

**CLEAN WATER ACT SERVICES STEERING COMMITTEE**  
**Comments on the Proposed Reissuance of the National Pollutant Discharge**  
**Elimination System (NPDES) Storm Water Multi-Sector General Permit for**  
**Industrial Activities**

65 FR 17010 (30 March 2000)

**1. Distinguish between regulated industrial facilities and large installations that resemble a small MS4 and have incidental industrial activities in the Permit**

**Comment:** It is not clear how installations that closely resemble small municipal separate storm sewer systems (MS4s) and have incidental industrial activities will be addressed in the permit.

**Discussion:** In the example of a vehicle maintenance facility, the Preamble to the Permit could be construed to require that the Storm Water Pollution Prevention Plan (SWPPP) address the runoff from any vehicle maintenance facility on an installation for which a Notice of Intent (NOI) has been provided. This may work for facilities that are principally industrial in character. Most military installations, however, more closely resemble a small MS4 and have incidental industrial activities. Such installations could have vehicle maintenance facilities that are not defined by SIC Code 42 nor located directly ancillary to an activity regulated under the Multi-Sector General Permit (MSGP). We believe that, under these circumstances, installations should be allowed to use their best judgment, based on the potential of the unrelated vehicle maintenance facility to contribute to the quality of storm water effluent from the installation. For example, in some circumstances, this might mean that the installation should consider coverage under the Phase II rule for small MS4s.

**Recommendation:** Distinguish in the Permit between a facility that is principally industrial and a large installation, such as a military base, that may have some industrial sites that fall within the SIC codes covered by the MSGP and other sites that are neither related to the presence of the regulated industrial activities nor in close proximity to them.

**Reference:** Section VI.B.3 (p. 17025) of the Preamble and Part 1.2.1.1 (p. 17049) of the Permit.

**2. Modify Preamble language pertaining to Storm Water Discharge Previously Covered by an Individual Permit to be consistent with Permit language**

**Comment:** There is a need for clarification in the Preamble as to whether a Storm Water Pollution Prevention Plan (SWPPP) prepared to comply with the Multi-Sector General Permit (MSGP) must only retain specific Best Management Practices (BMPs) contained in the SWPPP that was prepared to comply with an individual permit.

**Discussion:** The Preamble states that the SWPPP for a facility previously covered by an individual permit must have a SWPPP that covers the entire facility (as opposed to separate outfalls). The permit language, however, requires that the SWPPP prepared to comply with the MSGP retain only the specific BMPs that were in the SWPPP prepared to comply with the previous individual permit. This narrower scope is more appropriate to satisfy anti-backsliding concerns. The Preamble should be clarified by modifying its language to be consistent with the Permit on this point.

**Recommendation:** Modify the Preamble language to be consistent with the Permit language.

**Reference:** Section V.F (p. 17021) of the Preamble and Part 1.2.3.3.2.3 (p. 17050) of the Permit.

### **3. Clarify Line 6.b of the NOI form for MS4s discharging into another MS4**

**Comment:** It is not clear which choice applies to a municipal separate storm sewer system (MS4) that is discharging into another MS4 on line 6.b of the Notice of Intent (NOI) form.

**Discussion:** If an MS4 has industrial activities and is conveying the pollutants to its own storm drainage system prior to discharging into the waters of the US, it is not clear whether line 6.b of the NOI should be selected as “no”. This line should be restated to read: “A municipal separate storm sewer system (MS4) under separate ownership.”

**Recommendation:** Reword Line 6.b of the NOI form from “A municipal separate storm sewer system (MS4)” to “A municipal separate storm sewer system (MS4) under separate ownership.”

**Reference:** Section VI.A.1.h (p. 17021) of the Preamble, Part 2.2.2.5 (p. 17053) of the Permit, and Line 6.b (p. 17103) of the NOI.

### **4. Clarify the circumstances under which enforceable actions are to be taken when a permitted discharge causes or contributes to a violation of a water quality standard**

**Comment:** The permit condition that requires that “Your discharges must not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard” is ambiguous and may be extremely problematic from a compliance standpoint.

**Discussion:** We are concerned that the language in the Preamble and Part 3.3 (bolded in the text below) could unwittingly expose permittees to enforcement, if the enforcement authority arbitrarily deems their discharge to be the “potential cause”, “the primary cause” or “contributing” to a violation of a water quality standard.

**“Your discharges must not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify you of such violation(s). You must take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan (SWPPP). If the violations remain or re-occur, then coverage under this permit will be terminated by the Director and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided under the Clean Water Act for the underlying violation.”**

Although we understand EPA’s need to keep the option of enforcement available for egregious violations, we believe enforcement is appropriate only if the regulated communities’ obligations are clear. If a permittee were allowing the discharge of storm water so contaminated that it would clearly result in the violation of a water quality standard in the receiving water, enforcement may be appropriate. A permittee, however, is unlikely to know whether his discharge could “contribute” to the violation of a water quality standard because that implies knowledge of the other loadings and their combined effect on water quality. Also, the Preamble and Permit are unclear as to whether permittees may consider the effects of mixing zones in determining whether they could potentially be in violation of this requirement. One could read the first sentence of the condition as basically incorporating the numeric and narrative criteria of applicable water quality standards into the NPDES permit as a compliance condition. When read with the last sentence of the condition, the proposed language could be read to create noncompliance at any time in-stream monitoring indicates non-attainment for parameters being discharged in the storm water from the facility. If the condition were read even more broadly, there would not even have to be an excursion for a violation to occur, as Part 3.3 also could be interpreted to prohibit discharges that simply have the “reasonable potential” to cause or contribute to an excursion.

Even if EPA were to notify the permittee of the alleged “noncompliance” and the permittee complied with the protocol called for in the section, the last sentence appears to subject the permittee to enforcement for the “underlying violation.” Enforcement could occur even at a facility in compliance with all conditions in the permit and properly implementing all elements of its SWPPP and associated Best Management Practices (BMPs).

**Recommendation:** Clarify these issues and the circumstances under which enforcement action would be considered.

**Reference:** Section VI.B.5 (p. 17025) of the Preamble and Part 3.3 (p. 17053) of the Permit.

**5. Clarify in the Preamble the conditions under which velocity dissipation devices are necessary**

**Comment:** The requirement in the Permit for installation of velocity dissipation devices to evaluate whether natural physical and biological characteristics and functions of the water course will be maintained and protected is unsubstantiated in the Preamble.

**Discussion:** This section of the permit requires velocity dissipation devices to be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to the water course so that the natural physical and biological characteristics are maintained and protected. Although not specifically listed as being required by the permit, the need for velocity dissipation devices to prevent erosion should be addressed in the Sediment and Erosion Control section of the Storm Water Pollution Prevention Plan (SWPPP). This condition is not in the Construction General Permit and is not explained in the Preamble.

**Recommendation:** Explain in the Preamble (paragraph 3.e) the rationale for requiring velocity dissipation devices. In the Permit modify the requirement to read "Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel if they are necessary to provide a non-erosive flow velocity from the structure to the water course."

**Reference:** Part 4.2.7.2.3 (p. 17055) of the Permit.

**6. Extend the time frame for SWPPP revision after Site Compliance Evaluations**

**Comment:** The time frame for completing Storm Water Pollution Prevention Plan (SWPPP) revisions after Site Compliance Evaluations as outlined in the preamble, is inconsistent with the time frame outlined in the Permit. The time frame needs to be consistent and also extended to allow ample time for large facilities to reach compliance.

**Discussion:** We believe the time frames for SWPPP revisions are unreasonable. Moreover, there is some inconsistency between the language from Section VI.C.3.h of the Preamble in the text below and from the Permit following it:

"Based on the results of each comprehensive site evaluation, the description in the plan of potential pollution sources and measures and controls must be revised as appropriate within 2 weeks after each comprehensive site evaluation, unless indicated otherwise in Part 6 of the permit. Changes in procedural operations must be implemented on the site in a timely manner for non-structural measures and controls not more than 12 weeks after completion of the comprehensive site evaluation. Procedural changes that require construction of structural measures and controls are allowed up to 3 years for implementation. In both instances, an extension may be requested from the director."

Also, the language of Part 4.9.3 states:

“You must complete revisions to the SWPPP within 14 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they must be implemented as soon as practicable.”

Many Department of Defense (DoD) installations are large and contain many industrial facilities, non-industrial facilities, and administrative buildings, and residential housing areas that resemble small cities. Because of their size, it is infeasible to revise their SWPPPs in the 2-week time frame. Furthermore, the Preamble provides 12 weeks for the permittee to make procedural operational changes and up to 3 years for structural changes and controls. This is inconsistent with the language in Part 4.9.3 stating that the permittee must modify Best Management Practices (BMPs) before the next anticipated storm event.

**Recommendation:** Extend the time frame for SWPPP revisions after the Site Compliance Evaluation to 6 weeks. This will still leave facilities another 6 weeks to implement non-structural measures and controls after the completion of the Site Compliance Evaluation. Another alternative is to allow a single deadline of 12 weeks for SWPPP modification/implementation. Allow up to three years for the construction of structural measures and controls as discussed in the Preamble.

**Reference:** Section VI.C.3.h (p. 17028) of the Preamble and Part 4.9.3 (p. 17056) of the Permit.

**7. Allow for Director discretion in determining the appropriate time limit for correction of SWPPP deficiencies**

**Comment:** The 30 calendar day time limit to correct deficiencies to the Storm Water Pollution Prevention Plan (SWPPP) upon notification from the Director as stated in the Preamble and Permit is insufficient.

**Discussion:** For large DOD facilities, the 30 calendar day time limit to correct deficiencies to the SWPPP upon notification from the Director is insufficient. Often, a longer period of time is needed to contract out the work to correct the deficiency and update the SWPPP.

**Recommendation:** Rewrite the language as follows: “...(30) calendar days unless otherwise approved by the Director...”. This language, present in the existing Multi-Sector General Permit (MSGP), would give the permittee the opportunity to extend the time limit to adequately correct any deficiencies in the SWPPP for larger facilities.

**Reference:** Section VI.C.3.m (p. 17030) of the Preamble and Part 4.11.3 (p. 17056) of the Permit.

## **8. Supports the removal of EPCRA Section 313 requirements**

**Comment:** The proposed removal of EPCRA Section 313 requirements will reduce duplicative requirements.

**Discussion:** We support the removal of the 313 requirements. Proper identification and controls are included in our installations' Spill Prevention Control and Countermeasure (SPCC) plans and referenced and/or included in our Storm Water Pollution Prevention Plans (SWPPPs). The removal of duplicative controls from the SWPPP will enable us to more effectively use limited resources to implement the storm water program.

**Recommendation:** Remove the EPCRA Section 313 requirements from Permit as proposed.

**Reference:** Section VI.D.1 (p. 17030) of the Preamble and Part 4.12 (p. 17056) of the Permit.

## **9. Add or exempt swimming pool discharges to allowable non-storm water discharges**

**Comment.** Because several states and local municipalities prohibit discharge of swimming pools into the sanitary sewers, the multi-sector general permit (MSGP) should address this type of insignificant discharge to the storm water system.

**Discussion:** Some local sewer authorities prohibit the discharge or draining of swimming pools to the sanitary sewer, and presently this type of discharge is not included as an exemption to the storm water permitting requirements. After allowing the chlorine to dissipate before being emptied to the storm water system or ground, a pool discharge should not pose an environmental threat to a receiving water body. Similar discharges are listed under Section 1.2.2.2, Allowable Non-Storm Water Discharges.

**Recommendation:** Add swimming pool discharges to allowable non-storm water discharges or provide an exemption from permitting requirements altogether, especially end of year discharges, if the pool has allowed all chlorine to dissipate.

**Reference:** Part 6.N.3.1 (p. 17077) refers to a Part 6 N.5.1.3 referring to turnings containment and is non-existent.

## **10. Remove or Limit site compliance evaluations for specific facilities during deicing activities**

**Comment:** The requirement for **all** facilities to conduct site compliance evaluations during their deicing activities is unnecessary.

**Discussion:** Because of the low occurrence and unpredictability of frozen precipitation at mid-latitude facilities, it is not feasible for these facilities to conduct site compliance evaluations during deicing activities. This requirement is not explained in the Preamble.

**Recommendation:** Remove the requirement for site compliance evaluations or require only at facilities that are above the deicing material thresholds of 100 tons/yr of urea or 100,000 gal/yr of glycol based deicers.

**Reference:** Part 6.S.5.5 (p. 17085) of the Permit.

**11. Clarify that Sector T requirements are applicable to treatment work with or above a design capacity of 1.0 MGD**

**Comment:** This part implies that Sector T requirements apply to all treatment works treating domestic sewage (TWTDS).

**Discussion:** Sector T requirements are only applicable to industrial activities. As smaller TWTDSs are not defined as industrial activities, this should be clearly stated in the permit.

**Recommendation:** Modify the permit to indicate that Sector T requirements should apply only to TWTDS with a design capacity greater than or equal to 1.0 MGD since smaller TWTDS are not defined as industrial activities.

**Reference:** Part 6.T.2.1 (p. 17086) of the Permit.