LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL PERMITS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A "general order" does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with statutory disclosure requirements. For more information, see Water Code section 13287 and http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Must I disclose ex parte communications with board members regarding pending general orders?

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of "financial interest," consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (http://www.fppc.ca.gov/index.php?id=51).
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

What must I disclose?

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

When is the disclosure due?

Water Board staff must receive the disclosure within 7 working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

Who must receive my disclosure documents?

Unless the board member(s) provided you with a different contact person, please send your materials to:

Hugh Marley, Assistant Executive Officer
hugh.marley@waterboards.ca.gov
(213) 576-6607
or
Jenny Newman, Assistant Executive Officer
jenny.newman@waterboards.ca.gov
(213) 576-6791

What will the Water Board do with my disclosure?

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board's proceeding.

May other interested persons respond to a disclosure notice?

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order's written comment period, included in oral comments at the hearing, or both.

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

DISCLOSURE FORM
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS

Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: hugh.marley@waterboards.ca.gov *or* jenny.newman@waterboards.ca.gov

Use of this form is not mandatory.

1. Pending General Order that the communication concerned: LA Board Draft CII Permit

2. Name, title and contact information of person completing this form:
   Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act. Dawn Koepke, Partner, MKP 916/930-1993 dkoepke@mchughgr.com

3. Date of meeting, phone call or other communication: January 30, 2024

   Time: 11 a.m.

   Location: via Zoom

4. Type of communication (written, oral or both): written and oral

5. Names of all participants in the communication, including all board members who participated: see attachment/emailed

6. Name of person(s) who initiated the communication: Sarah Wiltfong, LA BizFed

7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*

   The attendees discussed concerns with the CII Stormwater Permit set to be adopted by the water board on February 22nd. The main topics discussed can be found in my clients' letters attached.

8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**

Participants

Name	Organization
David Nahai	Water Board
Dawn Koepke	MKP, McHugh Koepke Padron Government Relations
Jacqueline Moore	Pacific Merchant Shipping Association
Trini Jimenez	Watson Land Company
Christine Zimmerman	Western States Petroleum Association
Rob Spiegel	CA Manufacturers and Technology Association
Brenda Bass	California Chamber of Commerce
Silvia Shaw	Pacific Merchant Shipping Association
Skyler Wonnacott	CA Business Properties Association
Sarah Wiltfong	Los Angeles County Business Federation
Ramine Cromartie	Western States Petroleum Association

California Council for Environmental and Economic Balance
369 Pine Street, Suite 720, San Francisco, CA 94104
(415) 512-7890 | cceeb.org

Via Electronic Submission to: andrew.choi@waterboards.ca.gov

December 18, 2023

Andrew Choi
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013-2343

RE: Comment Letter – Revised Draft CII Permit

Dear Mr. Choi:

On behalf of the California Council for Environmental & Economic Balance (CCEEB), we appreciate the opportunity to provide the following comments on the Los Angeles Regional Water Quality Control Board's ("LA Regional Board" or "Board") revised draft Commercial, Industrial & Institutional Permit for the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed ("draft CII Permit" or "Permit").

CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

Overall Concern

Although the Permit is focused on the two designated watersheds, its impact will inevitably extend far beyond the watersheds it applies to under this Permit and could serve as a model for a statewide permit, or at least be precedent setting relative to its provisions. If the State is not aligned with the Board's requirements in this Permit then later efforts on a statewide permit will be out of sync from a statewide perspective. This permit can even lead to conflicts for those in the Los Angeles region relative to those impacted on a statewide basis. This could then lead to different permits on a regional basis. If the Board then elects to opt into the statewide permit program, industrial permittees would have then spent money on requirements which may no longer be in place, and any agreements under Compliance Option 1 would need to be re-negotiated. In this regard, CCEEB urges the Board to engage with and seek feedback from the State Water Board on the Permit provisions after the opportunity to review the comments submitted. The State Water Board should have a role in providing technical feedback to ensure consistency and continuity for this Permit, impacts on those already covered by the Industrial General Permit and individual NPDES permits, and any potential future CII Permit.

Compliance Options

In reviewing this section, it appears there may be an error in the text. In this regard, CCEEB respectfully suggests making the following correction to ensure the language applies to Compliance Option 1 rather than reference to Compliance Option 3.

> 8.1.3. Dischargers selecting and in compliance with ~~Compliance Option 3~~ *Compliance Option 1* shall be deemed in Compliance with the water quality based effluent limitations established in section 7.2 of this Order.

Overall, CCEEB believes Compliance Option 1 will most likely be the option of choice by many regulated entities covered by the Permit and who may have multiple outfall compliance locations. This approach is, however, not clearly laid out and several financial, legal, and administrative issues remains. Some issues include:

- Are the watershed management groups legal entities who can legally enter into contracts with CII Permit holders for payments?
- What are the checks and balances to ensure that funding provided is spent properly?
- How and when can a company entering into such an agreement see the estimated cost of joining as compared to pursuing Options 2 or 3 prior to declaring which option they elect to join?
- Who is held responsible for noncompliance with the actions specified in the agreement?
- What are the commitment mechanisms so that a company can control the costs they may be charged?
- What are the estimate of volumes and locations of these projects so that it can be seen as a viable option?

CCEEB urges the Board to provide further clarity and detail the process and elements associated with this Compliance Option and the Watershed Management Groups as a whole prior to adoption of this Permit. Alternatively, the Permit should specify that it is not to take effect until such agreements are established in guidance or regulation and a formal process in established for those subject to the Permit.

As it relates to Compliance Option 2, CCEEB is concerned with the following characterization:

> *"The Discharger may include BMPs that capture and divert the required stormwater runoff volumes to a publicly-owned sanitary sewer treatment facility, to an on-site facility for on-site use, to a regional reclaimed water distribution system, or a combination thereof. Proposed discharges to a publicly-owned sanitary sewer or reclaimed water distribution system shall be supported by a permit or by authorization in writing from the system's agency that specifically allows the proposed stormwater flow rates"*

These options are limited at best for a few selected CII permittees. With the hydraulic loading that occurs during rain events at the various POTWS, it is highly unlikely they

would be amenable or even capable of increasing the volume of influent going to their systems in wet weather flows.

CCEEB and its members are also concerned that the "onsite" use option reference is also infeasible for most CII users due to both land availability onsite and the resources needed to manage such a system. Unanticipated consequences such as the creation of habitats that can increase the populations of mosquitos, invasive species, and other issues make this option infeasible for most. The third example such as connecting to a reclaimed water distribution system may be viable in the future, but there are currently limited opportunities at this point in time.

In this regard, the Board should consider working with POTWs to develop a process to guide the acceptance of stormwater run-off prior to the Permit being implemented. This process should include a volume the POTWS are willing and able to accept and a smooth process to ensure CII Permit users understand the process, cost, and effluent limits they must meet.

Acronyms & Definitions

While we appreciate the Board providing clarity regarding what the draft CII Permit considers "impervious surface" and "imperviousness," CCEEB and its members are highly concerned with the new definitions on page A-10 that include "gravel roads." This is particularly important for sites that may have utility, pipelines or rail lines coming to/from facility properties that are considered "contiguous" and that may have gravel surfaces upon which they rest. The language does not provide any consideration for the compaction of the gravel surfaces where it still allows for absorption or infiltration.

Further, if this definition remains in place, it will have many unanticipated consequences. While some engineered gravel roads with clay bases may be considered impervious, not all gravel roads are impervious. Many roads are simple gravel placed on top of soil so as to provide some level of stability for the travelers, eliminate vegetation, and to work as a pathway in which way to travel. Not all roadways used for heavy traffic and a differentiation must be made.

Additionally, there is a lack of definition when using the term "compacted soil." The lack of clarity as to what constitutes "compacted soil" is of concern as it could result in inconsistent interpretation by inspectors to determine what is compacted. Some may believe that any soil that is levelled such as dirt pathways could be considered compacted. The absence of clarity on this point may also result in unattended consequences, such as:

Examples of Consequences

- Inclusion of firebreaks as impervious surfaces. Fire codes dictated that areas around roadways, buildings and structures that are in or nearby fire zones are to have cleared setbacks to prevent damage during wildfires. Landowners are required to establish setbacks per Fire Marshall requirements. Under this definition, the use of fire preventive measures such as the placement of gravel or

even cutting of vegetation back using mechanical equipment can be considered areas subject to calculation under the Permit.

- Trails, firebreak roads, other seldom used pathways – There are numerous examples of areas where seldom used trails and roadways are either graveled to reduce erosion, dust, or to minimize maintenance. These would be found in more rural areas and may include local farms, nurseries, timber harvesting, emergency access roads, hiking trails and more. All of these would be potentially subject to coverage if this permit is used as a model under a statewide CII permit.
- Gravel surfaces can also be considered a best management practice (BMP). A number of handbooks and manuals for stormwater management reference gravel surfaces as BMPs such that their use for capturing and minimizing pollutant loading would not be considered an option to assist with the various compliance obligations.

In general, these definitions may bring sites and acreage into the Permit which would not normally be included, and unnecessarily expand the areas needing management including BMPs. This may also have significant impacts to more rural areas not only in the affected Permit region, but also if adopted on a statewide basis in the future. Failure to address these issues can also have implications for other permits including IGP and individual NPDES permits in the relevant region under the Permit, as well as precedent statewide.

To this end, CCEEB urges the Board to clarify that surface area for the purpose of utility, pipelines and rail lines that are not asphalt or concrete-paved and allow for absorption or infiltration do not count towards nor are subject to a facility's 5-acre threshold scope for draft CII Permit coverage. Additionally, CCEEB urges the Board to remove "gravel roads" and "compacted soils" from the definitions.

Similarly, CCEEB urges the Board to consider the need for additional clarification as it pertains to easements. Easements are issued for a variety of reasons, and are different than leasing out a property by the owner to a tenant. One type of use for easements is granting access for power lines by utilities. These areas are kept free of vegetation and structure and may also be graveled or compacted. There are other cases where right of ways for private roads, access to trails, and more are done through easements between landowners and various groups which may include nonprofits. This relationship raises questions, as follows:

- Would the owner of the land need to obtain the Permit even though they may not have control of the activity?
- How would land use codes which are used to assess who may be subject to the Permit be based? By land owner designation or the use of the property? This can work both as a detriment both ways. For example, a piece of land designated under land use code as open space, but used for other activities under an access agreement may not be subject to the Permit, but a piece of property that has no activity on it but designated by a land use code subject to the Permit would be subject to it.

Given this lack of clarity and the potential implications, CCEEB urges land in the affected watersheds covered by easements to be explicitly removed from the Permit scope and

requirements. Only land owned and operation by the property owner or leased to another user be included. Land leased to a tenant should be the responsibility of the tenant to meet Permit conditions and requirements if they lease 5 acres or more, irrespective of if the parcel owned by the land owner is 5 acres or greater. Further, areas that have utility, pipelines, and rail lines that are considered "rights of way" or "easements" should also be explicitly exempted from scope for draft CII Permit coverage and compliance obligations.

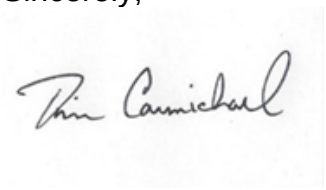
Monitoring & Reporting Program

For many dischargers, the draft CII Permit's monitoring and sampling obligations will be challenging given in many cases the newly covered areas do not have single outfall spots. It also raises the question as to whether the non-industrial areas on a site should be considered 24-hour operating facilities. We support the exceptions to sampling collection and visual observations in Section 2.2.5.1. regarding facility operating hours, but this is complicated by the multitude of outfalls in areas of a site like a parking lot and whether any activity would constitute a round-the-clock sampling and observation obligation.

CCEEB urges the Board to address this issue and clarify the process, timeline, and obligations. Additionally, we urge the Board to provide flexibility for required sampling and monitoring at these sites that are much more complicated. One such approach may include a regional monitoring approach rather than individual combined monitoring. This would be consistent with the overarching intent of Compliance Option 1 that is also focused on a regional approach to managing stormwater and non-stormwater discharges.

CCEEB and its members appreciate your consideration of these comments and suggested revisions. If you have any questions or wish to discuss the content of the letter further, please contact CCEEB's Water, Chemistry & Waste Project Manager Dawn Koepke with McHugh Koepke Padron at (916) 606-5309 or dkoepke@mchughgr.com. Thank you.

Sincerely,



Tim Carmichael
President

Cc: Members, CCEEB Water, Chemistry & Waste Project
Members, CCEEB Water Quality Task Force
Jerry Secundy, The Secundy Group
Susan Paulsen, Exponent

Ramine Cromartie
Senior Manager, Southern California Region

December 18, 2023

Andrew Choi Via e-mail at: andrew.choi@waterboards.ca.gov
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013-2343

Re: Comment Letter – Revised Draft CII Permit

Dear Mr. Choi:

On behalf of the Western States Petroleum Association (WSPA), we appreciate the opportunity to provide the following comments on the Los Angeles Regional Water Quality Control Board's ("LA Regional Board" or "Board") revised draft Commercial, Industrial & Institutional Permit for the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed ("draft CII Permit" or "Permit").

WSPA is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, renewable fuels, and other energy supplies in five western states including California.

Section 3.1.2. Applicability

While WSPA appreciates the Board's acceptance of an individual NPDES permit with more specific requirements and that covers the discharges under the Permit in lieu of requiring a CII Permit, we are concerned that the language has been revised to require the individual NPDES permit to be more *stringent*. It is unclear why an individual NPDES would be required to be more stringent than the requirements associated with the draft CII Permit. The individual NPDES permit should be at least as stringent as the draft CII Permit, but not be required in every case to be more stringent as the language provides.

What is the rationale and authority for requiring the individual NPDES permit to be more stringent?

Section 8.1.3. Compliance Option 1

WSPA respectfully suggests a correction needs to be made to the language in this section to ensure it applies to Compliance Option 1 rather than the error that cites to Compliance Option 3.

> 8.1.3. Dischargers selecting and in compliance with ~~Compliance Option 3~~ *Compliance Option 1* shall be deemed in Compliance with the water quality based effluent limitations established in section 7.2 of this Order.

Additionally, it would be helpful for the Water Boards to provide guidance and examples of Local Watershed Agreements for Compliance Option 1 for the discharger community to review and evaluate.

Section 10.1.2.5. Standard Provisions

While no changes were incorporated in this section as part of the revisions to the draft CII Permit, WSPA respectfully requests the Board provide additional information and clarity as to what is intended. The language in this section is unclear and vague. While it seems to relate to the Climate Change Mitigation Plan requirements, which we are seeing on newly issued site specific NPDES permits, additional information and clarity on what is required would be helpful.

Attachment A – Acronyms & Definitions

While we appreciate the Board providing clarity regarding what the draft CII Permit considers "impervious surface" and "imperviousness," we have concerns with the new definitions on page A-10 that include "gravel roads." This is particularly important for facilities that may have pipelines or rail lines coming to/from facility properties that are considered "contiguous" and that may have gravel surfaces upon which they rest. The language does not provide any consideration for the compaction of the gravel surfaces where it still allows for absorption or infiltration.

Further, gravel increases storm water percolation by slowing water velocity and reduces erosion and sedimentation. As most water compliance specialists know, attached to these soil particles are various pollutants from industrial activity or airborne deposition. Various stormwater management handbooks including those prepared by organizations like the California Stormwater Quality Association (CASQA) include manuals, both construction and industrial as well as commercial guidance that considers gravel a best management practice (BMP). In this regard, it is unclear why the Board would consider this impervious for the purpose of regulation via the Permit much less what justification would warrant such a decision.

In this regard, WSPA strongly urges the LA Regional Board to clarify that surface area for the purpose of pipelines and rail lines that are not asphalt or concrete-paved and allow for absorption or infiltration do not count towards nor are subject to a facility's 5-acre threshold scope for draft CII Permit coverage. Similarly, areas that have pipelines, rail lines, and utilities that are considered "rights of way" or "easements" should not be in scope for draft CII Permit coverage and compliance obligations.

Attachment E – Monitoring & Reporting Program

Like the Industrial General Permit (IGP), the draft CII Permit requires sampling within four hours of discharge. It is unclear, however, how a discharger can or should determine the start of discharge from the non-industrial areas at a site. Unlike industrial outfalls covered

by the IGP, non-industrial portions of a site (e.g. parking lots) do not have valves or singular discharge points. In this regard, there is a lack of clarity as to whether the non-industrial areas should be considered 24-hour operating facilities. We support the exceptions to sampling collection and visual observations in Section 2.2.5.1. regarding facility operating hours, but this is complicated by the multitude of outfalls in areas of a site like a parking lot and whether any activity would constitute a round-the-clock sampling and observation obligation.

WSPA urges the Board to address this issue and clarify the process, timeline and obligations. Additionally, we urge the Board to provide flexibility for dischargers and the required sampling and monitoring at these sites that are more complicated. One such approach may include a regional monitoring approach rather than individual combined monitoring. This would be consistent with the overarching intent of Compliance Option 1 that is also focused on a regional approach to managing stormwater and non-stormwater discharges.

Finally, regarding the Species Sensitivity Screening described in Section 5.4, it is unclear if is required of all dischargers covered by the draft CII Permit. It would be helpful to ensure clarity for compliance purposes who is subject to this requirement.

In conclusion, we thank you for the opportunity to comment and urge the LA Regional Board to provide further clarity of scope and applicability as well as revise the provisions of the draft CII Permit further to address these concerns. If you have questions or wish to discuss further, please do not hesitate to contact me at (310) 808-2146 or via email at rcromartie@wspa.org.

Sincerely,

Ramiro Comate

Cc: Patty Senecal, WSPA
Christine Zimmerman, WSPA

December 18, 2023
Via Electronic Mail Only

Andrew Choi
Los Angeles Regional Water Quality Control Board
320 W. 4th Street. Suite 200
Los Angeles, CA 90013-2343
andrew.choi@waterboards.ca.gov

Martha Guzman
Regional Administrator
US- EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Comment Letter – PROPOSED ISSUANCE OF WASTE DISCHARGE REQUIREMENTS AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR COMMERCIAL, INDUSTRIAL, AND INSTITUTIONAL FACILITIES IN THE DOMINGUEZ CHANNEL/GREATER LOS ANGELES AND LONG BEACH HARBOR WATERSHED AND THE LOS CERRITOS CHANNEL/ALAMITOS BAY WATERSHED AND REQUEST FOR PRELIMINARY DESIGNATION OF CERTAIN COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL STORMWATER DISCHARGES IN THE ALAMITOS BAY/LOS CERRITOS CHANNEL WATERSHED AND THE DOMINGUEZ CHANNEL AND LOS ANGELES/LONG BEACH INNER HARBOR WATERSHED IN LOS ANGELES COUNTY BY US EPA REGION IX

Dear Mr. Choi and Ms. Guzman:

The California Chamber of Commerce, California Business Properties Association, and the undersigned organizations appreciate the opportunity to provide comments on this proceeding.

We submit these written comments in response to the “the Notice of Opportunity for Public Comment, Staff Workshop and Public Hearings on a tentative General National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for 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 (Draft CII Permit). This letter pertains to the Revised Draft CII Permit.

The Draft CII Permit creates unacceptable housing impacts as currently written. In addition, Compliance Option 1 should be expanded to clarify site eligibility and provide a means to avoid significant business operation impacts associated with the retrofit of existing CII facilities to confirm with Compliance Options 2 and 3.

Impacts to Regional Housing Needs

California is suffering from a housing crisis concerning both supply and affordability. Senate Bill 330 was adopted in 2019 to help address these issues. The SB 330 legislative fact sheet states:

> California is experiencing an extreme housing crisis. Rent and purchase prices have skyrocketed, super commutes are normal, and increasing numbers of Californians, who can no longer afford the cost of housing, are living in their cars or on the streets.

The fact sheet further goes on to state, "With just a few years as an exception, annual housing construction in the state has not kept pace with population and job growth since the 1970s." The fact sheet focuses particularly on the development of multifamily housing, "the cost of building a single unit of housing in a multi-unit complex climbed from $265,000 in 2000 to $425,000 in 2016 – a 60 percent increase." In the context of California's housing crisis, measures that significantly impact the cost of delivering additional housing, particularly affordable housing, and constraining the land available for residential development will exacerbate the State's housing issues.

As part of a jurisdiction's General Plan, California State law requires the adoption of a Housing Element to identify and address the community's housing needs. Unlike the General Plan, however, the Housing Element must be updated every eight years to reflect changing conditions, community objectives, and goals.

The City of Carson of one of the cities affected by the Draft CII permit. The Carson Housing Element states:

> Carson is nearly entirely developed and there are few vacant sites available for residential development. Generally, non-vacant sites in Carson do not contain historic buildings and are characterized by cheaper structures with high redevelopment potential. The City has a significant track record in encouraging and assisting infill development projects….In particular, the City has successfully converted gas stations, strip malls, and underutilized retail or commercial uses.

The City of Carson acknowledges that the conversion of commercial properties into housing sites is a key mechanism for reaching its housing goals. The constraints to residential development outlined in the Carson Housing Element are common to all the affected cities in the Draft CII Permit area. All the cities are nearly entirely developed with little to no free land for new housing developments.

As currently drafted, the Draft CII Permit would constrain housing by including new and existing mixed-use properties greater than five acres as subject to the CII Permit. EPA's Revisions to the 2022 Preliminary designation states: "For purposes of the designation of CII parcels, designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. See Appendix 4 for additional information concerning land use codes." Per the County of Los Angeles Real Property Handbook on page 6 and attached to the EPA designation: "Improved properties with both commercial and residential

use are coded "1210" if each use is represented by a significant improvement value". Thus, a CII property that is converted to mixed-use remains subject to the CII or an existing mixed-use property greater than five acres would be subject to CII based on this analysis.

As currently drafted, many of the sites that would qualify for the Draft CII Permit would be obligated to utilize Compliance Option 2 or Compliance Option 3, as there are not sufficient regional projects for all the affected properties in the watersheds to fund. Compliance Options 2 and 3 would both require significant site infrastructure with potentially significant physical footprints. The infrastructure footprints would be largely dictated by existing site drainage patterns which cannot typically be altered on existing sites. The placement of additional infrastructure on CII sites will significantly limit the ability to plan and construct housing on CII sites that are already partially developed with housing or are eligible to be partially developed or redeveloped with housing in the affected Draft CII Permit communities. The obligation to treat the runoff from commercial uses within mixed-use sites will reduce the already scarce land available for residential development. When endeavoring to redevelop commercial property with a mix of uses, it is critical to maintain site planning flexibility. Compliance Options 2 and 3 would require permanent stormwater infrastructure, likely located at the existing discharge points. This infrastructure could come into direct conflict with residential development footprints under consideration.

The Draft CII Permit addresses housing development needs through a California Water Code section 13241 analysis. The Permit claims that the beneficial reuse and infiltration of stormwater would better secure water supplies and encourage future housing development. Most of the Draft CII Permit area is served by West Basin Municipal Water District, a water wholesaler that supplies several retail water districts in the area. The District authored a 2020 Urban Water Management Plan (UWMP) that:

> Provides the Department of Water Resources (DWR) with a detailed summary of present and future water resources and demands within West Basin's service area. It also assesses West Basin's water resource needs. Specifically, the UWMP provides water supply planning for a 25-year planning period in five-year increments and identifies water supplies needed to meet existing and future demands. The demand analysis identifies supply reliability under three hydrologic or rainfall conditions: an average (or normal) year, a single-dry year, and multiple-dry years.

The UWMP then goes on to state:

> West Basin projects to have sufficient supplies to meet demands under normal year supply and demand conditions as well as single-dry year conditions. West Basin also projects sufficient supplies to meet projected demands in multiple-dry years due to its diversified supply and conservation measures and Metropolitan's supply reliability investments. As a result, there are no anticipated shortages under the single-dry year or multiple-dry year scenarios, and West Basin service area demands are assumed to be unconstrained in each reliability scenario.

The water wholesaler for the majority of the Draft CII Permit area has confirmed a reliable water supply through 2045, accounting for multiple drought years in its modeling. Water supply is not the constraint to housing development in the Draft CII Permit area, the lack of available land is.

Based on the potentially significant housing impacts due to the Draft CII Permit, the Board should exempt the following sites from the Draft CII Permit:

1. All existing sites with mixed-use SIC codes that include residential in the mix of uses;
2. All sites with zoning or general plan designations that allow residential and/or mixed-use development and/or redevelopment;
3. All sites located in planning areas within specific plans that allow housing and/or mixed-use development and/or redevelopment;
4. Sites located within zoning overlays that allow housing and/or mixed-use development and/or redevelopment.
5. Sites listed as housing opportunity sites in a city or county housing element.

Clarification of Compliance Option 1 to Prevent Business Disruption

The Draft CII Permit outlines the process for entering into a legally binding agreement with the applicable local Watershed Management Group to fund or partially fund a downstream regional project. In the absence of downstream regional projects, the Watershed Management Group may identify an upstream project.

As of the time of the permit, only a select number of regional projects have been identified by the relevant Watershed Management Groups. Given the short timeline to comply with the Draft CII Permit, two years, it is likely that many CII sites would be forced into compliance options 2 and 3.

Collectively, Compliance Options 2 and 3 offer the following compliance design options; typical constraints and challenges associated with these measures are listed below:

- Option 2: Infiltration of the 85th percentile 24-hour storm event. Soil type and areas of soil contamination will limit the feasibility of infiltration throughout Draft CII Permit areas. Owners have little to no control over the feasibility of infiltration. Those owners who can retrofit a site with infiltration systems will experience significant construction timelines that materially interfere with the business operation of CII sites. Site access and parking would be affected for significant amounts of time due to the significant physical footprints required for infiltration; this would result in business revenue losses in addition to the costs of implementation.
- Option 2: Evapotranspiration of the 85th percentile 24-hour storm event. There will be few, if any evapotranspiration opportunities due to standing water and vector control issues associated with standing water.
- Option 2: Capture and reuse of the 85th percentile 24-hour storm event. Typical CII sites are highly impervious and do not have adequate landscape coverage to disperse the 85th percentile runoff as irrigation in a reasonable timeframe. Some sites are already irrigated with reclaimed water. Site capture and reuse, similar to site infiltration, will materially interfere with business operations and result in business revenue losses in addition to the costs of implementation due to site impacts during construction. Retrofit of building plumbing systems for capture and reuse of stormwater would require an overhaul of building plumbing systems, leading to potential partial or even full building closures. Building closures would cause significant business revenue losses.
- Option 3: Discharge of 85th percentile 24-hour storm event runoff treated to numerical effluent limits with monitoring and reporting requirements. There is a lack of currently commercially viable treatment systems that can treat the volumes of stormwater generated by CII sites to the level prescribed in the Draft CII Permit. Such systems would likely have a storage component and potentially complex mechanical systems and filtration systems. The storage component would cause similar temporary business

disruptions during construction as infiltration systems and capture and reuse systems would vary due to footprint size. In addition, the filtration systems would likely consist of above-ground components that would have permanent impacts on site access, circulation, and parking. The obligation of CII owners to monitor and maintain potentially complex systems is a significant burden and creates an increased risk of system failure due to the lack of CII owner expertise in the maintenance and operation of advanced stormwater filtration facilities.

Many CII sites are operated by a single maintenance and operating entity that serves multiple owners. The operating entity is oftentimes established in a Covenants, Conditions, and Restrictions (CC&R) document or a Reciprocal Easement and Operating Agreement (REOA). These documents also typically set forth to access, park, place utilities, and drain stormwater across property lines and for an operating entity to operate and maintain those systems. Drainage across property lines in multiple-ownership sites is particularly common and the collection of stormwater is oftentimes not on a parcel-by-parcel basis. CC&Rs and REOAs have mechanisms for addressing and assessing maintenance costs with multiple owners; however, they do not typically have mechanisms for the funding of retrofits to common facilities for unanticipated code changes. These documents will require renegotiation in many cases on multiple ownership sites under common maintenance if CII facilities are compelled to pursue Compliance Option 2 or 3. The renegotiation process can be quite lengthy and costly, and the Draft CII Permit only allows 2 years to demonstrate compliance.

CII sites under multiple ownership may have a property owner that opts to fund off-site projects under Compliance Option 1 but the property drains to an adjacent parcel under common maintenance. No clarity or provision in the Draft CII Permit addresses the incremental drainage from a property that has already paid a fee for an off-site project. There is typically no feasible way to isolate drainage on a parcel-by-parcel basis on multi-parcel sites under common maintenance and operation. In addition, many CII sites utilize triple-net leasing that passes through maintenance and compliance costs to tenants. For retrofits as part of Compliance Options 2 and 3, triple net lessors may have retrofit costs passed through from the owner.

The Draft CII Permit also does not consider the potential impact on food security in the permit area. Many of the listed CII sites include grocery stores and other businesses that sell fresh food. The USDA maintains a database of areas that are poorly served by grocery retailers. A map of the food desert areas in the South Bay area is attached to this letter. There are significant food deserts throughout both Draft CII permit watersheds, and implementation of Compliance Options 2 and 3 could further reduce the access to food due to temporary constriction site impacts and permanent site impacts.

Given the myriad challenges and impacts of implementing Compliance Options 2 and 3, the applicability of Compliance Option 1 should be expanded to include all CII properties covered under the Draft CII Permit. In essence, a region-wide fund could be established that permittees could pay into if they choose Compliance Option 1. These funds could then be funneled to the Watershed Management Groups would result in professionally designed and professionally managed stormwater projects that would have lower chances for failure due to improper design or maintenance. If no projects were available to fund, the Compliance Option 1 funding could help to identify more high-benefit regional projects and then fund them once identified.

In addition to the availability of viable projects to fund under Compliance Option 1, a second key question is cost. How much will it cost for owners or operators to participate in this compliance option? This question is critical for businesses of all sizes, but especially for small businesses that simply happen to have a footprint in excess of 5 acres. Pooling permittee contributions across the watersheds may allow for fees per facility to be much lower, while still achieving meaningful water quality improvements through regional projects. In addition, the Board should consider fee reduction or other cost-conscious measures to help ensure that small businesses can comply with the Draft CII Permit without going out of business.

The Dominguez EWMP and Los Cerritos WMP have published funding requirements for their respective implementations. Per the Los Cerritos Channel WMP:

> For cost estimation purposes, this WMP initially assumes that the Watershed could ultimately require the capacity to capture and infiltrate or use 592 AF of water. This estimate is based on the Reasonable Assurance Analysis performed to demonstrate that the activities and control measures proposed in this WMP will achieve compliance with applicable compliance deadlines during the permit term. Based on cost estimates for constructing underground compact concrete stormwater capture facilities with a capacity of eight acre-feet, such a requirement could cost $332 million for construction of these facilities between now and September 30, 2026. This represents an average cost of $18,745 per acre.

For instance, a few WMPs have cost estimates for their respective projects. The Dominguez Channel Watershed EWMP identifies a capital cost of $1,249,637,410 to implement the EWMP over its 50,857 acres. This simplifies to a per acre cost of $24,572.

It is crucial that Compliance Option 1 be a real option for permittees to choose. It must be both affordable and available for permittees, regardless of their location within a watershed. In addition, the Board should consider a change to the permit that allows a fee paid under the Draft CII Permit to constitute compliance with the Permit through Compliance Option 1 and run with the land in perpetuity.

Definition of "Discharger" Still Needs Clarity

The Draft CII Permit attempts to reduce some of the lack of clarity regarding who is responsible for obtaining permit coverage: the owner or the operator. However, the definition still makes compliance confusing for property owners, particularly of multi-tenant properties. This creates significant compliance hurdles, because oftentimes a property owner does not have the kind of immediate access to a facility that would be required for sampling storm events, for example. Similarly, many lease agreements limit an owner's ability to do certain things, like implement BMPs and inspect. Furthermore, an owner may be unaware of storm events, especially if the owner is not local to the property.

These are questions with legal implications and the definition of "discharger" should be refined to more clearly delineate who bears the responsibility to obtain permit coverage, particularly given that physical access to a property is not the same between an owner and operator.

Applicability to Other NPDES Permittees

Given the diversity of sectors that would be impacted by the Draft CII Permit, including those in the manufacturing sector who may already be covered by an individual NPDES permit, we

appreciate the revisions that ensure an individual NPDES permit may be sufficient to be considered compliant with the draft Permit. However, we must raise issue and concerns with the language that requires those with an individual NPDES permit with more specific requirements and that covers the discharges under the Permit in lieu of requiring a CII Permit to also ensure the individual NPDES permit is more stringent. We object to such a provision that would require an individual NPDES permit that covers the discharges and provisions under the draft Permit to be more stringent than the Draft CII Permit's provisions. The Board has not explained or cited any authority as to why an individual NPDES would have to be more stringent than the requirements associated with the draft CII Permit. The individual NPDES permit should be at least as stringent as the draft CII Permit, but should not be required to be more stringent, as the language provides, in every case.

Additionally, we appreciated the flexibility the prior version of the draft Permit provided permittees who may already be covered by the statewide Industrial General Stormwater Permit (IGP) but who would also be in scope for the Draft CII Permit related to non-industrial portions of their facility. Unfortunately, the revisions remove the flexibility of a permittee to decide for itself whether it would be more efficient to maintain an IGP and the new Draft CII Permit for the portions of the site not covered by the IGP or if it would be more efficient to seek coverage for the entire property under the draft Permit. Much discussion has been had in the past few years across the Water Boards, especially at the State Water Resources Control Board, regarding the need to institute efficiencies wherever possible that do not compromise water quality and the environment. The removal of this flexibility seems to run counter to such efficiency. While additional refinements may be necessary to provide such flexibility in a manner that ensures protection of water quality and the environment within the provisions of state and federal requirements, it is an important and worthwhile exercise given the complexity and significant cost increases the Draft CII Permit will impose on permittees across all sectors.

Delayed Implementation is Critical for Compliance

As described above, it is clear that the Draft CII Permit has significant issues that must be addressed before it is adopted. Even if all of these issues are resolved, this permit represents a sea change in both stormwater regulation and commercial business operations. The Compliance Options each involve costs and risks, and thus must be fully evaluated by permittees. Accordingly, permittees need sufficient time before they must comply with the Draft CII Permit to ensure that they have an opportunity to achieve compliance. A delayed implementation beyond 2 years will help businesses understand their options and weigh the relative costs of the different compliance options. We request a delayed implementation of at least 5 years.

Thank you for your consideration of our comments. This issue is critical for each of our organizations and our respective members. We appreciate your attention to this matter.

If you have any questions about our this letter or would like to further discuss concerns, please contact Brenda Bass at the CalChamber (brenda.bass@calchamber.com; (916) 879-7904) or Skyler Wonnacott from California Business Properties Association (swonnacott@cbpa.com; 916-960-3951).

Thank you for your attention to our concerns.

Respectfully,

Brenda Bass
California Chamber of Commerce

Skyler Wonnacott
California Business Properties Association

On behalf of:
American Council of Engineering Companies
Building Owners and Managers Association of California
California Building Industry Association
California Business Roundtable
California Construction and Industrial Materials Association
California Manufacturers & Technology Association
California Retailers Association
Chemical Industry Council of California
NAIOP California Chapters
State of California Auto Dismantlers Association

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