

March 22, 2016

Industrial Storm Water Permittees Face New Challenge—TMDLs

When the State Water Resources Control Board (“State Board”) adopted the Industrial General Storm Water Permit in 2014 (the “IGP”), the State Board reserved for a later day how to incorporate Total Maximum Daily Load (“TMDL”)-specific requirements for watersheds around the state into the IGP. Specifically, the State Board set July 1, 2016, as the deadline for Regional Water Quality Control Boards (“Regional Boards”) to propose TMDL-specific requirements for incorporation into the IGP.

Regional Boards around the state are now accepting public comment on proposed TMDL-specific requirements. Over the past several weeks the Los Angeles, San Diego, San Francisco, and Santa Ana Regional Boards have all issued public notices inviting 30-days of public comment on a variety of TMDLs. For example, the San Diego Regional Board is accepting comment through March 31 on TMDL-specific requirements for a wide range of pollutants including diazinon, copper, lead, zinc, bacteria, sediments, nitrogen, phosphorus, and dissolved copper in watersheds from Chollas Creek and Shelter Island, to beaches and coastal lagoons. (Please check your local Regional Board’s website for all relevant notices.)

How TMDL-specific requirements will affect entities covered by the IGP will be very case specific. TMDLs are watershed and pollutant specific, which means for the TMDL to apply to an IGP-covered entity, the entity must be discharging the pollutant covered by the TMDL into the watershed to which the TMDL applies.

For those entities that will be affected, however, the effect could be significant. Once the State Board re-opens and amends the IGP, dischargers must comply with the TMDL-specific requirements. (IGP, § VII.A.1.) How difficult it may be for a discharger to comply with these new requirements will vary from site to site. Some sites may already be in compliance, while others may have significant hurdles to surmount.

For new sites not yet covered by the IGP, the effect of the TMDL-specific requirements could be even more dramatic. New dischargers will be ineligible for coverage under the IGP unless the discharger can submit information showing no violation of TMDL-specific requirements will occur during operations. (IGP, § VII.B.)

All entities covered by the IGP should investigate whether the Regional Board(s) overseeing their areas of operation are proposing new TMDL-specific requirements, and carefully consider how those requirements may affect their operations under the IGP.

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