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6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OW-2019-0372; FRL-10019-29-OW]**

### **National Pollutant Discharge Elimination System (NPDES) 2021 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final permit issuance.

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**SUMMARY:** All 10 of the Environmental Protection Agency's (EPA) Regions are finalizing the 2021 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity, also referred to as the "2021 Multi-Sector General Permit (MSGP)" or the "final permit." This final permit replaces EPA's administratively continued 2015 MSGP that expired on June 3, 2020. EPA is issuing this permit for five (5) years to provide permit coverage to eligible operators in all areas of the country where EPA is the NPDES permitting authority, including Idaho (until July 1, 2021), Massachusetts, New Hampshire, New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. This **Federal Register** document summarizes the final permit. EPA encourages the public to read the final permit and accompanying fact sheet to better understand the final permit. The final permit and fact sheet can be found at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.

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**DATES:** The final permit becomes effective on March 1, 2021. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act (CWA) requirements in light of the expiration of the 2015 MSGP on June 3, 2020. In accordance with 40 CFR part 23, the 2021 MSGP shall be considered issued for the purpose of judicial review on **[insert date 14 days after date of publication in the *Federal Register*]**. Under CWA section 509(b), judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is issued. Under CWA section 509(b)(2), the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of a Notice of Intent (NOI) are provided in Part 1.3 of the 2021 MSGP. The 2021 MSGP also provides additional dates for compliance with the terms of the permit.

**FOR FURTHER INFORMATION CONTACT:** For further information on the final permit, contact the appropriate EPA Regional office listed in Section I.F of this document, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: 202-564-3324; email address: halter.emily@epa.gov.

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## **I. General Information**

*A. Does this action apply to me?*

The final permit covers stormwater discharges to waters of the United States from industrial facilities in the 30 sectors shown below:

Sector A—Timber Products.

Sector B—Paper and Allied Products Manufacturing.

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Sector C—Chemical and Allied Products Manufacturing.

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Sector T—Treatment Works.

Sector U—Food and Kindred Products.

Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.

Sector W—Furniture and Fixtures.

Sector X—Printing and Publishing.

Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing

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Industries.

Sector Z—Leather Tanning and Finishing.

Sector AA—Fabricated Metal Products.

Sector AB—Transportation Equipment, Industrial or Commercial Machinery.

Sector AC—Electronic, Electrical, Photographic and Optical Goods.

Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director.

Coverage under the final 2021 MSGP is available to operators of eligible facilities located in areas where the EPA is the CWA section 402 permitting authority. A list of eligible areas is included in Appendix C of the final 2021 MSGP.

*B. How can I get copies of these documents and other related information?*

1. Docket. EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2019-0372. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through [www.regulations.gov](http://www.regulations.gov). Out of an abundance of caution for members of the public and EPA staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. When the EPA Docket Center and Reading Room re-open, publicly available docket materials will be available in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water

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Docket is (202) 566-2426.

2. Electronic Access. Electronic versions of this final permit and accompanying fact sheet are available on the EPA's NPDES website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <https://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about the EPA's public docket, visit the Agency's Docket Center homepage at <https://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

*C. Who are the EPA regional contacts for the final permit?*

For the EPA Region 1, contact David Gray at: (617) 918-1577 or [gray.davidj@epa.gov](mailto:gray.davidj@epa.gov).

For the EPA Region 2, contact Stephen Venezia at: (212) 637-3856 or [venezia.stephen@epa.gov](mailto:venezia.stephen@epa.gov), or for Puerto Rico contact Sergio Bosques at: (787) 977-5838 or [bosques.sergio@epa.gov](mailto:bosques.sergio@epa.gov).

For the EPA Region 3, contact Carissa Moncavage at: (215) 814-5798 or [moncavage.carissa@epa.gov](mailto:moncavage.carissa@epa.gov).

For the EPA Region 4, contact Mike Mitchell at: (404) 562-9303 or [mitchell.michael@epa.gov](mailto:mitchell.michael@epa.gov).

For the EPA Region 5, contact Andrea Schaller at: 312-886-0746 or [schaller.andrea@epa.gov](mailto:schaller.andrea@epa.gov).

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For the EPA Region 6, contact Nasim Jahan at: (214) 665–7522 or [jahan.nasim@epa.gov](mailto:jahan.nasim@epa.gov).

For the EPA Region 7, contact Mark Matthews at: (913) 551–7635 or [matthews.mark@epa.gov](mailto:matthews.mark@epa.gov).

For the EPA Region 8, contact Paul Garrison at: (303) 312-6016 or [garrison.paul@epa.gov](mailto:garrison.paul@epa.gov).

For the EPA Region 9, contact Eugene Bromley at: (415) 972–3510 or [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov).

For the EPA Region 10, contact Margaret McCauley at: (206) 553–1772 or [mccauley.margaret@epa.gov](mailto:mccauley.margaret@epa.gov).

## **II. Background of the Industrial Stormwater Program**

Section 405 of the Water Quality Act of 1987 added section 402(p) of the CWA, which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 48065. In that final regulation, EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). EPA issues the 2021 MSGP under this statutory and regulatory authority.

## **III. Summary of the 2021 MSGP**

The 2021 MSGP replaces the administratively continued 2015 MSGP, which was issued for a five-year term on June 4, 2015 and expired on June 3, 2020 (see 80 FR 34403). EPA proposed a new MSGP for a 90-day comment period from March 2 to June 1, 2020 (see 85 FR

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12288). Since the new MSGP was proposed in 2020, EPA hereinafter refers to the proposed permit of the 2021 MSGP as the “proposed 2020 MSGP.” EPA received 195 total comment letters and 1865 unique comments on the proposed 2020 MSGP. EPA considered the comments submitted as part of this public process when finalizing 2021 MSGP. Response to comments are discussed in detail in a separate document, titled “2021 MSGP Response to Comments,” which can be found in the docket (Docket ID No EPA-HQ-OW-2019-0372).

The 2021 MSGP covers stormwater discharges from industrial facilities in areas where EPA is the NPDES permitting authority in EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. This permit covers facilities in the state of Idaho until the transfer of NPDES Permitting Authority to Idaho for stormwater general permits on July 1, 2021. The geographic coverage of this permit is listed in Appendix C of the permit. This permit authorizes stormwater discharges from industrial facilities in 30 sectors, as shown in section I.A. of this document.

Like the 2015 MSGP, the 2021 MSGP is structured in nine parts: general requirements that apply to all facilities (i.e., eligibility requirements, effluent limitations, inspection and monitoring requirements, Stormwater Pollution Prevention Plan (SWPPP) requirements, and reporting and recordkeeping requirements) (Parts 1-7); industrial sector-specific conditions (Part 8); and state and tribal-specific requirements applicable to facilities located within individual states or Indian Country (Part 9). Additionally, the appendices provide the paper forms for the Notice of Intent (NOI), the Notice of Termination (NOT), the Conditional No Exposure Exclusion (also known as the No Exposure Certification or NEC), the Discharge Monitoring Report (DMR), and the Annual Report, as well as step-by-step procedures for determining eligibility with respect to protecting National Historic Preservation Act-protected properties and



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Endangered Species Act (ESA)-listed species and critical habitat, and for calculating site-specific, hardness-dependent benchmarks.

*A. 2015 MSGP Litigation and National Academies Study*

After the EPA issued the 2015 MSGP, numerous environmental non-governmental organizations (NGOs)<sup>1</sup> challenged the permit, two industry groups<sup>2</sup> intervened, and a Settlement Agreement was signed in 2016 with all parties. The settlement agreement did not affect the 2015 MSGP but stipulated several terms and conditions that EPA agreed to address in the proposed 2020 MSGP. One key term from the Settlement Agreement stipulated that EPA fund a study conducted by the National Academies of Sciences, Engineering, and Medicine’s National Research Council (NRC) on potential permit improvements, focused primarily on monitoring requirements, for consideration in the next MSGP. In the Settlement Agreement, EPA agreed that, when drafting the proposed 2020 MSGP, the Agency would consider the recommendations suggested in the completed NRC Study.

The NRC delivered the results of their study, *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges*, in February 2019. In Part III of the 2021 MSGP Fact Sheet, titled “The National Research Council (NRC) National Academies of Sciences (NAS) Industrial Stormwater Study,” EPA outlines in detail how the Agency considered each recommendation from the NRC study in the proposed permit and which proposed requirements informed by the NRC study the Agency finalized in the 2021 MSGP. The NRC study can be found at the following website: <https://www.nap.edu/catalog/25355/improving-the-epa-multi->

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<sup>1</sup> Environmental NGOs included Waterkeeper Alliance, Apalachicola Riverkeeper, Galveston Baykeeper, Raritan Baykeeper, Inc. d/b/a NY/NJ Baykeeper, Snake River Waterkeeper, Ecological Rights Foundation, Our Children’s Earth Foundation, Puget Soundkeeper, Lake Pend Oreille Waterkeeper, and Conservation Law Foundation (collectively, “Petitioners”).

<sup>2</sup> Industry intervenors included the Federal Water Quality Coalition and the Federal Storm Water Association.

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sector-general-permit-for-industrial-stormwater-discharges.

## B. *Summary of Significant Final Permit Changes from the 2015 MSGP*

The 2021 MSGP includes several new or modified requirements from the 2015 MSGP.

1. *Streamlining of permit.* EPA streamlined and simplified language throughout the final permit to present the requirements in a more clear and readable manner. Regarding the structure of the permit, Part 4 (Monitoring) was previously Part 6 in the 2015 MSGP; Part 5 (Corrective Actions and AIM) was previously Part 4 in the 2015 MSGP; and Part 6 (SWPPP) was previously Part 5 in the 2015 MSGP. Formatting the final permit in this new order (Monitoring, followed by Corrective Actions and AIM, then SWPPP requirements) provides the information in a sequential way as the latter parts often refer back to requirements in previous parts of the permit. This new structure should enhance understanding of and compliance with the permit's requirements. EPA also made a few additional edits to improve permit readability and clarity. EPA revised the wording of many eligibility requirements to be an affirmative expression of the requirement instead of assumed ineligibility unless a condition was met. For example, Part 1.1.6.2 reads "If you discharge to an 'impaired water'...you must do one of the following:". In comparison, the 2015 MSGP reads "If you are a new discharger or a new source...you are ineligible for coverage under this permit to discharge to an 'impaired water'...unless you do one of the following:". EPA also numbered permit conditions that were previously in bullet form to make it easier to follow and reference the permit conditions. Finally, the language of the final permit was changed from passive to active voice where appropriate (e.g., "Samples must be collected..." now reads "You must collect samples...").
2. *Public sign of permit coverage.* The 2021 MSGP includes a new requirement that operators

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must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility. This notice must include basic information about the facility (e.g., the NPDES ID number), information that informs the public on how to request the facility's Stormwater Pollution Prevention Plan (SWPPP), and how to contact the facility and EPA if stormwater pollution is observed in the discharge. This requirement will make the procedure for requesting a SWPPP easily understandable by the public and improve transparency of the process to report possible violations. Operators are not required to post a sign of their permit coverage where other laws or local ordinances prohibit such signage. See Part 1.3.5 of the permit and fact sheet.

3. *Consideration of stormwater control measure enhancements for major storm events.* The 2021 MSGP requires that operators consider implementing enhanced stormwater control measures for facilities that could be impacted by major storm events, such as hurricanes, storm surge, and flood events. EPA is not requiring operators to implement additional controls if the operator determines such controls to be unnecessary, but EPA is requiring operators to consider the benefits of selecting and designing control measures that reduce risks to their industrial facility and the potential impact of pollutants in stormwater discharges caused by major storm events. See Part 2.1.1 of the permit and fact sheet.

4. *Monitoring changes.*

- *Indicator monitoring for pH, TSS, and COD for subsectors without benchmark monitoring.* The 2021 MSGP includes a new provision that requires certain operators to conduct indicator analytical monitoring for three parameters - pH, Total Suspended Solids (TSS), and Chemical Oxygen Demand (COD) - quarterly for the duration of the permit. This requirement applies to all operators in the following subsectors that do not

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have sector-specific benchmark monitoring requirements in the 2021 MSGP: B2, C5, D2, E3, F5, I1, J3, L2, N2, O1, P1, R1, T1, U3, V1, W1, X1, Y2, Z1, AB1, AC1, and AD1.

Indicator monitoring is “report-only” and does not have a threshold or baseline value for comparison, therefore no follow-up action is triggered or required based on the sampling results. The requirement in Part 2.2.1 that the operator’s discharge be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards still applies. These three parameters will provide operators and EPA with a baseline and comparable understanding of industrial stormwater discharge quality, broader water quality problems, and stormwater control measure effectiveness at these facilities. See Part 4.2.1.1.a of the permit and fact sheet.

- *Indicator monitoring for polycyclic aromatic hydrocarbons (PAHs) for certain sectors/activities.* The 2021 MSGP includes a new provision that requires certain operators to conduct report-only indicator analytical monitoring for polycyclic aromatic hydrocarbons (PAHs) bi-annually (twice per year) during their first and fourth years of permit coverage. This requirement applies to the following operators: operators in all sectors with stormwater discharges from paved surfaces that will be sealed or re-sealed with coal-tar sealcoat where industrial activities are located during coverage under this permit; operators in sectors A (facilities that manufacture, use, or store creosote or creosote-treated wood in areas that are exposed to precipitation), C (SIC Code 2911), D, F, H, I, M, O, P (SIC Codes 4011, 4013, and 5171), Q (SIC Code 4491), R, and S.

Indicator monitoring is “report-only” and does not have a threshold or baseline value for comparison, therefore no follow-up action is triggered or required based on the sampling results. The requirement in Part 2.2.1 that the operator’s discharge be controlled as

necessary such that the receiving water of the United States will meet applicable water quality standards still applies. EPA determined that the sectors and activities listed above are likely to have industrial activities with potential petroleum hydrocarbon exposure to precipitation that could result in the discharge of PAHs in stormwater based on a review of EPA's sector-specific fact sheets and a detailed literature review included in the docket (ID No EPA-HQ-OW-2019-0372). PAH monitoring data will provide operators and EPA with a baseline and comparable understanding of industrial stormwater discharge quality with respect to discharges of PAHs at these facilities. EPA plans to use the indicator monitoring data collected to conduct an initial quantitative assessment of the levels of PAHs in industrial stormwater, further identify industrial activities with the potential to discharge PAHs in stormwater, and inform future consideration of PAH benchmark monitoring for sectors with the potential to discharge PAHs in stormwater. See Part 4.2.1.1.b of the permit and fact sheet.

- *Updating the benchmark monitoring schedule.* The 2021 MSGP requires that applicable operators conduct benchmark monitoring quarterly in their first and fourth years of permit coverage. EPA reminds operators and the public that benchmark thresholds are not effluent limitations. This permit requires benchmark monitoring as gauge of the performance of facilities' stormwater control measures. Benchmark monitoring begins in the first full quarter of permit coverage for four quarters. In the 2015 MSGP, an operator that did not exceed the four-quarter annual average for a given parameter in the first four quarters of permit coverage could discontinue benchmark monitoring for that parameter for the remainder of the permit. Under the 2021 MSGP, an operator that does not exceed the four-quarter annual average for a given parameter in the first four quarters of permit

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coverage can now discontinue benchmark monitoring for that parameter for the next two years (i.e., the next eight quarters). Quarterly benchmark monitoring then resumes for all parameters for another four quarters in the fourth year of permit coverage, and if the operator does not exceed the four-quarter annual average for a given parameter, it can discontinue benchmark monitoring for that parameter for the remainder of their permit coverage. If, during either the first or fourth year of monitoring, the annual average for any parameter exceeds the benchmark threshold, the operator must comply with Part 5 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for four quarters until results indicate that annual average for the parameter(s) is no longer exceeded. Under the new schedule, regardless of when the operator discontinued monitoring for any benchmark parameter, monitoring resumes for all parameters for four quarters in the fourth year of permit coverage, unless the permit has already expired. It is possible that an operator with continued benchmark exceedances in years two and three of permit coverage will be required to continue monitoring through their second and third years of permit coverage. In the scenario where the operator receives results in their third year of permit coverage that the benchmark threshold is no longer exceeded, the operator is still required to monitor again in their fourth year of permit coverage.

The principle underpinning this schedule is that the relief period from benchmark monitoring between the first and fourth year decreases if benchmark exceedances continue and additional monitoring is required. During this time, operators may also be conducting continued benchmark monitoring in compliance with AIM for certain parameters that have ongoing exceedances. The extended benchmark monitoring

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schedule under the 2021 MSGP will ensure that operators have current data on their industrial stormwater discharges and stormwater control measure effectiveness throughout their permit coverage and will help identify potential adverse effects from modifications in facility operations and personnel over time. See Part 4.2.2.3 of the permit and fact sheet.

- *Updating benchmark values.* EPA updated the benchmark monitoring thresholds in the 2021 MSGP for aluminum, copper for discharges to freshwater, selenium for discharges to freshwater, and cadmium based on revised current CWA section 304(a) national recommended aquatic life water quality criteria and suspended the benchmark monitoring thresholds for magnesium and iron based on lack of documented acute toxicity. The 2021 MSGP also allows operators who exceed the revised benchmark thresholds for discharges to freshwater for aluminum and copper to demonstrate to EPA that their discharges do not result in an exceedance of a facility-specific value calculated by the operator using the national recommended water quality criteria multi-variable models in-lieu of the applicable 2021 MSGP benchmark threshold. See Parts 4.2.2 and 8 of the permit and fact sheet.

EPA also received some comments related to developing wet-weather criteria. At this time, EPA does not plan to develop wet-weather criteria as the Agency believes aquatic life water quality criteria are appropriate protective values for ambient waters and MSGP's benchmark thresholds. The Agency may consider the validity of exploring a wet-weather criteria approach in the future, however.

- *Additional Implementation Measures.* The 2021 MSGP includes revisions to the Additional Implementation Measures (AIM) requirements for benchmark monitoring

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exceedances that were included in the proposed 2020 MSGP. EPA revised these provisions to address concerns raised in public comments. Both the proposed 2020 MSGP and the final 2021 MSGP maintain a three-level structure of advancement and responses triggered by benchmark exceedances and keep follow-up actions clear, timely, and proportional to exceedance frequency and duration. The final 2021 MSGP AIM requirements reduce costs and complexity from the proposal by creating stepwise, sequential advancement through the AIM levels with clear “resetting” to baseline status if benchmark thresholds and responses are met within the required deadlines. EPA reminds operators and the public that benchmark thresholds are not effluent limitations. This permit requires benchmark monitoring as a gauge of the performance of facilities’ stormwater control measures. The other corrective action conditions, subsequent action deadlines, and documentation requirements in Part 5.1 remain the same as in the 2015 MSGP.

In Part 5.2, AIM is triggered by an exceedance of a benchmark monitoring parameter, which can occur from two “triggering events”: either an exceedance of the four-quarterly annual average for a parameter, or from fewer than four quarterly samples if a single sample or the sum of any sample results within the sampling year exceeds the benchmark threshold by more than four times for a parameter (this result indicates that an exceedance of the annual average is mathematically certain).

There are three AIM levels in the 2021 MSGP: AIM Level 1, Level 2, and Level 3. All operators subject to benchmark monitoring requirements begin in baseline status at the start of their permit coverage. An operator would progress linearly through the three AIM levels if an exceedance triggering event occurs and continues. If an exceedance



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triggering event occurs while in baseline status, an operator would enter AIM Level 1. If a triggering event occurs while in Level 1, an operator proceeds to AIM Level 2. If a triggering event occurs while in Level 2, an operator proceeds to AIM Level 3. The operator is required to respond with increasingly robust control measures and continued benchmark monitoring with each subsequent AIM level. The operator is “reset” to baseline status from any AIM level if benchmark thresholds and responses are met within the required deadlines.

After an exceedance triggering event occurs, an operator must continue quarterly monitoring for the parameter(s) that caused the AIM triggering event at all affected stormwater discharge points, until four additional quarters of monitoring do not result in an exceedance triggering event. The deadlines for implementing AIM responses remains the same as in the proposed permit for Levels 1 and 2 (within 14 days of receipt of lab results, unless infeasible, then within 45 days). The deadline for Level 3 has been extended to allow time for scheduling and completing installation of stormwater control measures (identify the schedule for installing controls within 14 days; install controls within 60 days, unless infeasible, then within 90 days). EPA may grant an extension to the specified deadlines for AIM Level 2 and AIM Level 3 based on an appropriate demonstration by the operator as outlined in Parts 5.2.4.2 (AIM Level 2 Deadlines) and 5.3.5.2 (AIM Level 3 Deadlines).

The following five exceptions to the AIM requirements are available for an exceedance triggering event at any AIM level: 1) natural background sources, 2) run-on, 3) a one-time abnormal event, 4) a demonstration that discharges of copper and aluminum do not result in an exceedance of facility-specific criteria using the national

recommended water quality criteria in-lieu of the applicable MSGP benchmark threshold, and 5) a demonstration that the benchmark exceedance does not result in any exceedance of an applicable water quality standard. AIM requirements increase regulatory certainty while ensuring that discharges are sufficiently controlled to protect water quality. See Part 5.2 of the permit and fact sheet.

- *Impaired waters monitoring.* Under the 2021 MSGP, operators discharging to impaired waters without an EPA-approved or -established total maximum daily load (TMDL) must complete annual monitoring for discharges of certain pollutants to impaired waters. Impaired waters monitoring begins in the first year of permit coverage, starting in the first full quarter of permit coverage. Monitoring is required for one year at each discharge point for all pollutants for which the waterbody is impaired, just as in the 2015 MSGP, after which the operator can discontinue monitoring for the next two years for any pollutant that is not detected. Annual monitoring must continue for any pollutant that is detected in the discharge. Required annual monitoring then resumes in the fourth year of permit coverage for one year for those pollutants that are both causing impairments and are associated with the industrial activity and/or are a required benchmark parameter for the operator's subsector(s), including any pollutant(s) for which the operator previously discontinued monitoring. After monitoring in the fourth year of permit coverage is completed, the operator can discontinue monitoring for the duration of their permit coverage for any pollutant that is not detected. Again, annual monitoring must continue for any pollutant that is detected in the stormwater discharge. For waters identified as impaired by acidity or heat, annual monitoring must continue where the measured pH or temperature exceeds the range of acceptable values assigned to the water consistent with

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applicable water quality standards. The extended impaired waters monitoring schedule under the 2021 MSGP will ensure that operators affirmatively determine in their first year of permit coverage that a parameter causing an impairment is not present at the facility before narrowing the list of monitored parameters in the fourth year. The updated schedule ensures operators periodically check on their potential contributions to impairments in their industrial stormwater discharges throughout their permit coverage. See Part 4.2.5.1.a of the permit and fact sheet.

### *C. Summary of Changes from Proposed 2020 MSGP*

After considering information and comments received, the following proposed requirements were either not finalized or have been modified in the 2021 MSGP relative to the proposed 2020 MSGP:

1. *Expanding the permit eligibility requirement for discharges to a federal CERCLA site beyond EPA Region 10.* EPA is limiting this eligibility criterion to MSGP facilities in EPA Region 10 states and Indian Country. EPA has extensive information that stormwater discharges are a source of CERCLA site recontamination in Region 10. EPA Region 10 has seen both the actual recontamination of Superfund Sites from stormwater discharge points and the potential for recontamination from source control information gathered at Superfund Sites not yet cleaned up. EPA adds in the 2021 MSGP that such facilities in Region 10 submit the required information to the EPA Regional Office in their NOI via the NPDES eReporting Tool (NeT) for the MSGP, which will be reviewed for 30 days prior to the standard 30-day review period for all NOIs.
2. *Adding an eligibility criterion regarding coal-tar sealcoat.* EPA is not finalizing the eligibility criterion regarding coal-tar sealcoat that was included in the proposed 2020

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MSGP. EPA is instead implementing a holistic activity-based approach for addressing discharges of PAHs in stormwater associated with industrial activity. The 2021 MSGP requires industrial facilities to complete “report-only” indicator analytical monitoring bi-annually (i.e., sample twice per year) during the first and fourth year of permit coverage for PAHs if the facilities initially seal or re-seal coal-tar sealcoat on paved surfaces where industrial activities are located, as well other specific sectors with potential petroleum hydrocarbon exposure to stormwater. The indicator monitoring, specified in Part 4.2.1 of the 2021 MSGP, is “report-only” and does not have a threshold or baseline value for comparison nor does it trigger follow-up actions. This pollutant focused approach to evaluating activities and sectors that may contribute PAHs to stormwater discharges will allow the Agency to use the indicator monitoring data collected to conduct an initial quantitative assessment of the levels of PAHs in industrial stormwater, further identify industrial activities with the potential to discharge PAHs in stormwater, and inform future consideration of potential PAH benchmark monitoring for sectors with the potential to discharge PAHs in stormwater.

3. *Modifying the permit authorization timeframe if a new facility had a pending enforcement action.* EPA is not finalizing the proposed extended authorization timeframe that would have extended the review period for new NOIs for facilities that have a pending enforcement action. However, EPA updates the NOI form in the 2021 MSGP to include new questions specifically to identify if there is a pending enforcement action related to stormwater.
4. *Providing an inspection-only option in lieu of benchmark monitoring.* EPA is not finalizing an inspection-only option in the 2021 MSGP. EPA acknowledges the validity of the NRC Study recommendation to provide an alternative compliance option for low-risk facilities; however, the Agency does not currently have sufficient information or a fully-

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vetted approach to identify which facilities should be considered “low-risk.” EPA will continue to collect information, including the indicator monitoring data required in the 2021 MSGP, to support future consideration of an inspection-only option for low-risk facilities.

5. *Requiring universal benchmark monitoring for pH, TSS, and COD applicable to all sectors.*

EPA is not finalizing universal benchmark monitoring for pH, TSS, and COD as proposed. Instead, the 2021 MSGP includes a new provision that requires certain operators to conduct indicator analytical monitoring for pH, TSS, and COD quarterly for the duration of the permit. This “indicator monitoring” requirement applies to all operators in subsectors that do not have sector-specific benchmark monitoring requirements in the 2021 MSGP. For the final permit, indicator monitoring is “report-only” and does not have a threshold or baseline value for comparison, therefore no follow-up action is triggered or required.

*Requiring sector-specific benchmark monitoring for Sector I (Oil and Gas Extraction), Sector P (Land Transportation and Warehousing), and Sector R (Ship and Boat Building and Repair Yards).* EPA is not finalizing benchmark monitoring requirements for Sectors I, P, and R as proposed. Upon reconsidering the recommendations of the NRC regarding “Sectors Not Subject to Benchmark Monitoring” and the “Need for Periodic Monitoring Reviews,” EPA now acknowledges that the NRC highlighted Sectors I, P, and R as “examples [to] show that monitoring requirements within the MSGP are not consistently applied” and that “[s]ector-specific monitoring requirements for all sectors should be rigorously reviewed to assess whether the monitoring requirements are appropriate to ensure control of stormwater pollution and determine whether benchmark monitoring requirements should be adjusted.” Contrary to the proposed 2020 MSGP Fact Sheet, which incorrectly interpreted the NRC study as “recommend[ing] that EPA require benchmark monitoring for Sectors I, P, and R,”

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EPA now recognizes that the NRC did not recommend the Agency require benchmarks for these sectors, but rather provided them as examples of “Sectors Not Subject to Benchmark Monitoring” and for highlighting the “Need for Periodic Monitoring Reviews.” The NRC notes that these examples “highlight the need for updated evaluations of pollutant potential and opportunities for pollutant reduction through implementation of additional SCMs.”

EPA recognizes it misinterpreted the actual recommendations of the NRC report in this instance, and the Agency acknowledges the NRC Study’s recommendation for additional sector-specific data-gathering efforts. EPA commits to address the specific recommendations of the NRC regarding “Sectors Not Subject to Benchmark Monitoring” and the “Need for Periodic Monitoring Reviews” in future proposals of the MSGP. At this time, EPA is requiring indicator monitoring for pH, TSS, and COD for facilities in subsectors that do not have sector-specific benchmark monitoring requirements in the 2021 MSGP, which includes subsectors I1, P1, and R1. The indicator monitoring will provide operators and EPA with a baseline and comparable understanding of industrial stormwater discharge quality, broader water quality problems, and stormwater control effectiveness at these facilities, as recommended by NRC. EPA will use the results of the indicator monitoring to re-assess the need for additional chemical-specific benchmark monitoring for the next reissuance of the MSGP.

6. *Modifying the method for determining natural background pollutant contributions from the 2015 MSGP.* In the 2021 MSGP, EPA retains the 2015 MSGP no net contribution method to applying the natural background exception for several reasons. The 2015 MSGP method is consistent with existing EPA policy concerning the establishment of site-specific water quality criteria based on natural background conditions. See EPA’s Office of Science and

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Technology memorandum, Establishing Site Specific Aquatic Life Criteria Equal to Natural Background (November 5, 1997). Additionally, the 2015 MSGP response to comments stated that “the CWA does not allow EPA or states to set a site-specific criteria equal to the natural background plus an otherwise protective level ... since doing so could raise the level of the pollutant in the water body that might [be] above the natural background, which would not be protective of aquatic life, at a minimum.” See Natural Background Exception to Benchmark Monitoring (p. 5-6) in Response to Public Comments – EPA NPDES 2015 Multi-Sector General Permit (MSGP), June 4, 2015. Public comments also raised a variety of concerns to EPA that the proposed subtraction method is counter to the “solely attributable” standard and is not appropriate for the MSGP.

7. *Requiring sector-specific fact sheet checklists to be used as part of AIM Tier 2 in Appendix Q.* EPA is not finalizing Appendix Q in the 2021 MSGP. Instead, EPA maintains the existing industrial stormwater fact sheet series as guidance. In the 2021 MSGP, after AIM Level 2 is triggered, the Level 2 response requires the operator to generally implement additional pollution prevention/good housekeeping measures. EPA encourages facilities to consult the existing MSGP industrial stormwater fact sheet series for guidance on recommended stormwater control measures appropriate to comply with AIM Level 2. EPA plans to work with external stakeholders to thoroughly revise the sector-specific fact sheets.

#### **IV. Implementation Assistance**

Following issuance of the 2021 MSGP, EPA plans to provide further assistance to industrial operators and other interested parties on various aspects of this new permit. The following activities or documents are planned:

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1. National webcast – EPA will host at least one webcast in February 2021 that will provide an overview of the 2021 MSGP and an opportunity for participants to ask questions. EPA will announce details of all webcasts and post webcast recordings on the industrial stormwater website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.
2. Revisions to sector-specific fact sheets for PFAS (guidance) – To recognize that industrial facilities can conduct activities that use, store, manufacture, transfer, and/or dispose of PFAS-containing materials and in alignment with EPA’s “Interim Strategy for Per- and Polyfluoroalkyl Substances in Federally Issued National Pollutant Discharge Elimination System Permits: Recommendations from the PFAS NPDES Regional Coordinators Committee,” EPA revised each of the sector-specific fact sheet guidance documents to include practices that could be used by operators to minimize PFAS in stormwater discharges. EPA will continue to work with stakeholders to further update these sector-specific fact sheets with additional emerging stormwater control measures that could be used by industrial operators.
3. Other templates and guidance – EPA will also update existing forms and guidance for developing SWPPPs, conducting monitoring, performing inspections and visual assessments, and provide tutorials and training materials for how to submit forms and data to EPA via NeT-MSGP.
4. Benchmark monitoring tracking spreadsheet – EPA will also develop a spreadsheet that industrial operators may use to calculate whether their quarterly benchmark monitoring data results in an exceedance (AIM triggering condition).

## **V. Paperwork Reduction Act (PRA)**



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The information collection activities in this permit have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2612.02, OMB Control No. 2040-0300. You can find a copy of the ICR in the docket for this permit (Docket ID No EPA-HQ-OW-2019-0372), and it is briefly summarized here.

CWA section 402 and the NPDES regulations require collection of information primarily used by permitting authorities, permittees (operators), and EPA to make NPDES permitting decisions. The burden and costs associated with the entire NPDES program are accounted in an approved ICR (EPA ICR number 0229.23, OMB control no. 2040-0004). Certain changes in this permit require revisions to the ICR to reflect changes to the forms and other information collection requirements. EPA is reflecting the paperwork burden and costs associated with this permit in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons.

EPA is collecting new information as part of the 2021 MSGP. The NOI form was updated from the 2015 MSGP to collect new information related to the following: added two questions to determine if PAH indicator monitoring in Part 4.2.1.1.b should apply; added questions for operators in New Mexico only (based on CWA section 401 conditions specific to operators in New Mexico in Part 9 of the permit); added the SIC code field for co-located activities; added an additional option for Sector G ore answer selections; added an additional option for operators to upload/attach their SWPPP (in addition to the existing options from the 2015 MSGP); for new dischargers only, added a question to indicate if the facility has a pending enforcement action related to industrial stormwater by EPA, a state, or a citizen; and added questions related to endangered species protection criterion determination and Criterion C3 form

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information, historic properties determination, new dischargers to impaired waters eligibility information, and CERCLA-related eligibility information to the NOI form in NeT-MSGP in lieu of providing information to EPA via email communication or in another form to streamline or reduce burden.

EPA made no changes to the Notice of Termination (NOT) requirements. For the Annual Report form, EPA added the requirement to include AIM responses for the 2021 MSGP. For the No Exposure Certification form, EPA made no changes to the information collected, but finalized a change of the acronym for the No Exposure Certification from NOE to NEC.

For the Discharge Monitoring Report (DMR) form, EPA updated the form to match the language included in the permit as follows: updated Part 3.d of the form to allow operators to indicate if monitoring was for indicator monitoring; updated Part 3.l of the form to match the abnormal event exception; added Part 3.n (demonstration that discharges of copper do not result in an exceedance of facility-specific criteria) and Part 3.o (demonstration that discharges of aluminum do not result in an exceedance of facility-specific criteria) to match the permit.

*Respondents/affected entities:* Industrial facilities in the 30 sectors shown in section I.A of this document in the areas where EPA is the NPDES permitting authority.

*Respondent's obligation to respond:* Compliance with the MSGP's information collection and reporting requirements is mandatory for MSGP operators.

*Estimated number of respondents:* EPA estimates that approximately 2,508 operators will receive coverage under the 2021 MSGP.

*Frequency of response:* Response frequencies in the 2021 MSGP vary from once per permit term to quarterly.

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*Total estimated burden:* EPA estimates that the information collection burden of the 2021 MSGP is 68,460 hours per year. Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* EPA estimates that the final information collection cost of the 2021 MSGP is \$2,461,813 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

EPA responded to ICR-related comments in the final permit.

## **VI. 2021 MSGP Incremental Cost Analysis and Future Cost-Benefit Considerations**

The cost analysis accompanying this final permit monetizes and quantifies certain incremental cost impacts of the final permit changes as compared to the 2015 MSGP. EPA analyzed each change in the 2021 MSGP considering the previous permit's (i.e., the 2015 MSGP) requirements. The objective of this cost analysis is to show where or to what extent the 2021 MSGP requirements impose an incremental increase in administrative and compliance costs (such as sampling and monitoring costs) on operators in relation to costs that are already accounted for in the 2015 MSGP.

More broadly, EPA notes that additional unquantified costs and benefits result from this action. In developing the next MSGP (or another NPDES general permit, as appropriate), EPA plans to estimate the broader impacts arising from these actions, including costs and benefits. Estimates under consideration may include: (1) assessing how costs and benefits are attributed between the MSGP and applicable water quality standards (including TMDLs) that may be in effect; (2) developing a new modeling framework to assess how regulated entities understand and implement control measures relating to existing and new permit obligations; (3) examining

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whether any underlying cost and benefit assumptions need to be updated; (4) examining more broadly how EPA can analyze benefits when developing permits; (5) developing more robust approaches to assessing uncertainties associated with the analytic approaches, including how to quantitatively assess uncertainties of key assumptions; and (6) developing a framework to analyze the effect of cooperative federalism.

EPA expects the incremental cost impact on entities that will be covered under the 2021 MSGP, including small businesses, to be minimal. EPA anticipates the incremental administrative and compliance cost for new or modified permit requirements will be \$338 - \$632 per operator per year; or \$1,690 - \$3,157 per operator over the 5-year permit term. A copy of EPA's incremental cost analysis for the final permit, titled "Cost Analysis for the Final 2021 Multi-Sector General Permit (MSGP)," is available in the docket (Docket ID No EPA-HQ-OW-2019-0372). The cost analysis indicates that while there will be an incremental increase in the costs of complying with the 2021 MSGP, these costs will not have a significant economic impact on a substantial number of small entities.

## **VII. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations will be documented in the docket for this action (Docket ID No EPA-HQ-OW-2019-0372).

## **VIII. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

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Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898. EPA has determined that the 2021 MSGP will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the requirements in the permit apply equally to industrial facilities in areas where EPA is the permitting authority, and the provisions increase the level of environmental protection for all affected populations.

## **IX. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. With limited exceptions, EPA directly implements the NPDES program in Indian country as no tribe has yet obtained EPA authorization to administer the NPDES program. As a result, almost all eligible facilities with stormwater discharges associated with industrial activities in Indian country fall under EPA's MSGP or may be covered under an individual NPDES permit issued by EPA.

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EPA consulted with tribal officials under EPA’s Policy on Consultation and Coordination with Indian Tribes early in the process of developing this permit to have meaningful and timely input into its development to gain an understanding of and, where necessary, to address the tribal implications of the permit. A summary of that consultation and coordination follows.

- June 26, 2019 – EPA initiated a tribal consultation and coordination process for this action by sending a “Notice of Consultation and Coordination” letter to all 573 federally recognized tribes. The letter invited tribal leaders and designated consultation representative(s) to participate in the tribal consultation and coordination process. The consultation period was from July 8 to September 9, 2019.
- July 10, 2019 – EPA presented an overview of the current 2015 MSGP and potential changes for the reissuance of the MSGP to the National Tribal Water Council.
- August 1, 2019 – EPA held an informational webinar for tribal representatives. A total of 19 tribal representatives participated in the webinar.

EPA solicited comment from federally recognized tribes early in the reissuance process. Tribes and tribal organizations submitted one letter and three emails to EPA, and EPA addressed those comments in the final permit and/or sent the requested information to the tribes. Records of the tribal informational webinar and a consultation summary summarizing the written comments submitted by tribes are included in the docket for this action (Docket ID No EPA-HQ-OW-2019-0372). EPA also notes that the Agency completed the CWA section 401 certification procedures with all authorized tribes where this permit applies. EPA will provide email notification to tribes of the final 2021 MSGP.

## **X. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use**

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This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

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Dated: January 15, 2021.

Dennis Deziel,  
Regional Administrator, EPA Region 1.



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Dated: January 15, 2021.

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Dated: January 15, 2021.

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Dated: January 15, 2021.

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Dated: January 15, 2021.

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