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California Considers Extensive Additions to Permit Regulating Storm Water Discharges from Industrial Facilities

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The California State Water Resources Control Board (“State Board”) is renewing the state’s general permit regulating storm water discharges from industrial facilities (“Industrial Permit”). As with the general permit for storm water discharges from construction sites that was renewed last year, the proposed revisions to the industrial permit are significant.

The industries covered include, but are not limited to, cement manufacturing, mining, feedlots, petroleum refining, hazardous waste treatment, landfills that have accepted industrial wastes, power generation, recycling, and vehicle maintenance.

The most significant changes from the prior permit are:

- Numeric Action Limits (“NALs”) and Numeric Effluent Limits (“NELs”): When NALs are exceeded, corrective actions are required. Dischargers who repeatedly exceed NALs eventually are subject to NELs, which are the same values as the NALs (unless a regional water quality control board imposes a more stringent level).
- The first year a trigger is met, operational changes are required.

- The second year a trigger is met, structural or treatment controls or both are required.
- The third year a trigger is met, NELs are imposed.
- For the discharge of total suspended solids and for any treatment-related Best Management Practice ("BMP"), the compliance storm event is the 10-year, 24-hour storm.
- Dischargers' compliance staff must meet minimum training qualifications and receive a certification.
- Sites must be inspected on at least a quarterly basis to ensure that the provisions in a site's Storm Water Pollution Prevention Plan ("SWPPP") are working to prevent pollution.
- The standard sampling frequency has been increased to the first eligible storm event per quarter. Dischargers undergoing corrective action must sample at a higher frequency.
- All dischargers must electronically file certain permit documents and the results of sampling. These documents will be publicly available via an electronic search.
- Every site must be monitored (the former provision allowing group monitoring has been removed).
- Under defined circumstances, a facility can be conditionally excluded from the industrial permit, including when an operator can certify that the facility does not have industrial areas exposed to storm water, when an operator can certify that the facility can contain the 100-year, 24-hour storm, and when a discharger meets Green Storm Water Impact Reduction Technology standards to be promulgated by the State Board in the future.

Of these changes, the NELs will likely garner the most attention, as there is wide disagreement as to whether the NELs can be met at industrial facilities

(and NELs have not previously been imposed in a general industrial permit like this one).

Beyond NELs, however, the Industrial Permit may subject a wider array of facilities to enforcement in the area of BMPs. The draft permit sets a much higher expectation for how dischargers are to specify and implement the BMPs they choose to adopt for a site. For example, no longer can dischargers simply describe a BMP in a generic sense. Instead, a discharger must specify who is responsible for a particular BMP, where and how often the BMP will be implemented, the pollutants of concern reduced by use of the BMP, and other details. Along with the new quarterly inspections, the State Board expects that such inspections will lead to more frequent revisions to a facility's SWPPP than under the current rules. Under the current permit, the State Board believes that dischargers have not conducted enough inspections to ensure that the SWPPP is adequately updated, so interest by the State Board in this area is expected to be high. While not having a SWPPP for a site is a violation of the Industrial Permit, so is the failure to update the SWPPP.

The Industrial Permit goes before the State Board for the first time on March 29, 2011, in Sacramento. Oral comments will be accepted but no final action will be taken. The written comment deadline is April 18, 2011 (at noon), after which time the proposed permit is likely to be scheduled for a final hearing.