

## STORMWATER GENERAL PERMIT UPDATE

JANUARY 2005

Demetriou, Del Guercio, Springer & Francis, LLP informs you of recent developments regarding the State Water Resources Control Board's ("SWRCB") National Pollutant Discharge Elimination System General Permit for discharges of storm water associated with industrial activities ("Stormwater General Permit"). The Stormwater General Permit adopted by the SWRCB in 1997 has expired and is being administratively extended until a new permit is adopted.

In June 2003, the SWRCB held public hearings to accept comments on a proposed draft of the new Stormwater General Permit. The 2003 draft included significant revisions to the 1997 permit, including the Storm Water Pollution Prevention Plan ("SWPPP") section, the Monitoring Program, and the group monitoring requirements. The 2003 draft also addressed EPA regulations which allow for a Conditional Exclusion from permitting for dischargers that certify that their facilities have no exposure of industrial activities and materials to storm water. This new regulation means that "light industry" dischargers who previously were exempt from permit coverage will be required to either obtain permit coverage or submit a certification for a Conditional Exclusion. All dischargers who previously were subject to permit coverage may also apply for a Conditional Exclusion.

After receiving comments to the 2003 draft Stormwater General Permit, the SWRCB issued a new draft Stormwater General Permit ("2004 Draft Permit"). The SWRCB is inviting written comments and testimony regard-

ing the 2004 Draft Permit until February 3, 2005. Further, public hearings regarding the 2004 Draft Permit are being held in Rancho Cucamonga on January 31, 2005 and in Sacramento on February 3, 2005.

Significant revisions set forth in the 2004 Draft Permit include:

(1) Minimum Best Management Practices ("BMP") that all dischargers must include in the SWPPP. The purpose of the minimum BMP's is to ensure compliance with the best practicable control technology currently available ("BCT") for conventional pollutants and best available technology economically achievable ("BAT") for toxic pollutants. The SWRCB contends that because of the diversity of industrial activities, facilities must include a site-specific BMP.

(2) Corrective action required whenever an exceedance of EPA storm water benchmark values occurs. The prior permit included an open-ended iterative process for improving BMP's at facilities that caused or contributed to the exceedance of water quality standards and found that if a discharger was engaged in this process, there was no violation of the permit for the exceedances. The 2004 Draft Permit requires that discharges must comply with water quality standards, and where there is a violation of this limitation, dischargers must take corrective action and revise their SWPPPs and improve BMPs within a short time period.

(3) More extensive monitoring requirements. Dischargers must continue monitoring for indicator parameters as well as additional parameters associated with spe-

cific industries. Additionally, the 2004 Draft Permit includes a one-time comprehensive pollutant scan for metals, Chemical Oxygen Demand, and semi-volatile organic compounds. The SWRCB states that the purpose of the site specific monitoring is to evaluate the runoff from individual sites, and the purpose of the one-time comprehensive pollutant scan is to develop a database of the constituents of concern and the levels at which they are generally found in runoff. The SWRCB intends to use the database to develop numeric effluent limitations. However, the SWRCB recognizes that a study based on statewide facilities from a variety of industries may produce more reliable data in a more cost effective manner, so the 2004 Draft Permit allows for modification of the requirement for the one-time comprehensive pollutant scan in the event that dischargers propose an alternative, representative statewide monitoring program.

A copy of the 2004 Draft Permit can be found at the SWRCB website at <http://www.swrcb.ca.gov/stormwtr/industrial.html>. Further, Demetriou, Del Guercio, Springer & Francis, LLP invites you to contact Michael A. Francis, Brian D. Langa, or Stan Barankiewicz of our offices if you have any questions regarding the 2004 Draft Stormwater General Permit or other environmental legal matters.

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