
EPA Proposes New NPDES Stormwater Multi-Sector General Permit for Industrial Activities

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October 30, 2005, marked the expiration of the Multi-Sector General Permit (MSGP) authorizing discharges of stormwater in Massachusetts, New Hampshire and other states and areas where the US Environmental Protection Agency (EPA) is the permitting authority. To replace the expired permit, EPA proposed a new MSGP for Industrial Activities on December 1, 2005. EPA has administratively extended coverage for the 3,500 facilities covered by the expired permit, allowing those facilities to continue discharges consistent with the substantive terms of the expired permit until the proposed MSGP becomes effective.

The draft of the proposed MSGP would require currently permitted entities to submit a Notice of Intent (NOI) certifying compliance with the new MSGP eligibility requirements within 120 days once the new MSGP becomes effective. Permitted facilities should track the status of the proposed MSGP carefully to avoid any lapse in coverage. New facilities seeking coverage under the MSGP should be prepared to apply as soon as the new version takes effect.

Background of EPA's Stormwater Permit Program

The Clean Water Act (CWA) generally prohibits facilities from discharging pollutants--including stormwater associated with certain industrial activity--through a "point source" to "waters of the United States" without a permit issued under the National Pollutant Discharge Elimination System (NPDES) program. Section 402(p) of the CWA establishes a framework authorizing EPA to address stormwater discharges. Under Section 402(p), EPA is authorized to require a permit for any stormwater discharge "associated with industrial activity."

EPA's definition of discharges "associated with industrial activity" relies principally on SIC codes. Depending on a facility's SIC code, three permitting options were available initially: an individual NPDES permit; a baseline general permit; or a group permit. In September 1992, EPA promulgated its baseline general permits authorizing stormwater discharges associated with industrial activity in states where it is the permitting authority. EPA developed the MSGP two years later after reviewing group permit applications for tens of thousands of facilities. The MSGP eventually replaced the baseline general permit for all industries, and covers 29 industrial sectors.

Over the past several years, the MSGP has provided a means for many companies to comply with the CWA's stormwater program without the burden of preparing individual permit applications. Deciding whether and how to submit an NOI and prepare a Stormwater Pollution Prevention Plan (SWPPP) may involve strategic considerations. The MSGP requires compliance with state-specific requirements, and may further involve dealings with local boards. We have advised clients in connection with stormwater permit compliance in an array of industrial sectors.

The Proposed Multi-Sector General Permit

EPA is proposing several changes to the MSGP. The proposed MSGP creates a 30-day public comment or "waiting" period after a complete NOI is submitted to EPA. During that period, anyone wishing to comment on the proposed discharge may submit comments to the agency. Although EPA has indicated it does not expect to respond formally to comments received during these waiting periods, the agency could impose more stringent requirements on permittees after receiving comments it deems actionable. Additionally, EPA may deny or delay discharge authorization depending on comments received.

Regulated entities should be aware of other notable differences between the proposed MSGP and the previous version. The proposed MSGP imposes new monitoring and reporting requirements designed to promote the implementation of SWPPPs. The proposed MSGP also creates new industry sector-specific requirements, monitoring requirements for total suspended solids (TSS), and training, recordkeeping and inspection requirements.

On December 20, 2005, EPA will hold an "informal" public meeting at EPA Headquarters in Washington, DC, to provide information on the proposed MSGP. EPA also may conduct informational meetings at regional offices around that time. EPA will accept comments on the proposed MSGP until January 16, 2006. Because the proposed MSGP contains significant general and sector-specific changes and may expose existing dischargers to new regulatory risks, entities with affected interests should closely monitor the process which develops the final MSGP, and should participate in that process if their interests so merit.

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