

A New Industrial Storm Water Permit Goes Into Effect on July 1, 2015

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The State Water Resources Control Board ("SWRCB") adopted a new Industrial General Permit ("General Permit") on April 1, 2014, which replaces the 1997 version. Pursuant to the Federal Clean Water Act ("CWA") sections 301 and 402, the General Permit authorizes discharges of industrial storm water to waters of the United States, so long as those discharges comply with all provisions of the General Permit. The General Permit takes effect on July 1, 2015, absent objection by the Regional Administrator of the U.S. Environmental Protection Agency.

The following industrial activities are covered by the General Permit: (1) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards found in 40 C.F.R., Ch. 1, Sub. N (e.g. Cement Manufacturing [40 C.F.R. Part 411]; Feedlots [40 C.F.R. Part 412]; Petroleum Refining [40 C.F.R. Part 419]; Phosphate Manufacturing [40 C.F.R. Part 422]; Coal Mining [40 C.F.R. Part 434]); (2) Manufacturing Facilities; (3) Oil and Gas/Mining Facilities; (4) Hazardous Waste Treatment, Storage, or Disposal Facilities; (5) Landfills, Land Application Sites, Open Dumps; (6) Recycling Facilities; (7) Steam and Electric Power Generating Facilities; (8) Transportation Facilities; and (9) Sewage or Wastewater Treatment Works.

In San Diego, the number of regulated facilities is projected to rise considerably, with the inclusion of light industry which will now be regulated – e.g. bread and other bakery products, chicken eggs, courier services, dairy farms, general warehousing and storage, roasted coffee and wineries. For a complete list go to: http://www.waterboards.ca.gov/water_issues/programs/stormwater/sic.shtml

Strict Liability for Prohibited Discharges

The General Permit strictly prohibits the following discharges of storm water to non-storm water associated with industrial activities: (1) all non-storm water discharges ("NSWD") with limited exceptions (e.g. potable water, incidental drift from cooling towers, irrigation drainage); (2) discharges and authorized NSWD's that contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the Water Code; (3) discharges that violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans ("Basin Plans") or statewide water quality control plans and policies; (4) discharges to Areas of Special Biological Significance; and (5) storm water and authorized NSWD's regulated by the General Permit that contain hazardous substances equal to or in excess of a reportable quantity listed in 40 C.F.R., sections 110.6, 117.21, or 302.6.

Effluent Limitations

The General Permit requires Dischargers to implement Best Management Practices ("BMPs") when necessary, to support attainment of water quality standards, in a manner that reflects best industry practices considering technologies available and economic practicability.

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Receiving Water Limitations

Dischargers must ensure that industrial storm water discharges and authorized NSWDS do not cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water. Dischargers must also ensure that industrial storm water discharges and authorized NSWDS do not contain pollutants in quantities that threaten to cause pollution, or a public nuisance, or adversely affect human health or the environment.

CWA Section 303 (d) Limitations

To obtain coverage under the General Permit, Dischargers intending to discharge to a water body listed as CWA section 303 (d) impaired must demonstrate that: (1) the discharger has eliminated exposure to storm water of all pollutant(s) for which the water body is impaired and has documented and retained at the facility the procedures taken to prevent exposure onsite or; (2) the pollutant for which the water body is impaired is not present at that the Dischargers' facility, and the Discharger has documented and retained this finding; or (3) the discharge of any listed pollutant will not cause or contribute to an exceedance of a water quality standard.

TMDL Limitations

Dischargers located in a watershed for which a CWA section 303 (d) Total Maximum Daily Load ("TMDL") has been approved by the U.S. EPA, must comply with any applicable TMDL-specific permit requirements that are incorporated into the General Permit now *or in the future*.

Electronic Reporting Required

The General Permit requires the development of a site-specific Storm Water Pollution Prevention Plan ("SWPP"), which must include information that demonstrates compliance with the requirements of this General Permit. The SWPP must be submitted electronically via the Storm Water Multiple Application and Report Tracking System ("SMARTS")¹, including sampling/monitoring data, and reports. Such electronic reporting facilitates public enforcement of the General Permit.

Qualified Industrial Storm Water Practitioner ("QISP")

Level 1 and Level 2 (i.e. Dischargers who have exceeded numeric action levels) must appoint a QISP to ensure compliance with the General Permit. A QISP is also required to assist a new discharger to determine coverage eligibility for discharges to an impaired water body.

Compliance Groups

Any group of Dischargers of the same industry type may form Compliance Groups. Such Groups may consist of Dischargers that operate facilities with similar types of industrial activities, pollutant sources, and pollutant characteristics. Compliance groups allow businesses engaged in similar industrial activities to come together to reduce the cost of compliance through information-sharing, monitoring, and other activities.

The new General Permit will substantially broaden the scope of facilities that must comply with the aforementioned specifications. Please contact John Lormon or Hazel Ocampo, at (619) 515-3217 or (619) 515-3298, respectively if you wish to discuss how these changes may affect your business.

¹ The SMARTS program regulates storm water discharges from various locations, including industrial facilities. The program also processes, reviews, and updates terminating Notices of Intent (NOIs), annual reports, and maintains the billing status of each discharger.

Hazel's practice focuses on environmental law, including climate change, clean technology and sustainability. She regularly assists state and federal government agencies on project permitting involving CEQA and NEPA. Hazel also represents businesses and individuals on permitting, compliance and enforcement matters under the Clean Air Act, the Clean Water Act, Superfund and the Endangered Species Act.