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Comments on the Proposed Changes to the Storm Water Industrial General Permit (IGP)

The following are comments regarding the Proposed Industrial General Permit for storm water discharge reporting.

The first and most overriding point that I would like to discuss is the application of CEQA to these proposed changes to California's environmental laws.

Project, by definition

15378. Project

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. ***This process is all about the issuance of a permit.***

(b) Project does not include:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (Stein v. City of Santa Monica (1980) 110 Cal.App.3d 458; Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165);

(4) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. ***It seems the entire purpose of this IG permit process it to make positive changes to the environment but changes, none the less.***

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the Lead Agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivisions (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464; *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

According to Jana Sokale, Environmental Planner in "Environmental Impact Assessment, An Overview of the California Environmental Quality Act (CEQA) and Related Environmental Laws", June 8, 2004 a project is;

> *"An action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.*
>
> *--Public Agency Project*
>
> *--Project supported with public agency grants, subsidies, loans, etc.*
>
> *--Private Project requiring public agency approval of a permit, lease, license, etc."*

As such it seems clear to me that within CEQA there must be a consideration for the economic impact of this IGP proposal. On the teleconference / webcast held by SWRCB staff on March 15th the comment was made that no time or money was available for the economic considerations of the proposed changes to the IGP. This is less than proper for a program that will lead to ±10,000 sites (Staffs estimate of participating sites) redoing their SWPPP, getting additional training and the additional sampling and analytical costs. This will probably cost at least an additional $1000 per year per site. (thus a minimum of $10,000,000 of new costs primarily from the private sector).

Before this proposal goes forward a thorough economic evaluation and cost/ benefit analysis should be completed.

In addition the following points should be considered;

- The way the system is set up if there are extenuating circumstances surrounding the baseline conditions within the site, these circumstances are not scheduled to be considered until the discharger falls to a LEVEL 3 status and is then loaded with extensive sampling, reporting and costly monitoring requirements to address those extenuating baseline circumstances. An example of his might be in the case where runoff from naturally highly

acidic or metal bearing soils create background levels which are substantially elevated toward or at NALs. The natural backgrounds should be considered at the outset of the sampling program and a site specific NAL set before the discharger is encumbered with the LEVEL 2 or 3 requirements. This is just good science.

- In our particular case, we mine a clay product left over from the past mining of silica sand. We own the undisturbed property for nearly a mile down drainage from the site. The mining site sits idle for most of the wet season as you cannot mine clay when it is wet. Our SWPPP has been in place since 2004. We have made a couple of modifications but we would fall into the LEVEL 2 category due to Aluminum and pH levels. We have numerous settling ponds and runoff containments which are completely vegetated and yet our internal sampling levels of Aluminum and pH are still over the NALs due to the nature of our acidic, lateritic, high aluminum soils. Our native soil is nearly bauxite (aluminum oxide ore). It seems appropriate that since we have BMP's and properly functioning structures in place, we should be able to file for and get a waiver of the NAL for these two components from the start so we don't have to go to the LEVEL 2 or 3 category sampling protocols. The bottom line is that if we can show natural, non storm event runoffs in our seasonal streams to be at or above NAL's then we should have a modified NAL for those two components without being pushed into the upper level protocols.

- Composite sampling should be allowed on a single site to establish the daily average for components whose holding time protocol is not violated by the compositing during a storm event. This would be a tremendous cost savings for the discharger.

- The Qualified SWPPP Practitioner should be a trained individual under the supervision of a QSD. There should be no other certification requirements beyond the State approved training course completion.

Thank you for your consideration of these comments and we look forward to further discussions on these changes in the IGP and SWPPP program as it progresses.

Respectfully

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