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CLIENT ALERT

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BUSINESSES MUST NOW DEMONSTRATE STORM WATER PERMIT COMPLIANCE TO GET A BUSINESS PERMIT

Effective January 1, 2020, every business seeking a new or renewed business license in California must prove it is registered under the State's General Permit for Storm Water Discharges Associated with Industrial Activities ("Industrial General Permit" or "IGP"), that it has an individual storm water permit, or that it is not required to have a storm water permit. This new requirement, mandated by California's Senate Bill 205 ("SB 205"), will likely trip up some unsuspecting businesses and could delay or even prohibit the issuance or renewal of a business license.

Under existing law, businesses in 541 Standard Industrial Classification ("SIC") codes must comply with the IGP issued by State Water Resources Control Board ("SWRCB") or obtain an individual permit for storm water discharges under the federal Clean Water Act. The storm water laws and regulations are not new and the IGP itself remains unchanged; however, SB 205 now requires cities and counties that issue business licenses to confirm that anyone applying for a new business license or seeking to renew an existing business license either has registered for coverage under the State's storm water regulations or is not required to register with the SWRCB.

The IGP regulates storm water discharges from "industrial" facilities. It establishes requirements for monitoring, reporting and recordkeeping, preparing a Storm Water Pollution Prevention Plan, implementing Best Management Practices, training requirements, as well as a system of Numeric Action Levels ("NALs") and response actions for exceedance of those NALs. The IGP is issued in lieu of requiring an individual permit for each business that discharges storm water, which would have been unworkable. An estimated 10,000 businesses were expected to enroll to discharge under the IGP, many of which are small businesses without dedicated environmental staff.

In 2015, the types of "industrial" facilities required to obtain a storm water permit was broadened considerably and many businesses remain unaware that storm water runoff from their establishments is regulated. Prior to SB 205, making sure that businesses were enrolled fell to regulatory agencies, primarily the Regional Water Quality Control Boards, or private citizens (typically local environmental groups) acting under the Clean Water Act's citizens' suit provision. Many businesses have learned the hard way that they should have been enrolled and in compliance with the IGP, often resulting in large fines or, in the case of citizens' suits, large payments to an environmental group for attorney fees. Undoubtedly, many businesses are still not in compliance. SB 205 is intended, in part, to identify those businesses and force them to come into compliance.

Not all cities and counties require a business license, so not every business faces this new review. Furthermore, not every business is subject to the IGP. Only those that fall within the 541 categories of facilities identified by SIC codes are required to obtain coverage under the IGP or seek an individual permit. Even businesses that fall within those SIC codes may be able to avoid the full impact of the IGP if they can demonstrate that their industrial

activities are not exposed to storm water or that the IGP is not applicable because their facility does not discharge storm water.

However, businesses that are located within a city or county that requires a business license should expect to see new requirements when they apply for a business license or seek renewal of an existing license. At a minimum, this will include providing a primary SIC code for the business. If the business falls under one of the designated SIC codes, it will be required to also provide one of the following pieces of information: a Waste Discharger Identification number ("WDID") issued by the SWRCB indicating they have enrolled under the IGP; a WDID application number if a WDID has not yet been issued; a Notice of Nonapplicability identification number, indicating the business does not discharge storm water; or a No Exposure Certification number, indicating the business' industrial activities are all carried on under cover and are not exposed to storm water.

If the city or county it is unable to verify that a business that is required to register under the State's storm water permit program is properly registered, as demonstrated by one of these documents, the city or county may issue a three-month provisional business license to allow the business to obtain permit coverage, but only if the city or county has adopted an ordinance allowing it to issue these provisional business licenses.

As SB 205 imposes wholly-new requirements that cities and counties will be implementing on relatively short notice (the law was enacted just three months before it took effect), the implementation may not be smooth at first. The city and county departments that handle business licenses will not be familiar with storm water regulations and will need time to get up to speed. It is also likely that the implementation will not be consistent across the state, as some cities and counties have more resources to bring to bear than others. Businesses may find that legitimate applications are rejected, or may need to help educate city and county staff so that they understand why a business is in compliance or does not need to comply. Unfortunately, there will also be businesses that were not aware they were required to comply with the IGP and they will find themselves scrambling to get into compliance. While SB 205 has no separate enforcement authority other than withholding the business license, it does require cities and counties to transfer compliance information to the SWRCB as requested, and it is likely that the SWRCB will use this information to evaluate the need for enforcement.

If you have questions about this new law or would like to discuss potential impacts on your business, please feel free to contact John Epperson (jepperson@buchalter.com) or Peter McGaw (pmcgaw@buchalter.com).



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