

Management Alert



California Industry: Start Preparing for New Industrial Stormwater Permit Requirements

By Patrick D. Joyce

Industrial facilities in California need to prepare now for implementing the requirements of the State's new Industrial Stormwater Permit (2014 General Permit), which will apply on and after July 1, 2015. *Industrial General Permit*, 2014-0057-DWQ.

The California State Water Resources Control Board's newly adopted industrial stormwater permit regime includes a broader swath of industrial facilities not previously covered, increases sampling and monitoring requirements, and implements new Best Management Practices (BMP). Due to the complexity and breadth of the new 2014 General Permit, facilities should consult with environmental counsel and a stormwater consultant as soon as possible.

New dischargers submitting a Notice of Intent to discharge to an impaired water body as well as facilities that are required to prepare Exceedance Response Actions (ERA) must use a Qualified Industrial Stormwater Practitioner (QISP) to prepare and certify the appropriate documentation. QISP must complete Water Board-approved training and pass a comprehensive examination. However, the program for obtaining QISP certification has not yet been established by the Water Board.

2014 General Permit Coverage and Requirements

Under the 2014 General Permit, industrial facilities must either obtain coverage, or, they can file a Notice of Non-Applicability (NONA) if the facility's industrial activity is not exposed to stormwater. The 2014 General Permit requires "light industry" uses, exempt under the prior 1997 permit, to obtain coverage. Examples of light industrial uses now covered are: bakeries, coffee roasters, textile mills, cabinet makers, and book printing facilities. In addition, the 2014 General Permit covers traditional industrial facilities such as: cement manufacturing plants, recycling facilities, landfills, vehicle maintenance shops, and mining facilities.

The 2014 General Permit's modification of the definition of a Qualifying Storm Event (QSE) drastically changes how often sampling and reporting must be done. A QSE is now defined as "a precipitation event that: (1) produces a discharge for at least one drainage area and (2) is preceded by 48 hours with no discharge from any drainage area." Samples must be collected from each drainage location within four hours of a QSE. Further, instead of only being required to collect two samples during the wet season, as was the requirement under the 1997 permit, facilities must now sample each discharge location from two QSEs between July 1 and December 31 and two QSEs between January 1 and June 30.

The 2014 General Permit requires implementation of minimum BMPs including, among others, good housekeeping, preventative maintenance, and spill response. In addition, advanced BMPs must be implemented "to the extent feasible." Examples of advanced BMPs include: storm-resistant shelters that prevent contact of stormwater with industrial materials, implementation of mechanical, chemical, or biologic treatment technology, and structures to divert, reuse, or contain

stormwater runoff to reduce volume and flow.

Next, the 2014 General Permit implements new Numeric Action Level (NAL) standards: annual and instantaneous. If an instantaneous or annual NAL is exceeded during a reporting period, the 2014 General Permit requires dischargers to develop and implement Exceedance Response Actions (ERA). ERAs require dischargers to revise or add BMPs and to submit reports to the Water Board outlining the actions taken to prevent a future exceedance and their effectiveness. As discussed above, ERAs must be prepared by a QISP.

Instantaneous exceedances occur when two or more results from samples taken for any contaminant within a reporting year exceed the maximum applicable instantaneous NAL. Instantaneous maximum NALs are only applicable for Total Suspended Solids, Oil and Grease, and pH. An annual exceedance occurs when the average of all analytical results from all samples taken at a facility during a reporting year for a given parameter (except pH) exceeds an applicable annual NAL.

Finally, facilities that have the potential to discharge into waters for which Total Maximum Daily Loads (TMDL) have been adopted, or are that listed as "impaired," must test for the relevant pollutant, even if the facility is not otherwise required to test for that pollutant. For example, if a facility discharges to a water body listed as impaired for zinc, and the discharge from the facility has the *potential* to include zinc, the facility must add zinc to the list of parameters to monitor. In addition, new dischargers must submit data, prepared and submitted by a QISP, demonstrating that the facility will not cause or contribute to impairment.

Facilities May File A Notice of Non-Applicability

Any facilities that may otherwise be subject to the 2014 General Permit, including newly regulated light industry, but who have submitted a valid certified Notice of Non-Applicability (NONA) prepared and signed by a California licensed professional engineer, are not subject to the 2014 General Permit requirements. A facility can claim "no discharge" through NONA if (1) the facility is engineered and constructed to contain all stormwater associated with industrial activities from discharging to waters of the United States and there is no discharge to groundwater that has a direct hydrologic connection to waters of the United States; or (2) the facility is located in a basin or other physical location that is not hydrologically connected to waters of the United States.

Applicable Deadlines for Compliance and Risks of Noncompliance

Compliance is required by July 1, 2015. Facilities need to start planning now, as demand will be high in the coming months for stormwater consultant services. All facilities covered by the 2014 General Permit, including existing dischargers covered under the 1997 permit, must file a Notice of Intent to discharge by July 1, 2015. Facilities covered under the 1997 permit will need to review their Stormwater Pollution Prevention Plans (SWPPP) and update their BMPs to comply with new "minimum BMPs" in the 2014 General Permit. Noncompliance may result in court imposed civil liability up to a maximum of \$37,500 per day of violation or administrative civil liability up to a maximum of \$10,000 per day of violation. In addition, facilities that do not comply with requirements of the 2014 General Permit can expect citizen's suits brought under the Clean Water Act.

Facilities with stormwater discharge that are conducting no industrial activities and using no covered hazardous material, including light industry "exempt" under the 1997 permit, must file a "No Exposure Certificate" (NEC) by October 1, 2015. The NEC must be re-filed on an annual basis.

Patrick D. Joyce is an attorney in Seyfarth's Chicago office. If you would like further information, please contact your Seyfarth Shaw LLP attorney or Patrick D. Joyce at pjoyce@seyfarth.com.

www.seyfarth.com

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Management Alert | October 3, 2014

©2014 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.