

EPA Releases 2020 Multi-Sector General Permit for Comment

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The U.S. Environmental Protection Agency (EPA) published for public comment its proposed [2020 National Pollutant Discharge Elimination System \(NPDES\) Multi-Sector General Permit \(MSGP\)](#), which authorizes stormwater discharges associated with industrial activity in areas where EPA is the NPDES permitting authority. Public comments are due May 1, 2020.

This newest version of EPA's MSGP incorporates a number of revisions since the 2015 MSGP was issued, driven in part by recommendations in a National Academies of Sciences, Engineering, and Medicine's National Research Council (NRC) study required by a 2016 [Settlement Agreement](#) that resolved a lawsuit arising out of the 2015 MSGP.

This permit will apply to facilities in jurisdictions where EPA is the permitting authority: Idaho, Massachusetts, New Hampshire, New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. Many of the remaining states model their MSGPs and industrial stormwater general permits on the federal permit and, historically, those states have considered and frequently adopted innovations in the federal permit. Therefore, one can expect states with NPDES industrial general permits modeled after the MSGP to incorporate revisions in the final 2020 MSGP, once those states consider their respective permits for renewal.

Background

Under the federal Clean Water Act (CWA), stormwater discharges "[associated with industrial activity](#)" require a NPDES permit, unless the facility qualifies for an exemption. There are two types of NPDES permits: general and individual. The MSGP allows facilities within jurisdictions where EPA is the permitting authority to apply for coverage under the MSGP rather than apply for an individual discharge permit. Once covered, the facility must comply with all MSGP terms.

The current MSGP expires on June 4, 2020, and the final 2020 MSGP will take effect following that

expiration. Facilities currently covered by the 2015 MSGP will need to reapply for coverage under the forthcoming 2020 MSGP.

Proposed MSGP Permit Changes

EPA has proposed a number of changes for the 2020 MSGP, many of which are intended to address the NRC study's recommendations. A summary of proposed changes follows.

- **Discharge authorization waiting period.** If an operator whose discharges were not previously covered by the 2015 MSGP submits a notice of intent for permit coverage and that operator is subject to a pending enforcement action (including a notice of intent to bring a suit citizen suit), EPA is proposing a 60-day discharge authorization waiting period. According to EPA, the waiting period will allow the agency to more adequately review an operator's stormwater control measures, Stormwater Pollution Prevention Plan, and permit eligibility. In the 2016 Settlement Agreement mentioned above, EPA only agreed to propose and solicit comments for a 30-day waiting period.
- **Public sign of permit coverage.** The proposed 2020 MSGP requires operators to post a sign confirming permit coverage in close proximity to their facilities.
- **Consideration of major storm control measure enhancements.** To address risks of potential discharges from major storm events and extreme flooding, the proposed 2020 MSGP would require that operators of facilities in areas with higher risks of major storm and extreme flooding events consider implementing enhanced stormwater control measures.
- **Monitoring changes.** EPA has proposed a universal benchmark monitoring requirement for pH, total suspended solids, and chemical oxygen demand that would apply to all facilities and sectors subject to the MSGP. EPA believes the monitoring would provide a baseline assessment to better understand "industrial stormwater risk, broader water quality problems, and stormwater control effectiveness across all sectors." In addition, the proposed 2020 MSGP would add new benchmark monitoring requirements for three sectors: Sector I (Oil and Gas Extraction), Sector P (Land Transportation and Warehousing), and Sector R (Ship and Boat Building and Repair Yards).
- **Additional implementation measures.** For benchmark monitoring exceedances, the proposed 2020 MSGP would require additional implementation measures through a three-tiered system. The tier level would correspond to the magnitude of the exceedance, and EPA would still retain exceptions for exceedances based on natural background sources.
- **Eligibility for stormwater discharges to a federal CERCLA site.** Under the 2015 MSGP, facilities in EPA Region 10 must notify the Regional Office prior to submitting a notice of intent for permit coverage if the facility discharges stormwater to sites that have undergone or are undergoing remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Region 10 then evaluates whether the facility has appropriate stormwater controls to prevent recontamination of the CERCLA site. EPA has requested comment on whether it should expand this permit eligibility criterion to all regions for the 2020 MSGP.
- **Revisions to sector-specific fact sheets.** EPA would update existing sector-specific fact sheets to account for emerging stormwater control measures.

- **Streamlining of permit.** In the proposed permit EPA proposes a number of changes that the agency believes will streamline and simplify permit language, including but not limited to reordering various sections, revising wording of eligibility requirements, and changing the use of passive to active voice.

The proposed changes have many implications for operators subject to the MSGP, and the proposed 60-day discharge authorization waiting period would have significant consequences for those operators whose discharges were not covered under the 2015 MSGP and that receive a notice of intent to bring a citizen suit. After filing a notice of intent to sue, citizens must wait 60 days before bringing suit, during which time an operator may be able to address and remedy the alleged violations. 33 U.S.C. § 1365(b). A 60-day discharge authorization waiting period would make it unfeasible for an operator to obtain permit coverage and thereby remedy any alleged violation for discharging without a permit prior to the filing of a citizen suit.

Public Comment

The draft MSGP and its associated [fact sheet](#) with supporting documentation is available for public comment through May 1, 2020. Interested persons may also request a public hearing on the proposed changes. Although a number of the above proposed changes directly result from the 2016 Settlement Agreement, the terms of the Settlement Agreement only require that EPA propose the changes—EPA is not obligated to include these changes in the final 2020 MSGP. EPA must consider and respond to all public comments before finalizing the MSGP. Facilities and trade associations impacted by the proposed changes may want to consider submitting public comments. For more information on, or assistance with, the public commenting process, please contact one of Beveridge & Diamond's [Water Practice Group](#) attorneys, including [Richard Davis](#), [Karen Hansen](#), [Andrew Sifton](#), [Allyn Stern](#), or [Tim Sullivan](#).

Implementation

The changes in EPA's proposed MSGP range from procedural to substantive. Once the permit takes effect, compliance with all final changes will be necessary. Failure to comply with the permit's requirements can result in enforcement actions and/or citizen suits. In addition to submitting comments, facilities affected by the new MSGP can also minimize liability exposure and risk by becoming familiar with, and where necessary preparing now for, the potential new requirements.

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