

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of	:	
	:	
DISCHARGE OF STORMWATER	:	GENERAL PERMIT
ASSOCIATED WITH	:	DEP-PED-GP-014
INDUSTRIAL ACTIVITY	:	DECEMBER 18, 2009

MOTION FOR INTERVENING PARTY STATUS

TO: Kenneth M. Collette, Hearing Officer
Department of Environmental Protection
Office of Adjudications
79 Elm Street
Hartford, CT 06106-5127

INTRODUCTION

The Connecticut Business and Industry Association (“CBIA”) hereby requests intervening party status in the matter of the Department of Environmental Protection’s (“DEP”) proposed revisions to its General Permit for the Discharge of Stormwater Associated with Industrial Activity (“ISGP”).

CBIA understands that the opportunity to file for intervening party status is subject to the following limitations:

1. Only entities that are currently stakeholder parties in the ISGP proceedings may request intervening party status;
2. Petitioners must meet the Dec. 11 and Dec. 18 deadlines established by the hearing officer;
3. Petitioners must comply with applicable statutes and the DEP’s Rules of Practice; and
4. Motions must be based on “substantive changes to the permit made as a result of the public comment received during the hearing process.”

BASIS FOR CBIA's

1. Only entities that are currently stakeholder parties in the ISGP proceedings may request intervening party status

In response to DEP's Notice of Tentative Determination concerning the above referenced General Permit, published July 30, 2008, CBIA submitted a Request for Public Hearing to DEP Commissioner Gina McCarthy on Aug. 29, 2008. Since that time, CBIA has participated as a stakeholder party in the ISGP proceedings.

2. Petitioners must meet the Dec. 11 and Dec. 18 deadlines established by the hearing officer

CBIA understands, based on your Prehearing Conference Summary dated June 17, 2009 as well as your emails to all party stakeholders dated Nov. 19, Dec. 2 and Dec. 3, 2009, that CBIA and other party stakeholders had the opportunity by close of business on Dec. 11, 2009 to provide notice of intention file a motion for intervention and that such motions must be filed no later than the close of business on Dec. 18, 2009. CBIA submitted to the hearing officer and all stakeholder parties, via email, a notice of intent to file a motion for intervention on Dec. 11 at 4:19 p.m.

3. Petitioners must comply with applicable statutes and the DEP's Rules of Practice

CBIA meets the conditions of Conn. Gen. Stat. Sec. 4-177a and the DEP's Rules of Practice, because: 1) it is submitting this written petition to the agency and all stakeholder parties at least five days before the date of a hearing; and 2) the legal rights, duties or privileges of its members are specifically affected by the DEP's decision and latest recommended revisions (see Regulations of Connecticut State Agencies (RCSA) section 22a-3a-6(k); and 3) as an association, CBIA may represent the interests of its members who may be adversely affected by the proposed permit in this proceeding. See Connecticut Assoc. of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 502 A.2nd 743 (1986).

Further, CBIA filed proper and timely notice of its intent to file this petition and is, in fact, filing this petition consistent with the deadlines specified by the hearing officer as noted above.

CBIA is a not-for-profit professional trade association that represents the interests of thousands of businesses, small and large, across Connecticut including thousands of industrial facilities whose interests are directly and indirectly affected by the proposed changes to the ISGP.

CBIA seeks intervening party status because the legal rights, duties or privileges of its members may reasonably be expected to be affected by the decision in this proceeding. R.C.S.A. sect. 22a-3a-6(k). Specifically, the proposed language, terms and conditions for the proposed ISGP will directly affect and may adversely impact our members.

4. Motions must be based on “substantive changes to the permit made as a result of the public comment received during the hearing process.”

CBIA has identified 4 provisions in the latest (Oct. 29, 2009) ISGP we submit represent substantive changes that could have a direct or indirect impact on our members. They are the following (page references are based on the “redline” version of the ISGP issued by DEP):

Page 10 of 68, last paragraph of Section 3(b)(9): contains substantive changes restricting authorization under the general permit for new facilities located on an impaired water body (e.g. new or expanded businesses in Connecticut). Specifically, the section reads: “if an impairment exists for which an indicator or surrogate pollutant has not been designated but for which stormwater discharges are a potential cause, the industrial activity is not authorized by this general permit.”

This clause is a substantive change to the ISGP as it creates new limitations on applicability of the ISGP not articulated in previous versions. It is a concern to CBIA

because it could have direct and indirect impacts on our members by arbitrarily freezing the sighting or expansion of industrial activity along any water body segment designated as impaired by the DEP where the DEP does not know the nature of the impairment but deems that the impairment *may* be related to stormwater discharges.

Page 14 and 15 of 68, Sections 4(c)(2)(H) and 4(d): contains substantive changes to provisions regarding electronic submission and internet posting of stormwater prevention plans. The previous ISGP allowed facilities to submit or post their plan with omissions for “confidential business information” in a self-implementing fashion. By contrast, the latest draft states that facilities seeking to omit information from their plans must first submit the plan to the commissioner for written approval reflecting her agreement that information proposed to be omitted constitutes a “trade secret” or other exemption allowed under the state Freedom of Information Act.

Several member companies have expressed concern that sensitive business information, under the latest proposal, would have to be provided to a public agency where its confidentiality could be compromised. Further, some have indicated the ISGP is in direct conflict with regulations of the Federal Homeland Security Agency.

Page 19 of 68, Section 5(b)(9)(A): contains a substantive change as, for the first time, DEP is recommending language that would require secondary containment for, “tanks or containers utilized for the storage of liquid chemicals or for the collection, storage or treatment of waste water.” This could have costly ramifications for businesses and other entities with such waste water infrastructure at their facilities. This infrastructure is often very sizeable handling many thousands of gallons. They were generally not designed for secondary containment and providing such containment could be extremely expensive or possibly infeasible from an engineering and economic perspective.

Page 31 of 68, Section 5(e)(1)(B)(ii): contains a substantive change whereby the compliance “benchmark” for zinc is reduced from 0.3 mg/l to 0.160 mg/l. Zinc is present in natural soil at levels that typically range from 10-300 ppm. We understand

the average level of zinc in soil is 50 ppm. Companies will likely be faced with additional operating cost to prevent the migration of natural soil during rain storms. In many cases this cost will be unrelated to their actual storm water exposure from operations. Thereby placing an unnecessary and costly burden on Connecticut employers which does not relate to the use of a site. According to one laboratory's review of recent stormwater testing, changing the compliance benchmark to 0.16 ppm. could result in an approximately 20% increase in the number of facilities exceeding the zinc threshold and triggering additional compliance costs.

CONCLUSION:

Based on the foregoing, CBIA submits it has demonstrated compliance with the procedural, legal and other substantive requirements as defined by statute, regulation, the DEP's Rules of Practice and the hearing officer. CBIA therefore requests party status pursuant to C.G.S. section 4-177a and R.C.S.A. section 22a-3a-6(k) so that it may adequately protect its legal rights and that of its members.

CONNECTICUT BUSINESS AND
INDUSTRY ASSOCIATION



By

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