
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Blakespear, Chair

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Bill No: AB 2322
Author: Papan
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Consultant: Taylor McKie

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Fiscal: Yes

SUBJECT: Water discharge: commercial, industrial, or institutional sites

DIGEST: This bill defines “commercial industrial, or institutional site” or “CII site” based on county tax assessor land use codes for the purposes of issuing permits for the discharge of stormwater from municipal separate storm sewer systems (MS4s).

ANALYSIS:

Existing federal law:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States (WOTUS) and to regulate quality standards for surface waters. (33 United States Code (USC) §§ 1251 et seq.)
- 2) Establishes, under the CWA, the National Pollutant Discharge Elimination System (NPDES) permit program, requiring the State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) to prescribe waste discharge requirements that, among other things, regulate the discharge of pollutants into stormwater. (33 USC § 1342)
- 3) Requires operators, on and after October 1, 1994, for discharges composed entirely of stormwater, to obtain an NPDES permit under the CWA only if:
 - a) The discharge is from a small municipal separate storm sewer systems (MS4), as specified;
 - b) The discharge is a stormwater discharge associated with small construction activity;
 - c) The Director, or in states with approved NPDES programs, either the Director or the United States Environmental Protection Agency (U.S. EPA) Regional Administrator, determines that stormwater controls are needed for

the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutants of concern; or

- d) The Director, or in states with approved NPDES programs, either the Director or the U.S. EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the U.S. (40 Code of Federal Regulations § 122.26(a)(9)(i)(D))

Existing state law:

- 1) Establishes the Porter-Cologne Water Quality Control Act (Porter-Cologne), which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board; declares that the health, safety, and welfare of people require there to be a statewide program for water quality control and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy. (Water Code (WC) §§ 13000 et seq.)
- 2) Establishes the State Water Board and nine Regional Water Boards to preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. (WC §§ 13100 et seq.)
- 3) Prohibits the discharge of waste or pollutants to surface and ground waters unless the discharger obtains a permit from the State Water Board or a Regional Water Board. (WC §§ 13260 et seq.)

This bill:

- 1) Defines “commercial, industrial, or institutional site” or “CII site” to mean a privately owned parcel or contiguous parcels of land that are commercial, industrial, or institutional based on the appropriate county tax assessor land use codes for the purposes of issuing permits for the discharge of stormwater from municipal separate storm sewer systems (MS4s).
- 2) Further specifies that “CII site” shall mean the commercial, institutional, or industrial portion of the mixed land use parcel for parcels with mixed use commercial and residential land use codes; and shall not include residential facilities of any type, as specified.

Background

- 1) *The NPDES Permit Program.* As authorized by the federal CWA, the NPDES Permit Program controls water pollution by regulating point sources—or discrete conveyances such as pipes, or human-made ditches—that discharge pollutants into waters of the U.S. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste. In California, implementation of the NPDES Permit Program has been delegated to the State Water Board and nine Regional Water Boards, which maintain regional jurisdiction within boundaries that are based on major watersheds. While the State Water Board has issued some NPDES permits, the Regional Water Boards issue the vast majority of NPDES permits in the state and ensure compliance with their permits through inspections, monitoring report reviews, and enforcement actions.

Because of their propensity to contain and mobilize pollutants, stormwater discharges are regulated through NPDES permits. The State Water Board oversees three statewide NPDES stormwater programs: the Industrial Stormwater Program, Construction Stormwater Program, and Municipal Stormwater Program. Below is a description of each:

- a) *Industrial Stormwater Program.* The Industrial General Permit (IGP) regulates industrial stormwater discharges and authorized non-stormwater discharges from industrial facilities in California. The IGP is called a “general permit” because many industrial facilities are covered by the same permit, but comply with its requirements at their individual industrial facilities. Industrial facilities such as manufacturers, landfills, mining, steam-generating electricity, hazardous waste facilities, transportation with vehicle maintenance, larger sewage and wastewater plants, recycling facilities, and oil and gas facilities are typically required to obtain IGP coverage;
- b) *Construction Stormwater Program.* Certain dischargers—those with projects that disturb one or more acres of soil, or projects that disturb less than one acre, but are part of a larger common plan of development that in total disturbs one or more acres—are required to obtain coverage under the “General Permit for Discharges of Stormwater Associated with Construction Activity” (Construction General Permit). Construction activities subject to this permit include clearing, grading, and disturbances to the ground such as stockpiling or excavation. They do not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the

development of a Stormwater Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer; and,

- c) *Municipal Stormwater Program.* The State Water Board regulates stormwater discharges from MS4s throughout California. U.S. EPA defines an MS4 as a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels, or storm drains. Under Phase I of the Municipal Stormwater Program, Regional Water Boards have adopted NPDES permits to regulate discharges from MS4s serving municipalities with over 100,000 people; under Phase II, the State Water Board has issued a waste discharge requirement to regulate discharges from small MS4s serving municipalities with less than 100,000 people.
- 2) *Residual designation authority.* The U.S. EPA and authorized states, like California, can designate other stormwater discharges to control stormwater pollutants under their “residual designation” authority. The U.S. EPA or the State and Regional Water Boards can require NPDES permits for other stormwater discharges or category of discharges on a *case-by-case basis* when it determines any of the following:
 - a) The discharges contribute to a violation of water quality standards;
 - b) The discharges are a significant contributor of pollutant to WOTUS; or
 - c) Controls are needed for the discharge based on waste load allocations that are part of TMDLs.

Residual designations can also be requested by petition. There have been residual designations made by the U.S. EPA for small MS4 systems and the U.S. EPA has also received petitions for the designation of commercial, industrial, and institutional sources for stormwater permitting in U.S. EPA Regions 1, 3, and 9 (Los Angeles watersheds, as described below).

- 3) *Commercial, industrial, and institutional site runoff.* The impervious area associated with urban development can be a collection site for pollutants and generate greater quantities and various types of contaminants. The stormwater that washes over these impervious areas and into receiving waters could carry car emissions, litter, pesticides, industrial chemicals, and household hazardous waste. These additional pollutant loadings can result in immediate and long-term impacts on the health of the receiving water body and the organisms that inhabit it. The U.S. Geological Survey has indicated that with increased urban development, local water bodies exhibited increased concentrations of

contaminants such as nitrogen, chloride, insecticides, and polycyclic aromatic hydrocarbons (PAHs).¹

Runoff from commercial industrial, and institutional sites can consistently contain high levels of nitrogen, phosphorus, and sediment. These can lead to major impacts including algal blooms and eutrophic conditions. Although some these sites can be covered under a local jurisdiction's MS4 permit, it is argued that the permits do not sufficiently control discharges from these sites and that direct regulation through permitting of these sites would better mitigate the impacts of the discharges.

- 4) *Federal action on pollution in two California watersheds.* In response to petitions (submitted to Region 9 of the U.S. EPA (Region 9) in 2015), a subsequent court case, and a 2018 District Court order, Region 9 is using its Residual Designation Authority to add requirements for certain stormwater sources that discharge into two watersheds in Los Angeles County: the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed. The final designation is specifically designed to require privately-owned commercial, industrial, and institutional facilities to obtain NPDES permits for stormwater runoff. Region 9 states that both watersheds are impaired due to elevated levels of copper and zinc, and TMDLs have been established to define needed reductions of these pollutants, to restore water quality and beneficial uses of the watersheds.

According to Region 9, in a November 2024 memo explaining the Final Designation, “the record demonstrates that stormwater discharges from the [commercial, industrial, and institutional] sources...contribute to violations of water quality standards...The Final Designation will require permit coverage for discharges from approximately 600 facilities and will significantly reduce discharges of pollutants of concern, including metals.” Once designated, these sites will be required to obtain coverage under an NPDES permit.

Region 9 is partnering with the Los Angeles Regional Water Quality Control Board (Los Angeles Regional Water Board), which is in the process of developing a new NPDES general permit, to provide coverage for all commercial, industrial, and institutional facilities in the two Los Angeles County watersheds designated by Region 9's action. The Los Angeles general permit defines a commercial, industrial, and institutional site 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

¹ Masoner, J., et. al. (2019). [Urban Stormwater: An Overlooked Pathway of Extensive Mixed Contaminants to Surface and Groundwaters in the United States.](#)

through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400. The permit would apply to stormwater discharges and authorized non-stormwater discharges from certain unpermitted commercial, industrial, and institutional sites with five or more acres of impervious surfaces.

Describing the rationale for a new permit, the Los Angeles Regional Water Board states on its website, “Storm Water—Commercial, Industrial and Institutional (CII) Permit” (last updated January 28, 2025), “The Los Angeles Regional Water Board and U.S. EPA are considering potential regulatory requirements for stormwater runoff from certain commercial, industrial, and institutional (CII) facilities in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed to reduce pollutant levels in stormwater runoff that flows from these facilities. These waterbodies are currently polluted by numerous chemicals, including copper and zinc, which can harm aquatic life, ecosystems, and human health. Impervious surfaces such as streets, parking lots, rooftops, and sidewalks collect a variety of pollutants.”

Inspired by the Los Angeles general permit, this bill would define “commercial, industrial, or institutional site” for the purposes of issuing permits for the discharge of stormwater from municipal separate sewer systems based on tax assessor land use codes. Current law does not have a definition for “commercial, industrial, or institutional site.”

Comments

- 1) *Purpose of Bill.* According to the author, “AB 2322 establishes a single, statewide definition of Commercial, Industrial, and Institutional (CII) sites for municipal stormwater permits using existing county land use codes. Cities and counties currently operate under stormwater permits (MS4 permits) that require them to identify and inspect businesses and ensure stormwater controls are installed when sites are built or redeveloped. However, these existing permits rely on different MS4 permittees’ interpretations of what is considered a regulated facility. As a result, identical businesses can face different inspection expectations and compliance requirements depending solely on where they operate. For example, a car wash may be included in one city’s program but not in a neighboring jurisdiction. AB 2322 fixes this inconsistency by providing an objective, uniform standard that can be applied consistently across California. For businesses, that means clearer rules, more predictable

planning, and a fair, level playing field statewide.”

- 2) *Codifying a definition.* This bill codifies a definition for “commercial, industrial, and institutional site” (CII site) for the purposes of issuing stormwater discharge permits and based off county tax assessor land use codes. The definition itself and its codification raises various questions about its applicability and implementation. The following sections discuss these implications:

- a) *Accounting for county codes.* The aim of this legislation was to create a state-wide definition that could provide consistency on how CII sites could be identified across the state. The definition implies that any parcel of land that is commercial, industrial, or institutional would be involved. Though intended to create consistency, not all counties consistently categorize land use codes.

The “CII Site” definition in the LA Regional Water Board general permit for CII facilities specifies individual land use codes. While some counties have individual codes tagged with each of these categories, other individual codes captured under the LA general permit definition would not be captured by this definition. Some counties have a broad range of codes nested within each of these categories, which may or may not be fully comprehensive. Other counties may categorize land use codes under other labels that would exclude potentially polluting sites from the definition. This calls into question how this definition would be applied to different entities within future statute or regulation, and without the associated policies, it is difficult to predict how they will apply or whether these inconsistencies will be considered.

- b) *Case-by-case evaluations.* As in print, the CII sites definition would encompass any and all commercial, industrial, or institutional site based on land use, whereas designations for permitting made within the existing regulatory framework have and will be assessed on a case-by-case basis by the regulator and only with certain facilities. It is unclear whether this definition would strip the authorities of the State or Regional Water Boards to evaluate the necessity of a permit on a case-by-case basis if the definition gives prescriptive statutory direction.
- c) *The basis for land use.* Typically, the determination for the need of a stormwater permit is based on the permeability of the land surface, parcel size, and/or the extent of disturbance or nuisance. Without case-by-case considerations or designations, it is not clear how land use alone could effectively capture the entities that should be regulated for stormwater, without overextending or over regulating. Depending on how a county

designates land use, the definition may be too broad if applied in a future policy context. There could also be miscellaneous categories for land use with facilities that could significantly contribute to stormwater contamination, but they would not be captured within CII.

Without the associated policy that describes how this definition would apply, it is unclear how this definition alone would serve the State or Regional Water Boards, or regulated entities. When a policy is created through future legislation and regulation that applies this definition, questions would then be raised on its implementation given how it is crafted. There are levels of uncertainty with this bill, that could certainly lead to subsequent bills to adjust the definition if potential complications were to arise in its application. Running future legislation changing the definition to fit into certain circumstances for some jurisdictions could then impact the way other jurisdictions have applied it. Pairing a definition with a framework could create more clarity and avoid potential unintended consequences.

Related/Prior Legislation

AB 1313 (Papan, 2025) would have required the State Water Board to establish, as provided, a statewide commercial, industrial, and institutional NPDES order to regulate stormwater and authorized non-stormwater discharges from facilities with impervious surfaces that are significant contributors of pollutants to federally-protected surface waters. This bill did not meet the house of origin deadline and died on the inactive file.

AB 2106 (Rivas, 2022) would have required the State Water Board to establish a statewide commercial, industrial, and institutional NPDES order regulating stormwater and authorized non-stormwater discharges from facilities with impervious surfaces that are significant contributors of pollutants to federally protected surface waters. This bill was vetoed by Governor Newsom.

SOURCE: California Coastkeeper Alliance

SUPPORT:

None received

OPPOSITION:

None received

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