

# Workshopping the CII Permit

## Topic 1: Streamlining Enrollment

On November 20<sup>th</sup> the Los Angeles Regional Water Quality Control Board (RWQCB) held a workshop to consider improvements to the draft CII Permit. After receiving a briefing from RWQCB staff and comments from stakeholders, the Board asked staff to engage with stakeholders to consider possible improvements to the Permit. Some of the provisions that the Board directed staff to focus on included:

- Who should be the permittee -- the facility owner or operator?
- What should be in the Option 1 contract between the permittee and the Watershed Management Groups?
- Permit implementation timing
- Exemptions for residential properties identified as mixed use
- Sampling requirements

This memo considers the questions of who should be the permittee and a proposed protocol for implementing the enrollment process.

The current draft Permit creates an ambiguous and confusing methodology for identifying who is responsible for permit compliance. The draft Permit currently identifies the “Discharger” as the entity responsible for enrolling in and complying with the Permit. The draft Permit then defines the term “Discharger” as: “**either the owner or operator** of the CII Site, whoever has the authority and operational control to comply with all conditions of this General Permit, including preparing and implementing the SWPPP, and either (1) entering into a legally binding agreement with a local Watershed Management Group, (2) operating and maintaining stormwater controls to address the volume of runoff produced by an 85th percentile 24-hour storm event, or (3) implementing monitoring and reporting requirements and stormwater controls to directly demonstrate compliance with water quality based effluent limitations. The owner is the owner of the parcel subject to this General Permit. The operator is the lessee of the parcel subject to this General Permit”. [Emphasis added.]

As discussed at the workshop by both Board members and stakeholders, this “either/or” definition can only lead to confusion and litigation. Moreover, this either/or definition makes compliance assurance with the Permit highly suspect. For the following reasons, this memo advocates for a single class of Discharger and that the single class be the property owners.

First, owners are easily identifiable while operators are not. The draft Permit defines CII Sites as “a privately owned parcel or contiguous parcels of land that are commercial, industrial or institutional based on Los Angeles County Tax Assessor land use codes 1000. This document was produced by S. Wayne Rosenbaum, Partner at the Environmental Law Group and does not represent the opinions of others.

through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400. (<https://portal.assessor.lacounty.gov>). Thus, the County Assessor's office provides an available data base to identify owners. No such data base appears to be available for operators.

Second, each of the compliance Options offered by the draft Permit require long term commitments between the Discharger and a public agency that will necessarily need to run with the land.

In the case of Option 1, the Discharger is required to "enter into a legally binding agreement with the local Watershed Management Group or its Fiduciary Agent to fund, or partially fund, an existing or planned downstream regional project(s) included in the group's Watershed Management Program, which has been developed to implement requirements of the Regional MS4 Permit and approved by the Los Angeles Water Board". Any such agreement will necessarily have to include provisions for long term operation and maintenance costs assessed with the regional projects. While the land owner has the legal authority to enter into an agreement that runs with the land into perpetuity, a tenant authority to do so would be limited to the life of the lease.

Option 2 presents the discharger with three possible alternatives. These are: 1) capture and use the storm water on site; 2) capture and infiltrate the storm water on site; or 3) discharge the storm water to the sanitary sewer. Alternative 1 may be viable for a limited number of businesses such as ready-mix concrete plants. Alternative 2 requires the right geological conditions plus the discharger must treat the storm water to better than drinking water standards prior to infiltration. Thus Alternative 3 appears to be the only viable option for most dischargers and here a long-term agreement would be necessary between the property and the sanitary sewer authority. Thus, as with Option 1, in the vast majority of cases, Option 2 requires that the discharger be the property owner.

Option 3 requires the discharger to design, build and operate large and complex onsite storm water treatment plants. These facilities will be subject to local building permits, some of which may trigger CEQA. Thus, once again the involvement of the land owner is essential.

If the Board concludes that the only viable option is for the land owner to be designated as the Discharger, then the author proposes the following steps be incorporated into the permit to insure an effective and efficient enrollment process:

1. Regional Board staff would first coordinate with LA County Assessors Office and prepare a list of all of the parcels within the two watersheds with Los Angeles County Tax Assessor land use codes 1000 through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400. The list should include parcels that are entirely or partially within the watersheds. The list should include

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all parcels greater than or equal to five acres based on the County Assessor's APN rolls. The list should include the County Assessor Parcel Number (APN), the address, and the current owner. The list should then be incorporated into the draft Permit as an Exhibit with the caveat that ownership of the parcels may change from time to time.

2. Each of the identified parcel owners would then be required to enroll in the draft Permit or file a Notice of Non-Applicability (NONA). NONA would be available for parcels meeting any of the following conditions:<sup>1</sup>
  - a. The parcel has less than five acres of impervious area. The NONA should be supported by a declaration from a Qualified Industrial Storm Water Professional (QISP) or other similarly qualified professional that there is less than five acres of impervious area.
  - b. The parcel is designated as Assessor land use codes 1210 or 1720.

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<sup>1</sup> NONA would require annual recertification.