U.S. Environmental Protection Agency
Region 10 – Seattle

Questions and Answers Regarding the Multi –Sector General Permit for Stormwater Discharges Associated with Industrial Activity

as updated on September 24, 2022

These answers were developed in response to inquiries received at the U.S. E.P.A. regional office in Seattle. Please be aware that some answers are specific to those States, Indian Country, and Federal operators within EPA's jurisdiction in this region. Answers could differ in other areas under EPA's jurisdiction. This document is not a rule, permit, or otherwise legally binding on any entity or activity.

If you have questions regarding this document, please contact Margaret McCauley, Stormwater Permit Administrator, U.S. EPA Region 10/Seattle office, 206.553.1772, mccauley.margaret@epa.gov.

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MSGP Questions and Answers

Section 1 Types of Sites Regulated Under MSGP

Question 1.1 We own/operate a gravel site that is entirely self-contained and has no run-off. If our facility is exposed to precipitation (rain, snowmelt, etc.) but does not discharge stormwater do we need to get permit coverage?

Answer 1.1

Discharge of a pollutant is defined as "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source,' or any addition of any pollutant or combination of pollutants to the waters of the 'contiguous zone' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2." Sheet flow also is a form of conveyance.

If the gravel pits truly have no stormwater discharge, then these facilities would likely not be required obtain coverage under the MSGP. However, if failure of stormwater controls means a stormwater discharge would or could occur, then the site/facility needs to get coverage under the MSGP. If a facility does not have permit coverage and a stormwater control failed resulting in a discharge, then the facility would be in violation of the Clean Water Act and may be subject to enforcement action.

Question 1.2 If stormwater from my industrial operation does not discharge to waters of the U.S., do I need permit coverage?

Answer 1.2

No federal NPDES permit is needed. Please note, however

- the operator should carefully evaluate and document the potential for any discharge to waters of the U.S. Even if a discharge to waters of the U.S. occurs only rarely, as with a 100-year storm event, permit coverage for that discharge is required.
- a state may have designated additional waters as waters of the state; this could trigger the need for permit coverage; see Answer 1.3.
- discharges of stormwater associated with industrial activity through a municipal separate storm sewer system (MS4) need permit coverage. By definition, a MS4 is not connected to an operable treatment works and effluent transported in the MS4 discharges to a receiving water/water of the U.S.

Question 1.3 Is discharge to ground/groundwater regulated under the MSGP?

Answer 1.3

It depends on where you are located. The Clean Water Act regulates the discharge of pollutants to waters of the United States, which includes surface waters but does not include groundwater. Many states and tribes regulate discharges to groundwater under state/tribal

law. These states/tribes can include additional conditions in an EPA-issued permit through the state 401 certification process (33 U.S.C. § 1341(d)). The State of Washington has included conditions in the 401 certification for the MSGP related to groundwater which EPA has included as a condition of the MSGP pursuant to CWA Section 401(d). Specifically, Part 9.10.7.2 of the MSGP states that discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 173-204 WAC), and human health-based criteria in the National Toxics Rule (40 CFR Part 131.36). Discharges that are not in compliance with these standards are not authorized.

Groundwater resources are also regulated under the Safe Drinking Water Act; check with the tribal or state agency for your facility to determine whether additional requirements apply to your facility operations.

In addition, if contamination from stormwater that entered the aquifer shows up in a nearby stream, it could be considered a discharge due to the hydrologic connection. Direct injection of stormwater into the ground via a well (known as a Class V well) is regulated through the Underground Injection Control (UIC) program. This program mandates protections to underground sources of drinking water. See information at https://www.epa.gov/uic/class-v-wells-injection-non-hazardous-fluids-or-above-underground-sources-drinking-water.

Question 1.4 A facility has a state permit for land application of its effluent. The facility manager believes they have no stormwater discharge from the land application area. Does the facility still need to obtain MSGP coverage?

Answer 1.4

If there is a stormwater discharge from activities identified in Appendix D of the MSGP, the facility requires permit coverage. Review the Permitting Decision Tree for assistance in determining whether permit coverage is required[1]. If the facility does not have a discharge of pollutants to waters of the U.S., the operator should document how this conclusion was reached and keep it on file at the facility. See also Answer 1.1. EPA or other regulatory agencies may ask why your facility does not have MSGP coverage during an inspection.

Question 1.5 Are discharges of industrial stormwater to a holding tank, or to a retention or detention basin used to collect stormwater, regulated by the MSGP?

Answer 1.5

Discharges of stormwater associated with industrial activity into waters of the U.S. must obtain a NPDES permit; the MSGP is most often the permit used for such discharges. Any discharge from a tank or basin that is part of a conveyance system for a stormwater discharge associated with an industrial activity identified under Appendix D of the MSGP is eligible for coverage under the MSGP. Flows which are channeled into tanks or basins and which do not discharge to receiving waters are not subject to the MSGP. (See NPDES Phase I rule preamble, 55 FR 47966, November 16, 1990). If there is direct injection of stormwater into the ground via a well (known as a Class V well), this is regulated through the

[1] https://www3.epa.gov/region10/pdf/npdes/stormwater/msgp_permitting_decision_tree.pdf

Underground Injection Control (UIC) program. This program mandates protections to underground sources of drinking water. See information at https://www.epa.gov/uic/class-v-wells-injection-non-hazardous-fluids-or-above-underground-sources-drinking-water.

Question 1.6 Does an industrial facility discharging to an MS4 have to obtain an industrial stormwater permit? If so, where is the outfall/ discharge point that must be monitored? Where the MS4 discharges to waters of the U.S. or where the industrial facility discharges into the MS4?

Answer 1.6

Yes, the facility would require coverage under a NPDES permit; see Answer 2.2 below. The industrial facility must monitor at the point the industrial facility discharges to the MS4.

To determine where stormwater is discharged from your property, walk the grounds and perimeter of your facility during a storm event to identify where stormwater discharges from the site (often known as "outfalls" but referred to as "discharge points" in the MSGP). Discharge points are locations where stormwater exits the facility property, including pipes, ditches, swales, sheet flow,[2] and other structures that transport stormwater. If possible, walk outside the boundary of your facility to identify discharge points that may not be apparent from within your site. If you discharge into an MS4, you monitor where stormwater discharges into the MS4 system. Please see the "Industrial Stormwater Monitoring and Sampling Guide" for further guidance and information.[3]

Question 1.7 Does our MS4 permit cover the municipality's industrial and construction stormwater discharges?

Answer 1.7

No. The NPDES permit programs for industrial, construction, and municipal stormwater discharges are *complementary, but different*.

An MS4 permit requires implementation of a stormwater management plan for the entire system, designed to minimize the discharge of pollutants to and from the MS4.

In comparison, certain industrial and construction activities that discharge to a receiving water, either directly or indirectly through an MS4, are required to obtain NPDES permit coverage, typically through the MSGP (for industrial activities) or the CGP (for construction activities). Once covered under either of these permits, the operator of the facility is required to comply with applicable technology- and water quality-based effluent limitations.

A city's MS4 permit does not supersede or eliminate the requirement for the city/municipality to comply with the MSGP requirements when the city/municipality is

[2] By designating specific industries as needing permit coverage, the Code of Federal Regulations designates them as point sources. The shape of a discharge at any particular point in its path is irrelevant.
[3] Industrial Stormwater Monitoring and Sampling Guide: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp_monitoring_guide.pdf

engaged in industrial activities that result in an industrial stormwater discharge. If a municipality conducts industrial activities at a municipal facility as defined in 40 CFR 122.26(b)(14), and there are stormwater discharges from those activities to waters of the United States, the municipality must obtain authorization to discharge this industrial stormwater under the MSGP.

Question 1.8 It was previously thought that our facility did not discharge to waters of the U.S. However, the facility does have a stormwater discharge during large storms. What do we do?

Answer 1.8

If you have now determined that you have a discharge, you must prepare a SWPPP and submit an NOI to be covered under the MSGP.

Question 1.9 A Superfund/CERCLA operable unit is being managed under a Record of Decision, which would otherwise be regulated under the industrial stormwater program. Must this activity obtain stormwater permit coverage? (Example: A former quarry is being managed as part of a CERCLA remediation; must the activity obtain coverage under the MSGP?)

Answer 1.9

No. The Superfund regulations provide that "no Federal, state or local permit shall be required for the portion of any removal or remedial action conducted entirely on site." (Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA], Section 121(e)) However, the Superfund law requires that Federal facilities and private parties must still comply with all substantive requirements of the Clean Water Act, including the NPDES permit program. The Congressional intent behind the CERCLA permit exemption was to allow parties to quickly initiate and continue cleanups.

Question 1.10 Stormwater from my operations discharges to a Superfund / CERCLA clean up site that is not listed in Appendix P. What are my obligations under the 2021 MSGP?

Answer 1.10

Part 1.1.7 of the MSGP only applies to discharges to the sites listed in Appendix P. Additional CERCLA (clean up) Sites may be added in the future.

Operators in the Puget Sound Basin of Washington State should be aware that Part 9.10.7.2 of the permit contains additional sampling requirements and effluent limits for discharges to certain impaired waters and Puget Sound sediment cleanup sites.

Question 1.11 Why are only some clean up sites in Appendix P?

Answer 1.11

While CERCLA Site recontamination from MSGP-authorized discharges may be an issue in all the EPA Regions where the MSGP applies, for the 2021 permit cycle, Part 1.1.7 applies only to CERCLA sites in EPA Region 10 listed in Appendix P. EPA Region 10 has information that stormwater discharges are an ongoing source to certain CERCLA sites.

Information on stormwater as a source to CERCLA sites is in EPA's MSGP docket: https://www.regulations.gov/docket/EPA-HQ-OW-2019-0372.

In addition, Part 9.10.7 of the permit contains additional sampling requirements and effluent limits for discharges to certain impaired waters and Puget Sound sediment cleanup sites.

Question 1.12 A company has two facilities, with activities that fall under two different sectors. Do they establish one account for the two locations/facilities? Do they file a separate Notice of Intent (NOI) for each location?

Answer 1.12

If the sites are not contiguous, then the company must submit a separate NOI and prepare an individual stormwater pollution prevention plan (SWPPP) for each facility. However, if the facilities are located on adjoining property, then one SWPPP and one NOI could cover that entire site. There may be different conditions that apply to each facility and those different conditions/requirements must be reflected in the SWPPP and NOI. In Section D.10 of the NOI, the operator must identify the primary industrial activity at the facility. In Section D.10, the operator is asked to identify the co-located industrial activities at the facility; this is where the facility will indicate the specific industrial sector corresponding to the activity taking place at the adjoining property.

Question 1.13 If I have multiple industrial activities at my site, may I file a No Exposure Certification for one or more of the activities?

Answer 1.13

The No Exposure Certification for exclusion applies to the ***entire*** facility. If some activities are not exposed to stormwater, then it should be noted in the SWPPP that those areas are not exposed. However, once covered under the MSGP, the permittee must inspect those areas that are not exposed to stormwater during the site inspections to ensure that those areas continue to have no exposure to stormwater, and that there is no tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas.

Question 1.14 Should a facility obtain MSGP coverage for the entire site or file individual NOIs for each industrial activity and/or facility on the site?

Answer 1.14

Facilities with multiple industrial activities may submit one NOI listing all sectors that are covered by the MSGP.

Question 1.15 Must inactive gravel pits obtain industrial stormwater permits?

Answer 1.15

Inactive and unstaffed sites are required to obtain permit coverage. Depending on the circumstances, inactive and unstaffed sites may be subject to more flexible requirements under the MSGP. See Parts 1.2.1.4, 1.2.2.3, 2.1.3, 4.2.3.1,-as well as Parts 8.G, 8.H, and 8.J if the site is a mining facility.

Question 1.16 If my industrial activity doesn't clearly fit the SIC Code that it was assigned to, what should I do? Do I need to get coverage under the MSGP?

Answer 1.16

If your primary industrial activity has been assigned a SIC Code listed in Appendix D and you discharge stormwater, you are required to obtain permit coverage, even if the activity does not clearly fit within that SIC code. If there is any uncertainty about whether the facility falls within a particular SIC code, you should contact EPA for assistance in making the determination of applicability. If it is determined that your facility is eligible for MSGP coverage, be sure to tailor your SWPPP to reflect the ***actual*** activities that occur at your facility so that the pollution prevention measures employed at the facility for stormwater discharges are appropriate and sufficient.

Question 1.17 We have a quarry at our Federal facility. What do we need to do?

Answer 1.17

If there are stormwater discharges to waters of the U.S. from the industrial activity (specified in Appendix D of the MSGP) at the quarry, then coverage under an NPDES permit is required. Typically, facilities elect to seek coverage under the MSGP. It is likely that the quarry falls within one of the SIC codes corresponding to Sector J in the MSGP. Whoever is the operator of the quarry, that entity or person must get permit coverage. It is possible that there may be more than one operator. If that is the case, each operator must get permit coverage.

Question 1.18 Are only those transportation related facilities with vehicle maintenance shops, equipment cleaning operations, or airport deicing operations required to obtain industrial stormwater discharge permits?

Answer 1.18

In 40 CFR 122.26(b)(14)(viii), transportation facilities are "considered to be engaging in 'industrial activity' [if they are classified by the listed SIC codes] and **have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations**. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under categories (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity."

If your facility has stormwater discharges associated with industrial activity for any primary industrial activities and co-located industrial activities, as defined in Appendix A and included in Appendix D, then you are required to obtain NPDES permit coverage for such discharges. One of the options for permit coverage for such a facility is the MSGP.

Question 1.19 40 CFR 122.26(b)(iv) refers to "Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA". Does the language of the rule mean only TSDFs operating under a RCRA TSDF permit (or interim status) are considered industrial under the NPDES stormwater regulations and thus required to obtain industrial stormwater permits? Does that mean that a hazardous waste generator or <90 day storage facility is not considered industrial activity for stormwater permitting purposes?

Answer 1.19

In previous guidance for the MSGP, it was determined that a facility storing hazardous waste less than 90 days is **not** required to obtain NPDES permit coverage.

It is EPA's intent to cover those facilities that are operating under interim status or permit under the Resource Conservation and Recovery Act (RCRA) subtitle C. As such, only facilities meeting the definition of a hazardous waste treatment, storage, or disposal facility under RCRA are expressly included in this category. A facility that stores hazardous waste less than 90 days is not considered to be a treatment, storage, or disposal facility, and therefore is not required to be covered under an NPDES permit for their stormwater discharges.

If the primary SIC code of a facility is not explicitly covered under the stormwater regulations, but there is a hazardous waste treatment, storage or disposal facility (TSDF) on site, that TSDF is subject to stormwater permitting requirements. If the hazardous waste TSDF is or should be operating under interim status or a permit under Subtitle C of RCRA, regardless of the facility's primary activity, the stormwater discharges from that portion of the site are subject to the narrative definition of stormwater discharges associated with industrial activity under category (iv) in 40 CFR 122.26(b)(14).

Question 1.20 Does the MSGP cover portable asphalt plants? Do stormwater regulations always apply to asphalt plants or are there situations where they are exempt?

Answer 1.20

Yes. Stormwater regulations apply to and the MSGP covers portable asphalt plants. Stormwater discharges from a portable asphalt batch plant can also be permitted as a "support activity" when the plant directly supports a specific construction site; in that situation, the construction site operator obtains coverage under the CGP. If there are no discharges of stormwater, there is no need for an NPDES discharge permit.

Section 2 Definitions

Question 2.1 What is the definition of waters of U.S.? Is a ditch or other man-made waterbody considered "Waters of the U.S."?

Answer 2.1

Given the evolving definitions, we refer you to: https://www.epa.gov/wotus

States generally also define "Waters of the State." Those definitions may be more extensive than WOTUS. States can extend coverage under the MSGP to those Waters of the State through the 401 certification. As explained in Answer 1.3, the State of Washington has included such a condition through their 401 certification.

Question 2.2 What is the definition of "outfall" and "discharge point"?

Answer 2.2

In general, an industrial stormwater outfall or discharge point, for the purposes of the MSGP, is the point where stormwater associated with industrial activity discharges to waters of the United States or a municipal separate storm sewer system (MS4). A discharge point does not include conveyances, pipes or tunnels connecting segments of the same system (see regulatory definition below). Sometimes the actual receiving waterbody may be some distance away from the industrial facility, (for example, when a facility's stormwater flows offsite to a discharge point via a conveyance that is not part of an MS4 (sometimes being commingled with discharges from other facilities, roadways, etc. along the way). In such cases, the facility's discharge point is considered to be the location where the discharges leave the industrial site.

Refer to the regulatory definitions of the following terms:

Outfall means: "a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer system discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the United States and are used to covey waters of the United States." (See 40 CFR 122.26(b)(9)).

Point source means: "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff." (See 40 CFR 122.2).

Discharge when used without qualification means the "discharge of a pollutant." (See 40 CFR 122.2).

Discharge of a pollutant means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used

as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (See 40 CFR 122.2).

Question 2.3 What is a definition of "conveyances" for purposes of 122.26(b)?

Answer 2.3

See the definition of point source, above, in Answer 2.2. The term "conveyance" is not defined in the NPDES regulations. The dictionary definition of the applicable terms is instructive here: "to convey" means to transfer or deliver to another; "conveyance," the means or way of conveying. For the purposes of the MSGP, stormwater conveyances can include any means for conveying a stormwater discharge, such as a drainage system, ditch, swale, pipe, sewer, or municipal separate storm sewer system (MS4). Conveyance also includes any natural channels or tributaries that carry stormwater through and off the facilities property.

Section 3 Training

Question 3.1 What constitutes acceptable training for your SWPPP team?

Answer 3.1

Part 2.1.2.8 of the MSGP specifies that training must cover both the specific control measures used to achieve the effluent limits in this Part, and monitoring, inspection, planning, reporting, and documentation requirements in other parts of the permit. Various organizations provide training on inspecting stormwater control measures and EPA encourages individuals to pursue additional training to gain additional knowledge and understanding of proper operation of practices appropriate for reducing pollutants in stormwater. As an example, one can find training opportunities via the International Erosion Control Association at https://www.ieca.org/IECAEducation.

Section 4 Monitoring and Reporting

Question 4.1 Regarding Washington State's sediment standards, what monitoring requirements should we follow for discharges to impaired waters?

Answer 4.1

Per Part 9.10.7.2d of the 2021 MSGP, there are additional sampling requirements and effluent limits for discharges to certain impaired waters and Puget Sound sediment cleanup sites.

Federal operators in other areas of Washington State are not subject to the Puget Sound requirements but must still comply with the requirements in Part 2.2.2 regarding discharges to water quality impaired waters. For example, the facility must also sample for turbidity if the receiving water is impaired for sediment, pursuant to Part 4.2.5.1.

Question 4.2 Can records be stored separately if too voluminous to be with SWPPP?

Answer 4.2

Yes; keep this additional documentation on-site with the SWPPP, and ensure these records are accessible, complete, and up-to-date so that they demonstrate your full compliance with the conditions of your permit. As a general matter, compliance records required to be kept pursuant to the MSGP do not need to be incorporated as part of the SWPPP. Instead, keep these records on site in the same general area as the SWPPP so they may be accessed easily by any inspectors.

Question 4.3 When/ how do we sample if our stormwater discharge is pumped out of a detention pond (and is therefore not necessarily in sync with storm events)?

Answer 4.3

The intention is to sample a discharge representative of a storm's 'first flush', or the highest concentration of pollutants (one of the reasons why many benchmark parameters are set using the "National Recommended Water Quality Criteria." Acute Aquatic Life Freshwater (EPA-822-F-04-010 2006- CMC)). Sample when the water is leaving the control of the operator and entering a conveyance that connects to Waters of the U.S. While in most circumstances, grab samples are optimal, using either time-weighted or flow-weighted sampling may be appropriate (e.g. if pollutants have stratified within the pond).

Question 4.4 For the routine inspection, do you need two people or one super-qualified person?

Answer 4.4

Per MSGP Part 3.1.1., qualified personnel must conduct the routine facility inspections with at least one member of the Stormwater Pollution Prevention Team participating. If the qualified personnel is a third-party you hire (i.e., a contractor), at least one member of your stormwater pollution prevention team must participate in the inspection. The intent of this requirement is not to require any particular facility officer to participate in inspections. Rather the intent is to ensure that inspections are carried out by qualified personnel. By requiring that inspectors be formally identified as part of the Stormwater Pollution Prevention Team, this will help ensure that they are properly trained to carry out effective inspections.

Question 4.5 What do we do if there is just a seasonal presence of our industrial activity, e.g., a U.S. Coast Guard helicopter station that ceases to exist in the winter? What do we do about stormwater discharges when there is no industrial activity occurring?

Answer 4.5

Despite the fact that the facility is seasonally inactive and unstaffed, permit coverage is required during all such periods. If a facility is seasonally inactive **and** unstaffed, the operator should provide such information on the NOI form. See Section D.11 of the NOI form in Appendix G of the MSGP. Additionally, to invoke this exception, you must maintain a statement in your SWPPP pursuant to Part 6.2.5.3.c indicating that the site is

inactive and unstaffed, and that there are no industrial materials or activities exposed to precipitation, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii). The statement must be signed and certified in accordance with Appendix B, Subsection 11. If circumstances change and industrial materials or activities become exposed to stormwater or your facility becomes active and/or staffed, this exception no longer applies and you must immediately resume quarterly facility inspections.

During the seasons of inactivity, such facilities are relieved of the requirement to conduct benchmark monitoring (if applicable) during the corresponding monitoring periods (Part 4.2.2.5 of the MSGP) and the requirement to conduct quarterly visual assessments (Part 3.2.4.4 of the MSGP) as long as there are no industrial materials or activities exposed to stormwater.

Question 4.6 When must I begin reporting for the MSGP?

Answer 4.6

Once your facility is covered under the MSGP, some reporting requirements apply immediately, while others apply based on the next complete monitoring period. For instance, the requirement to report to Region 10 within 24 hours of any permit noncompliance that may endanger health or the environment applies immediately upon coverage under the permit. For reporting benchmark monitoring results, however, a permitted facility is required to start reporting results from samples that are taken during the first complete monitoring quarter (Part 4.1.7).

Question 4.7 Can the permittee submit monitoring results? (The drinking water program requires that data be submitted to EPA directly by the analytical lab).

Answer 4.7

Yes, EPA expects the permittee to submit the monitoring results for their facility through NetDMR.

Question 4.8 How do I determine and document that elevated "natural background" levels are causing the benchmark exceedances monitored at the facility?

Answer 4.8

Part 5.2.6.1 of the MSGP states:

"Document and maintain with your SWPPP, as required in Part 6.5.9, your supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. You must include in your supporting rationale any data previously collected by you or others (including literature studies) that describe the levels of natural background pollutants in your stormwater discharge."

The MSGP Fact sheet further clarifies the topic of natural background levels, specifically documentation of elevated background levels:

> "The following information, describing the rationale for claiming the natural background exception, must be documented and kept onsite with the facility's SWPPP:

- Map showing the reference site location in relation to facility along with available land cover information
- Reference site and test site elevation
- Available geology and soil information for reference and test sites
- Photographs showing site vegetation
- Site reconnaissance survey data regarding presence of roads, outfalls, or other human-made structures
- Records from relevant state or federal agencies indicating no known mining, forestry, or other human activities upstream of the proposed reference site

The background concentration of a pollutant in runoff from a non-human impacted reference site in the same watershed should be determined by evaluation of ambient monitoring data or by using information from a peer-reviewed publication or a local, state, or federal government publication specific to runoff or stormwater in the immediate region. Studies that are in other geographic areas, or are based on clearly different topographies or soils, are not eligible. When no data are available, and there are no known sources of the pollutant, the background concentration should be assumed to be zero."

Question 4.9 Does previous benchmark sampling carry over from old permit to the new permit?

Answer 4.9

No, the benchmark monitoring re-sets with each permit cycle. You must conduct your sampling in accordance with the requirements of the 2021 MSGP. Your previous benchmark monitoring data must be summarized in your SWPPP, pursuant to Part 6.2.3.6.

Question 4.10 Do you have to monitor for hardness in marine waters?

Answer 4.10

No. As the "hardness" of seawater is considerably large and its assimilative capacity regarding metals is high, the benchmarks for hardness-dependent metals are those associated with the greatest hardness: 250+ mg/L.

However, permittees should remain cognizant of state water quality standards for the benchmark pollutants in marine waters.

Question 4.11 How do we get the right number of samples through the year?

Answer 4.11

Using your permit, determine the type of monitoring requirements to which your specific facility is subject, and document in your SWPPP the specific monitoring requirements that applies to each discharge point, including the frequency of monitoring and the specific parameters that must be monitored. Different monitoring requirements may apply to individual discharge points on your property based on the type of industrial activity discharging to that point, and the receiving water(s) to which you are discharging.

Question 4.12 When is sampling required?

Answer 4.12

Please see Part 6 and your sector-specific requirements in Part 8.

Question 4.13 What reports do we need to submit to EPA?

Answer 4.13

Please see Part 7 of the Permit.

Section 5 Spills

Question 5.1 If we had spills at our facility, how far back in time must we report?

Answer 5.1

You are required to document in your SWPPP all significant spills and leaks of oil or toxic or hazardous pollutants that occurred at exposed areas of the site for the previous 3 years prior to the date the SWPPP is prepared. See Part 6.2.3.3.

Question 5.2 What is the minimum volume for spills that we need to report?

Answer 5.2

There is no minimum specified in the MSGP. The permit requires reporting of "significant spills and leaks of oil or toxic or hazardous pollutants that actually occurred at exposed areas." See Part 6.2.3.3 of the permit. Significant spills have been defined by EPA to include releases within a 24-hour period of hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act and Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act.

Question 5.3 Must the federal operator's SWPPP include a map of past spills throughout the facility, or just at the "industrial facilities"?

Answer 5.3

Please see Part 6.2 of the permit; the site description must include "locations where significant spills or leaks identified under Part 6.2.3.3 have occurred." It is for the entire facility, not just the industrial areas. Significant spills have been defined by EPA to include releases within a 24-hour period of hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act and Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act.

Section 6 Sector S – Air Transport

Question 6.1 If our facility includes activities that occur seasonally, e.g., deicing operations for air transportation, must we do the analytical sampling out of season?

Answer 6.1

You are only required to conduct benchmark monitoring during the seasonal timeframe during which deicing activities typically occur at the facility. Refer to Parts 8.S.4.1.8 and 8.S.6 of the MSGP.

Question 6.2 What does "dry weather discharge of de-icing chemicals" mean?

Answer 6.2

The phrase "dry weather discharge of deicing chemicals" means that there is a discharge of deicing chemicals that is not associated with a storm event or snowmelt. Such discharges are prohibited under the MSGP and constitute violations of the Clean Water Act. Please see Part 8.S.2.2.

Question 6.3 Does the de-icing chemical section apply to runways as well as airplanes?

Answer 6.3

Yes

Question 6.4 Can operators at Sector S facilities ignore deicing chemicals which are not explicitly named in the MSGP?

Answer 6.4

No. The MSGP requires adequate management of all potential sources of pollutants to discharges of stormwater. Chemicals that are specifically named in the MSGP are those used to determine whether benchmark monitoring is required. If the chemical is not named in the permit, then no benchmark monitoring is required.

However, even though the deicing chemical utilized at the facility is not explicitly named in the MSGP, it is a pollutant source that must be controlled as any other pollutant source under the terms of the permit.

Section 7 Sector Q Water Transportation

Question 7.1 Is there a definition of size regarding water transportation or its activities?

Answer 7.1

No, there is no minimum or maximum size for this sector. The MSGP addresses those water transportation facilities that perform vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting, fueling, vessel and vehicle exterior washdown. Please see Part 8.Q.1 regarding stormwater discharges for this sector, and 40 CFR 122.26(b)(14)(i-ix, xi) for the definition of industrial activities.

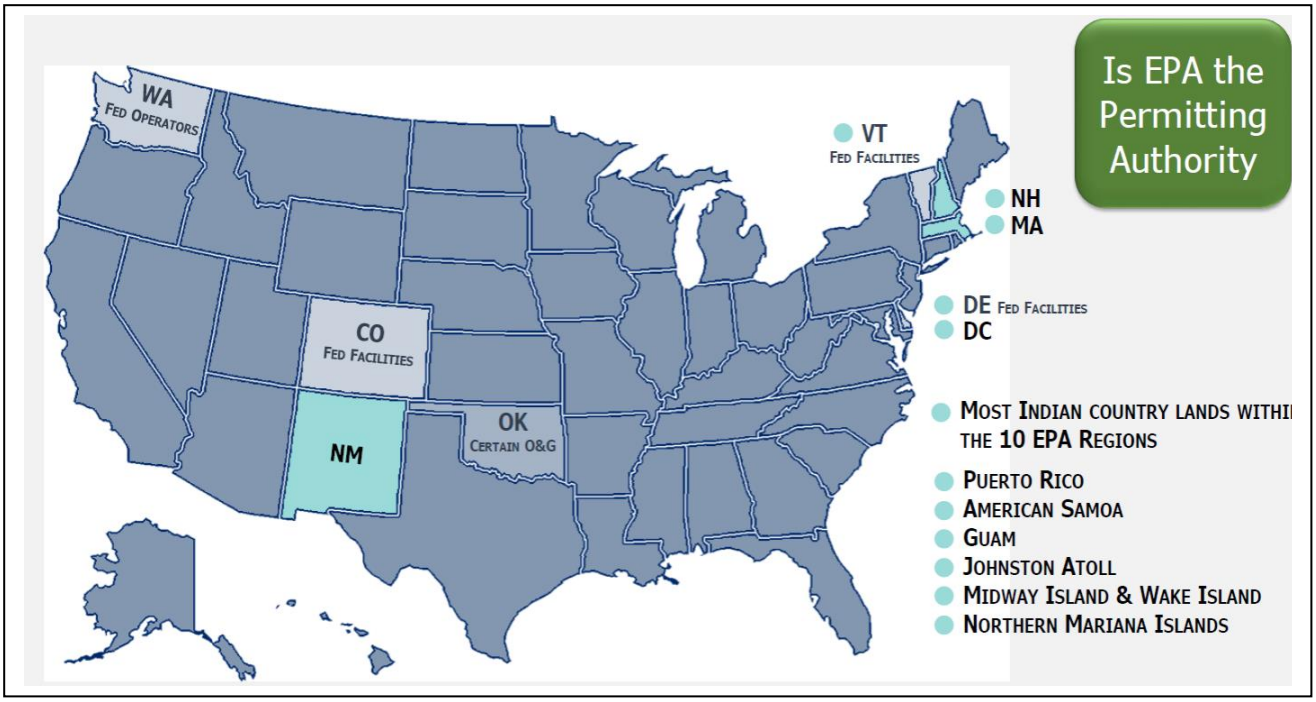
Section 8 Operator Obligations

Question 8.1 Why would a Federal operator need an MSGP? Only when the specific SICs are on base?

Answer 8.1

If you are a Federal operator of industrial activities under SIC Codes listed in Appendix D of the MSGP and you have stormwater discharges associated with those activities, you must obtain permit coverage. Whether it is EPA's permit depends on where you are located (see

Figure).



Question 8.2 What if I operate a gravel pit that I am leasing from a state or federal land agency? Am I responsible as the operator to get MSGP coverage? What if a state or tribal agency operates a gravel pit with a private company? Who is responsible for MSGP coverage?

Answer 8.2

The operator as defined in the MSGP must sign up for NPDES permit coverage and comply with the permit requirements. It is possible that there may be more than one operator and more than one NOI filed.

Any entity with a stormwater discharge associated with industrial activity that meets either of the two criteria:

- The entity has operational control over industrial activities, including the ability to modify those activities

or…

- The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).

Question 8.3 Who would be liable for noncompliance with the permit at a Federal facility: the contractor, the Federal facility, etc.?

Answer 8.3

The operator as defined in the MSGP must sign up for NPDES permit coverage and comply with the permit requirements. It is possible that there may be more than one operator and more than one NOI filed.

Any entity with a stormwater discharge associated with industrial activity that meets either of the two criteria:

- The entity has operational control over industrial activities, including the ability to modify those activities

or…

- The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit)

If an operator (per the definition of "operator" in the MSGP) is found to be in violation of the permit, then that entity or person could receive a Notice of Violation. If a contractor is an operator, then the violation would be sent to them. Whoever is an operator per the permit, that entity or person is responsible for complying with the permit.

Question 8.4 Does a company/facility make the decision that they will not have discharges to receiving waters or does EPA? If the facility makes that call, are they obligated to tell EPA?

Answer 8.4

The facility operator provides the initial determination as to the receiving water that receives discharges from its facility. If the facility determines that there is no discharge of stormwater to waters of the U.S. and relies on this determination to not seek coverage under an NPDES permit, the facility assumes the risk of being found to discharge stormwater without a permit and subject to law enforcement, should EPA find that the initial determination of no discharge was made in error.

Question 8.5 Can multiple tenants at an industrial site (airport, industrial park) who require coverage under the MSGP prepare one SWPPP and conduct monitoring jointly? Or must they each prepare a separate SWPPP and monitor separately?

Answer 8.5

In Appendix A of the MSGP, "Operator" is defined as:

> "any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria:
> (i) The entity has operational control over industrial activities, including the ability to modify those activities; or
> (ii) The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).

Thus, it is possible that there may be more than one operator at a facility.

Using airports as an example, an airport typically operates under a single management organization known as the airport "authority" which in most cases is a public agency. Airline carriers and other fixed base operators (e.g., fueling companies and maintenance shops) that

have contracts with the airport authority to conduct business on airport property are commonly referred to as "tenants" of the airport.

Tenants may be of two types—those that are regulated as stormwater dischargers associated with industrial activities under 40 CFR 122.26(b)(14) and those that are not. The operator and the tenants of the airport that conduct industrial activities as described above, or as described anywhere in 40 CFR 122.26(b)(14) and which have stormwater discharges, are required to apply for coverage under an NPDES stormwater permit for the discharges from their areas of operation. Where an airport has multiple operators (airport authority and tenants) that have stormwater discharges associated with industrial activity, as described above, **each operator is required to apply for coverage under an NPDES stormwater permit.** Each individual party must submit a Notice Of Intent (NOI) to be covered under the permit. Ultimately, the operator(s)/owner(s) of the stormwater discharge points from the airport is (are) responsible for compliance with all terms and conditions of the permit. The airport authority and tenants of the airport are encouraged to work in partnership in the development and implementation of a stormwater pollution prevention plan.[4]

Section 9 Additional Requirements

Question 9.1 The "Energy Independence and Security Act of 2007" requires all federal development and redevelopment projects with a footprint above 5,000 square feet to achieve predevelopment hydrology to the "maximum extent technically feasible". What must Federal facilities do to comply with this requirement?

Answer 9.1

Guidance is available at https://www.epa.gov/nps/stormwater-management-federal-facilities-under-section-438-energy-independence-and-security-act.

Question 9.2 Does your permit have generally applicable best management practices (BMPs) or stormwater control measures (SCMs) to control stormwater or would SCMs be created on a site-specific basis? Along that line, do the SCMs or other requirements normally have setback (from waterbodies) requirements?

Answer 9.2

Yes, there are some generally applicable BMPs/ SCMs for all facilities seeking coverage under the MSGP; however, EPA notes that the facility operator is ultimately responsible for implementing controls necessary to meet applicable effluent limits of the permit and applicable water quality standards.

The MSGP requires the operator to develop a SWPPP that details exactly what they do at their location to meet the terms and conditions of the permit. The SWPPP also contains the documentation regarding how they are eligible under the Endangered Species Act (ESA) provisions, among other things.

[4] Federal Register. Vol. 60, No. 189, 50998. Friday, September 29, 1995.

Question 9.3 What is meant by "technologically available and economically practicable?" How should I comply with that?

Answer 9.3

The control measures used need to be adequate to meet the effluent limits in the permit and any water quality-based effluent limits that EPA determines are necessary to meet TMDL or antidegradation-related requirements. The technology-based standard for the selection, design, installation, and implementation of control measures is that level of control that will "reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice." See Part 2. EPA has not defined a minimum storm event around which to design control measures, but rather is using a case-by-case best professional judgment approach that recognizes the tremendous variability among sites and between different climatic conditions in different parts of the country. EPA expects that facilities will consider the best industry practices when determining which particular control measure to implement at their site; selecting practices that are clearly subpar will violate the technologically available and economically practicable standard in the permit.

The selection, design, installation, and implementation of control measures must also be "in accordance with good engineering practices and manufacturers specifications." See Part 2.1. For this reason, if EPA finds that control measures have been improperly selected, designed, installed, or implemented at a particular site, in clear defiance of good engineering practice and/or in such a way that ignores applicable manufacturer specifications to the detriment of the effectiveness of the control measure, then a permit violation will have occurred. However, if a particularly intense storm event overwhelms the site's control measures in such a way that they did not perform as intended, this may not be considered a violation as long as the operator had properly selected and designed the controls to be in conformance with the standard for selection and design in Part 2.

Question 9.4 Do exceedances of TMDL target values follow the Additional Implementation Measures (AIM) process?

Answer 9.4

Yes. AIM is part of "all measures necessary to be consistent with an available wasteload allocation in an EPA-established or approved TMDL."

Question 9.5 How do we reduce the zinc in our discharge?

Answer 9.5

Sources of zinc will vary depending on site specifics. Examples of possible measures to reduce zinc in stormwater discharges at an industrial facility include:

- Using painted metal instead of galvanized metal for ventilator covers, ductwork, and other surfaces.
- Substituting vinyl-covered chain-link fences for galvanized chain-link fences.
- Cleaning grounds and loading dock areas, particularly those with heavy vehicular traffic.
- Repairing forklifts that leak hydraulic fluid.

Section 10 Contacts

Question 10.1 Who should we call when we have questions like these? Is there an EPA stormwater hotline?

Answer 10.1

Permittees may contact the EPA Headquarters industrial storm water program:

Industrial Stormwater Program, US EPA Headquarters, Office of Water, Office of Wastewater Management, Water Permits Division
1200 Pennsylvania Ave NW, (4203M), Washington, DC 20460

Alicia Denning
Phone: (202) 564-0577
denning.alicia@epa.gov

Emily Anwari
Phone: (202) 564-3324
anwari.emily@epa.gov

Permittees in Alaska, Idaho, Oregon, and Washington State may also direct questions to the EPA Region 10 Office in Seattle:

Margaret McCauley, Stormwater Permit Administrator
Office of Water & Watersheds, NPDES Permits Unit
United States Environmental Protection Agency – Region 10
206.553.1772 or 1.800.424.4372, x. 1772
mccauley.margaret@epa.gov

Stacey Kim, Stormwater Compliance Officer
Office of Compliance & Enforcement, NPDES Unit
United States Environmental Protection Agency – Region 10
206.553.1380 or 1.800.424.4372, x. 1380
kim.stacey@epa.gov