

Client Alert

June 2015

California's Industrial General Permit Survives Challenge and EPA Reissues Multi-Sector General Permit

California Industrial General Permit

On June 3, 2015, the court denied a petition by California Coastkeeper Alliance (Coastkeeper) challenging California's Industrial Storm Water General Permit (IGP). Order Den. Pet. For Writ of Mandate, *Cal. Coastkeeper Alliance v. State Water Res. Bd.*, No. RG14-724505 (Cal. Super. Ct. June 3, 2015). The IGP replaces the 1997 permit and authorizes stormwater discharges from industrial facilities in California. The IGP becomes effective on July 1, 2015.

The IGP contains significant changes from the 1997 permit, including an increase in monitoring, sampling and reporting requirements; numeric action limits (NALs) for certain pollutants; new and/or improved best management practices associated with an exceedance of the NALs; the elimination of conditional exemptions, thereby increasing the number of facilities covered by the IGP; and requiring facilities that discharge to an impaired water body to comply with additional requirements.

The Coastkeeper petition focused on the permit's compliance with water quality standards and monitoring requirements. First, petitioners argued the IGP must immediately include effluent limitations consistent with applicable total maximum daily loads (TMDLs) and associated wasteload allocations (WLAs). When the State Water Resources Control Board (State Board) issued the IGP it established a deadline of July 1, 2016, to reexamine WLAs and translate them, as necessary, into specific permit requirements. The court rejected Coastkeeper's argument finding that the US Environmental Protection Agency's (EPA) regulations, EPA's interpretation of those regulations and case law allow the State Board to defer setting effluent limits consistent with WLAs. The permitting authority may examine individual discharges at a later date and, if appropriate, impose more stringent requirements as may be necessary to comply with WLAs.

Next, petitioners argued the IGP's monitoring requirements are insufficient to demonstrate compliance with Receiving Water Limitations — known outside California as water quality-based effluent limitations. Coastkeeper argued that the permit must require each industrial facility to monitor their stormwater discharges into the receiving waters. The court found EPA's regulations require some means of effectively measuring compliance with the permit terms. However, the court disagreed with petitioners' argument that the IGP did not contain sufficient monitoring provisions to effectively determine compliance. The court noted the NPDES permitting authority has discretion on the specific monitoring requirements and "monitoring" is not limited to sampling pollutants entering receiving waters but can include a combination of inspections, monitoring and recordkeeping. Coastkeeper may appeal this order to the California Court of Appeals, and Hunton & Williams LLP will continue to monitor any developments in this case.

EPA Multi-Sector General Permit

On June 4, 2015, EPA reissued its Multi-Sector General Permit (MSGP) pursuant to the Clean Water Act (CWA) for stormwater discharges associated with industrial activity, replacing the 2008 MSGP. The new MSGP is effective immediately. The MSGP is available only to operators of industrial facilities —

categorized into industrial sectors — located in areas where EPA is still the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, New Mexico, US territories and Indian Country. However, because delegated states that issue their own industrial stormwater permits typically model them on EPA's MSGP, EPA's permit is very influential.

While the MSGP is largely similar to the 2008 MSGP, various modifications were made including revisions to select technology-based effluent limits, eligibility requirements on the ability to obtain permit coverage and requirements associated with threatened and endangered species. With respect to the permit shield issue raised in comments on the proposed permit, EPA failed to clarify that a discharger who complies with the terms and conditions of the MSGP will be deemed in compliance with the CWA and be protected by the permit shield contained in CWA § 402(k).

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