. A notice extending the comment period by 30 days also appeared in the *Federal Register* on November 29,

2023.[107]

As explained above in Common Response 5, EPA's exercise of its residual designation authority is not a rulemaking, but an adjudication that does not implicate any economic analysis. Designation is based on the authority provided under CWA § 402(p)(2)(E) and (6) and NPDES regulations at 40 CFR §§ 122.26(a)(1)(v) and 122.26(a)(9)(i)((D). These statutory and regulatory provisions provide for designations strictly on the basis of water quality considerations and do not require an analysis of the economic effects. The decision in *Los Angeles Waterkeeper v. Pruitt* clarified that EPA may not consider other factors, such as economic effects, in analyzing petitions for residual designation.[108]

Although the next comment appears to be directed to the Regional Board, EPA will address the comment since EPA made the decision to designate sites of five or more acres.

BizFed Comment 2, 2022: *"[t]he Regional Board has provided little justification for why the five-acre limitation was selected. Would a ten-acre limitation (or any other size) be just as effective, while also being less burdensome on businesses (particularly small businesses and nonprofits)? . . . In the event that the Regional Board refuses to provide analysis of alternative acreage limitations for purposes of the applicability of the Draft CII Permit, the Regional Board should consider a phase implementation schedule for unpermitted CII sites with ten or fewer acres of impervious surface and permitted CII sites with ten or fewer acres of total area."*

Response: The Regional Board's Draft CII Permit reflects EPA's Preliminary Designation, including the five-acre cutoff. EPA considered several options for the designation including parcels with one, five, and 10 acres of impervious surface as well as all parcels. EPA selected the five-acre as a reasonable first step in a phased response to the Petitions, focusing initially on the largest sources in the watersheds while also ensuring reasonable progress in addressing water quality impairments in the watersheds.[109] EPA may designate stormwater discharges from additional CII sites in the future.

The five-acre option will result in 22% zinc load reduction to impaired waters. See also Common Response 2.

EPA estimates the Final Designation will reduce pollutant discharges of zinc by about 22% (6,480 kg/yr of a total load of about 34,300 kg/yr) and that about 600 sources would be permitted.[110] See also the Revised Procedures (Attachment 2) for more

[107] 88 Fed. Reg. 83405, Administrative Record I.A.; 88 Fed. Reg. 75282, Administrative Record I.B.
[108] *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115 (C.D. CA 2018), Administrative Record VIII.B.
[109] Preliminary Designation Memo at p.11, Administrative Record III.C.
[110] Final Designation Memo, Administrative Record III.A.

information about numbers of CII sources and associated pollutant loading estimates.

BizFed Comment 3, 2022: *"In its rulemaking, EPA has not clarified why areas of a site that may currently have NPDES permit coverage are also considered in determining applicability of the 5-acre size threshold under the Draft CII Permit."*

Response: See response to *Gold Bond Building Products Comment 2*.

BizFed Comment 4, 2022: *BizFed requested a "list of the 640 businesses the EPA believes this stormwater permit will impact." BizFed also noted that it is "not clear where the borders of the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed are, and properly informing our members who are impacted in that area is presenting to be a challenge."*

Response: As noted in the Final Designation[111], EPA estimates that approximately 585 facilities could be affected. The Revised Procedures (Attachment 2) summarizes how EPA calculated this estimate.

The Regional Board is the permitting authority. The Draft CII Permit defines the categories of facilities that require coverage. NPDES regulations at 40 CFR 124.52(b) require that dischargers be notified if EPA determines that an individual NPDES permit is required. The Draft CII Permit is similar to a general permit and is not subject to the same notification requirements.[112]

Appendix 3 in the Revised Preliminary Designation included update watershed boundary maps that include Pier 400.[113] Now for this Final Designation, EPA provided and updated map. See also response to *Port of Long Beach (POLB) Comment 4*, *2022*r.

BizFed Comment 5, 2022: "*Consideration of the Draft Permit is Premature Prior to EPA Undertaking the Required Notice & Comment Rulemaking to Exercise its Residual Designation Authority."*

Response: With regards to the timing of the Draft CII Permit in relation to EPA's Preliminary Designation, see response to *Alta Environmental, LP Comment 2* from 2022. Additionally, with regards to the comment on rulemaking, see Common Response 5, and response to *Alta Environmental, LP Comment 2, 2022*.

Although the following comment appears to be directed to the Regional Board, EPA is also addressing the comment given the reference to the 2021 Paradigm Environmental

[111] Final Designation Memo, Appendix 1, Administrative Record III.A
[112] *Conservation Law Foundation, Inc. and Charles River Watershed Association v. Michael S. Regan, David Cash and United States Environmental Protection Agency*, Civil Action No. 22-11863-RGS, July 18, 2023.
[113] Revised Preliminary Designation Memo, Appendix 3 at p. 17, Administrative Record III.B. at p. 17; Final Designation Memo, Administrative Record III.A.

modeling report submitted to EPA.[114]

BizFed Comment 6, 2022: *"We reviewed the modeling used by the Regional Board to quantify pollutant loads from CII facilities within Dominguez Channel and Los Cerritos Channel watersheds and to determine the load reductions necessary to meet applicable water quality objectives for those watersheds and have identified multiple issues with the modeling that should be addressed before the Draft CII Permit is finalized and implemented. For example, we noticed that Paradigm Environmental conducted modeling and related analyses to quantify the pollutant loads for two metal pollutants, zinc and copper. However, there are no similar modeling and analyses available for any of the other pollutants that have effluent limitations in the Draft CII Permit. Even though zinc and copper may be the most concerning pollutants in the watersheds, there are 15 other pollutants included in the permit. If dischargers are expected to be subject to effluent limitations for those other pollutants, they should have access to the modeling that was used to develop the effluent limitations. The Regional Board should conduct modeling for all the other pollutants in the Draft CII Permit and make the modeling available to the public, or they should remove the other pollutants from the proposed permit."*

Response: The 2021 Paradigm Environmental report provides modeling and load estimates for zinc and copper for stormwater sources in the subject watersheds, along with other information found in EPA's Preliminary, Revised Preliminary, and Final Designations,[115] are sufficient because they demonstrate that the designated CII sources are contributing to violations of water quality standards and thus EPA designated CII sources under 40 CFR § 122.26(a)(9)(i)(D) and the holding in *Pruitt*.[116]

Effluent limits and monitoring requirements are included in the Regional Board's Draft CII Permit[117] for a variety of pollutants other than zinc and copper because, as noted in applicable TMDLs and Watershed Management Programs (WMPs) that have been developed for the watersheds, numerous other pollutants have been shown to be pollutants of concern.[118] The effluent limits and monitoring requirements in the Draft CII

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[114] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021, Administrative Record XIII.C.1.

[115] Preliminary Designation Memo at p. 8, Administrative Record III.C. at p. 8; Final Designation Memo, Administrative Record III.A.

[116] *Los Angeles Waterkeeper v. Pruitt*, 320 F. Supp.3d 1115, 1112 (C.D. CA 2018) (explaining that "the statute means that the Administrator may either (1) issue a permit for the discharge of the pollutant or (2) enforce the total proscription on discharge set forth in § 1311(a)"), Administrative Record VIII.B.

[117] Revised Draft CII Permit, November 2023, Administrative Record X.A.

[118] *See* Enhanced Watershed Management Program for the Dominguez Channel Watershed Management Area Group, February 2016, Administrative Record XI.G, City of Long Beach Watershed Management Program for Nearshore Watersheds, January 2016, Administrative Record XI.H.; *See also* California Regional Water Quality Control Board, Los Angeles Region, Dominguez Channel and Greater Los

Permit are necessary to comply with NPDES regulations at 40 CFR § 122.44(d)(1)(i) for pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard and for consistency with applicable TMDLs (40 CFR § 122.44(d)(1)(vii)(B)). EPA views the requirements of the Regional Board's Draft CII Permit to be adequately supported by the information in the fact sheet.[119]

BizFed Comment 7, 2022: *"Research conducted by Paradigm Environment on behalf of EPA shows that for institutional sources, 'total loading [of zinc and copper] was relatively small and below average on a per acre basis, compared to other land uses.[citation omitted] By failing to recognize that institutions contribute comparatively low loads of the relevant pollutants, the Draft Permit imposes an undue burden on them. Consequently, institutions (including hospitals, churches, schools) should be exempt from the Draft CII Permit."*

Response: The commenter cites a 2015 report by Paradigm Environmental which, at that time, found that institutional sources contribute comparatively lower amounts of pollutants than commercial or industrial sources. [120] However, institutional sources nevertheless contribute to water quality standards violations. These violations are again noted in the Preliminary Designation at page 9. EPA's 2016 letter denying the 2015 Petitions included an enclosure showing that, based on the Paradigm Environmental report, all three categories of CII sources (commercial, industrial and institutional) were contributing to violations of water quality standards.[121] As such, consistent with NPDES regulations at 40 CFR § 122.26(a)(9)(i)(D), EPA's Final Designation includes institutional sources.

MACERICH LAKEWOOD LP

Macerich Lakewood LP Comments submitted December 18, 2023 and December 29, 2023

Angeles and Long Beach Harbor Waters Toxic Pollutants TMDLs, 2012, Administrative Record IX.D.; U.S. Environmental Protection Agency, Region 9, Los Cerritos Channel Metals TMDLs, March 2010, Administrative Record IX.E.

[119] Revised Draft CII Permit, November 2023, Attachment F at p. 92-152, Administrative Record X.A. at p. 92-152.

[120] Report entitled "Analytical Support for Stormwater Source Analysis," Paradigm Environmental, April 24, 2015, Administrative record XV.D.

[121] Enclosure of Region 9's Record of Decision explaining the Final Determination for the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition, October 2016 at p.7, Administrative Record VII.A.1. at p. 7.

Macerich Lakewood LP Comment 1, 2023: *The commenter requested the deletion of parcels with Los Angeles County Assessor land use codes 1210 (mixed use commercial and residential) and 1720 (mixed used office and residential). The commenter expressed concern that the designation could conflict with state law concerning municipal requirements for meeting housing needs and could impede conversion of such parcels to multi-family housing, thereby driving up housing prices.*

Response: See response to *CICWQ Comment 1, 2023.*

Macerich Lakewood LP Comment 2, 2023: *The commenter alleged that EPA had failed to comply with the Administrative Procedure Act (APA).*

Response: See Common Response 5, and response to *Alta Environmental Comment 2*, *2022.*

PACIFIC MERCHANT SHIPPING ASSOCIATION (PMSA)

Pacific Merchant Shipping Association (PMSA) Comments submitted October 24, 2022

PMSA Comment 1, 2022: "*The Preliminary Designation erroneously includes the publicly owned Ports of Long Beach and Los Angeles; the whole of each of which are municipally owned properties. The inclusion of the ports' public property is erroneous as it is arbitrary and capricious to single out these public properties for inclusion, but not others, such as airports, and to do so in contradiction to the original petitioned-for action and subsequent court decisions which resulted in the Preliminary Designation proposal."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4.

PMSA Comment 2, 2022: "*EPA proposes 'to designate all CII facilities with five or more acres total area at the Ports of Los Angeles and Long Beach, given the high degree of imperviousness at the Ports.' The amount of 'imperviousness' a facility may have does not make for a basis for which contribution of impairment and designation is ultimately modelled or estimated. Moreover, applying that methodology may reasonably justify any and all government owned property being incorporated in the CII Designation as well."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds

below to specific issues raised by the commenter.

With regards to the five or more acres total area, see Common Response 2.

As explained in the Preliminary, Revised and Final Designations, a high degree of imperviousness at a site leads to an increase in the stormwater volume and pollutant load discharged from the site.[122] As such, for the purposes of this Designation, EPA considers analyses of impervious surface as a valid method to identify and select appropriate stormwater sources of discharges for selecting appropriate stormwater discharges for designation.[123]

PMSA Comment 3, 2022: "*It is further confounding that a portion of Port property, Pier 400, is not included within the applicability scope; it is unclear why the facility purposely excluded."*

Response: Pier 400 is not included in the Final Designation at this time. See response to *Pacific Merchant Shipping Association (PMSA) Comment 5, 2024.*

PMSA Comment 4, 2022: "*It is evident that the EPA did not consider practical feasibility in endeavoring to incorporate publicly owned seaports and marine terminals in drafting its Preliminary Designation. The Ports of Long Beach and Los Angeles handle 40% of all US containerized cargo; unintended consequences from such untenable and costly obligations could further exacerbate market share loss from west coast and Californian ports, increase and shift congestion and also be detrimental to union labor."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4 for additional information.

PMSA Comment 5, 2022: *The "identity of the potentially regulated stakeholders specifically is unclear from the data released. EPA estimated that approximately 640 parcels would be included in the Preliminary Designation, without publishing these unique parcels identified… The identified 640 facilities and their owners should be clarified, before EPA will have afforded adequate notice to all affected parties who will be regulated by the permit ultimately to be issued by the LA Water Board."*

Response: See Common Response 5 and response to *Los Angeles County Business Federation (BizFed) Comment 4,2022.*

PMSA Comment 6, 2022: "*As the information acquired [referring to EPA's Preliminary Designation from August 2022] contained total area of the publicly owned Port facilities,*

[122] Preliminary Designation Memo at p. 7-8, Administrative Record III.C. at p. 7-8.
[123] Dominguez Channel Petition at p. 2-8, Administrative VI.A. at p.2-8; Los Cerritos Petitions at p. 2-8, Administrative Record VI.B. at p.2-8.

'the Preliminary Designation is based on total area of the sources rather than impervious cover as above for parcels.' As the Preliminary Designation applicability is based on impervious cover, this methodology is entirely flawed and unjust and knowingly overestimates zinc loads for Port owned properties, as outlined in the Procedure . . . Further, Paradigm Environmental estimated zinc loading at Port properties by erroneously assuming industrial land uses and zinc loading information 'from nearby parcels that resembled land use at the Ports.' This, again, is entirely inappropriate for a scientific methodology to accurately calculate zinc loading at the Ports. These 'nearby' parcels are unidentified, so an analysis cannot be conducted by stakeholders who would be impacted by this insufficient methodology."

The Commentor also commented that the port modeling results were not obtained applying the same model as all the other land uses in the two watersheds in question. Instead, the baseline watershed loads were determined 'utilizing proximal and similar sub-watersheds' which are not identified in the Analysis, and thus, can't be analyzed by the stakeholders that could potentially be impacted from such a methodology.

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter.

EPA relied on impervious surface acreage where it was explicitly available; this applies to privately owned CII sites in non-port areas. See Part A, Appendix 1 of Final Designation Memo that shows the designation applies to approximately 430 parcels as defined by greater than 5 acres of impervious surface acres. Where this impervious surface acreage was not available, EPA used total acreage information for designating approximately 155 other CII sites, specifically the unpermitted portions of IGP facilities that are five or more total acres. For additional information, see response to *Gold Bond Building Products Comment 2, 2022.*

With regards to the comment about estimating zinc loads at for CII sties at the ports by assuming industrial land uses and zinc loading information from 'nearby' parcels, we refer the commenter to response to POLB comment 5, 2022. See also Procedure 5 in the Revised Procedures (Attachment 2).

PMSA Comment 7, 2022: *"Step 4 of the Procedure indicates that the total zinc loading from all sources at the Ports is 7,072 kg/yr. The spreadsheets provided failed to disclose how this number was calculated."*

PMSA also made specific comments about the loading factor of 0.92 kg/yr/acre and the total port land area, as well as commenting that the loads summed for NEC facilities did not match what was included in the spreadsheet.

PMSA made general comments about the data underlying the model and asked EPA to

elaborate on the suitability and applicability of the underlying data that was used to calculate pollutant loads.

PMSA also commented that reports and underlying land use data does not represent current watershed conditions or account for watershed-wide improvements.

PMSA commented that EPA refused to share modeling information after the modeling was complete, despite being asked to do so in March and September 2022.

Response:
The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter.

With regards to the estimate of 7,072 kg/yr for the zinc loading for the ports overall, EPA estimated the total area of both ports combined at 7,720 acres which is sum of 3,520 acres for the Port of Long Beach and 4,200 acres for the Port of Los Angeles.[124] EPA used an estimated zinc loading factor of 0.9161 kg/yr/acre. See response to *Port of Long Beach (POLB) Comment 5, 2022* for an explanation for the derivation of the figure of 0.9161 kg/yr/acre. The total annual zinc loading is calculated to be 7,720 acres multiplied by 0.9161 kg/yr/acre equals 7072 kg/yr.

With regards to the question concerning the sum of the loads for NEC facilities, the "all parcels loads" spreadsheet[125] includes parcels as maintained by the L.A. County Assessor that were "tagged" as NEC in the 2021 Paradigm Environmental report. EPA determined the average load of all parcels of five or more acres that were tagged as "NEC." The average was determined to be 0.7 kg/yr/acre. This average zinc load was then used to estimate the total unpermitted load from IGP facilities (including those

[124] The figures for the total acres for the Port of Long Beach and the Port of Los Angeles were obtained by EPA in 2021. EPA's source for the Port of Long Beach is file #6 in section C of the Revised Procedures (Attachment 2) provided to EPA by the Port of Long Beach in 2021 in response to an information request from EPA concerning CII facilities at the port. Although the Port of Los Angeles provided similar information in 2021 (file #7 in section C of Attachment 2), the Port did not provide a figure for the total area of the port, and EPA used a figure of 4,200 acres obtained from the internet. EPA rechecked the accuracy of these figures for the ports using information currently available on the websites maintained by the ports at: https://polb.com/port-info/port-facts-faqs#facts-at-a-glance for the Port of Long Beach and https://www.portoflosangeles.org/business/statistics/facts-and-figures for the Port of Los Angeles, both last accessed on May 2, 2024. The Port of Long Beach website still provides the same figure for the total area of the port that was provided in 2021 (3,520 acres). The Port of Los Angeles website provides a figure of 4,300 acres for the total area of the port which is slightly largely than the figure (4,200 acres) obtained by EPA in 2021. Although the new figure for the Port of Los Angeles would lead to a slightly larger acreage for both ports combined (7,820 acres) and a slightly larger total zinc loading estimate, the difference is small (7,164 kg/yr versus 7,072 kg/yr) and for simplicity, EPA has retained the original estimate for the Final Designation.

[125] Paradigm Environmental Excel spreadsheet of zinc loading data for CII parcels, Administrative Record XIII.C.3.

submitting NECs) on the Regional Board's list of IGP permitted facilities of five of more acres.[126] The total unpermitted load from IGP facilities submitting NECs can be seen in Procedure 2 of the Revised Procedures (Attachment 2). However, the land areas of the parcels tagged as NEC in the L.A. County Assessor database are not the same as the unpermitted land areas in the Regional Board's IGP database for NECs, and as such, the zinc loads from these different land areas will not be the same.

With regards to the comment about the model and underlying data to generate zinc load estimates from various CII sources, see Common Response 4 as well as the Revised Procedures (Attachment 2).

With regards to comment about current watershed conditions and watershed-wide improvements, see response to *Port of Long Beach Comment 8, 2022*.

With regards to the commenter's claim the EPA refused to share the modeling data in March and September 2022, the modeling results were still under review internally in March 2022. EPA shared the modeling data in August 2022, during the 2022 Preliminary Designation Public Notice.[127]

PMSA Comment 8, 2022: "*The scope of authority granted to EPA for Residual Designation Authority (RDA) is limited. The Preliminary Designation exceeds this authority. As laid out in the following, the RDA in the Clean Water Act contemplates that EPA conduct an adjudication under the APA. Instead, EPA has treated the proposed designation as a rulemaking under the APA yet failed to comply with either the adjudicative requirements of 5 U.S.C. § 556-557, or the rulemaking requirements (including publication in the Federal Register for notice and comment and an economic analysis) required by 5 U.S.C. § 553.*"

PMSA also commented that the Preliminary Designation is impermissibly broad as "Congress intended that the RDA comprises only discrete stormwater discharges on a facility level that would be identified on a case-by-case basis through adjudicatory procedures."

PMSA also stated that EPA's petition regulations require the identification of "a discharge" and not a category of discharges.

Response: With regards to the comment about the APA and discussion on EPA's authority to regulate "categories" of discharges, see Common Response 5 and *Alta Environmental, LP Comment 2, 2022*.

[126] Regional Board list of IGP facilities, Administrative Record XIII.C.8.
[127] Public Notice: Preliminary Residual Designation to Address Stormwater Discharges in two Los Angeles County Watersheds, Administrative Record II.F.

Pacific Merchant Shipping Association (PMSA) Comments submitted on January 3, 2024

PMSA Comment 1, 2024: *PMSA requested that EPA clarify whether the Preliminary Designation in question is final agency action and what the meaning of the use of "preliminary" is in the proposed action.*

Response: The word "preliminary" in the context of the Preliminary Designation is intended generally as a synonym for the word "proposed" and refers to an action that is open for comment prior to final agency action.

PMSA Comment 2, 2024: *PMSA disagreed with the way the Preliminary Designation included some publicly owned facilities such as ports, but not others such as airports. The commenter indicated that "[t]here is simply no explanation, policy, impact threshold, or objective statement in the Revised Designation as to a basis for an evaluation as to how some public properties should be included and others excluded."*

PMSA also disagreed with the conclusions drawn from EPA's memorandum entitled "RDA Pollutant Loading Comparison (Ports Versus Airports)" ("Airports Memorandum") that compared the pollutant loading from ports versus airports and concluded that ports should be designated due to a substantially larger load. PMSA noted that EPA "never once established a standard of comparison." PMSA further noted that "even if it had established a standard for a relative comparison, it does not then apply that standard as to any other properties other than seaports and airports."

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter.

To be responsive to comments regarding EPA's pollutant load estimates for CII facilities at ports and at municipal airports that were included in the Revised Preliminary Designation, we refer the commenter to revised explanations of loading for CII facilities at Ports and Airports which are Procedures 5 and 6, respectively in the Revised Procedures (Attachment 2).

PMSA Comment 3, 2024: *PMSA expressed concern over the potential adoption of a general NPDES permit for CII facilities by the Regional Water Board prior to final EPA action on the Preliminary Designation.*

Response: As noted in the response to *Alta Environmental LP Comment 2*, *2022*, EPA has been coordinating with the Regional Board concerning the timing of the Draft CII Permit and any Final Designation. This will ensure that any final action taken by EPA on the Designation will occur first and will be consistent with any final CII Permit adopted by the Regional Board. This sequence of actions will also facilitate compliance for the sites

covered by the designation, as NPDES regulations require they apply for a permit within 180 days of designation, unless additional time is granted.[128] Ongoing coordination between EPA and the Regional Board will ensure some type of permitted coverage is available for facilities that would otherwise be subject to enforcement actions.

PMSA Comment 4, 2024: *PMSA asked how the estimate of 3,600 kg/yr for zinc in the "Airports Memorandum" was obtained.*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to the specific issue raised by the commenter.

The commenter's reference to the Airport Memorandum is associated with the 2022 Preliminary Designation and documents posted on EPA's website in August 2022.[129] In the 2023 Revised Preliminary Designation, EPA included a zinc loading estimate of 3,600 kg/yr. associated with CII facilities of five or more total acres at the ports. The zinc loading was calculated by adding the zinc loading from the unpermitted portion of the industrial (IGP) facilities (3,100 kg/yr) and zinc loading from CII facilities, both located at the ports (499 kg/yr).

For the Final Designation, as noted in Common Response 3, EPA prepared a more detailed explanation of its procedure for estimating the pollutant loads from potentially designated sources. The Final Designation does not include CII facilities at the ports at this time; however, EPA is providing revised estimates for these facilities. Procedure 5 in the Revised Procedures (Attachment 2) provides a revised estimate of approximately 2,600 kg/yr.

PMSA Comment 5, 2024: *PMSA questioned whether the ports were within the watersheds that were the subject of the Petitions and whether they should be included in the scope of the Preliminary Designation as a result.*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to the specific issue raised by the commenter.

The geographic area covered by the Preliminary and Revised Preliminary Designations was based on the area described in the Dominguez Channel and Los Angeles/Long Beach Harbor Petition and the applicable TMDLs that include the entire ports' area. This comes from several sources.

The Petition includes the 12-digit Hydrologic Unit Codes (HUC-12) that make up the

[128] 40 C.F.R. 124.52(c).
[129] Preliminary Designation Memo, Administrative Record III.C.

Dominguez Channel watershed drainage area. One of these is 180701060703 (San Pedro Bay) and this includes the Outer Harbor and Pier 400. The Petition also specifies Unit Code 180701060701 (Long Beach Inner Harbor) and together with Unit Code 180701060703, thus the entire Harbor area is included. The geographic area requested by the Petition can also be seen in maps found in Exhibit A to the Petition, and the entire port area is included. In addition, the Regional Board's 2012 Dominguez Channel and Greater Long Beach/Los Angeles Harbor Watershed Toxic Pollutants TMDL also includes the entire ports' area.[130] Also the Port of Los Angeles provided information to EPA that included Pier 400.

PETITIONERS (LOS ANGELES WATERKEEPER, AMERICAN RIVERS, NATURAL RESOURCES DEFENSE COUNCIL, CALIFORNIA COASTKEEPER ALLIANCE, AND HEAL THE BAY)

Petitioners Comments submitted October 24, 2022

Petitioners Comment 1, 2022: *"Overall, we generally support EPA's Residual Designation as described in the draft documents and accompanying analysis. However, we have reservations about the threshold size for CII sites that EPA has opted to designate."*

"The five-acre impervious threshold in the Residual Designation is arbitrary and insufficient to attain water quality standards in the Watersheds."

"EPA's own calculations in the Residual Designation show that reductions from [sites included in the preliminary designation] will provide insufficient progress toward attainment of water quality standards in the Watersheds, and that reducing the regulatory threshold would be both feasible and more protective of local water . . . EPA's proposed Residual Designation reiterates the need to reduce zinc loadings in Alamitos Bay/Los Cerritos Channel and Dominguez Channel/Long Beach Inner Harbor by 80.9% and 85.4%, respectively, in order to meet water quality standards in the Watersheds.[footnote omitted]. However, EPA's modeling underpinning the Residual Designation suggests that these zinc loadings will be reduced by only around 27% as a result of the CII designation. EPA's reasoning provides no compelling evidence that [designating all sites with five acres or greater of total area] would create unrealistic or unreasonable oversight burdens on the Regional Board, local MS4 operators, or other entities with compliance and permitting obligations . . . EPA has not shown in the Residual Designation that CII sites under five acres of impervious coverage do not contribute to water quality violations. Based on EPA's analysis in the Residual

[130] California Regional Water Quality Control Board, Los Angeles Region, Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDLs, 2012, Administrative Record IX.D.

Designation, a reasonable alternative regulatory threshold exists and has been thoroughly modeled to improve water quality on a faster timeline. Results from this modeling exercise demonstrate the clear value of extending the Residual Designation to, at minimum, all CII sites that are larger than five acres, regardless of the extent of impermeability of the property. Therefore, we urge EPA to revise the Residual Designation to apply to covered discharges from all unpermitted CII sites within the Watersheds that are five or more acres in size."

"This meaningful enhancement of water quality gains results from designating an additional 492 facilities, {footnote omitted} which is a manageable number."

Response: With regards to the comment on designating sources in the five-acre size threshold, see Common Response 2.

The commenter cites a value of 27% for the overall reduction of zinc discharges in the watersheds stemming from the Preliminary and Revised Preliminary Designations. The value of 27% cited by the commenter is the estimated load reduction stemming from the Preliminary and Revised Preliminary Designations as a percentage of the total watershed load (9,300 kg/yr divided by 34,300 kg/yr = 27%). As explained in the Preliminary Designation, EPA is taking a phased approach in responding to the Petitions.[131] EPA disagrees with the commenter that the Preliminary Designation provides insufficient progress in attaining the water quality goals in the watersheds.

The Final Designation addresses 22% of the total zinc load (7,600 kg/yr divided by 34,300 kg/yr), and this is reasonable progress towards reducing the pollutant loads that contribute to the existing water quality impairments in these watersheds. As discussed in Common Response 4, this decrease from 27% to 22% is a result of not including CII sites at the ports in the Final Designation. Nevertheless, EPA maintains this designation is a step towards addressing the water quality impairments in the watersheds, and that EPA may consider designating additional CII sources in the future.

The Final Designation also notes that sources of high impervious surface tend to be the most significant sources of pollutants in stormwater runoff.[132] The Final Designation focuses on such sources, either CII parcels with five or more acres of impervious surface, or unpermitted portions of IGP facilities of five or more acres of total area which tend to have a high level of imperviousness overall. See also response to *Gold Bond Comment 2, 2022*.

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[131] Preliminary Designation Memo at p. 11, Administrative Record III.C. at p. 11 (explaining that "Region 9 is preliminarily designating certain CII sites for NPDES permitting. In recognition of the large number and varying sizes of CII sources in the watersheds, Region 9 finds that a phased approach is appropriate, focusing initially on the largest sources while also ensuring reasonable progress in addressing the water quality impairments in the watersheds.").

[132] Final Designation Memo at p. 7, Administrative Record III.A.

The commenter also recommended that EPA designate all sites of five or more total acres rather than five acres of impervious surface as in the case of unpermitted CII parcels. EPA focused on impervious surface for the majority of sites included in the Preliminary Designation since a high degree of imperviousness at a site leads to an increase in the stormwater volume and pollutant loads in stormwater discharges from the site. As explained in the Preliminary Designation at pages 7-8:

> As described by Petitioners and in various studies, impervious surfaces are a source of pollutants. Impervious surfaces include rooftops, walkways, patios, driveways, and storage areas that prevent the land's natural ability to infiltrate stormwater. Pollutants from wear of automotive parts (e.g., tires and brake pads), spills and leaks of automotive fluids (e.g., motor oil and coolant), and airborne materials (e.g., atmospheric deposition and wind-transported pollutants) are deposited on impervious surfaces. [citations omitted] Because of the limited or nonexistent infiltration capacity of these surfaces, pollutants can build up and are not easily degraded, leaving them available to be picked up and discharged in stormwater during the next precipitation event. In the preamble of the Phase I rule, EPA noted that 'large parking facilities, due to their impervious nature[,] may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters[,]' and stated that while it was not requiring regulation at this time, such sources could be designated if they were contributing to a violation of a WQS.[133]

In the 2016 Response[134], EPA demonstrated that CII sources have many areas (such as automobile parking lots) with substantial likelihood of exposure of pollutants such as copper and zinc (e.g., from tire and brake pad wear) to precipitation.[135] For this re-evaluation, the record continues to indicate that CII sites have significant amounts of impervious surfaces that are exposed to a variety of pollutants, including metals such as copper and zinc, that can discharge during rain events.

The California Office of Environmental Health Hazard Assessment (OEHHA) issued a guide providing information concerning the degree of imperviousness of CII sources, as well as other land use categories in California (hereinafter, OEHHA Surface Coefficients User Guide). The guide notes that CII sources such as industrial sites, office parks, and retail areas, typically have impervious surfaces ranging from approximately 70%-90% of

[133] 55 Fed. Reg. 47990, 48010 (November 16, 1990).
[134] Enclosure of Region 9's Record of Decision explaining the Final Determination for the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Petition, October 2016, Administrative Record VII.A.1.; Enclosure of Region 9's Record of Decision explaining the Final Determination for the Alamitos Bay/Los Cerritos Channel Petition, October 2016, Administrative Record VII.B.1.
[135] Region 9's 2016 Response Letters to the Petitions, Administrative Record VII.

the total site.[136] The guide estimates institutional sources, such as schools and hospitals, to have 50% impervious surface.[137] Natural and agricultural lands, on the other hand, may only have 2%-4% impervious surface.[138] As noted in the Petitions and in relevant literature, the high level of imperviousness at CII sites leads to increases in the volume of stormwater as well as increased pollutant loadings discharged from the sites. So, the record indicates that the CII sites at issue have significant amounts of impervious surfaces that contain pollutants, such as zinc and copper, which are exposed to precipitation and are discharged in stormwater runoff from such sites.

The Preliminary Designation included industrial facilities associated with the IGP based on total facility acreage given that for some facilities, data regarding impervious surface acreage was not always available in the State's IGP database. As noted in the Preliminary Designation, industrial facilities tend to have a high level of imperviousness and designation based on total acreage for these facilities will generally ensure that the designation focuses on the sources with the greatest potential for pollutant load reduction. The Preliminary Designation explains at page 10:

> There are approximately 190 industrial facilities (as defined by 40 C.F.R. § 122.26(b)(14)) over five acres in the two watersheds that have submitted a notice of intent for coverage under the industrial general permit, a no exposure certification [NEC], or a notice of non-applicability [NONA]. Examples of these facilities include light and heavy industry, warehouses, trucking, scrap material handlers, and marine terminal operations. While some facilities may have moved industrial activities under cover to eliminate exposure to stormwater or collect and contain stormwater discharges associated with industrial activity, these facilities also have large areas of impervious surfaces, such as parking lots or rooftops. Such industrial sites are approximately 80% to 90% impervious, consisting of industrial areas, parking lots, interior roadways, and roofed buildings, much of which is not currently subject to NPDES permitting. [citations omitted]

The commenter also stated there would be meaningful water quality gains from designating an additional 492 facilities. It appears the value of 492 was obtained from information within Table 3-1 in the 2021 Paradigm Environmental report.[139] The value of 492 parcels is the difference between the combined total number of parcels of five or more acres impervious surface in the Dominguez Channel (467 parcels) and the Los

[136] "Impervious Surface Coefficients, A Tool for Environmental Analysis and Management," California Office of Environmental Health Hazard Assessment, July 2008, Administrative Record XVI.K.
[137] *Id.*
[138] *Id*.
[139] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021, Administrative Record XIII.C.1.

Cerritos Channel (114 parcels) (581 combined total parcels), and the total number of parcels with five or more acres total area in the Dominguez Channel (847 parcels) and the Los Cerritos Channel (226 parcels) (1,073 combined total parcels), with the difference being 1,073 – 581 or 492 parcels associated with five or more total acres.

EPA also considered the zinc loads that would be addressed by the two options of designation of parcels with five or more acres impervious surface versus five or more acres total area. Table 3-2 of the 2021 Paradigm Environmental report shows that the zinc load addressed by the designation of 581 parcels with five or more acres impervious surface for both watersheds combined is 4,255.55 kg/yr + 917.81 kg/yr equals 5,173 kg/yr. Similarly, Table 3-2 shows that the zinc load addressed by designation of 1,073 parcels with five or more total acres is 5,405.96 kg/yr + 1,131.49 kg/yr equals 6,537kg/yr.

As described above, EPA is adopting a phased approach in response to the Petitions that focuses initially on the largest pollutant sources in the watersheds. The commenter's recommendation would nearly double the total number of parcels designated from 581 to 1,073 but the designation of the additional 492 parcels would increase the designation load by only a small amount (approximately 4%) in comparison to the total load of 34,300 kg/yr. For more clarity, designating 581 sites based on impervious acres yields 5,173/34,300 kg/yr or 15% of the total load, by comparison designating 1073 sites based on total acres yields 6,537/34,300 kg/yr or19% of the total load.

Petitioners Comment 2, 2022: *"[W]e are confused about the calculations of estimated zinc load reductions under the Residual Designation. Appendix 1 attached to the Residual Designation presents a cursory summary of the Paradigm analysis and modeling results. It appears, however, that some of the figures in the Appendix differ from the Paradigm results. For example, Table A in the Appendix lists numbers of parcels and associated loadings for CII facilities in each of the parcel size categories that EPA considered. Table A identifies that there are 450 parcels with five or more acres of impervious area, while Paradigm's Table 3-1 identifies 581 such parcels. Table 1 in the Residual Designation indicates that total zinc loads from parcels in this category are 9,200 kg/yr, while Figure 3-2 in Paradigm's suggests that the loading is 5,173.36 kg/yr in the Watersheds. These inconsistencies make it difficult to determine the full, accurate extent of pollutant load reductions associated with EPA's proposed action and alternatives. It may be that representational differences in the presentation of the data in each of the memos create the impression of discrepancies when, in fact, none exists. Alternatively, EPA may have used a different or updated set of data from Paradigm in forming its Proposed Designation. Regardless, EPA should review the competing documents and either explain or correct these discrepancies."*

"EPA also does not explain how the Residual Designation will reduce zinc loading by about 9,300 kg/yr, or from which sources those reductions will be observed. EPA must offer a clearer explanation of how it calculated (1) the zinc loading in the Watersheds for

covered CII sites, both permitted and unpermitted, and clearly delineated between the categories; (2) the estimated reductions in zinc loading resulting from the Residual Designation from these sources; and (3) the additional reductions in zinc loading that could result from alternative designation thresholds identified in Paradigm's modeling using the same methodology."

Response: In their comment, the Petitioners noted that Table 3-1 of the 2021 Paradigm Environmental report[140] estimated that there were 581 unpermitted CII parcels in the watersheds with five or more acres of impervious surface. However, Appendix 1 to EPA's Preliminary Designation provided a figure of only 450 parcels. The reason for the difference is that the figure of 581 cited by the Petitioners includes numerous parcels that are government land use. Given the focus of the Petitions on privately-owned facilities, EPA subtracted government parcels from the list of 581 parcels with five or more acres of impervious surface and this resulted in the lower number of parcels in Appendix 1 of the Preliminary Designation.

The Petitioners also noted that Figure 3-2 (EPA presumes they meant Table 3-2) in 2021 Paradigm Environmental report provides an estimate of 5,173.36 kg/yr for the zinc load from CII parcels with five or more acres of impervious surface in the watersheds while Table 1[141] provides a figure of 9,200 kg/yr. In response, the figure of 9,200 kg/yr in Appendix 1, Table A is for parcels with one or more (rather than five or more) acres of impervious surface.

The Petitioners also asked for further explanation concerning how the estimate of 9,300 kg/yr was derived for the required overall zinc load reduction in the watersheds As noted in Appendix 1 to the Preliminary Designation, EPA estimated that the total zinc load from sources addressed by the designation would be about 11,000 kg/yr.[142] Sources in the Dominguez Channel Watershed need to reduce stormwater discharges by 85.4% to comply with the applicable water quality standards, while those in the Los Cerritos Channel Watershed need to reduce by 80.9%. The modeling report provided by Paradigm Environmental report had identified the need for a percentage reduction of 85.4% for the loads from the sources in the Dominguez Channel Watershed and 80.9% for those in the Los Cerritos Channel Watershed.[143] These percentage reductions for the sources in their respective watersheds result in the overall required loading reduction of 9,300 kg/yr noted in the Preliminary Designation

In the Final Designation, EPA is not including CII source at the ports, so this change

[140] *Id.*

[141] EPA presumes the Petitioners meant Appendix 1, Table A in the EPA's Preliminary Designation which is the only available source for the figure of 9,200 kg/yr.

[142] Preliminary Designation Memo at p. 14, Administrative Record III.C. at p. 14.

[143] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 2021 at p. 5, Administrative Record XIII.C.1. at p. 5.

resulted in revised estimates of zinc loading. As noted above in Common Response 3, EPA has prepared a Revised Procedures document that provides a revised explanation for estimating the pollutant loads from designated sources. The final estimate for the required zinc reduction from designated CII sources is now 6,480 kg/yr. Additional explanation of the derivation of this figure can be found in the Revised Procedures (Attachment 2). We refer the commenter to Procedure 4 of the Revised Procedures.

Petitioners Comment 3, 2022: *"As part of their regulatory duties to achieve water quality standards, EPA and the Regional Board possess the authority to initiate studies into commercial stormwater sources and to request funding from federal and state budgets to support those studies. We therefore urge EPA and the Regional Board to take the first step of conducting a study to investigate and model CII loading in other watersheds in the Regional Board's jurisdiction and, subsequently, to issue a similar CII Permit for those watersheds."*

Response: EPA will continue working with the Regional Board to assess water quality conditions and to evaluate pollutant loadings in other watersheds in the Los Angeles area.

Petitioners Comment submitted December 18, 2023

Petitioners Comment 1, 2023: ***"****Finally, we note that in the Revised Residual Designation and a separate memorandum entitled RDA Pollutant Loading Comparison (Ports Versus Airports) ("Airports Memorandum"), EPA clarifies that the CII Permit applies to privately-owned facilities at the Port of Los Angeles and Port of Long Beach, but does not apply to privately-owned facilities at airports within the watersheds—Torrance Airport, Hawthorne Airport, Long Beach Airport, and a portion of LAX. [footnote omitted]. While we support the inclusion of the Port facilities in the scope of the CII Permit due to the significant pollutant loading originating from these facilities, EPA should include privately-owned airport facilities in the scope of permit coverage. Despite uncertainty regarding the extent of non-industrial CII facilities at airports that are privately-owned, taking EPA's own estimates into account, there is a significant opportunity to reduce pollutant loading by a meaningful amount at just four locations in the Watersheds. At the high end of EPA's estimation, private facilities at these four airports could account for 1% of the 9,300 kg/yr target for zinc load reduction sought to be achieved under the Revised Draft Permit, which outpaces the average rate of zinc loading at around 700 other covered facilities in the Watersheds."*

Response: This 9,300 kg/yr. is associated with 2023 Revised Preliminary Designation. Common Response 4 describes this Final Designation made a change and does not include CII sources at Ports of Los Angeles and Long Beach at this time. In the Final Designation, the overall zinc estimate of load reductions from CII sources is now 6,480 kg/yr. As described in Common Response 3, EPA has prepared a Revised Procedures document to provide estimates of certain categories of CII sources. EPA's estimate of

zinc loadings from privately operated CII facilities at airports is 100 kg/yr at the high end and this is 0.3% of the total zinc loads of all sources in both watersheds. See also response to *California Council for Environmental and Economic Balance Comment 1, 2022*.

PORT OF LONG BEACH (POLB)

Port of Long Beach Comments submitted October 24, 2022

POLB Comment 1, 2022: *"It is unclear whether [Footnote 4 on Page 2 of Memo Related to the Ports of Los Angeles and Long Beach] intends to expand CII coverage to all Port operations, whether private or publicly operated, because all Port properties are publicly owned. The footnote should be revised to clearly indicate that only privately operated facilities on publicly owned Port land that are 5 acres or greater are subject to the CII Permit. This footnote must be clarified to avoid confusion and inconsistency with the petitions and existing Port coverage under the under the Regional MS4 Permit."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4.

POLB Comment 2, 2022: *"The [Preliminary Designation] memorandum currently indicates 'any' unpermitted portion of an IGP site is designated, but it does not appear that modeling supports this designation and is inconsistent with the 5-acre or greater threshold USEPA proposes for unpermitted CII facilities and NONA sites . . . [and] it is unclear how these small, unpermitted portions of an industrial site would be considered significant contributors of pollutants . . . [Also,] it is unclear why portions of a site already covered under an NPDES permit are considered when calculating the 5-acre size threshold for USEPA's designation. The unpermitted portions of an IGP site are no different than an unpermitted CII facility or portions of an industrial site not covered by a NONA and should follow the same 5-acre threshold that was established based on modeling results."*

Response: See response to *Gold Bond Building Products Comment 2, 2022*.

POLB Comment 3, 2022: *"USEPA should clarify the appropriateness and applicability of the underlying land use data that were used in calculating pollutant loads to help dischargers understand the basis for the designation . . . [It's] unclear from documents released by USEPA as part of the Preliminary Designation process what underlying source concentrations were used or the rigor and quality of methods used to collect and validate the underlying data used in the model. It is not clear if USEPA has coordinated with local watershed management groups to confirm whether any of the designated*

facilities are already located within the drainage area of a regional stormwater capture BMP and if that was accounted for in the modeling exercise. It is unclear how the loading calculations account for uncontrollable indirect atmospheric deposition of pollutants, such as copper and zinc, to the land surfaces of CII facilities. The Total Maximum Daily Load appears to only quantify direct deposition to the water surface areas and not indirect atmospheric deposition."

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4. Nevertheless, EPA responds below to the specific issues raised by the commenter.

EPA used land use data from the Los Angeles Assessor database both for identifying CII sources and evaluating parcel size. This database is a readily available and a commonly used source of land use information. EPA also used the Assessor database for estimating zinc loads associated with CII sources; this was applied to privately owned parcels. With regards to the underlying source concentrations or the rigor and validation of the model, we refer the commenter to Common Response 3. See also the Revised Procedures (Attachment 2) which is provided to address comments on the model and zinc estimates.

With regards to the comment about potentially designated facilities that may be within the drainage area of a regional stormwater capture BMP, it was beyond the scope of the modeling and would need to be considered during the implementation of the permit.

Applicable TMDLs such as the 2012 Dominguez Channel and Greater Long Beach/Los Angeles Harbor Watershed Toxic Pollutants TMDL[144] did consider atmospheric deposition of pollutants such as copper and zinc directly to waterbodies and to land surfaces where the pollutants may later be discharged in stormwater runoff. Dischargers such as MS4s and CII sources are responsible for the pollutants in their stormwater discharges even if the original source of the pollutants is atmospheric deposition. The pollutants from atmospheric deposition to land surfaces are incorporated into EPA's estimates of zinc pollutant loads that are from the MS4s and CII sources and thus were considered by EPA in the Preliminary Designation, the Revised Preliminary Designation, and the Final Designation.

POLB Comment 4, 2022: *"[T]here appears to be an inconsistency in the scope of the proposed action between the recommendation made in the USEPA RDA Memorandum and Regional Board's application of the RDA as presented in the proposed CII Permit. Please clarify if the RDA only pertains to discharges to Inner Harbor waters."*

Response: The Revised Preliminary Designation clarified the proposed designation

[144] California Regional Water Quality Control Board, Los Angeles Region, Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDLs, 2012, Administrative Record IX.C.

applied to Inner and Outer Harbor waters. The Final Designation does not include CII sites at the ports at this time. See also Common Response 4.

POLB Comment 5, 2022: *"To provide transparency and allow for appropriate review of supporting spreadsheets used to calculate loads, EPA should provide the spreadsheets used to calculate load values, including any sorting, duplicate removal (if any), equations, and tabulation of values."*

"Based on review of the various spreadsheets provided by EPA, including "all_parcel_loads," it is unclear what parcels were used in the summary loading information provided by EPA."

"To the extent EPA commissioned detailed modeling to evaluate pervious versus impervious areas for the two CII watersheds, it is unclear why the Port facilities were excluded from this effort, and it appears the method used may overestimate loading."

POLB also made comments about the loading factor of 0.92 kg/yr/acre, port land area, as well as commenting that the loads summed for NEC facilities did not match what was included in the spreadsheet.

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter. See Common Response 3 as well as the Revised Procedures (Attachment 2) for additional information.

As noted above in the response to *Pacific Merchant Shipping Association (PMSA) comment 6, 2022*, the loading data for the ports in the 2021 Paradigm Environmental modeling report was based on "nearby" or "adjacent" parcels" to the Ports that resembled land use at the ports.[145] EPA did not use the watershed model, WMMS2, to directly estimate loading from the ports because the model does not cover the port area. Instead, EPA estimated the average zinc loading factor for the ports using WMMS2 estimates for nearby parcels with similar industrial land use, dividing the annual zinc loads for each parcel by the area of the parcel and averaging the results. (See Revised Procedures, Part C, file #3) The average zinc loading factor is 0.9161 kg/yr/acre or rounded this value is 0.92 kg/yr per acre. The industrial land use at the adjacent parcels is similar to industrial land use at the ports including truck and other transportation-activity.

The ports provided lists of facilities located at the ports, including industrial facilities covered by the IGP and non-industrial facilities not covered by the IGP. The ports also

[145] "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis," Memorandum from Steve Carter and Eric Wineteer of Paradigm Environmental to EPA Region 9, February 16, 2021, Administrative Record XIII.C.1.

provided information concerning the size of these facilities, although for the Port of Los Angeles size information was missing in some cases. EPA used the facility-specific information along with the average loading derived from WMMS2 for "nearby" or adjacent parcels the ports to estimate the loading from the facilities at the ports. See also Procedure 5 in the Revised Procedures (Attachment 2).

EPA recognizes the duplicate values in the Paradigm Environmental Excel spreadsheet of zinc loading data for CII parcels labeled as "all_parcels_loads."[146] EPA did not use the duplicate information in the loading estimates.

With regards to the question concerning the sum of the loads for NEC facilities, the "all_parcels_loads" spreadsheet includes parcels as maintained by the L.A. County Assessor that were "tagged" as NEC in the 2021 modeling report prepared by Paradigm Environmental.[147] The NEC load for industrial facilities in EPA's summary is based on information submitted by facilities covered by the State Board's IGP concerning the land area occupied by these facilities. The land areas represented by the parcels in the County Assessor database are not the same as the land areas submitted for the IGP, and as such the total pollutant loading estimates are different. EPA used the average zinc loading per acre for parcels tagged as NEC in the Tax Assessor database to generate an estimate for the loading from the land areas occupied by industrial facilities under the IGP.

POLB Comment 6, 2022: "*The technical basis for including parameters (e.g., bacteria, PCBs, PAHs, nutrients, etc.) that were not the subject of modeling efforts by Paradigm and EPA in the draft CII permit is unclear. The models only evaluated copper and/or zinc and did not include other parameters which are included in the draft CII permit. According to the draft CII Permit, zinc is considered the "limiting pollutant" and states that if the discharge of zinc is controlled, then the discharge of other pollutants will be controlled. This approach is making zinc a surrogate parameter to examine the discharge of all pollutants of concern from CII facilities. Since zinc is the limiting pollutant and is serving as a surrogate parameter to examine the discharge of all pollutants of concern from CII facilities, we suggest the draft CII permit only require monitoring for zinc unless sufficient technical justification for the additional monitoring parameters can be provided."*

Response: With regards to zinc as the limiting pollutant, see Common Response 3. See also response to *Los Angeles County Business Federation (BizFed) Comment 6, 2022*. With regards to the use of limiting pollutant in the draft CII permit, EPA refers the commenter to the Regional Board's response to comments documents and the Draft CII

[146] Paradigm Environmental Excel spreadsheet of zinc loading data for all CII parcels, Administrative Record XIII.C.3.
[147] Paradigm Environmental Excel spreadsheet of zinc loading data for all CII parcels, Administrative Record XIII.C.3.

Permit itself.

Although POLB's Comments 7 and 8 appears to be directed to the Regional Board, EPA will address the comment.

POLB Comment 7, 2022: *"The Order indicates that USEPA has exercised RDA pursuant to 40 CFR section 122.26(a)(9)(i)(D) for certain CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed. However, the USEPA RDA Memorandum recommends discretionary authority is exercised to designate discharges from CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominquez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County [bold added for emphasis]. The Ports of Los Angeles and Long Beach are geographically separated into Inner Harbor and Outer Harbor waters. Discharges may occur to both areas; however, the USEPA RDA Memorandum specifically states "Inner Harbor Watershed." Please clarify if this Order only pertains to discharges to Inner Harbor waters. If the RWQCB intends the Order to apply to discharges to Inner and Outer Harbor waters (i.e., Los Angeles/Long Beach Harbor Watershed, collectively), please clarify how the USEPA RDA Memorandum authorizes regulation of discharges to Outer Harbor waters. If the Order does indeed only apply to discharges to Inner Harbor waters, please update all occurrences of "Los Angeles/Long Beach Harbor Watershed" to "Los Angeles/Long Beach Inner Harbor Watershed."*

Response: Although the above comment from POLB was submitted only to the Regional Board, it also relates to EPA's Preliminary Designation. As such, EPA is providing a response. See response to *Pacific Merchant Shipping Association (PMSA) Comment 5, 2024*.

POLB Comment 8, 2022: *"The Port understands the importance of environmental stewardship and is committed to protecting the beneficial uses of the harbor waters. The Green Port Policy, adopted in 2005, outlines specific guiding principles, goals, and metrics that direct Port activities and track progress toward meeting environmental goals. Subsequently, the Port, together with the Port of Los Angeles, developed the Water Resource Action Plan (WRAP) in 2009 to formalize implementable actions designed to improve water and sediment quality . . . The most recent compliance monitoring results for water, sediment, and fish tissue quality illustrate that conditions within the Port's harbor waters indicate improving conditions within the Port . . . ."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter.

EPA recognizes and appreciates efforts undertaken in recent years by the ports and the Harbor Technical Working Group such as those described in the 2009 Water Resources

Action Plan to address water and sediment quality issues in the ports' harbor waters. EPA also recognizes that stormwater control measures implemented by the POLB and its tenants, both past and present, help to reduce pollutant loads in stormwater discharges from facilities at the ports.

With regards to the comment that water quality conditions (interpreted via water, sediment and fish quality data) are improving within the port, EPA notes that waterbodies in the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed currently remain on California's list of impaired waters.[148] Therefore, pollutant reductions for stormwater discharges into those waterbodies are still needed to attain water quality standards and restore beneficial uses.

EPA notes the 2012 Dominguez Channel and Greater Los Angeles/Long Beach Harbor Waters Toxic Pollutants TMDL and the applicable wasteload allocations therein are still in effect and therefore EPA encourages POLB and its tenants to continue to implement a wide variety of strategies and control measures to comply with the applicable TMDLs and to address the existing impairments.

EPA also reviewed the 2023 revised Watershed Management Program (WMP) for the City of Long Beach[149] and the reasonable assurance analysis (RAA)[150] prepared in 2021 for the Port of Long Beach. These documents evaluated whether additional reductions in pollutant discharges specifically from the port would be necessary for compliance with the 2012 Harbor Waters Toxics TMDL. Zinc was determined to be the limiting pollutant and the RAA found that a 57% reduction in zinc discharges from the port would be necessary to comply with the applicable 2012 Harbor Waters Toxics TMDL.[151] As such, at a minimum, a substantial reduction in zinc discharges would be necessary to comply with the TMDL, and additional pollutant control measures may also be needed for other constituents in the future to restore water and sediment quality in the Los Angeles/Long Beach Harbor waters.

Port of Long Beach Comments submitted January 3, 2024

POLB Comment 1, 2024: *POLB expressed concern that EPA had not provided a response to the comments that had been submitted in 2022 to go along with the November 2023*

[148] See 2020-2022 California Integrated report. While the 2024 Integrated Report has been approved by California State Water Resources Control Board and submitted to EPA on March 26, 2024 with additional information on August 27, 2024, EPA has not taken final action on it. Relevant to this designation, waterbodies in Dominguez Channel and Los Angeles/Long Beach Harbor currently remain on California's list of impaired waters. That list has not yet been approved by EPA.
[149] City of Long Beach Watershed Management Program for Nearshore Watersheds. Revised August 1, 2023, Administrative Record XI.C.
[150] Port of Long Beach Reasonable Assurance Analysis Final Report. May 2021, Administrative Record XI.E.
[151] Id.

revisions to the Preliminary Designation.

Response: EPA indicated in the November 2023 revisions to the Preliminary Designation that it would provide a response to all the comments submitted, including those submitted on the 2022 Preliminary Designation as well as the 2023 Revised Preliminary Designation. EPA is now providing responses to all the comments in this comprehensive Response to Comments document.

POLB Comment 2, 2024: *POLB expressed concern that EPA's Preliminary Designation had only covered facilities within the "Inner Harbor Watershed" while the Los Angeles Regional Water Board's revised CII NPDES Permit included both the Inner and Outer Harbors.*

Response: See response to *Pacific Merchant Shipping Association (PMSA) Comment* 5, *2024*.

POLB Comment 3, 2024: *"It is not possible to state there are adverse impacts related to metals in water discharged from the ports because there are no demonstrated impairments for these compounds within the receiving waters. Discharges from all facilities are not adding to water quality violations in the receiving water or causing and/or contributing to adverse conditions in the receiving waters. The latest summary by LARWQCB has confirmed the sediment conditions within the Inner and Outer Harbor waterbodies meet water quality standards for the constituents listed on the TMDL 303(d) list. [citations omitted] . . . [Additionally, we] appreciate the revisions made by the USEPA to the PD Memo, but remain concerned that the PD Memo fails to account for the existing and ongoing efforts made by the POLB and our tenants in complying with the Harbor Toxics TMDL."*

The commenter also cited a 2022 Staff Report from the Los Angeles Regional Board entitled "Reconsideration of the Dominquez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL Staff Report" to support the comment.

Response: With regards to comment about impairments in the receiving waters (i.e., waterbodies near the ports), see response to *POLB Comment 8, 2022*.

With regards to the Los Angeles Regional Board's 2022 *Reconsideration of the Dominquez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL*, EPA did review these documents and found the following information in the Resolution and Attachment A documents:

> These revisions of the 2012 [Dominguez Channel] and Greater Harbor Waters TMDL are not general reconsiderations of each and every element of these TMDLs. The fundamental technical elements including the Problem Statement, Numeric Targets, Loading Capacities, Margins of Safety, and Critical Conditions

have not changed. Nor are there changes proposed to the implementation options identified in the TMDL.[152]

Metals and PAHs are currently generated or deposited in the watersheds and are then washed into storm drains and channels that discharge to the Dominguez Channel and greater Harbor waters.[153]

Relevant to this designation, EPA finds the 2022 Toxic Pollutants TMDL Reconsideration did not change the underlying source assessments and wasteload allocations for municipal stormwater sources established in the 2012 approved Dominguez Channel and Greater Harbor Waters Toxic Pollutants TMDL. Furthermore, EPA notes that the Regional Board's *2022 Toxic Pollutants TMDL Reconsideration* has not yet been approved by EPA,[154] and it could be subject to change and therefore, EPA did not rely on it for our determinations for the Final Designation.

POLB Comment 4, 2024: *POLB expressed concern regarding the potential compliance costs associated with Regional Water Board's permit. Capital costs were estimated at $40 million with annual costs of $1 million.*

Response: See response to the *Los Angeles County Business Federation (BizFed) Comment 1, 2022*.

POLB Comment 5, 2024: *"The revised draft PD Memo appears to place additional emphasis on the Port of Long Beach and Port of Los Angeles properties, including establishing a more rigorous standard (facilities with a total of 5 acres or more versus facilities with 5 or more acres of impervious surface) to port properties than to other facilities in the subject watershed. It is unclear how the USEPA's analysis supports applying a more rigorous standard to Port facilities, and more importantly, the draft finding that Port facilities are contributing to a violation of water quality standards is not supported by the results of many years of rigorous Harbor water quality monitoring."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4. Nevertheless, EPA responds

[152] TMDL Reconsideration Resolution R22-05, pg. 2, Administrative Record IX.A.2
[153] TMDL Reconsideration Attachment A to Resolution R22-02, pg. 7, Administrative Record IX.A.1.
[154] Dominguez Channel and Great Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL (EPA approved on March 23, 2012). The California Los Angeles Regional Water Board adopted the Dominguez Channel and Great Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL Reconsideration on October 13, 2022. The California State Water Board adopted the same Toxic Pollutants TMDL Reconsideration on January 7,2024; however, California has not yet submitted the Toxic Pollutants TMDL Reconsideration to EPA for approval.

below to the specific issue raised by the commenter.

As explained in the response to *Gold Bond Building Products Comment 2, 2022*, designation of industrial facilities covered by the State's Industrial General Permit (IGP) is based on total area due to data limitations for impervious surface for the industrial facilities covered by the IGP. This is also true for facilities at the ports. As noted in the final designation, EPA used an OEHHA study which reported that industrial facilities tend to have a high level of impervious surface (80-90%) as do the ports.[155] As such, the numerical values for the total area and impervious surface for a given port facility will not be significantly different, and thus the proposed designation criteria of five or more total acres for port facilities will also not be significantly different from other facilities of five or more impervious acres subject to the designation.

With regards to the comment of whether port facilities are contributing to violations of water quality standards, EPA notes the reasonable assurance analysis (RAA) prepared by the Port of Long Beach in the 2021 showed that a 57% reduction in zinc discharges would be necessary to comply with the 2012 Dominguez Channel and Greater Los Angeles/Long Beach Harbor Toxics TMDL[156]

POLB Comment 6, 2024: *"The USPD Memo indicates the Preliminary Designation addresses zinc and copper because they are the two main constituents of concern in the Petitions. However, other parameters (e.g., bacteria, PCBs, PAHs, nutrients, etc.) are included in the draft CII Permit by the LARWQCB. These parameters were not the subject of modeling efforts by Paradigm and USEPA in the original or revised PD Memo. The technical basis for their inclusion is unclear and does not appear supported by any data analysis. It is unclear how the LARWQCB can use USEPA's analysis to make a link between an impervious surface (e.g., roof top, parking lot, church, etc.) to a significant source of parameters such as legacy pesticides or toxicity from potential CII sites. To be consistent with parameters that were modeled and the focus of USEPA's Preliminary Designation, USEPA should coordinate with the LARWQCB to ensure the CII Permit does not expand to parameters that were not specifically modeled by the USEPA and found to be contributing to a violation of water quality standards."*

Response: The constituents selected for regulation under the Draft CII Permit is a matter to be evaluated and decided by the Regional Board. As such, EPA would direct the commenter to the Regional Water Board for further information. See also response to the *Los Angeles County Business Federation (BizFed) Comment 6, 2022*.

POLB Comment 7, 2024: "*The memorandum currently indicates 'any' unpermitted portion of an Industrial General Permit (IGP) site or notices of non-applicability (NONA) sites are designated, regardless of size or surface cover. Many examples have been*

[155]"Impervious Surface Coefficients, A Tool for Environmental Analysis and Management," California Office of Environmental Health Hazard Assessment, July 2008, Administrative Record XVI.K.
[156] Port of Long Beach Reasonable Assurance Analysis Final Report. May 2021, Administrative Record XI.E.

identified where the USEPA will be designating small, unpermitted portions of IGP sites, such as customer/employee parking lots and even pervious landscaped areas that could be as small as a few thousand square feet. Designating these small portions of parcels is inconsistent with the modeling relied upon by the USEPA and it is unclear how these small, unpermitted portions of an industrial site would be considered significant contributors of pollutants or contributing to violations of water quality standards."

Response: See response to *Alta Environmental LP Comment 6, 2024*.

POLB Comment 8, 2024: "*There is no timeframe given by USEPA for reevaluation of the preliminary designation and whether it is meeting the intention of the designation. What measures or benchmarks will USEPA use to evaluate the success of this designation?"*

Response: As described in the Final Designation, depending in part on the progress that occurs as a result of this designation, EPA may consider designating additional CII sources in the future.

PORT OF LOS ANGELES (POLA)

Port of Los Angeles Comments submitted October 24, 2022

POLA Comment 1, 2022: "*A process needs to be developed to incorporate new data into the [RDA] Memo and Draft Commercial, Industrial, and Institutional (CII) Permit as it becomes available. Additional regional monitoring data have been developed over the last nine years that should be used to inform both the Memo and Draft CII Permit. It is not clear what the process was for incorporation of data collected since 2013 and for inclusion of future data and model reruns."*

Response: EPA, in partnership with the State, will continue to evaluate future available data and corresponding surface water quality conditions. See also Common Response 2 for EPA's phased approach in response to these petitions.

POLA Comment 2, 2022: "*Based on information provided in the Memo, it is not possible to determine whether the data used in the model to evaluate the linkage of stormwater discharges to sediments impairments or water quality exceedances. The Memo does not specifically address the contribution of pollutants in stormwater runoff to the sediment impairments within the Port of Los Angeles and Port of Long Beach (Port Complex) … Organic contaminants and contaminants with a high affinity for sediments/particulates do not behave as dissolved metals in the water column. In addition, the toxic effect related concentrations of these organics are at lower concentrations than the modeled compounds of copper and zinc."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, we respond below to specific issues raised by the commenter.

The Final Designation Memo describes stormwater discharges from CII sources that are contributing to water quality standards violations, interpreted as impairments, for various pollutants including metals such as zinc copper, toxic organics such as polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and legacy pesticides including DDT-related compounds.

Zinc has a high affinity for particulates or suspended sediment within stormwater, as do PAHs, PCBs and DDT related compounds.[157] Therefore, control measures designed to reduce zinc are also expected to reduce these other toxic organic pollutants. See also response to *POLA comment 5, 2022* and response to *POLA Comment 3, 2024*.

POLA Comment 3, 2022: *"According to the Memo, EPA reviewed data 'submitted by the Petitioners themselves, analyses found in the several relevant TMDL documents for waterbodies in the watersheds, and a special source study conducted by Paradigm Environmental' in April 2015 [citations omitted]. However, no accessible references or weblinks to these documents are provided in the Memo; it is therefore not possible to evaluate the sufficiency or applicability of these data to the target compounds of concern in the receiving water sediments."*

Response: The 2015 Paradigm Environmental report is part of the Administrative Record for the Preliminary Designation.[158] As such, the public was able to request access to the report by contacting EPA during the comment period for the Preliminary and Revised Preliminary Designation. Currently, this report continues to be available by contacting EPA. Interested parties could also come to the EPA Region 9 office to review the Administrative Record. As noted in the response to *Los Angeles County Business Federation (BizFed) Comment 6*, *2022*, BizFed obtained and reviewed a copy of the report.

EPA re-noticed the Revised Preliminary Designation on November 2, 2023 which provided another opportunity for the commenter to request access to the report and submit comments pertaining to the report.

The Revised Preliminary Designation also noted that EPA had considered TMDLs such as the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL, 2012; and the Los Cerritos Channel TMDL for Metals, March 2010.

[157] Dominguez Channel and Greater Harbor Toxics TMDL, 2012, Administrative Record IX.C.
[158] Report entitled "Analytical Support for Stormwater Source Analysis," Paradigm Environmental, April 2015, Administrative Record XV.D.

These items were available during the comment period and continue to be available on the Regional Board website at:
https://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/*POLA*

POLA Comment 4, 2022: "*EPA subsequently funded a study of loading from CII sites but looked only at sources within the upper portion of the Dominguez Channel Watershed and extrapolated these data across parcels for the entirety of both watersheds."*

Response: EPA is uncertain if the commenter is referring to the 2015 Paradigm Environmental Report or by using the phrase "subsequently funded a study" if the commenter is referring to the 2021 Paradigm Environmental study.

Assuming the commenter is referring to the 2015 study, then EPA did not extrapolate the 2015 study results or data across the entirety of both watersheds. EPA acknowledges the 2015 study was analysis of the storm water sources in the upper portion of the Dominguez Channel Watershed.[159]

For the Preliminary, Revised Preliminary and Final Designation, EPA used, in part, the more recent 2021 Paradigm Environmental report, that directly assessed stormwater loadings of zinc and copper from various CII sources associated with land uses within both watersheds. Figure 3-1 in the 2021 Paradigm Environmental report shows that both watersheds are highly urbanized with a land use pattern generally consistent throughout the watersheds.

See also Common Response 3 and the Revised Procedures (Attachment 2).

POLA Comment 5, 2022: "*EPA uses zinc and copper as surrogate contaminants for all listed [contaminants of concern] in the TMDLs without providing justification for why bioaccumulative contaminant loadings are expected to be similar. Bioaccumulative pollutant concentrations are the contaminants driving the TMDL reduction strategy needs, not copper and zinc."*

Response: The degree to which various pollutants must be controlled in complying with applicable TMDLs is addressed in the Watershed Management Programs (WMP) that have been developed for each of these watersheds. The Dominguez Channel Enhanced WMP (DC EWMP) includes waterbodies within POLA harbor district. The 2021 Dominguez Channel WMP provides a discussion on zinc as the surrogate contaminant for all listed pollutant causing impairments within these waterbodies.

EPA found the following relevant statement within the 2021 DC EWMP.

> The limiting pollutant concept simplifies the RAA through the following

[159] *Id.*

> assumption: if the pollutants that require the largest treatment capacity to meet [Water Quality Based-Effluent Limits] WQBELs and [Receiving Water Limits] RWLs are managed, all other constituents will also be addressed. Meeting all of the WQBELs and RWLs in the DC WMG can be achieved through control of the limiting pollutants. The limiting pollutants drive the implementation actions and dictate the stormwater volumes the control measures must manage. The results highlight zinc and bacteria as the limiting pollutants that drive the capacity of BMPs in the EWMP Implementation Plan. That conclusion is consistent with the results of other [Reasonable Assurance Analysis] RAAs that used WMMS [model] to conduct RAAs. The limiting pollutants are as follows:
> Limiting pollutant #1 – Zinc: In nearly all urbanized watersheds evaluated across LA County, zinc is a limiting pollutant. For the DC EWMP, zinc is a Category 1 WBPC in all watershed areas except Wilmington Drain and Machado Lake. As such, zinc is defined as a limiting pollutant in the Dominguez Channel, Dominguez Channel Estuary and LA Harbor. Zinc is the primary pollutant by which load reduction for the Harbor Toxics TMDL will be achieved. The zinc 90th percentile "limiting day" was identified between 2011 and 2020 and the required reduction on those days was calculated using calibrated WMMS2 [model].[160]

This provides the linkage between achieving zinc reductions to also support reduction of bioaccumulative pollutants. See also Common Response 3 for more information and sources for the scientific rationale regarding zinc as a limiting pollutant.

POLA Comment 6, 2022: "*Memo and underlying modeling do not account for the receiving water quality benefits achieved by industrial facilities at the Port of Los Angeles and throughout the watershed that have opted to install stormwater treatment systems, effectively penalizing, or discouraging CII facilities from pursuing stormwater treatment options."*

Response: The pollutant loading estimates in the Preliminary Designation are based on watershed modeling using the WMMS2 model. The model was updated in June 2020 and uses the latest available data on land characteristics, and hydrologic and water quality conditions in the County.[161] As such, the WMMS2 model provides the best information available on current conditions in the watersheds. See also Common Response 3.

We note that the commenter did not provide details of any additional stormwater

[160] Dominguez Channel Enhanced Watershed Management Program Revised, June 2021, Section 3.4,2 p. 3-8, Administrative Record XI.D at p.3-8.
[161] "WMMS Phase I Report: Baseline Hydrology and Water Quality Model." May 2020, Administrative Record XIII.D.

treatment systems. EPA is open to learning about these treatment systems and any other BMPs, current or future, that POLA has implemented or proposes to do so in the future.

With regards to the comment on receiving water quality benefits achieved, see response to *POLB Comment 8, 2022*.

POLA Comment 7, 2022: *"Without providing basis as to why the Port Complex is designated as dischargers, the Port Complex should be treated the same as the airports, which are not designated . . . Many industrial facilities in the Port Complex also have coverage under the IGP. This results in double (and potentially, triple) permit coverage within a parcel for tenants within the Port Complex. There is no clear basis for who is regulated for which discharges under which permit."*

Response: See Common Response 4 and response to *California Council for Environmental and Economic Balance (CCEEB) Comment 1, 2022.*

POLA Comment 8, 2022: *"Stormwater modeling using the Watershed Management Modeling System (WMMS) version 2.0 evaluated pollutant loads in stormwater discharges from the MS4 in the two watersheds using simplified loading values extrapolated across the modeled area and does not provide an accurate assessment of a highly diverse watershed. Further, this model is in the process of being updated; the analysis presented herein is premature and should be aligned with the updated WMMS. The model was based on assumed loading values for zinc from broad categories of land use as opposed to actual data, and these data were extrapolated across the two watersheds. However, it is unclear where these loading values came from without further research of the source inputs to the model."*

Response: As described in Common Response 4, the WMMS2 was updated in 2020 to incorporate the latest available data on land characteristics (including land use), and hydrologic and water quality conditions in the County. A report entitled "WMMS 2.0 Phase I Report: Baseline Hydrology and Water Quality Model describes the model and explains the sources used for the loading data.[162] As noted in the 2020 WMMS2 Phase I model report the pollutant loading data are derived from monitoring studies of stormwater runoff in the Los Angeles area from 19 land categories.[163] As such, contrary to the commenter's assertions, the model is based on actual Los Angeles stormwater runoff data and not just from broad land use categories.

This 2020 WMMS2 Phase I model report also describes the steps that have been

[162] "WMMS Phase I Report: Baseline Hydrology and Water Quality Model." May 2020, Administrative Record XIII.D.

[163] "WMMS Phase I Report: Baseline Hydrology and Water Quality Model." May 2020 at p. 79, Administrative Record XIII.D..

undertaken to validate the model. Notably, section 5.4.2 of the report compares model predictions with actual monitoring results reported from several Coordinated Integrated Monitoring Programs that are operated by the associated Watershed Management Groups and implemented since 2015 pursuant to the Los Angeles County MS4 permit.[164] The generally good agreement between modeled and observed results indicates that the model is a valid tool for estimating the loads from CII sources in the watersheds. EPA disagrees that such a model would be considered overly simplified.

See also the Revised Procedures (Attachment 2) that provides additional description of the WMMS model, its inputs and outputs and EPA's procedures used for estimating the pollutant load for zinc from CII sources.

As noted above, the model was updated in 2020 and EPA is not aware of any other model updates and thus this is the best available information to date. EPA may consider updating its analysis in the future if new information or improved modeling becomes available.

POLA Comment 9, 2022: *"The [Preliminary Designation] Memo does not clearly define the discharger/Legally Responsible Party. 'EPA is proposing to designate all CII facilities with five acres or more at the Ports of Los Angeles and Long Beach, given the high degree of imperviousness at the Ports.' [citations omitted]. This footnote pertains to the bullet that states, 'Region 9 is preliminarily designating stormwater discharges… from the following: Any privately owned and unpermitted CII parcel with five or more acres of impervious surface.' The footnote seems to contradict the text because the Port Complex is not "privately owned."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4. See also response to *California Council for Environmental and Economic Balance (CCEEB) Comment 1*, 2022.

POLA Comment 10, 2022: "*Additional regional monitoring data, such as data gathered from municipal separate storm sewer system (MS4) monitoring programs and collected by industrial facilities for compliance with the Industrial General Permit (IGP) as well as the Dominguez Channel and Greater Los Angeles and Long Beach Waters Toxic Pollutants Total Maximum Daily Load (Harbor Toxics TMDL), have been developed over the last nine years that should be included in both the Memo and CII Permit. It is not clear what the process is for inclusion of currently available and future available data."*

Response: This comment, although submitted to the Regional Board, is similar to *POLA Comment 1*, *2022*. As such, we refer the commenter to EPA's response to *POLA*

[164] WMMS Phase I Report: Baseline Hydrology and Water Quality Model." May 2020, Administrative Record XIII.D.

Comment 1, 2022.

Port of Los Angeles Comments submitted January 3, 2024

POLA Comment 1, 2024: *The commenter indicated that the Preliminary Designation did not reflect current conditions in the Harbor.* T*he commenter cited a 2022 Staff Report from the Los Angeles Regional Board entitled "Reconsideration of the Dominquez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL Staff Report" to support their comment.*

Response: See response to *POLB Comment 3, 2024*.

***POLA Comment 2, 2024*:** *POLA expressed concern regarding designation of publicly owned facilities at the ports, but nowhere else in the watersheds.*

Response: See Common Response 4 and response to *California Council for Environmental and Economic Balance (CCEEB) Comment 1, 2022*.

POLA Comment 3, 2024: *POLA raised several objections pertaining to the regulation of rooftop runoff. POLA noted that:*

"Rooftops are not uniform in construction and therefore pollutant loads in runoff from rooftop material itself cannot generally be assumed. One major and consistent source of pollutants to rooftops is atmospheric deposition, which is excluded from TMDL Waste Load Allocations (WLAs) calculations. Because the stated intent of the PD Memo is to address point sources through WLAs, rooftops should not be included without and unless supporting site data indicate the rooftop material itself is contributing to a water quality violation in the waterbody. The Harbor Department would like to point out again that TMDL monitoring data in the Inner and Outer Harbor have no water quality impairments for dissolved zinc, cadmium or lead, the constituents of concern in rooftop construction material.

Requiring CII facilities to be responsible for pollutants associated with atmospheric deposition on impervious surfaces places an unwarranted burden on those facilities rather than focusing on true industrywide pollutant source control (for example, reduction of copper in brake pads or zinc and other chemicals in tires). Rooftops as a broad category should not be included as a source."

Response: EPA is designating stormwater discharges from CII sources that have pollutants contributing to water quality standards violations in the watersheds. The pollutants in stormwater discharges from these CII sources come from impervious surfaces, e.g., parking lots, internal roads, and rooftops. To the extent that rooftop runoff may not be a significant source of pollutants from a particular site, that can be

considered in the selection of the pollutant controls implemented by the discharger at the site.

As noted in the response to POLB Comment 8, 2022, the 2012 Dominguez Channel and Greater Los Angeles/Long Beach Harbor Waters Toxics TMDLs and the applicable wasteload allocations therein are still in effect. EPA notes a 2021 RAA for the Port of Long Beach determined that a 57% reduction in zinc discharges from the port would be necessary to comply with the 2012 Harbor Waters Toxics TMDL. Given the likely similar the land uses at the Port of Long Beach and the Port of Los Angeles, it is reasonable to assume that additional control measures would be necessary for zinc, at a minimum, to comply with this TMDL for the Port of Los Angeles.

EPA disagrees with the commenter that atmospheric deposition is excluded from WLA calculations. Atmospheric deposition may contribute to pollutant loads in stormwater discharges from sources addressed by TMDLs and is thereby implicitly included in the estimates of pollutant loads (and WLAs) for the discharges. In addition, it should be noted that EPA's Phase I stormwater regulations clarified that dischargers are responsible for the pollutants in their discharges regardless of the original source of the pollutants and this would include atmospheric deposition.[165]

With regards to the regulation of products that may be the original source of pollutants of concern, see response to *Alta Environmental LP Comment 4,* 2022.

POLA Comment 4, 2024: *The commenter alleged that the revised Preliminary Designation contained a significant typographic error in designating sites with five or more acres total area at the ports versus parcels with five or more acres impervious cover elsewhere in the watersheds.*

Response: The Final Designation does not include any CII sources at the ports at this time. See also Common Response 4. The Final Designation does include privately owned CII sources, using a size threshold of five acres. See Common Response 2.

To respond to the specific comment about the Revised Preliminary Designation, it is not a typographic error [166], since that document described the proposed designation of CII sources with five or more total acres (rather than impervious surface) at the ports, and the Revised Preliminary Designation included parcels with five or more acres impervious surface elsewhere in the watersheds. See also response to *Gold Bond Building Products Comment 2, 2022*.

[165] 55 Fed. Reg. 47990, 48010 (November 16, 1990).
[166] Revised Preliminary Designation Memo at p. 10-11, Administrative Record III.B. at p. 10-11.

RICHARD WATSON & ASSOCIATES, INC (RWA)

Richard Watson & Associates, Inc, Comments submitted in 2024

RWA Comment 1, 2024: *The commenter recommended that sites with several land use classification codes in the Los Angeles County Assessor land use classification system not be included in the Final Designation. In particular, the commenter alleged that land use codes 6000-6910 (recreational facilities) and 7000-7710 (private institutional facilities) were not targeted by the Petitions and, in any event, would be minor sources of pollutants and should be removed.*

Response: EPA disagrees with the commenter that these land use codes should be removed from the Final Designation. First, each Petition specifically targeted privately-owned institutional sites such as private schools and hospitals. EPA found these facilities to be within land use codes in the 7000-7710 range, the code 72XX is for private schools.[167] With regards to recreational facilities with land use codes in the 6000-6910 range such as bowling alleys, movie theatres and racetracks, EPA considers such facilities commercial in nature because they have impervious surfaces and, as such, are within the scope of the Petition.

With regards to the water quality impacts from such sources, as noted in the Revised Preliminary Designation, EPA concluded in its 2016 initial denial of the Petitions that all three major categories of CII sources (commercial, industrial and institutional) were contributing to violation of water quality standards.[168] Since the commenter did not provide any specific information showing that these land use codes do not contribute to water quality standards violations, they have been retained in the Final Designation.

RWA Comment 2, 2024: *The commenter recommended that EPA delay the Final Designation to provide the Regional Water Board with more time to improve compliance Option 1 in the Regional Board's Draft CII Permit. The commenter also recommended that EPA encourage the Regional Board to work with the Los Cerritos Watershed Group to improve compliance Option 1 for permittees in the draft permit.*

Response: EPA is coordinating with the Regional Board concerning the timing of any final actions concerning EPA's Revised Preliminary Designation and the Regional Board's Draft CII Permit. As an authorized NPDES permitting authority, the Regional Board has a certain amount of discretion concerning the requirements of its permits. However, EPA

[167] Dominguez Channel Petition, Administrative Record VI.A., Los Cerritos Petition, Administrative Record VI.B.

[168] Revised Preliminary Designation Memo at p. 5, Administrative Record III.B. at p. 5.

retains an oversight role in the implementation of the state's NPDES permit program and will ensure that any Regional Board final permit is consistent with the requirements of the Clean Water Act and NPDES regulations.

TOTAL TERMINALS INTERNATIONAL, LLC

Total Terminals International, LLC Comments submitted in 2022

Although the following comments were submitted only to the Regional Board, they relate to EPA's Preliminary Designation. As such, EPA is providing a response.

Total Terminals International Comment 1, 2022: "*At the outset, we note that federal (National Pollutant Discharge Elimination System ('NPDES')) stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems ('MS4s'), construction activities, and industrial activities. Industrial activities are those that are specifically defined in 40 C.F.R. § 122.26(b)(14)(i)-(xi), and most of the categories included are determined by an operation's standard industrial classification ('SIC') code. Marine terminals are included in the broader category of 'transportation facilities' in sub-paragraph viii. According to those regulations: Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14)(i)–(vii) or (ix)–(xi) of this section are associated with industrial activity.*

See 40 C.F.R. § 122.26(b)(14)(viii) ... Based on the foregoing, generally for a marine terminal, only those (uncovered) areas where vehicle maintenance and equipment cleaning are covered under an NPDES permit. This is a relatively small area.

There is only one state that we are aware of that has expanded the area at marine terminals subject to NPDES permitting beyond vehicle maintenance and equipment cleaning and that is the State of Washington. Washington included this requirement in a general permit that was not challenged, largely because the industry was unaware of the potential regulatory impacts of the proposed permit language. The result has been disastrous for marine terminals there—requiring most to implement costly (exceeding tens of millions of dollars) best management practices ('BMPs') and treatment, which has largely been ineffective in improving water quality. We do not want the same mistake repeated here. Marine terminals have a significant portion of their facilities that are paved and as a result generates an incredible volume of stormwater. Given the

location of marine terminals (at the waterfront), there is little land or ability to capture and effectively treat the stormwater. Thus, the cost of capture and treatment generally far outweighs the environmental benefit."

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4.

Total Terminals International Comment 2, 2022: "*We understand that federal regulations at 40 C.F.R. § 122.26(a)(4) allows 'the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator,' to regulate a discharge that they determine will 'contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." However, the EPA and Director have failed to show that the marine terminals impacted by this proposed permit will 'contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.' They have failed perform an adequate analysis of the financial impact of this proposal on the facilities subject to this proposed designation and permit."*

Response: With regards to the potential financial impact of the proposed action, see response to the *Los Angeles County Business Federation (BizFed) Comment 1*.
With regards to the sufficiency of the evidence supporting the proposed action, see response to *International Transportation Service Comment 2*.

TRAPAC, LLC

TraPac, LLC Comments submitted in 2022

TraPac Comment 1, 2022: *"TraPac has concerns as to why port terminals are included under this Permit, while other publicly owned properties such as airports and POTWs are not."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4 for additional information.

TraPac Comment 2, 2022: *"Because of the lack of viable compliance alternatives, the port complexes should not be included under the designation of the Permit."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See Common Response 4 for additional information.

WESTERN STATES PETROLEUM ASSOCIATION (WSPA)

Western States Petroleum Association (WPSA) Comment submitted in 2022

Although the following comments were submitted only to the Regional Board, they relate to EPA's Preliminary Designation. As such, EPA is providing a response.

WSPA Comment 1, 2022: "*Under the draft CII Permit, unpermitted CII sites with five (5) or more acres of impervious cover and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed are deemed to be in scope for draft CII Permit +coverage for stormwater and non-stormwater discharges. While WSPA appreciates the challenges presented to Municipal Separate Storm Sewer Systems (MS4s), who are charged with addressing pollutant loading in their relevant watersheds and have the interest in ensuring a greater array of entities who may have a role in the loading help to mitigate the pollutants entering the watersheds, the draft CII Permit's scope and applicability needs revision.*

As you well know, WSPA members who have facilities in the designated watersheds already work with the LA Regional Board and State Water Resources Control Board (SWRCB) to ensure they are compliant with their established permit requirements for stormwater and non-stormwater discharges for a variety of pollutants. Under the draft CII Permit, it would require these WSPA members to also obtain coverage under the draft CII Permit irrespective of whether the already permitted portion of the facility that is not covered by the Industrial General Permit (IGP) or another site-specific permit meets the 5-acre impervious surface threshold that the non-permitted facilities would trigger for coverage. In this regard, the draft CII Permit would impose yet another layer of regulatory burden on permitted facilities even if the non-permitted portions of the facility property are not impervious, which is the basis of applicability for other CII entities. This seems to raise an issue of equity between currently regulated facilities where the scope of regulation would be expanded regardless of the imperviousness of the property at 5-acres or more and those that have 5-acre impervious surface that have not shared in the responsibility for their pollutant loading. Ultimately, the draft CII Permit should only apply to regulated facilities that have 5-acres of unpermitted impervious surface, not to all facilities with a 5-acre parcel that is already covered by a permit irrespective of impervious surface acreage that is not covered by current permitting.

Additionally, those properties with greater than 5-acres that may have unpermitted wildlife/natural/wetland area should not have these natural areas count towards their 5-acre threshold. As currently drafted, the Draft Permit is not clear about the scope and

applicability, much less obligations for portions of a facility property that are natural and not "impervious." Facilities should not be evaluated for compliance based on wildlife/natural/wetland areas where CII activity is not demonstrated to have an effect or leakage onto these portions of a facility property. Further, these portions of a facility property, especially for already regulated sites, should not count towards the facility's 5-acre threshold for required draft CII Permit coverage."

Response: With regards to the designation of industrial facilities based on total area rather than impervious surface, see response to *Gold Bond Building Products Comment 2*. With regards to the presence of wildlife/natural/wetland areas, see response to *California Council for Environmental and Economic Balance (CCEEB) Comment 2*. See also Common Responses 1 and 2.

Late Comments:

BRISCOE IVESTER & BAZEL, LLP

Briscoe Ivester & Bazel, LLP submitted January 23, 2024

Briscoe Ivester & Bazel, LLP Comment, January 23, 2024: *The commenter raised questions about the timing of the Regional Board's Draft Permit in relation to EPA's Final Designation. The commenter expressed concern that the Regional Board scheduled a permit adoption hearing for February 22, 2024, despite EPA not having issued a Final Designation. The commenter also asked about the coordination between EPA and Regional Board concerning the timing of Regional Board's permit and the Final Designation.*

Response: EPA and the Regional Board have been coordinating the timing of their respective potential actions in responding to the Petitions. This included simultaneous proposal of the initial Draft CII Permit by the Regional Board in July 2022 and concurrent publication of EPA's Preliminary Designation for public comment.

NPDES regulations applicable to case-by-case designations for stormwater discharges provide only limited guidance concerning the procedures to the followed. The regulations do require that a discharger apply for permit coverage within 180 days of notice of final designation, unless additional time is provided.[169] For this reason, permitting authorities must prepare for any potential final designation. Otherwise, the newly designated sources could be subject to enforcement actions.

EPA and the Regional Board are coordinating as necessary to ensure that any final CII permit does not precede a Final Designation by EPA and that the final permit accurately reflects the sources that were designated. We note that final adoption of the Regional Board's proposed Draft CII Permit was removed from the Board's agenda for the February 22, 2024, Board meeting, and that on March 11, 2024, the Regional Board announced that it will postpone consideration of its CII permit until any Final Designation determination.

[169] 40 C.F.R. § 122.26(a)(9)(iii) ("Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter)").

PACIFIC MERCHANT SHIPPING ASSOCIATION (PMSA)

Pacific Merchant Shipping Association submitted April 10, 2024

PMSA Comments of April 10, 2024, during meeting with EPA Regional Administrator: A record of the April 10, 2024 meeting along with a PowerPoint presentation provided by PMSA are included in the Administrative Record.[170]

Most of the concerns raised by PMSA on April 10, 2024 were also raised in PMSA's letters of October 24, 2022 or January 3, 2024 commenting on the Preliminary and Revised Preliminary Designations or by other commenters, so responses to these comments can be found as indicated in the table below. PMSA also indicated during the meeting that if public seaports were removed from the Final Designation (as Region 9 has done), that by itself would resolve all of PMSA's concerns.

Issues Raised by PMSA and Existing Comments and Responses. (April 10, 2024 Meeting)

Issues Raised by PMSA	Existing Comment and Responses
Whether designation of public seaports is appropriate	Common Comment 4 POLB Comment 8, 2022
Lack of data showing public seaports are a source of pollutants	International Transportation Service, LLC Comment 2, 2022, PMSA Comment 6, 2022 and POLB Comment 3, 2024
Inadequate disclosure of modeling and related data	Common Comment 3, PMSA Comment 6, 2022, PMSA Comment 7, 2022; PMSA Comment 4, 2024, POLB Comment 5, 2022
Flawed methodology for loading estimate for seaports versus other sources	Attachment 2 to Response to Comments
Modeling only performed for zinc and copper	BizFed Comment 6, 2022
Incomplete list of facilities at the ports	POLB Comment 5, 2022
Whether designation should be considered a rulemaking	Common Comment 5
Inclusion of public seaports but not public airports	Common Comment 4

[170] Record of April 10, 2024 Meeting between EPA and PMSA, Administrative Record XVII.A.

Issues Raised by PMSA	Existing Comment and Responses
Timing of designation and Regional Board permit	Alta Environmental, LP Comment 2, 2022

One new issue was also raised during the April 10, 2024 meeting and we respond to that issue below.

PMSA Comment, April 10, 2024*: PMSA indicated that EPA's estimate for the zinc loading from the ports appeared to be flawed in that if one back calculates from EPA's loading estimate to the total area of the ports, you get a result (7,680 acres) which is 1,200 acres larger than the ports actually are.*

Response: EPA disagrees with the comment about overestimation of zinc load based on the following explanation. EPA's Revised Preliminary Designation had included a value of 7,072 kg/yr for the zinc loading which was calculated by assuming a loading factor at 0.9161 kg/yr per acre (see response to Comment 5, 2022 from the Port of Long Beach), and a total area for the ports of 7,720 acres (3,520 acres for the Port of Long Beach and 4,200 acres for the Port of Los Angeles). PMSA's comment indicates that the total area of the ports is 6,480 acres (7,680 acres – 1,200 acres). However, PMSA did not provide its sources for the acreage of the ports. EPA's source for the Port of Long Beach acreage is file #6 in the Revised Procedures (Attachment 2) provided by the Port of Long Beach in 2021 in response to an information request from EPA concerning CII facilities at the port. While the Port of Los Angeles provided similar information in 2021 (file #7 in Attachment 2), the Port of LA did not provide a value for the total area of the port, and EPA used a value of 4,200 acres obtained from the internet.

In response to this comment, EPA rechecked the total area of the ports using information currently available on the websites maintained by the ports at: https://polb.com/port-info/port-facts-faqs#facts-at-a-glance for the Port of Long Beach and https://www.portoflosangeles.org/business/statistics/facts-and-figures for the Port of Los Angeles, both last accessed on May 2, 2024. The Port of Long Beach website still provides the same value for the total area of the port that was provided in 2021 (3,520 acres). For the Port of Los Angeles, we find a value of 4,300 acres for the total area of the port which is very similar to the value (4,200 acres) obtained by EPA in 2021.

Using the value of 4,300 acres for the Port of Los Angeles along with the value of 3,530 acres for the Port of Long Beach we still arrive at a total area for the ports that is substantially larger (7,820 acres) than PMSA's value (6,480 acres) provided during the April 10, 2024 meeting. The value of 7,820 acres also differs only slightly from the value (7,720 acres) that EPA used in estimating the total zinc loading at the ports for the Preliminary and Revised Preliminary Designations.

Pacific Merchant Shipping Association submitted April 15, 2024

PMSA Comment, April 15, 2024*: In an email to the EPA Regional Administrator, PMSA provided the Powerpoint presentation that PMSA had used for the April 10, 2024 meeting. The email provides estimates for compliance costs for port marine terminals with the proposed designation and the proposed CII permit. The email also indicated that additional information would be provided by the ports concerning progress made by the Ports in improving water quality in the harbor.*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4.

As noted in the response to PMSA comment April 10, 2024, most issues raised during the April 10, 2024 meeting were raised previously and have been addressed elsewhere in the Response to Comments. Region 9 did receive some additional information from the Port of Long Beach on June 6, 2024 and we respond to that new information below.

PORT OF LONG BEACH (POLB)

Port of Long Beach submitted June 6, 2024

Port of Long Beach Comment, June 6, 2024: *In an email from the Port of Long Beach (POLB) to EPA Regional Administrator, the POLB provided a fact sheet on Port of Long Beach Water and Sediment Quality. This fact sheet describes recent water and sediment quality observations, proactive sediment management at Channel 2, beneficial and active approaches to stormwater management and that biological resources in harbor waters are diverse and abundant. The fact sheet also stated "[A]lthough the Port of Long Beach (Port) agrees that stormwater runoff is a primary mechanism for transporting typical urban contaminants to downstream receiving waters, the past 9 years of compliance monitoring results do not support the necessity to include Port properties in the Permit."*

Response: The Final Designation does not include CII sites at the Ports of Long Beach and Los Angeles at this time. See also Common Response 4. Nevertheless, EPA responds below to specific issues raised by the commenter.

EPA notes that POLB had also commented on its ongoing efforts to improve water and sediment conditions at the ports in previous comments on the Preliminary and Revised Preliminary Designations, e.g., POLB comment 8, 2022 and POLB Comment 3, 2024.

EPA's responses to these comments pointed out that the 2012 Dominguez Channel and Greater Los Angeles/Long Beach Harbor Waters Toxic Pollutants TMDL and the applicable wasteload allocations are still in effect, and that a 2021 RAA for the Port of Long Beach determined, at that time, that a 57% reduction in zinc discharges from the port would be necessary to comply with the 2012 Harbor Waters Toxic Pollutants TMDL.

EPA carefully reviewed the Water Quality Compliance Monitoring Results in the *fact sheet* provided by POLB (herein, *POLB's fact sheet)*. The map showed 6 sampling sites for water quality results within the Port of Long Beach Inner and Outer Harbor and the Table provided summary results for 126 samples; EPA could not differentiate as to which numeric results were associated with each waterbody - POLB Inner Harbor versus POLB Outer Harbor. The summary table showed the following number of exceedances out of 126 total water samples: copper (4), lead (1), DDX (10), Total Chlordane (3) and PCBs (6). There were zero exceedances for cadmium, chromium, mercury, zinc, toxaphene. No results were reported for PAHs, such as benzo(a) pyrene, and chrysene.

With regards to sediment quality at these six sampling sites, *POLB's fact sheet* indicates that most sediment stations in the POLB Inner Harbor and the POLB Outer Harbor were categorized as unimpacted or likely unimpacted, both of those results are considered indications of good sediment quality. However, the Inner Harbor contained one possibly impacted result (West Basin) and a likely impacted result (Channel 2). Both of those results are an indication of poor sediment quality. Based on these results, EPA concludes these results are mixed and do not indicate an overall condition of acceptable sediment quality.

EPA adds one relevant clarification related to information within *POLB's fact sheet* and related specific information included in California's 303(d) list. That is, California's 303(d) list of impaired waterbodies has a different geographical area and name for the waterbody, namely the "Los Angeles - Long Beach Inner Harbor" includes the POLB Inner Harbor and the Port of Los Angeles Inner Harbor, whereas *POLB's fact sheet* provides results only for the POLB portion of the Inner Harbor. Similarly, this also applies to California's 303(d) list where the geographical area and name for the waterbody of the "Los Angeles - Long Beach Outer Harbor" which includes the POLB Outer Harbor and the POLA Outer Harbor, whereas *POLB's fact sheet* provides results only for the POLB portion of the Outer Harbor.

In conclusion, EPA finds the water and sediment quality results provided by *POLB's fact sheet* to be informative, but as described above, these results are only for POLB's portion of the larger waterbodies named on California's 303(d) list and since this is partial information, it is insufficient to reconsider any impairments for the waterbodies

as identified on California's 303(d) list which is included in the state's Integrated Report.[171]

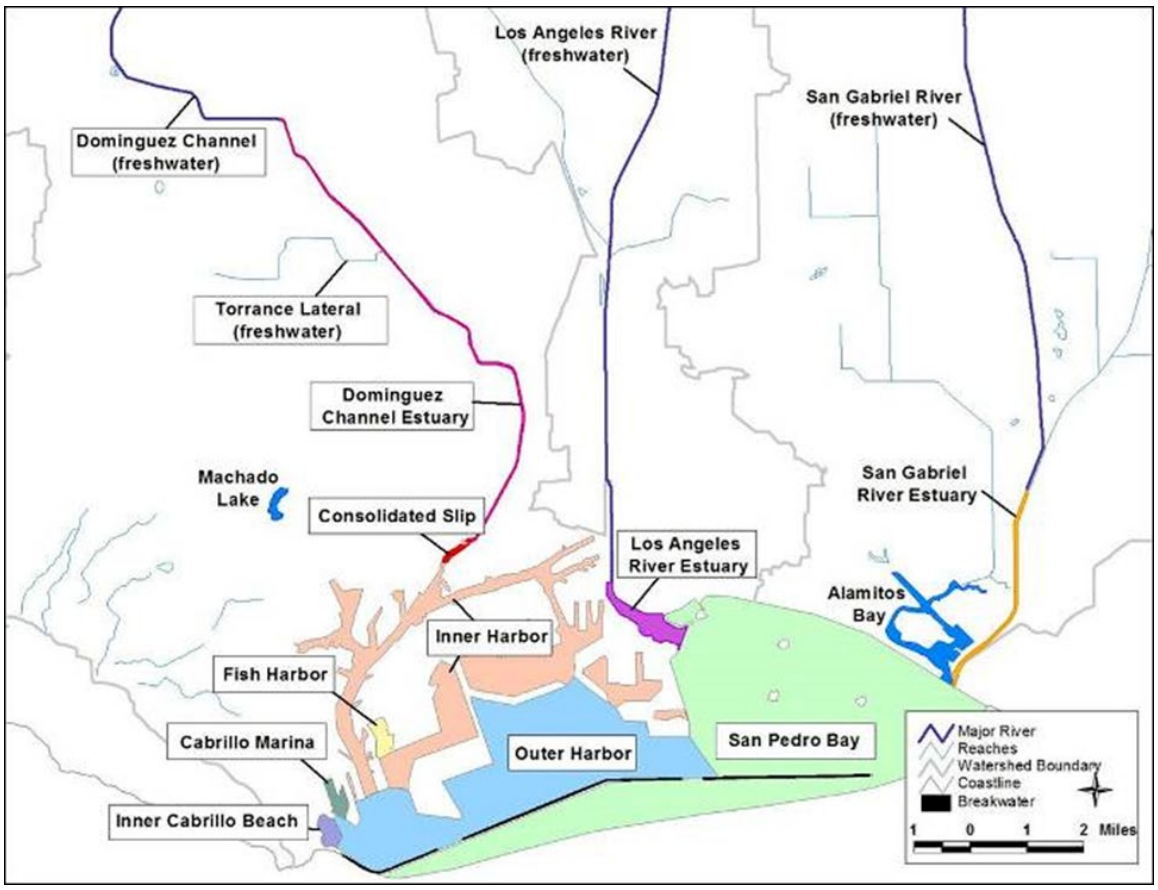
POLB's fact sheet also describes POLB's active and beneficial approaches to stormwater management. EPA supports POLB's efforts to date and in the future. Specifically, EPA supports the port's studies and implementation of stormwater treatment controls, either thru infrastructure (e.g., diversion of stormwater to sanitary sewer) or best management practices such as inspections of commercial and industrial facilities on POLB property. EPA is interested in learning more about the POLB-specific Reasonable Assurance Analysis to reduce stormwater runoff and associated contaminant loads. EPA agrees these efforts are needed to comply with the 2012 Dominguez Channel and Greater Los Angeles/Long Beach Harbor Toxics TMDL, since the wasteload allocations therein are still in effect and are designed to attain and maintain good water quality that supports all applicable beneficial uses.

While *POLB's fact sheet* states that biological resources are diverse and abundant, EPA reiterates that California's 303(d) list shows that numerous impairments exist in the waterbodies of the ports area.

[171] See 2020/2022 California Integrated Report: https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html. On February 6, 2024, California adopted the 2024 Integrated Report. On March 26, 2024, California submitted the 2024 Integrated Report and subsequently submitted additional information to EPA for review and approval on August 27, 2024. Relevant to this designation, waterbodies in the Dominguez Channel and Los Angeles and Long Beach Harbor Watershed currently remain on California's list of impaired waters. That list has not yet been approved by EPA.

IV. Attachment 1 - Map

Attachment 1 – Map of the waterbodies included in 2012 Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. See Figure 2 of the TMDL. Relevant to this designation, the following waterbodies are included on California's list of impaired waters: Dominguez Channel, Torrance Lateral, Dominguez Channel Estuary, Consolidated Slip, Cabrillo Marina and Inner Harbor.



V. Attachment 2 – Revised Procedures

Revised Procedures for Estimating the Zinc Loads from Stormwater Discharges from Certain CII Sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County (Composite for Both Watersheds) – November 2024

Overview

This Revised Procedures document demonstrates how EPA derived the estimated zinc values as provided in EPA's Final Designation memorandum, Appendix 1, titled – *Estimated Zinc Loads Addressed from Designation of Certain CII Sites in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)*. Specifically, it provides revised explanations as to how EPA derived the following estimates:

- Zinc loads in stormwater discharges for various types and sizes of commercial, industrial, and institutional sites (CII)[172]
- The number of such CII sites in the Alamitos Bay/Los Cerritos Channel and Dominquez Channel and Los Angeles/Long Beach Inner Harbor Watersheds (the Watersheds)
- Comparison of the estimated zinc loads from designated CII sites with the estimated total zinc load from all CII sites in the Watersheds.

As described in the Final Designation memo and in Common Response 4 of the Response to Public Comments document, EPA is not including privately operated CII sites on public lands at ports and municipal airports at this time. Consequently, this Revised Procedures document, dated 2024, supersedes the prior document titled *Procedures for Estimating the Zinc Loads from Certain CII Sources in Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner and Outer Harbor Watersheds in Los Angeles County (Composite for Both Watersheds)*, dated 2022.

Consistent with Common Response 3 of the Response to Public Comments document, these Revised Procedures focus on zinc since it is a key "limiting pollutant"[173] in the

172 CII sites or CII sources includes two sub-categories: parcels – a term associated with Los Angeles County Tax Assessor's Office, and facilities – a phrase for an IGP facility.

173 The limiting pollutant approach was developed by the Los Angeles Regional Water Quality Control Board (RWQCB) in 2014 to guide MS4 permittees in preparing reasonable assurance analyses for compliance with the water quality-based requirements in the 2012 Los Angeles County MS4 permit. Since common stormwater Best Management Practices such as stormwater capture will work equally well in controlling all pollutants of concern, ensuring sufficient capture for the limiting pollutant (the one requiring the greatest amount of capture) will also ensure that all pollutants of concerns are adequately controlled. For additional information, see the Los Angeles RWQCB document entitled "Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program Including an Enhanced

watersheds. Local watershed management groups have previously completed independent analyses demonstrating stormwater controls implemented to achieve adequate zinc reductions will also lead to adequate pollutant reductions for other pollutants of concern.[174] Zinc is also one of two pollutants requested in the Petitions.

The Final Designation memo describes EPA's estimated zinc load of approximately 7,600 kg/yr associated with stormwater runoff from approximately 600 CII sites subject to this designation. By comparison, EPA estimates a zinc load of approximately 34,300 kg/yr from all stormwater sites in both Watersheds; therefore, this designation addresses about 22% of zinc loads.

Below, we provide a Summary Zinc Table of each stormwater discharge source type, zinc load, and the number of sites; this serves as a cross-reference between the Designation memo, Appendix 1, and other tables presented in this document. Further below, we demonstrate the specific calculations that result in these zinc loading values. EPA also completed similar calculations for copper loads since the Petitions also included copper and has included a Summary Copper Table for CII sites subject to the designation.

This document is separated into three parts:

Part A describes the procedures associated with the CII sites and values included in the Final designation. This portion of the document is consistent with information presented in the Final Designation Memo, Appendix 1.

1. Estimate zinc loads from privately-owned unpermitted CII parcels.
2. Estimate zinc loads from currently unpermitted portions of privately-owned CII facilities that are also enrolled in the State Water Board's Industrial General

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Watershed Management Program," March 25, 2014 Administrative Record XVI.H, with further refinements in the 2021 Los Angeles Regional MS4 permit. NPDES Permit No R4-2021-0105, at p. 82. Administrative Record X.C.

174 For example, the February 2016 Enhanced Watershed Management Program (EWMP) for the Dominguez Channel watershed (p. 3-8) and the June 2021 revised EWMP for this watershed (p. 3-8) identified zinc and bacteria as the wet weather limiting pollutants in the watershed. Administrative Record XI.G and XI.F. Copper, the other main constituent of concern in the Petitions, was not identified as a limiting pollutant given the ongoing implementation in California of Senate Bill 346 limiting the amount of copper in brake pads (revised EWMP, pages 3-8 and 3-9) Administrative Record XI.D. As noted in the revised EWMP, control measures are first sized to meet the required zinc reductions and then additional capacity is added (if needed) for bacteria Administrative Record XI.D. Together, adequate controls for zinc and bacteria are expected to be sufficient for all pollutants of concern (e.g., copper, lead, PAHs, PCBs and legacy pesticides such as DDT). Similarly, for the September 2017 revised Los Cerritos Channel Watershed Management Program (WMP), zinc was determined to be the limiting wet weather pollutant (WMP, Attachment A, p. 38) Administrative Record XI.F. For the updated Los Cerritos WMP of January 2024 for the Los Cerritos Channel watershed, metals overall as well as bacteria were determined to be limiting pollutants, but with zinc again selected as the limiting metal rather than copper (2024 WMP, p. 67). See Administrative Record XI.B.

Permit (IGP). These include facilities with no exposure certifications (NECs) and notices of non-applicability (NONAs).[175]

3. Estimate total zinc loading from all CII sites in the watersheds, including all land uses and regardless of parcel size of facility type.

4. Estimate zinc load reductions needed for CII sites to attain wasteload allocations in applicable TMDLs in both watersheds.

Part B provides procedures associated with CII sites at ports and at airports, both of which are ***not included*** *in* the Final Designation, but were discussed in the Preliminary and Revised Preliminary Designation. EPA is providing these Procedures 5 and 6 to be responsive to comments submitted on zinc estimates within the proposed Preliminary and Revised Preliminary Designations.

5. Estimate zinc loads from CII privately-operated sites in the Ports of Long Beach and Los Angeles (not included in the Final Designation).

6. Estimate total zinc loading for privately-operated sites at airports (not included in the Final Designation).

Part C provides a list of information sources used in this document.

Summary Zinc Table. Final Designation - Information of zinc loads (kg/yr) and CII sites included in Final Designation. Also provides cross-reference to the Stormwater Designation memo, Appendix 1, Part A and B.

Stormwater Discharge Source name/location	**Zinc Load (kg/year)**	**# of parcels or facilities**	**Procedure /Table**	**Designation Appendix 1**
CII parcels (non-Port areas)	4141	430	Procedure 1	Part A
Unpermitted portion of IGP facilities (non-Port areas)	2424	130	Procedure 2	Part B
IGP/NEC facilities	1089	24	Procedure 2	Part B
IGP/NONA facilities	12	1	Procedure 2	Part B
Total Zn load within designation (rounded)	7666 (~7600)	585 (~600)		

175 NECs and NONAs are specific categorizations within California State Water Board's IGP. A NEC must demonstrate that the facility has no exposure of industrial activities and materials to stormwater discharges. A NONA must demonstrate no industrial stormwater discharge from the facility. NECs and NONAs cover permitted portions of sites. Sites may have unpermitted portions not covered by the IGP. Stormwater discharges from the unpermitted portions are discussed in Procedure 2.

Appendix 1, Part A shows 430 parcels of >5 acre CII sites (in non-Port areas) and the corresponding total zinc load is 4141 kg/yr or approx. 4100 kg/yr.

Appendix 1, Part B shows approximately 155 IGP facilities of >5 acres (in non-Port areas, NEC and NONA) and the corresponding total zinc load is 2424+1089+12 = 3525 kg/yr or approx. 3500 kg/yr.

Summary Copper Table. Information of copper loads (kg/yr) and CII sites.

Stormwater Discharge Source name/location	**Copper Load (kg/year)**	**# of parcels and facilities**	**Procedure /Table**
CII parcels (non-Port areas)	976.76	430	Procedure 1
Unpermitted portion of IGP facilities (non-Port areas)	534.47	130	Procedure 2
IGP/NEC facilities	239.03	24	Procedure 2
IGP/NONA facilities	2.55	1	Procedure 2
Total Copper load within designation (rounded)	1,752.81 (~1,700)	585	

Part A: Separate Procedures for Zn loads for Final Designation

Procedure 1 – **Estimate zinc loads from unpermitted privately-owned CII sites in each watershed (not including CII sites at the Ports of Long Beach and Los Angeles)**

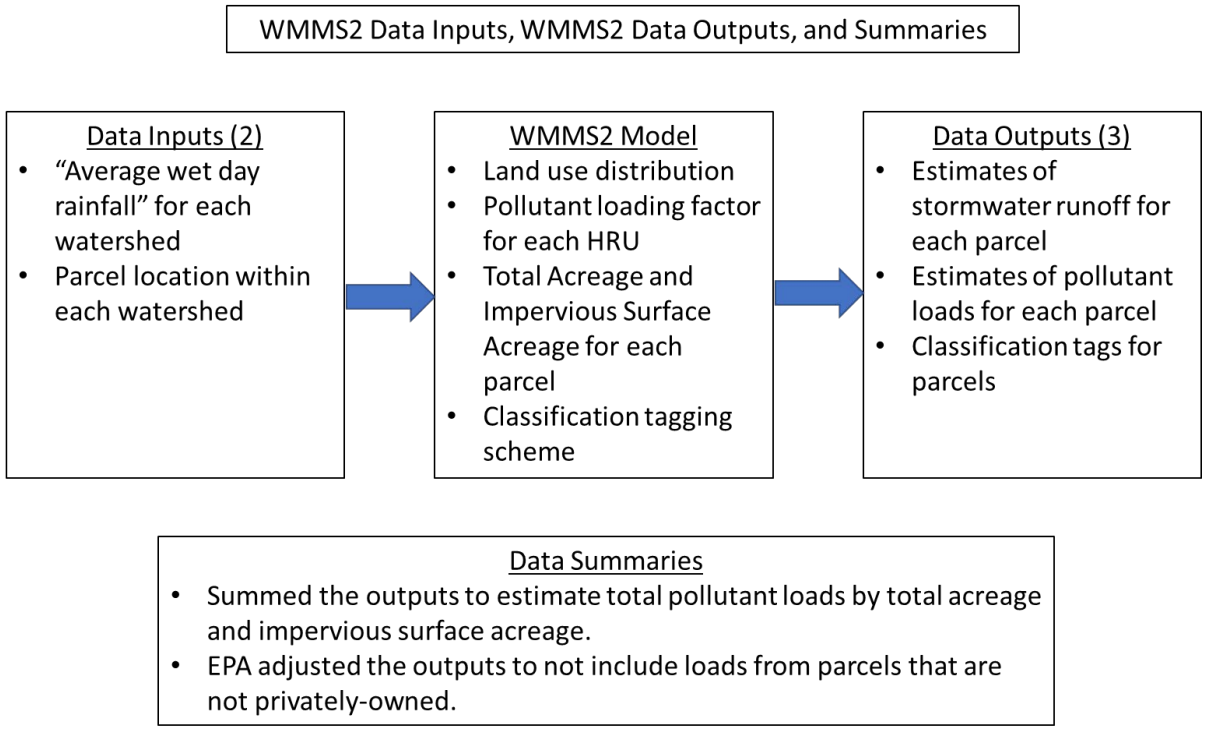
For Procedure 1, EPA used information within the 2021 Paradigm Environmental memo to determine zinc loads for CII sites based on parcel size thresholds (>10, >5, >1 acres, and all parcels). Using these size thresholds, EPA selected and summed zinc loads associated with impervious acreage for privately-owned CII parcels within non-Harbor areas of both Watersheds. Paradigm had already determined the annual zinc load for each individual parcel; these were presented in supplementary spreadsheet(s), titled "all_parcels_loads." This procedure did not include any CII sites at the ports.

Under contract to EPA, Paradigm Environmental developed a memorandum (2021 Paradigm memo[176]) providing zinc loads by Watershed based on land use codes from the Los Angeles County Assessor parcel dataset, i.e., the same land use code as the Final Designation memo Appendix 4. The analysis also used the Watershed Management Modeling System (WMMS2) available at https://portal.safecleanwaterla.org/wmms/home. As stated on the website, this model was developed by the Los Angeles County Flood Control District to "allow for simulation of all the major watersheds within Los Angeles County including hydrologic and pollutant generation processes, transport routines, and forecasts of benefits that could be achieved by stormwater capture infrastructure and source control programs." The model is based on EPA-developed models – Loading Simulation Program C (LSPC) and System for Urban Stormwater Treatment and Analysis Integration (SUSTAIN). The WMMS2 model was updated in 2020 and one important update to this model was the use of local stormwater monitoring data to further calibrate and validate the model, thereby using the most recently available information. All zinc loads reported used the most recent version of the WMMS2 model. See 2021 Paradigm memo, pg. 1. (Note: WMMS2 is same model as WMMS2.0 mentioned in 2021 Paradigm memo)

The 2021 Paradigm memo describes how zinc loads were generated for each CII parcel within the non-Harbor areas of each Watershed. Paradigm Environmental relied on the WMMS2 model and several data inputs to estimate the loading rates.[177]

176 Paradigm Environmental Memorandum titled "Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis", dated February 16, 2021 This is also Information source #1 in Information Sources, Section C of this document. Administrative Record XIII.C.1

177 2021 Paradigm memo and WMMS2 model documents describe how hydrologic response units (HRUs) are areas of common physical characteristics that are expected to respond similarly to precipitation events. For depiction of sub-watersheds, see 2021 Paradigm memo, Figure 1-1. Administrative Record XIII.C.1



All parcels within each Watershed were selected to input into the model. Runoff was simulated through inputting "average wet day rainfall" for each Watershed. To determine "average wet day rainfall" for each Watershed, Paradigm evaluated a 28-year historical record and selected the 90th percentile critical year. See 2021 Paradigm memo Table 1-1.[178]

The WMMS2 model uses hydrologic response units (HRUs) to represent discrete combinations of land characteristics (e.g., land use/cover, geology, slope) that dictate the quantity and quality of runoff in each model sub-watershed. A summary of the HRU distributions by land use in the Dominguez Channel and Los Cerritos watersheds are depicted in 2021 Paradigm memo Figure 1-2 and WMMS 2.0 Phase I Report Section 3.2.[179] The existing WMMS2 model uses a HRU distribution for each parcel, a zinc loading factor for each HRU, and total and impervious surface acreage for each parcel. See WMMS 2.0 Phase I Report for a detailed description of how the HRU distributions were determined. Paradigm also had a parcel tagging classification scheme built into the model to categorize types of parcels. See 2021 Paradigm memo Figure 3-1.[180]

The WMMS2 model output was hourly estimates of stormwater runoff in volume and pollutant concentrations which were multiplied together to produce mass unit loads of pollutants per parcel. Additionally, parcels within the classification scheme were tagged. See "all_parcels_loads.csv" for estimated zinc loading per parcel and classification tag.

178 See Administrative Record XIII.C.1.
179 See Administrative Record XIII.C.1 and XIII.D.
180 See Administrative Record XIII.C.1.

Paradigm Environmental summarized the model outputs with annual parcel specific pollutant loads by total acreage and impervious surface acreage and sorted these into different bins associated with parcel size thresholds and by watershed. See 2021 Paradigm memo Table 3-2 and 3-3.[181]

To be clear, EPA used *some* information in the 2021 Paradigm memo, focusing on the zinc loads associated with the privately-owned CII sites in both watersheds because these sites were described in the Petitions. Specifically, based on the 2021 Paradigm memo Tables 3-3 and 3-4, EPA used zinc loads for privately-owned parcels associated with these land use codes: COM (commercial), IND (industrial), INST (institutional) and EDU (education).[182] For the EDU land use, EPA adjusted the zinc loads to not include loads from parcels that are not privately-owned; e.g., facilities that are tagged[183] SCH (public school) and COL (public college/university). EPA accordingly reduced the EDU totals in the 2021 Paradigm memo Tables 3-3 and 3-4 to include only zinc loads from the privately-owned school parcels. EPA also did not include zinc loads for parcels tagged as GOV (government) or APT (airport) land uses in those two tables from the 2021 Paradigm memo. The GOV parcels were not included because they are not privately-owned. The APT parcels (two small parcels with total load of 15.40 kg/yr) were also not included because they are not privately-owned.

Tables 1a and 1b below represent zinc loads that EPA calculated and summed to yield values for impervious surface acreage by parcel threshold. The tables are binned according to land use category. Values in Tables 1a and 1b are from the 2021 Paradigm memo and therefore are outputs of the WMMS2 model. Table 1c below is a summation of values in Tables 1a and 1b and are also outputs of WMMS2 model.

Table 1a. Zn loads (kg/yr) from unpermitted, privately-owned CII parcels in Dominguez Channel (values from 2021 Paradigm memo Table 3-3; EPA adjusted the EDU values to not include zinc loads from parcels tagged as public schools, colleges, and universities).

Parcel Size Threshold (impervious acres)	**COM**	**IND**	**INST**	**EDU**
>10	403.04	1488.85	37.89	0
>5	680.49	2803.66	41.26	7.39
>1	1518.43	5719.53	102.07	32.63
All Parcels	2385.54	7220.85	157.51	53.82

181 See Administrative Record XIII.C.1.

182 As such, EPA's estimates of zinc loads provided in this Revised Procedure document are a subset of all values presented in the 2021 Paradigm Memo, Table 3-2.

183 Paradigm Environmental used a tagging scheme to further identify parcels within common land use codes in the Los Angeles County Office of the Assessor database. For example, EDU land use was further separated into several sub-categories or tags such as SCH, COL or PVT.

Table 1b. Zn loads (kg/yr) from unpermitted, privately-owned CII parcels in Los Cerritos Channel (values from 2021 Paradigm memo Table 3-4; EPA adjusted the EDU values to not include parcel loads from parcels tagged as public schools, colleges, and universities).

Parcel Size Threshold (impervious acres)	**COM**	**IND**	**INST**	**EDU**
>10	65.61	296.77	7.14	0
>5	152.86	445.62	8.29	1.70
>1	411.03	775.78	45.99	17.33
All Parcels	702.74	996.69	68.62	20.41

Table 1c. Zn loads from unpermitted, privately-owned CII parcels and privately-owned schools in both watersheds. Zinc loads by parcel size threshold are the sum of COM, IND, INST and EDU values in Table 1a and Table 1b.

Parcel Size – Impervious Acres	**# of Parcels**	**Zinc Load (kg/yr)**
>10	124	2299.25
>5	**430**	**4141.28**
>1	3,070	8622.79
All parcels	19,715	11606.19

For the Final Designation, EPA selected the >5 acre parcel size threshold or ~4100 kg/yr for 430 parcels. For clarity, EPA's Final Designation memo discusses 20,000 parcels for 12,000 kg/yr. when discussing total zinc load from all CII parcels within the two Watersheds; these are rounded from 19,715 parcels and 11,606, respectively.

Procedure 2 **– Estimate the loads from unpermitted portions of privately-owned CII facilities that are addressed by the State Water Board's Industrial General Permit (IGP) (not including CII sites at the Ports of Long Beach and Los Angeles)**

For Procedure 2, EPA used the information sources associated with the 2021 Paradigm memo to determine a zinc loading factor (kg/yr/acre) and used the Regional Board's spreadsheet to determine the acreage of the unpermitted portion of IGP facilities. By multiplying these two values, EPA calculated the zinc loads per year for each IGP facility of five or more total acres in both Watersheds. EPA applied this approach to each of three sub-categories (regular, NEC, and NONA) of IGP facilities subject to the designation. This approach differs from that presented in Procedure 1.

The Paradigm Environmental spreadsheet labeled "all_parcels_loads" tagged IGP permitted parcels as "WDD"[184] and provided zinc loads for each parcel using the WMMS2 model. Based on the decision in Procedure 1 to select the size threshold of five acres, EPA analyzed the zinc loading data for WDD parcels that were five or more total acres size to determine the average annual zinc load per acre. The average annual zinc loading per acre for non-Port IGP facilities was determined to be 0.7923 kg/yr/acre. The calculations for average annual zinc loading along with the list of WDD facilities can be found in the worksheet titled "IGP Non-Port Loading Rate" in the EPA file titled "IGP zinc loading totals[185]."

The Paradigm Environmental spreadsheet labeled "all_parcels_loads" also tagged IGP parcels that submitted NECs and provided zinc loads for each such parcel using the WMMS2 model. EPA analyzed the zinc loading data for NEC parcels that were five or more total acres in size to determine the average annual zinc load per acre. The average annual zinc loading per acre for non-Port IGP facilities was determined to be 0.70 kg/yr/acre. The calculations for average annual zinc loading along with the list of NEC facilities can be found in the worksheet titled "NEC Non-Port Loading Rate" in the EPA file titled "IGP zinc loading totals."[186]

For facilities permitted under the IGP within the Watersheds, the Regional Board's spreadsheet also provides values for total facility acreage as well as the estimated acreage considered "associated with industrial activity." The difference between total facility acreage and estimated acreage considered "associated with industrial activity" is the unpermitted acreage that is subject to this designation. As noted above, the unpermitted acreage is shown in column J of the sheet "Calculated Acreage" (EPA's spreadsheet titled "IGP zinc loading totals").[187] EPA used the zinc loading factor of 0.79223 kg/yr/acre for facilities submitting regular notices of intent under the IGP. EPA used a zinc loading factor of 0.70 kg/yr/acre for NECs and NONAs. Zinc loads are determined by multiplying the unpermitted acreages of each IGP facility by the appropriate zinc loading factor. The results are summarized in Table 2 below.

184 Paradigm Environmental's tagging scheme (in file 3) assigned WDD to parcels enrolled in the State's IGP. Administrative Record XIII.C.9.
185 See Administrative Record XIII.A.
186 See Administrative Record XIII.A.
187 See Administrative Record XIII.A.

Table 2. Zn Loads from Unpermitted Portion of Facilities Addressed by the State Board's IGP (in non-Port areas).

IGP Facility Type – Five Acres or More Total Area	# of Facilities	Zinc Load (kg/yr)
Regular IGP Notice of Intent	130	2,423.7
NEC	24	1,088.6
NONA	1	11.6
Total IGP	155	3,523.9 (rounded ~3,500)

Procedure 3 – Estimate the total zinc loading from all sources in the Watersheds

The total zinc load from all sources in the entire Watersheds (including all land uses and regardless of acreage) was estimated by adding the loading estimate for non-Port areas from the 2021 Paradigm memo for both Watersheds and EPA's loading estimate from all CII sites at the Ports of Long Beach and Los Angeles.

The 2021 Paradigm memo provides estimates of total zinc loading for each Watershed. EPA used a different method than the 2021 Paradigm memo to estimate zinc loading at the ports. Therefore, to determine total zinc loading for the non-Port portion of the Dominguez Channel Watershed (22,757 kg/yr), EPA subtracted the harbor load (5,287 kg/yr) in Table 3-2 of the 2021 Paradigm memo from the total load of 28,044 kg/yr in Table 2-2.[188] To determine the total zinc loading for all CII sites at the Ports of Long Beach and Los Angeles (7,072 kg/yr), EPA multiplied the total acreage of the ports (7,720 acres: 3,520 acres for the Port of Long Beach and 4,200 acres for the Port of Los Angeles) by an average zinc loading factor of 0.9161 kg/yr/acre (further discussed in Procedure 5 of this document). The value of 4,453 kg/yr for the Alamitos Bay/Los Cerritos Channel Watershed is found in Table 2-2 of the 2021 Paradigm memo.

Table 3. Total zinc loading from all sources.

Watershed Name	Zinc load (kg/year)
Dominguez Channel and Los Angeles/Long Beach Inner Harbor (non-Port)	22,757
Alamitos Bay/Los Cerritos Channel	4,453
Ports of Long Beach and Los Angeles	7,072
Total Zn load (rounded)	~34,300

188 See Administrative Record XIII.C.1

Procedure 4 – **Estimate the load reduction needed for CII sites to achieve TMDL compliance within these Watersheds**

For Procedure 4, EPA multiplied the Watershed-specific percentage zinc load reductions required for TMDL compliance by the total zinc loads from CII sites within each Watershed. EPA then added the two values to obtain the total load reduction for both Watersheds combined.

The 2021 Paradigm memo provides two values for the percentage reductions needed for TMDL compliance. Specifically, the report provides a 85.4% reduction from the designated sites in the Dominguez Channel and Los Angeles/Los Beach Inner and Outer Harbor watershed and a 80.9% reduction for the loads from the designated sites in the Alamitos Bay/Los Cerritos Channel watershed (see p. 5).[189] As determined in Procedures 1 and 2, the Watershed-specific total loads for designated sites are 6187.65 kg/yr for the Dominguez Channel and Los Angeles/Los Beach Inner and Outer Harbor watershed and 1477.58 kg/yr for the Alamitos Bay/Los Cerritos Channel watershed, as shown below in Table 4. The total zinc load from all designated CII sites in both Watersheds is approximately 7,665 kg/yr. By multiplying the percent reductions needed with the Watershed-specific total loads, EPA calculated the total load reduction for both Watersheds combined is 6,480 kg/yr; this value is also in Appendix 1, Part D.

Table 4. Zinc loadings and load reductions needed for designated CII sites to achieve TMDL compliance within each Watershed.

Watershed	**% Reduction Needed**	**Watershed Estimate kg/yr**	**Required Load Reduction kg/yr**
Dominguez Channel and Los Angeles/Long Beach Harbor Watershed	85.4	6187.65	5284.24
Los Cerritos Channel/Alamitos Bay Watershed	80.9	1477.58	1195.36
Total for Both Watersheds	(n/a)	7,665 (~7,600)	6,480 (~6,500)

189 See Administrative Record XIII.C.1

Part B: Separate Procedures for Zn loads for Ports and Airports discussed in the Preliminary and Revised Preliminary Designation

Based on comments submitted to EPA, Part B provides updated explanations about estimates of zinc loads from privately-operated CII sites at the ports and at municipal airports. In the Preliminary Designation and the Revised Preliminary Designation, EPA had proposed to include privately-operated CII sites at the ports and not include such sites at municipal airports in both Watersheds. As described in Common Response 4, the Final Designation does not include either of these two categories of CII sites; nonetheless, EPA is providing explanations of zinc loads to be responsive to submitted comments.

Procedure 5 **– REVISED Procedure – Estimate zinc loads from CII sites (both CII sites and unpermitted portions of IGP facilities that are five or more total acres) at the Ports of Long Beach and Los Angeles**

For Procedure 5, EPA used a similar approach to that described in Procedure 2; that is, determine a zinc loading factor (kg/yr/acre) and multiply that by the appropriate acreage to determine the zinc loading estimates (kg/yr) for CII sites at the ports. EPA applied this approach to the following:

i. Stormwater discharges from unpermitted portions of IGP facilities at ports
ii. Stormwater discharges from (non-IGP) CII sites at ports
iii. Explanation of Zn loading factor at ports and adjacent areas

For consistency with the size threshold selected in Procedure 1 above,[190] EPA selected five acres total area as the designation threshold for both IGP facilities and non-IGP CII sites at the ports.

i. <u>Calculation of Total Zinc Load for Unpermitted Portion of IGP facilities at ports</u>

EPA used information within the 2021 Paradigm memo to calculate a zinc loading factor that was applied to both categories of CII sites at the ports.[191] This analysis consisted of identifying industrial land use parcels located nearby but not within the ports. These

190 As noted in the response to Gold Bond Comment 2, 2022, total area was used for non-Port IGP facilities given incomplete information concerning impervious surface. However, as also noted this response, industrial facilities tend to have high levels of impervious surface and as such, total area will be a close approximation of impervious surface. Further, as noted in the response to Port of Long Beach Comment 5, 2024, specific impervious surface information was also lacking for facilities at the ports, but since the ports also tend to have a high level of impervious surface, as also noted in the response to Port of Long Beach Comment 5, 2024, total area for sources (IGP and non-IGP) at the ports and will also closely match impervious surface. See Administrative Record V.A.

191 EPA notes this approach of developing a land use specific loading factor is also described in the 2021 Paradigm Memo, "load from industrial land use was divided by total industrial area in each sub-watershed" pg./4). Administrative Record XIII.C.1

"adjacent" industrial land use parcels were proximal to and just north of the Port areas and were tagged as IND or WDD. See Figure 3-1 in the 2021 Paradigm memo which shows IND and permitted sites just above the blue colored port area (labeled as Harbor Industrial).[192]

The analysis produced a zinc loading factor (0.9161 kg/yr/acre) for the ports. This loading factor was determined by looking at all parcels labeled as "HARB" in column G in "all_parcels_loads.csv" spreadsheet. For these parcels, EPA divided the annual loading in column J by the parcel area in column H. The result was 0.9161 kg/yr/acre for all parcels. Thus, this is used as the zinc loading factor for both categories of CII sites at the ports.

To determine the acreage information, EPA obtained information directly from the ports concerning the categories of CII sites (IGP and non-IGP) and the facility acreage of each source.[193] EPA also evaluated the Regional Water Board spreadsheet[194] which provides a list of all IGP facilities of five or more total acres that are located in the Watersheds; however, the Regional Water Board spreadsheet does not identify the specific facilities located in the ports. EPA cross referenced the ports' information with the Regional Water Board spreadsheet to carefully identify only the IGP facilities located at the ports, thereby not including IGP facilities in non-Port areas.

The zinc loads from IGP facilities in the ports were estimated as shown in in the EPA spreadsheet titled "IGP zinc loading totals." IGP facilities in the ports are marked with a "p" in column F of "Calculated Acreage" in the EPA file "IGP zinc loading totals."[195] In the same file and sheet, sites submitting "no exposure certifications" under the IGP are designated as "NEC" in column H and those submitting "notices of non-applicability" under the IGP are designated as "NONA" in column H.[196]

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192 Administrative Record XIII.C.1

193 See "Copy of Industrial Facilities in the Harbor District1.xlsx" and "EPA request Port of Los Angeles Tenant list with parcel size (Autosaved).xlsx" in Part C: Information Sources section of this document.

194 See "IGP+5_sites_DomCh_LosCerr_Excel_fromLAWB_09-08-2021.xlsx" in Part C: Information Sources section of this document.

195 IGP facilities not marked with a "p" did not match any of the facilities on the lists provided by ports and are assumed to not be in the ports. Other designations in columns F and G include "a" for municipal airports and "m" for other municipally-owned facilities such as municipal transit facilities. These municipally-owned IGP sources, along with municipal airports, are not being included in the Final Designation. Administrative Record XIII.A.

196 The IGP allows dischargers who meet certain criteria to claim "No Discharge" in NONAs. The State Water Board provided information to EPA concerning NONAs submitted for the Los Angeles Regional Board under the IGP; see "Copy of nona_region_4.xls" in Part C: Information Sources. EPA reviewed the information in "Copy of nona_region_4.xls" and found there were two Regional Board facilities that are five or more acres in total area and also within the Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Greater Harbor watersheds. One facility is actually six sub-facilities (permitted as one facility) of which four sub-facilities are in the Dominguez Channel and Los Angeles/Long Beach Greater Harbor Watershed. See "NONA Info" in EPA file titled "IGP zinc loading totals" for more

The Regional Board's spreadsheet of IGP facilities provides information on total facility acreage as well as the portion of the total acreage that is considered "associated with industrial activity" and currently permitted under the IGP. To determine the portion of an IGP facility that is considered "non-industrial" and currently unpermitted, EPA subtracted the acreage "associated with industrial activity" from the total facility acreage. This estimate provides the unpermitted acreage of IGP facilities, within the ports, that were proposed in both Preliminary Designations. This acreage is shown in column J of "Calculated Acreage" in EPA's file "IGP zinc loading totals" and is determined by subtracting the values in column C from column B. EPA determined the figures for NONAs separately as described in "NONA Info" in EPA file titled "IGP zinc loading totals."

EPA multiplied the unpermitted acreage of each IGP facility by the appropriate zinc loading factor of 0.9161 kg/yr/acre to generate annual zinc loads for each IGP facility. The loads for the different categories of non-Port and Port sites can be seen in sheets "IGP Total – Final Designation" and "IGP Total – Port Areas" in EPA's file "IGP zinc loading totals," along with the totals for the various categories.

Table 5a. Zinc loads from unpermitted portion of IGP facilities of five or more total acres at the ports

Facility Type – Five Acres or More	# of Facilities	Zinc Load (kg/yr)
Regular IGP Notice of Intent	31	1938.65
NEC	4	123.22
NONA	1	6.43
Total IGP	36	2068.30

ii. Calculation of Total Zinc Load for Unpermitted (Non-IGP) CII Sites at Ports of Five or More Total Acres

For this calculation, EPA used the data for non-IGP sites in the spreadsheets provided by the Port of Long Beach and Port of Los Angeles (See Part C files "Copy of Industrial Facilities in the Harbor District1.xlsx" and "EPA request Port of Los Angeles Tenant list with parcel size (Autosaved).xlsx", respectively). These sites are labeled "MS4" in the spreadsheets indicating non-industrial sites. The Port of Long Beach provided complete information concerning its (non-IGP) CII sites and the acreages of its sites. However, Port of Los Angeles provided information that was missing much of the acreage information for each CII source. EPA relied on the best available information from the ports and assumed that the types and sizes of non-IGP CII sites at the Port of Long Beach would roughly match those at the Port of Los Angeles. The spreadsheet for the Port of Long

information concerning NONAs. The total unpermitted area for these NONA facilities was estimated to be 23.6 acres.

Beach includes 46 non-IGP sites; of these, 10 sites are five or more total acres in size with a total acreage of 250.4 acres. By multiplying this total acreage with the zinc loading factor of 0.9161 kg/yr/acre for ports, EPA estimated an annual zinc loading of 229.4 kg/yr for (non-IGP) CII sites at the Port of Long Beach.

The Port of Los Angeles spreadsheet includes 54 (non-IGP) CII sites. EPA opted to use ratios with given information on the relative number of sites at the Port of Los Angeles versus the Port of Long Beach to estimate the annual zinc loading for non-IGP sites of five or more acres at the Port of Los Angeles [54/46 x 229.4 kg/yr = 269.3 kg/yr]. EPA similarly used ratios to estimate the number of sites of five or more total acres at the Port of Los Angeles based on the number of sites of five or more total acres at the Port of Long Beach [54/46 x 10 sites ≈ 12 sites]. Combined with the estimate for the Port of Long Beach, the total loading from (non-IGP) CII sites of five or more acres at both ports becomes 498.7 kg/yr from 22 sites as shown in Table 5b below.

Table 5b. Zinc loads from unpermitted (non-IGP) CII sites of five or more acres at the ports

Port Non-IGP CII Sites of Five or More Total Acres	# of Sites	Total Acreage	Zinc Load (kg/yr)
Port of Long Beach	10	250.4	229.4
Port of Los Angeles	12	293.9	269.3
Total	22	544.3	498.7

The total estimate for zinc loads from CII sites at the ports is: 2068.3 + 498.7 = 2,567 kg/yr or approximately 2,600 kg/yr.

The value of 2,600 kg/yr is associated with CII sources of five or more total acres; therefore, it is lower than the value of 7,072 kg/yr in Procedure 3 which is associated with all CII sites (regardless of acreage) at the ports.

iii. Explanation of Zn loading factor at ports and adjacent areas

EPA determined a zinc loading factor of 0.9172 kg/yr/acre from land uses in an adjacent non- sub-watershed and applied it to CII sites at the ports. EPA evaluated information in [197]the 2021 Paradigm memo, specifically we examined information regarding these "adjacent" or "proximal" sub-watersheds that contained industrial land uses.

In June 2024, EPA obtained additional information from Paradigm regarding the characterization and location of the "adjacent" watersheds (Email from Paradigm Environmental titled "Approximation of HRU distribution in harbor sub-watersheds").

197 See Administrative Record XIII.B.

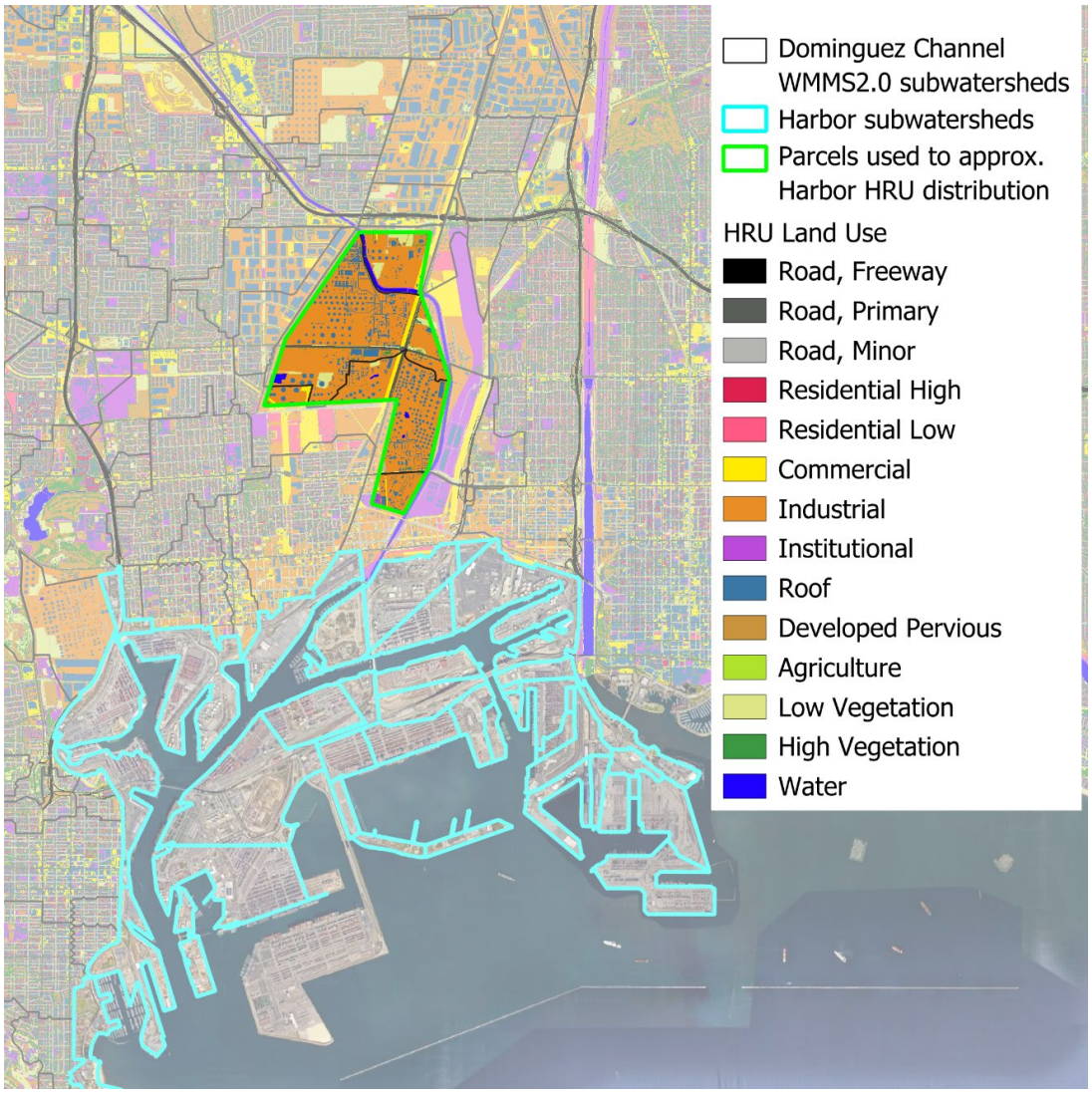
Baseline loads from the Harbor were approximated by applying the distribution shown in Table 5c to the total Harbor area. The resulting HRU areas were then multiplied by the corresponding unit-area loads for each HRU. The same approach was used to calculate loads from CII parcels in the Harbor (Table 3-5 in the 2021 Paradigm memo).[198]

Table 5c. and accompanying map are on the following page.

198 See Administrative Record XIII.C.1

Table 5c. Land Use percentages within the adjacent sub-watershed used to determine the zinc loading factor for use in estimating zinc loads from CII sites at both ports.

Land Use	Distribution
Road	3.0%
Commercial	2.7%
Industrial	73.5%
Institutional	0.6%
Roof	13.7%
Developed Pervious	0.8%
Low Vegetation	3.2%
High Vegetation	0.7%
Water	1.7%



Procedure 6 – **Estimate the unpermitted loads from privately-operated sites (both CII facilities and unpermitted portions of IGP facilities) located at municipal airports within these two Watersheds**

EPA estimated zinc loads at privately-operated CII facilities at airports based on the estimated acreage of these facilities in comparison to the total acreage at four airports in the two Watersheds. These included Long Beach Airport, Hawthorne Municipal Airport, Torrance Municipal Airport, and Los Angeles International, hereafter referred to as LAX. The total zinc load estimate only includes the portion of LAX within the Dominguez Channel Watershed.

EPA determined acreage information by examining the airport stormwater pollution prevention plans (SWPPPs) from the State's IGP. EPA reviewed the LAX SWPPP[199] (Figure 4) to determine the acreage for the non-industrial or unpermitted portion of privately-operated IGP facilities at LAX; this value is 214.1 acres. EPA's analysis also examined the acreage of CII facilities at LAX such as parking lots and rental car agencies; this value was 533.6 acres. However, EPA could not ascertain from the SWPPPs whether these facilities were privately-operated. By using the total area of the entire LAX airport (3,563 acres), EPA used a proportional approach to determine the amount of privately-operated acreage that is associated with these two categories. See equations below. Essentially, for the three airports in the watersheds other than LAX and for the portion of LAX in the Dominguez Channel Watershed, the acreage of unpermitted portions of IGP facilities, as well as the acreage of CII facilities, was assumed to be the same percentage as for LAX overall.

EPA did not include acreage of runways and focused on the unpermitted portion of the privately-operated facilities at four airports in these Watersheds.

EPA estimated the total zinc load from all four airports in the Watersheds by using outputs from the WMMS2 model (provided within Paradigm Environmental spreadsheet with file name "all parcels loads", file 3). EPA summed zinc loads for parcels that were tagged as WDD (permitted under the IGP) and that have Los Angeles County Assessor land use classification codes that are airport-related such as 8862 and 8865. Note: EPA did not need to calculate a zinc loading factor for estimating zinc loads at unpermitted portions of facilities at airports since the model *did* provide zinc loads for these airport parcels. Using this methodology, the total zinc load from all four airports, including only the portion of LAX within the Dominguez Channel watershed, was determined to be 440.77 kg/yr.

199 Los Angeles World Airports, Storm Water Pollution Prevention Plan (SWPPP) Associated with Industrial Activities for The Los Angeles International Airport, January 18, 2018. Administrative Record XIV.D.

Because the SWPPPs did not provide definitive information about whether the CII facilities at the airports are privately-operated, EPA calculated a range of zinc loading estimates for the airport facilities. The minimum estimated value included only the unpermitted portion of privately-operated IGP facilities at these airports. The maximum estimated value included both the unpermitted portion of privately-operated IGP facilities as well as the presumed privately-operated CII facilities (parking lots and rental car agencies). Using the total zinc load, here are the relevant calculations to produce these two range values (LAX total area is 3,563 acres).

Calculation of minimum Total Zinc Load for unpermitted acres of IGP facilities at airports in both Watersheds. This includes 214 acres of unpermitted areas of privately-operated airline facilities, but it does not include any privately-operated CII facilities such as parking lots or car rental lots. This produces a minimum estimate of total zinc loads at these airports. Also, EPA assumed unpermitted portion (in acres) at LAX would equally apply to the unpermitted portion (in acres) at the other three airports.

Minimum estimate: (assume only IGP facilities are privately-operated):
214.1 acres/3,563 total acres = 0.06 (or 6%)
0.06 x 440.77 kg/yr = 26.44 kg/yr

Calculation of maximum Total Zinc Load for all privately-operated facilities (i.e., unpermitted acres of IGP facilities and all CII facilities) at airports in both Watersheds. This assumes 214 acres of unpermitted areas of airline facilities and 533 acres of CII facilities (parking lots and rental car lots) are privately-operated and produces a maximum estimate of total zinc loads at these airports.

Maximum estimate: (assume both IGP and CII (e.g., long term parking lots) facilities are privately-operated):
(214.1 acres + 533.6 acres) /3,563 total acres = 0.2097 (or 21%)
0.2097 x 440.77 kg/yr = 92.4 kg/yr

The range of zinc load estimates for CII facilities at the municipal airports in both watersheds is:
26.4 kg/yr at a minimum to 92.4 kg/yr at a maximum.

Part C: Information sources

Modeling Data Used for EPA's Analysis: Proposed Action to Address Stormwater Pollution in Two Los Angeles Watersheds. Posted August 2022.

Files available at: https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific

Number	File Name	Description
1	CII_Analysis_Results_Memo_02_16_21_REVISED.pdf "2021 Paradigm Environmental memo"	Memorandum dated February 16, 2021, from Paradigm Environmental to EPA Region 9 concerning Dominguez Channel and Los Cerritos Channel CII Metals Load Analysis
2	parcels with HRU area V.4.csv	Paradigm Environmental Excel spreadsheet of zinc loading data for CII parcels along with data for parcel impervious surface
3	all parcels loads.csv	Paradigm Environmental Excel spreadsheet of zinc loading data for CII parcels
4	lc_parcel_summary_by_landuse.csv	Paradigm Environmental table of number of CII parcels versus parcel size and impervious surface (Alamitos Bay/Los Cerritos Channel Watershed)
5	Dom_parcel_summary_by_landuse.csv	Paradigm Environmental table of number of CII parcels versus

		parcel size and impervious surface (Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed)
6	Copy of Industrial Facilities in the Harbor District1.xlsx	File with Excel spreadsheet data for CII facilities at the Port of Long Beach (provided by the Port of Long Beach)
7	EPA request Port of Los Angeles Tenant list with parcel size (Autosaved).xlsx	File with Excel spreadsheet data for CII facilities at the Port of Los Angeles (provided by the Port of Los Angeles)
8	IGP+5_sites_DomCh_LosCerr_Excel_fromLAWB_09-08-2021.xlsx	File with Excel spreadsheet of data for facilities covered by industrial general permit No. CAS000001 for the Alamitos Bay/Los Cerritos Channel and Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watersheds; file provided by the Los Angeles Regional Water Board
9	Paradigm Environmental Parcel Tagging Classification Scheme	Paradigm Environmental tagging classification scheme for parcels within the Watersheds.

10	Copy of nona_region_4.xls	Excel spreadsheet of NONA information from the State Water Board.

Here are additional sources that are publicly available and in the Administrative Record.

”IGP Zinc Loading Totals.” Dated October 2024. Administrative Record XIII.A.

“WMMS Phase I Report: Baseline Hydrology and Water Quality Model.” Dated May 2020. Administrative Record XIII.D.

“WMMS Phase II Report: BMP Model and Optimization Framework.” Dated May 2020. Administrative Record XIII.E.

“Real Property Handbook: Property Use and Building Design Type Classifications,” Los Angeles County Assessor. Dated November 2, 2018. Administrative Record XIII.F.

This source is part of the administrative record.
Email from Paradigm Environmental to EPA Region 9 NPDES Section titled “Approximation of HRU distribution in harbor sub-watersheds.” Dated June 14, 2024. Administrative Record XIII.B.