



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2019-0372; FRL-10005-82-OW]

National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: All ten of the Environmental Protection Agency's (EPA) Regions are proposing for public comment the 2020 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity, also referred to as the "2020 Multi-Sector General Permit (MSGP)" or the "proposed permit." The proposed permit, once finalized, will replace the EPA's existing MSGP that will expire on June 4, 2020. The EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where the EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. The EPA seeks comment on the proposed permit and on the accompanying fact sheet, which contains supporting documentation. This **Federal Register** document describes the proposed permit and includes specific topics on which the EPA is particularly seeking comment. Where the EPA proposes a new or modified

provision, the Agency also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. The EPA encourages the public to read the fact sheet to better understand the proposed permit. The proposed permit and fact sheet can be found at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No EPA-HQ-OW-2019-0372, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments.

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

Follow the online instructions for submitting comments.

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2019-0372 to the Federal eRulemaking Portal: <https://www.regulations.gov/>. All submissions received must include the Docket ID No. for this proposed permit. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed

permit, contact the appropriate EPA Regional office listed in Section I.F of this action, 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.

SUPPLEMENTARY INFORMATION:

This section is organized as follows:

Table of Contents

I. General Information

- A. Does this action apply to me?
- B. How do I submit written comments?
- C. Will public hearings be held on this action?
- D. What process will the EPA follow to finalize the proposed permit?
- E. Who are the EPA regional contacts for the proposed permit?

II. Background of Permit

III. Summary of Proposed Permit

- A. 2015 MSGP Litigation and National Academies Study
- B. Summary of Proposed Permit Changes
- C. Other Requests for Comment

IV. Paperwork Reduction Act (PRA)

V. Cost Analysis

VI. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

VII. Compliance with the National Environmental Policy Act (NEPA)

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

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

I. General Information

A. Does this action apply to me?

The proposed permit covers stormwater discharges from industrial facilities in the 30 sectors shown below:

Sector A—Timber Products.

Sector B—Paper and Allied Products Manufacturing.

Sector C—Chemical and Allied Products Manufacturing.

Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers.

Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.

Sector F—Primary Metals.

Sector G—Metal Mining (Ore Mining and Dressing).

Sector H—Coal Mines and Coal Mining-Related Facilities.

Sector I—Oil and Gas Extraction.

Sector J—Mineral Mining and Dressing.

Sector K—Hazardous Waste Treatment Storage or Disposal.

Sector L—Landfills and Land Application Sites.

Sector M—Automobile Salvage Yards.

Sector N—Scrap Recycling Facilities.

Sector O—Steam Electric Generating Facilities.

Sector P—Land Transportation.

Sector Q—Water Transportation.

Sector R—Ship and Boat Building or Repairing Yards.

Sector S—Air Transportation Facilities.

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 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 proposed 2020 MSGP is available to operators of eligible facilities located in areas where the EPA is the permitting authority. A list of eligible areas is included in Appendix C of the proposed 2020 MSGP.

B. How do I submit written comments?

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2019-0372, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket.

The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

C. Will public hearings be held on this action?

The EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period and must state the nature of the issue the requester would like raised in the hearing. Pursuant to 40 CFR 124.12, the EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If the EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

D. What process will the EPA follow to finalize the proposed permit?

After the close of the public comment period, the EPA intends to issue a final permit. This permit will not be issued until all significant comments have been considered and appropriate changes have been made to the proposed permit. The EPA's responses to public comments received will be included in the docket as part of the final issuance. Once the final permit becomes effective, eligible operators of industrial facilities may seek authorization under the 2020 MSGP.

E. Who are the EPA regional contacts for the proposed permit?

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

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

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

For the EPA Region 4, contact Sam Sampath at: (404) 562-9229 or sampath.sam@epa.gov.

For the EPA Region 5, contact Matthew Gluckman at: (312) 886-6089 or gluckman.matthew@epa.gov.

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

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

For the EPA Region 8, contact Amy Clark at: (303) 312-7014 or clark.amy@epa.gov.

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

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

II. Background of Permit

Section 405 of the Water Quality Act of 1987 added section 402(p) of the Clean Water Act (CWA), which directed the EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. The EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 48063. The 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). The EPA proposes to issue the MSGP under this statutory and regulatory authority.

III. Summary of Proposed Permit

The proposed 2020 MSGP, once finalized, will replace the existing MSGP, which was issued for a five-year term on June 4, 2015 (see 80 FR 34403). The 2020 MSGP will cover stormwater discharges from industrial facilities in areas where the EPA is the NPDES permitting authority in the EPA’s Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10, and will also now provide coverage for industrial facilities where the EPA is the NPDES permitting authority in the EPA’s Region 4. As proposed, this permit will cover facilities in the state of Idaho; the schedule for the transfer of NPDES Permitting Authority to Idaho for stormwater general permits is July 1, 2021. The geographic coverage of this permit is listed in Appendix C of the proposed permit. This permit

will authorize stormwater discharges from industrial facilities in 30 sectors, as shown in section I.A. of this document.

The proposed permit is similar to the existing permit and is structured in nine (9) parts: general requirements that apply to all facilities (e.g., 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 proposed forms for the Notice of Intent (NOI), the Notice of Termination (NOT), the Conditional No Exposure Exclusion, the Discharge Monitoring Report (DMR), and the annual report, as well as step-by-step procedures for determining eligibility with respect to protecting historic properties and endangered species, 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)¹ challenged the permit, two industry groups² 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 the EPA agreed to address in the proposed 2020 MSGP. One key term from the settlement agreement stipulated that the EPA fund a study conducted by the National Academies of Sciences, Engineering, and Medicine's National

¹ 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").

² Industry intervenors included Federal Water Quality Coalition and Federal Storm Water Association. i

Research Council (NRC) on potential permit improvements, focused primarily on monitoring requirements, for consideration in the next MSGP. In the settlement agreement, the EPA agreed that, when drafting the proposed 2020 MSGP, it will consider 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 of 2019. The NRC study can be found at the following website: <https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges>.

The NRC study's overarching recommendation is that the MSGP is too static and should continuously improve based on best available science, new data, and technological advances. The following is a high-level summary of the NRC study's recommendations the EPA addressed in the proposed 2020 MSGP, organized by category. The proposed Fact Sheet provides further discussion of the NRC study's recommendations and the settlement agreement terms and how they were addressed in the proposed permit.

Where the EPA proposes a new or modified provision, the EPA also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. A more comprehensive discussion of the NRC study recommendations can be found in Part III of the fact sheet.

- *Recommendations for MSGP pollutant monitoring requirements and benchmark thresholds:*
 - *Industry-wide monitoring for pH, total suspended solids (TSS), and chemical oxygen demand (COD) as basic indicators of the effectiveness of stormwater controls employed on site. To address this recommendation, the EPA proposes to*

require “universal benchmark monitoring” for pH, TSS, and COD for all facilities. See Part 4.2.1 of the proposed permit and fact sheet.

- *A process to periodically review and update sector-specific benchmark monitoring requirements to incorporate new scientific information.* To address this recommendation, the EPA proposes revisions to the MSGP’s sector-specific fact sheets, and proposes specific benchmark monitoring for Sectors I, P, and R. See Parts 4.2.1.1 and 8, and Appendix Q of the proposed permit and fact sheet.
- *Benchmark levels based on the criteria designed to protect aquatic ecosystems from adverse impacts from short term or intermittent exposures, which to date have generally been acute criteria.* To address this recommendation, the EPA proposes to update and/or requests comment on benchmark thresholds for aluminum, selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1.2 and 8 of the proposed fact sheet.
- *Recommendations for sampling and data collection:*
 - *Allowance and promotion of the use of composite sampling for benchmark monitoring for all pollutants except those affected by storage time.* To address this recommendation, the EPA proposes an explicit clarification that composite sampling is allowed for benchmark monitoring. See Part 4.1.4 of the proposed permit and fact sheet.
 - *For permittees with average results that meet the benchmark, a minimum of continued annual sampling to ensure appropriate stormwater management throughout the remainder of the permit term.* To address this recommendation, as part of proposed “universal benchmark monitoring” for pH, TSS, and COD for all

facilities in Part 4.2.1.1, the EPA proposes that facilities monitor and report for these three parameters on a quarterly basis for the entire permit term, regardless of any benchmark threshold exceedances, to ensure facilities have current indicators of the effectiveness of their stormwater control measures throughout the permit term. See Part 4.2.1.2 of the proposed permit and fact sheet.

- *A tiered approach to monitoring that recognizes the varying levels of risk among different industrial activities and that balances the overall burden to industry and permitting agencies.* To address this recommendation, the EPA proposes to have the following tiered approach to monitoring: 1) a possible “inspection-only” option available to low-risk facilities (see Part 4.2.1.1 of the proposed permit and fact sheet and associated request for comment in that Part); 2) require new “universal benchmark monitoring” for pH, TSS, and COD; 3) continue existing benchmark monitoring requirements from the 2015 MSGP; and 4) require continued benchmark monitoring as part of the proposed Additional Implementation Measures (AIM) protocol for repeated benchmark exceedances. See Parts 4.2. and 5.2 in the proposed permit and fact sheet.
- *Recommendations for stormwater retention to minimize pollutant loads:*
 - *Incentives to encourage industrial stormwater infiltration or capture and use where appropriate.* The EPA acknowledges the importance of protecting groundwater during the use of stormwater infiltration systems. To address this recommendation, the EPA proposes infiltration, where the operator can demonstrate to the EPA that it is appropriate and feasible for site-specific conditions, as an alternative or adjunct to structural source controls and/or

treatment controls required in proposed Tier 3 AIM responses. See Part 5.2.3.2.b of the proposed permit and fact sheet.

In addition to the NRC study, the following are other key terms from the 2016 Settlement Agreement and how and where the EPA addressed those terms in the proposed permit:

- *Comparative analysis.* The EPA agreed to review examples of numeric and non-numeric effluent limitations (including complete prohibitions, if any) applicable to the discharge of industrial stormwater that have been set in other jurisdictions and evaluate the bases for those limitations. The EPA includes this analysis, titled “MSGP Effluent Limit Comparative Analysis,” in the docket for this proposed permit (Docket ID No EPA-HQ-OW-2019-0372).
- *Preventing recontamination of federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites.* The EPA agreed to propose for comment an expansion to all the EPA Regions of the existing eligibility criterion regarding operators discharging to federal CERCLA sites that currently applies to operators in Region 10 in the 2015 MSGP. See Part 1.1.7 of the proposed permit and fact sheet.
- *Eligibility criterion regarding coal-tar sealcoat.* The EPA agreed to propose for comment a new eligibility condition for operators who, during their coverage under the next MSGP, will use coal-tar sealcoat to initially seal or to re-seal pavement and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater. The EPA agreed to propose that those operators are not eligible for coverage under the MSGP and must either eliminate such discharge or apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet.

- *Permit authorization relating to a pending enforcement action.* The EPA agreed to solicit comment on a provision covering the situation where a facility not covered under the 2015 MSGP submits an NOI for permit coverage while there is a related pending enforcement stormwater related action by the EPA, a state, or a citizen (to include both notices of violations (NOVs) by the EPA or the state and notices of intent to bring a citizen suit). In this situation, the EPA agreed to solicit comment on holding the facility's NOI for an additional 30 days to allow the EPA an opportunity to (a) review the facility's control measures expressed in its SWPPP, (b) identify any additional control measures that the EPA deems necessary to control site discharges in order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) to conduct further inquiry regarding the site's eligibility for general permit coverage. See Part 1.3.3 and Table 1-2 of the proposed permit and fact sheet.
- *Additional Implementation Measures (AIM).* The EPA agreed to include in the benchmark monitoring section of the proposed MSGP "Additional Implementation Measures" (AIM) requirements for operators for responding to benchmark exceedances. See Part 5.2 of the proposed permit and fact sheet.
- *Facilities required to monitor for discharges to impaired waters without an EPA-approved or established Total Maximum Daily Load (TMDL).* The EPA agreed to propose for comment specific edits regarding monitoring for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.
- *Revision of Industrial Stormwater Fact Sheets.* The EPA agreed to review and revise the MSGP's sector-specific fact sheets associated with the permit. See Appendix Q of the

proposed permit.

B. *Summary of Proposed Permit Changes*

The proposed MSGP includes several new or modified requirements from the 2015 MSGP, many of which were discussed in the previous section and are being proposed to address terms in the 2016 Settlement Agreement and the NRC study's recommendations. The EPA requests comment on these and all parts of the proposed permit.

1. *Streamlining of permit.* The EPA proposes to streamline and simplify language throughout the permit to present the requirements in a generally more clear and readable manner. Regarding structure of the proposed permit, proposed Part 4 (Monitoring) was previously Part 6 in the 2015 MSGP; proposed Part 5 (Corrective Actions and AIM) was previously Part 4 in the 2015 MSGP; and proposed Part 6 (SWPPP) was previously Part 5 in the 2015 MSGP. In the EPA's view, formatting the permit in this new order (Monitoring, followed by Corrective Actions and AIM, then SWPPP requirements) makes more sequential sense 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. The EPA also made a few additional edits to improve permit readability and clarity. The 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, proposed 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." The EPA also numbered proposed permit conditions that were previously in bullet form to make it easier to follow and reference the permit

conditions. Finally, the language of the proposed permit was changed from passive to active voice where appropriate (e.g., “Samples must be collected...” now reads “You must collect samples...”).

2. *Permit eligibility and authorization-related changes.*

- *Eligibility for stormwater discharges to a federal CERCLA site.* The 2015 MSGP requires facilities in the EPA Region 10 that discharge stormwater to certain CERCLA or Superfund sites (as defined in MSGP Appendix A and listed in MSGP Appendix P) to notify the EPA Regional Office in advance and requires the EPA Regional Office to determine whether the facility is eligible for permit coverage. In determining eligibility for coverage, the EPA Regional Office may evaluate whether the facility has included appropriate controls and implementation procedures designed to ensure that the discharge will not lead to recontamination of aquatic media at the CERCLA site. While the 2015 MSGP permit cycle was limited to discharges to certain CERCLA sites in EPA Region 10, the Agency is concerned that CERCLA site recontamination from MSGP authorized discharges may be an issue in all EPA Regions. In the proposed permit, the EPA requests comment on whether this current eligibility criterion should be applied in all the EPA Regions for facilities that discharge to Federal CERCLA sites that may be of concern for recontamination from stormwater discharges. The EPA is interested in information from the public that would assist the Agency in identifying such sites. The EPA also requests comment on requiring such facilities to notify the EPA Regional Office a minimum of 30 days in advance of submitting the NOI form. See Part 1.1.7 in the proposed permit and fact sheet, and request for comment 1.
- *Eligibility related to application of coal-tar sealcoat.* The EPA proposes in Part 1.1.8 to

include a new eligibility criterion related to stormwater discharges from pavement where there is coal-tar sealcoat. Operators who will use coal-tar sealcoat to initially seal or to re-seal their paved surfaces where industrial activities are located and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater, would be eligible for coverage under the 2020 MSGP only if they eliminate such discharge(s). This would reduce the amount of PAHs in industrial stormwater discharges. Alternatively, operators who wish to pave their surfaces where industrial activities are located with coal-tar sealcoat may apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet, and request for comment 2.

- *Discharge authorization related to enforcement action.* The EPA proposes to establish a discharge authorization wait period of 60 calendar days after NOI submission for any operators whose discharges were not previously covered under the 2015 MSGP and who have a pending stormwater-related enforcement action by the EPA, a state, or a citizen (to include both NOV's by the EPA or a state and notices of intent to bring a citizen suit). EPA is proposing this new requirement because the Agency is aware of some instances where a facility with a pending enforcement action will quickly submit an NOI without adequately developing their SWPPP or stormwater control measures (SCMs) in order to avoid further enforcement action. This additional review time would allow EPA to (a) review the facility's SCMs detailed in the NOI and SWPPP to make sure they are appropriate for the facility which may already have stormwater pollution issues, (b) identify any additional SCMs that EPA deems necessary to control site discharges in order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) conduct further inquiry regarding the site's eligibility for permit

coverage. See Part 1.3.3, Table 1-2 of the proposed permit and fact sheet, and request for comment 4.

3. *Public sign of permit coverage.* The EPA proposes that the 2020 MSGP include a requirement that MSGP operators must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility. The EPA proposes that this notice must also include information that informs the public on how to contact the EPA if stormwater pollution is observed in the discharge. This addition will make the protocol for requesting a SWPPP easily understandable by the public and improve transparency of the process to report possible violations. The EPA requests comment on this proposal and what information could be included on any sign or other notice. See Part 1.3.6 of the proposed permit and fact sheet, and request for comment 6.
4. *Consideration of major storm control measure enhancements.* The EPA proposes that operators would be required to consider implementing enhanced measures for facilities located in areas that could be impacted by stormwater discharges from major storm events that cause extreme flooding conditions. The purpose of this proposed requirement is to encourage industrial site operators to consider the risks to their industrial activities and the potential impact of pollutant discharges caused by stormwater discharges from major storm events and extreme flooding conditions. The EPA also requests comment on how the permit might identify facilities that are at the highest risk for stormwater impacts from major storms that cause extreme flooding conditions. See Part 2.1.1.8 of the proposed permit and fact sheet, and request for comment 8.
5. *Monitoring changes.*
 - *Universal benchmark monitoring for all sectors.* The EPA proposes to require all

facilities to conduct benchmark monitoring for three indicator parameters of pH, TSS, and COD, called universal benchmark monitoring. This proposed requirement would apply to all sectors/subsectors, including those facilities that previously did not have any chemical-specific benchmark monitoring requirements and those that previously did not have these three specific benchmark parameters under the 2015 MSGP. These three parameters would provide a baseline and comparable understanding of industrial stormwater risk, broader water quality problems, and stormwater control effectiveness across all sectors. See Part 4.2.1 of the proposed permit and fact sheet, and requests for comment 10 and 13.

- *Impaired waters monitoring.* Under the 2015 MSGP, operators discharging to impaired waters must monitor once per year for pollutants for which the waterbody is impaired and can discontinue monitoring if these pollutants are not detected or not expected in the discharge. The EPA proposes to require operators discharging to impaired waters to monitor only for those pollutants that are both causing impairments and associated with the industrial activity and/or benchmarks. The proposal specifies that, if the monitored pollutant is not detected in your discharge for three consecutive years, or it is detected but you have determined that its presence is caused solely by natural background sources, operators may discontinue monitoring for that pollutant. This proposed requirements potentially narrows scope of pollutants for which the operator must monitor and improves protections for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.
- *Benchmark values.* The EPA proposes to modify and/or requests comment on benchmark thresholds for selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1 and 8 of the proposed fact sheet and fact sheet,

and requests for comment 14, 15, 16, 17, 18, and 19.

- *Sectors with new benchmarks.* The 2015 MSGP does not require sector-specific benchmark monitoring for Sector I (Oil and Gas Extraction), Sector P (Land Transportation and Warehousing), or Sector R (Ship and Boat Building and Repair Yards). Based on the NRC study recommendation which identified potential sources of stormwater pollution from these sectors, the EPA proposes to add benchmark monitoring requirements for these three sectors. See Part 8 of the proposed permit, Parts 4.2.1.1 and 8 of the proposed fact sheet, and request for comment 12.

6. *Additional implementation measures.* The EPA proposes revisions to the 2015 MSGP's provisions regarding benchmark monitoring exceedances. The corrective action conditions, subsequent action deadlines, and documentation requirements in proposed Part 5.1 remain unchanged from the 2015 MSGP. In proposed Part 5.2, the EPA proposes new tiered Additional Implementation Measures (AIM), that are triggered by benchmark monitoring exceedances. The proposed AIM requirements would replace corresponding sections regarding benchmark exceedances in the 2015 MSGP ("Data exceeding benchmarks" in Part 6.2.1.2 in the 2015 MSGP). There are three AIM levels: AIM Tier 1, Tier 2, and Tier 3. Operators would be required to respond to different AIM levels with increasingly robust control measures depending on the nature and magnitude of the benchmark threshold exceedance. The EPA proposes to retain exceptions to AIM triggers based on natural background sources or run-on for all AIM levels. The EPA also proposes an exception in AIM Tier 2 for a one-time aberrant event, and an exception in AIM Tier 3 for operators who are able to demonstrate that the benchmark exceedance does not result in any exceedance of applicable water quality standards. Proposed AIM requirements will increase regulatory

certainty while ensuring that discharges are sufficiently controlled to protect water quality.

See Part 5.2 of the proposed permit and fact sheet, and requests for comment 21, 22, 23, and 26.

7. *Revisions to sector-specific fact sheets.* The EPA proposes updates to the existing sector-specific fact sheets that include information about control measures and stormwater pollution prevention for each sector to incorporate emerging stormwater control measures. These fact sheets are also proposed to be used when implementing Tier 2 AIM. See Part 5.2.2.2 and Appendix Q of the proposed permit and fact sheet.

C. *Other Requests for Comment*

In addition to the specific proposed changes discussed previously on which the EPA seeks comment, the Agency also requests comment on the following:

1. *Eligibility related to use of cationic chemicals.* The EPA requests comment on adding an eligibility requirement to the MSGP for operators who may elect to use cationic treatment chemicals to comply with the MSGP, similar to that eligibility requirement in the EPA's Construction General Permit (CGP). See Part 1 of the proposed permit and fact sheet, and request for comment 3.
2. *Change NOI form.* The EPA requests comment on whether a separate paper Change NOI form would be useful for facilities for submitting modifications to a paper NOI form. See Part 1.3.4 of the proposed permit and fact sheet, and request for comment 5.
3. *New acronym for the No Exposure Certification (NOE).* The EPA requests comment on changing the acronym for the No Exposure Certification from "NOE" to "NEC" to more accurately represent what the acronym stands for. See Part 1.5 of the proposed permit and fact sheet, and request for comment 7.

4. *Alternative approaches to benchmark monitoring.* The EPA requests comment on viable alternative approaches to benchmark monitoring for characterizing industrial sites' stormwater discharges, quantifying pollutant concentrations, and assessing stormwater control measure effectiveness. See Part 4.2.1 of the proposed permit and fact sheet, and request for comment 9.
5. *Inspection-only option in lieu of benchmark monitoring.* The EPA requests comment on whether the permit should include an inspection-only option for “low-risk” facilities in lieu of conducting benchmark monitoring. See Part 4.2.1.1 of the proposed permit and fact sheet, and request for comment 11.
6. *Information about polycyclic aromatic hydrocarbons (PAHs).* The EPA requests comment on information and data related to pollutant sources under all industrial sectors with petroleum hydrocarbon exposure that can release polycyclic aromatic hydrocarbons (PAHs) via stormwater discharges, any concentrations of individual PAHs and/or total PAHs at industrial sites, the correlation of PAHs and COD, and appropriate pollution prevention/source control methods and stormwater control measures that could be used to address PAHs. See Part 4.2.1.2 of the proposed permit and fact sheet, and request for comment 20.
7. *Modifying the method for determining natural background pollutant contributions.* The EPA requests comment on changing the threshold for the natural background exception throughout the permit from the 2015 MSGP, which required no net facility contributions, to the proposed 2020 MSGP method of subtracting natural background concentrations from the total benchmark exceedance to determine if natural background levels are solely responsible for the exceedance. EPA requests comment on implications of this change

and other factors the Agency should consider in proposing this change to the exception. EPA also requests comment on other appropriate methods to characterize natural background pollutant concentrations. See Part 5.2.4 of the proposed permit and fact sheet, and requests for comment 24 and 25.

8. *Clarifications to Sector G monitoring requirements.* The EPA requests comment on whether the newly proposed language in Part 8.G.8.3 clarifies the monitoring requirements for that part and if the proposed monitoring frequency is appropriate. Given the overlap in parameters the operator is required to monitor for in Parts 8.G.8.2 and 8.G.8.3 and the potential confusion about the monitoring schedules for the same parameter, EPA proposes to align the monitoring schedule for Part 8.G.8.3 to that of Part 8.G.8.2. The EPA also requests comment on suspending the analytical monitoring currently required for radium and uranium in Part 8.G.8.3 until a relevant water quality criterion and possible benchmark value can be developed. The EPA requests comment on any alternative or additional clarifications to the monitoring frequencies the Agency should consider for this Part. See Part 8.G.8.3 of the proposed permit and fact sheet, and request for comment 27.

IV. Paperwork Reduction Act (PRA)

The information collection activities in this proposed permit have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2040-NEW. 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 the 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 proposed permit would require revisions to the ICR to reflect changes to the forms and other information collection requirements. The 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. Eventually, the EPA plans to consolidate the burden and costs in this ICR into that master ICR for the entire NPDES program and discontinue this separate collection.

Respondents/affected entities: Industrial facilities in the 30 sectors shown in section I.A of this notice in the areas where the 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: The EPA estimates that approximately 2,400 operators will receive coverage under the 2020 MSGP.

Frequency of response: Response frequencies in the proposed 2020 MSGP vary from once per permit term to quarterly.

Total estimated burden: The EPA estimates that the proposed information collection burden of the proposed permit is 68,857 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The EPA estimates that the proposed information collection cost of the proposed permit is \$2,374,891.73 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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed permit (Docket ID No EPA-HQ-OW-2019-0372). You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA will respond to any ICR-related comments in the final permit.

V. Cost Analysis

The EPA expects the incremental cost impact on entities that will be covered under this permit, including small businesses, to be minimal. The EPA anticipates the incremental cost for new or modified permit requirements will be \$472.75 per facility per year; or \$2,363.74 per facility over the 5-year permit term. A copy of the EPA's cost analysis for the proposed permit,

titled “Cost Impact Analysis for the Proposed 2020 Multi-Sector General Permit (MSGP),” is available in the docket (Docket ID No EPA-HQ-OW-2019-0372). The economic impact analysis indicates that while there will be an incremental increase in the costs of complying with the new proposed permit, these costs will not have a significant economic impact on a substantial number of small entities.

VI. 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 the Office of Management and Budget (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).

VII. Compliance with the National Environmental Policy Act (NEPA)

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4307h), the Council on Environmental Quality’s NEPA regulations (40 CFR part 15), and the EPA’s regulations for implementing NEPA (40 CFR part 6), the EPA has determined that the reissuance of the MSGP is eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). This category includes “actions involving reissuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid, there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.” The EPA completed an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the existing 2015 MSGP. The analysis and conclusions regarding the potential environmental impacts, reasonable alternatives, and potential mitigation

included in the EA/FONSI are still valid for the reissuance of the MSGP because the proposed permit conditions are either the same or in some cases are more environmentally protective. Actions may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. The EPA has reviewed the proposed action and determined that the reissuance of the MSGP does not involve any extraordinary circumstances listed in 6.204(b)(1) through (b)(10). Prior to the issuance of the final MSGP, the EPA Responsible Official will document the application of the categorical exclusion and will make it available to the public on the EPA's Web site at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/search>. If new information or changes in the proposed permit involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, the EPA will prepare an EA or Environmental Impact Statement (EIS).

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

The EPA believes that 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 (59 FR 7629, February 16, 1994). The EPA has determined that the proposed permit 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 the EPA is the permitting authority, and the proposed 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, the 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 the EPA MSGP or may be covered under an individual NPDES permit issued by the EPA.

The EPA consulted with tribal officials under the EPA 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 proposed permit. A summary of that consultation and coordination follows.

The EPA initiated a tribal consultation and coordination process for this action by sending a “Notice of Consultation and Coordination” letter on June 26, 2019, 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 EPA held an informational webinar for tribal representatives on August 1, 2019. A total of 19 tribal representatives participated in the webinar. The EPA also presented an overview of the current 2015 MSGP and potential changes for the reissuance of the MSGP to the National Tribal Water Council during a July 10, 2019 call with EPA staff.

The EPA solicited comment from federally recognized tribes early in the reissuance process. Tribes and tribal organizations submitted one letter and three emails to the EPA. Records of the tribal informational webinar and a consultation summary summarizing the written comments submitted by tribes are included in the docket for this proposed action (Docket ID No EPA-HQ-OW-2019-0372).

The EPA incorporated the feedback it received from tribal representatives in the proposal. The Agency specifically solicits additional comment on this proposed permit from tribal officials.

The EPA also notes that as part of the finalization of this proposed permit, the Agency will complete the Clean Water Act section 401 certification procedures with all authorized tribes where this permit will apply.

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

Dated: February 12, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Javier Laureano,

Director, Water Division, EPA Region 2.

Carmen R. Guerrero-Pérez,

Director, Caribbean Environmental Protection Division, EPA Region 2.

Catherine A. Libertz,

Director, Water Division, EPA Region 3.

Jeaneanne M. Gettle,

Director, Water Division, EPA Region 4.

Thomas R. Short Jr.,

Acting Director, Water Division, EPA Region 5.

Brent E. Larsen,

Acting Director, Water Division, EPA Region 6.

Jeffrey Robichaud,

Director, Water Division, EPA Region 7.

Humberto L. Garcia, Jr.,

Acting Director, Water Division, EPA Region 8.

Tomás Torres,

Director, Water Division, EPA Region 9.

Daniel D. Opalski,

Director, Water Division, EPA Region 10.

[FR Doc. 2020-04254 Filed: 2/28/2020 8:45 am; Publication Date: 3/2/2020]