

April 1, 2015

Three Months and Counting: Preparing for California's New Industrial Storm Water Permit

If you operate one of the over 100,000 industrial facilities subject to [California's new Industrial Storm Water Permit \(2015 Permit\)](#), you are probably already aware that only three months remain to ensure your compliance before the permit takes effect. If you are a senior executive, general counsel, facility manager or consultant, and your responsibilities include storm water compliance for industrial facilities in California, consider the seven questions below to stimulate your thinking before the clock ticks down to July 1, 2015.

A little background: On April 1, 2014, the State Water Resources Control Board (State Board) approved the first update to California's existing Industrial Storm Water permit since 1997 (approximately 12 years later than envisioned under the Clean Water Act). Like its predecessor, the 1997 Permit, the 2015 Permit applies to certain industrial activities based on the Standard Industry Classification (SIC) code assigned to the principal activity occurring at the facility.

Understanding that the 2015 Permit adds major new compliance obligations and substantially re-works the 1997 Permit, the State Board gave the regulated community until July 1, 2015, to comply. One year later, regulated facilities and storm water professionals are working overtime to meet the July 1, 2015, deadline, now just three short months away.

Here are seven questions to make sure you can answer:

1. *Is one of your facilities covered under the 2015 Permit?*

To evaluate whether the 2015 Permit applies, determine whether the relevant SIC code for your facility's primary activity (which may not match your organization's primary activity) matches a covered activity in Attachment A to the 2015 Permit. Covered SIC codes include a range of industrial activities, such as manufacturing, oil and gas, mining, recycling, transportation, sewage and wastewater treatment, landfills and many others.

2. *Are you responsible for one of the tens of thousands of facilities in the "light industry" category, which is **no longer conditionally exempt** from the Industrial Storm Water permit?*

The 1997 Permit conditionally exempts light industries from compliance, but the 2015 Permit eliminates this conditional exemption. All facilities engaged in light industry, including manufacturing facilities with SIC codes from 20XX to 39XX, and public warehousing with SIC codes from 4221 to 4225, are affected by this change. Estimates vary as to how many "light industry" facilities are now subject to the 2015 Permit, but some private estimates place the number as high as 100,000 facilities statewide.

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3. *Can your facility qualify for a “No Exposure Certificate”? If not now, how about after a little work?*

The 2015 Permit includes a new manner of compliance. If your facility does not expose storm water to industrial activities, it may qualify for a “No Exposure Certificate” (NEC), which is both easier and less expensive to comply with than full coverage under the 2015 Permit. (Even if your facility may not qualify for a NEC in its current state, ask whether targeted improvements could be made to qualify by July 1.)

4. *Is your facility registered in SMARTS?*

This is two questions in one. First, SMARTS ([Storm water Multiple Application and Report Tracking System](#)) is the State Board’s web-based database. Under the 2015 Permit, all permit registration documents, monitoring reports, and other filings must be digitally uploaded on SMARTS. This major change will substantially increase the public’s access to **all** storm water compliance data.

Second, because the 2015 Permit is an entirely new permit, **all existing facilities must recertify** their permit registration documents in SMARTS. The State Board encourages all covered facilities to register in SMARTS now.

5. *Are you a “legally responsible person” (LRP)?*

All 2015 Permit registration materials must be certified by the facility’s legally responsible person (LRP). For a corporation, an LRP is a senior executive or a facility manager with delegated authority from a senior executive. For a partnership or sole proprietorship, the LRP must be a principal. For a municipality, the LRP is “either a principal executive officer or ranking elected official.” If any of those roles fit your job description, read on.

Furthermore, the LRP’s certification must be accompanied with a signed declaration that includes the following language: *“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision . . . I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

6. *Is the LRP for your facilities involved in the compliance process?*

If the LRP is not yet involved in your 2015 Permit compliance strategy, now is the time to bring him or her into the loop. Most of us would be uncomfortable signing documents under penalty of law without any background information (see Question 5, above)—especially if the deadline for submitting certification documents is imminent.

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7. *Does your storm water professional know your name?*

Storm water professionals are great people to know, especially now. Many of the experienced practitioners we know are telling us that they are extremely busy preparing storm water pollution prevention plans (SWPPPs), the cornerstone compliance documents under the 2015 Permit. California only has so many storm water professionals available—and there are only so many hours in the day. Make sure that your professional knows you need him or her, and that you have your spot reserved on his or her schedule.

Complying with the 2015 Permit will bring a host of new challenges. As a senior executive, general counsel, facility manager or consultant, know that you are not alone in wrestling with these new complications. Our experience tells us that many others are addressing the same questions.

This document is intended to provide you with general information regarding the Industrial Storm Water Permit in California. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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