

U.S. Environmental Protection Agency  
2006 Proposed Reissuance of  
National Pollutant Discharge Elimination System  
(NPDES) Stormwater Multi-Sector General Permit  
for Industrial Activities  
Fact Sheet

AGENCY: Environmental Protection Agency (EPA)  
ACTION: Notice of Proposed NPDES general permit

## Summary

The Regional Administrators of EPA Regions 1, 2, 3, 5, 6, 9, and 10 are today proposing a reissuance of EPA's NPDES Stormwater Multi-Sector General Permit (MSGP). This general permit, MSGP 2006, when finalized, will replace the MSGP 2000, which was issued on October 30, 2000 (65 FR 64746), and expired on October 30, 2005.

## Public Comment

EPA is soliciting comment on the proposed MSGP 2006. Comments on any provision of the permit, or comments on the fact sheet discussion are welcome. The comment period is open for 45 days from publication of this Notice in the Federal Register. Comments may be submitted to EPA in the following ways:

- EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search", and then key in Docket ID No. OW-2005-0007. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.
- E-mail. Comments may be sent by electronic mail (e-mail) to [ow-docket@epa.gov](mailto:ow-docket@epa.gov), Attention Docket ID No. OW-2005-0007. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- Disk or CD-ROM. You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in Microsoft Word or ASCII file format. Avoid the use of special characters and any form of encryption.
- By Mail. Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW-2005-0007.
- By Hand Delivery or Courier. Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. OW-2005-0007. Such deliveries are only accepted during the Docket's normal hours of operation as identified on the next page under "Addresses."

**Addresses**

The index to the administrative record for the proposed reissued MSGP is available at the appropriate Regional Office or from the EPA Water Docket Office in Washington, DC. The administrative record, including documents immediately referenced in this proposed reissuance and applicable documents used to support the MSGP 2006 and the prior issuances of the MSGP in 1995 and 2000, is stored at the EPA Water Docket Office at the following address: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Water Docket, MC4101T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The records are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at 202-566-2426. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

**For Further Information**

For further information on the proposed MSGP, contact the appropriate EPA Regional Office. Contact information is available through the Internet on EPA's Office of Wastewater Management website at <http://www.epa.gov/npdes/stormwatercontacts>.

**Supplemental Information**

This fact sheet explains and provides additional details on the topics covered in the MSGP. The actual language of the proposed MSGP 2006 appears after this fact sheet. Many provisions of the proposed MSGP 2006 originated with previous permits. Therefore, additional discussion on many MSGP requirements can be found in fact sheets for the 1995 and 2000 MSGPs.

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## **1. Background**

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program. 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.” EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities.

The Regional Administrators of EPA Regions 1, 2, 3, 5, 6, 9 and 10 are today proposing to reissue EPA’s NPDES Stormwater Multi-Sector General Permit (MSGP). The MSGP currently authorizes stormwater discharges associated with industrial activity for most areas of the United States that are not authorized to administer the NPDES permit program. The initial MSGP was issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534), and September 30, 1998 (63 FR 52430). The current MSGP was issued on October 30, 2000 (65 FR 64746), after being proposed on March 30, 2000 (65 FR 17010). MSGP 2000 was subsequently corrected on January 9, 2001 (66 FR 1675-1678) and March 23, 2001 (66 FR 16233-16237). On April 16, 2001 (66 FR 19483-19485) EPA re-issued the permit, as corrected, for facilities in certain areas of Regions 8 and 10.

## **2. Changes from MSGP 2000**

The organization of today's proposed MSGP has been changed substantially from the MSGP 2000. Parts 1, 2 and 3 of today's proposed MSGP 2006 contain provisions common to all discharges. Part 4 details the industrial sector-specific requirements, and Part 5 details the State- and Tribe-specific requirements. The permit also includes appendices for: definitions and acronyms (Appendix A); standard permit conditions (Appendix B); areas covered (Appendix C); activities covered (Appendix D); Endangered Species Act procedures (Appendix E); National Historical Places Act procedures (Appendix F); Notice of Intent requirements and form (Appendix G); and Notice of Termination (NOT) (Appendix H). These appendices were extracted from the general permit body as one-time per permit term references for permitted facilities, unless substantial changes in industrial activities are undertaken during the active permit term. The intent of the reorganization was to simplify the process of determining requirements for the permitted facilities by placing the core requirements into the main permit body.

A detailed list of proposed changes from MSGP 2000 is included below. A discussion of notable differences is provided in Chapter 3 of this Fact Sheet.

### **2.1 MSGP 2006 Part 1**

1. Simplified co-located activity discussion (Part 1.2.1)
2. Makes a clearer distinction between eligibility requirements (Part 1.2) and permit compliance (Part 1.3).
3. Added description that generic pH range limits not included to address a known exceedance covered under an individual permit or alternative general permit could be covered under the MSGP (Part 1.2.4.3 [MSGP 2000 Parts 1.2.3.3.2 and 1.2.3.3.2.1])
4. Added description that discharges previously covered by an individual permit or alternative general permit where the permittee fails to implement BMPs that provide equal or better pollution prevention or pollutant removal required by the previous permit are not authorized (Part 1.2.4.3 [MSGP 2000 Parts 1.2.3.3.2 and 1.2.3.3.2.2])
5. Clarified that facility discharges are not authorized when a Total Maximum Daily Load (TMDL) specifically articulates a Wasteload Allocation (WLA) requiring more stringent controls than can be achieved under MSGP 2006, or when a TMDL applies a WLA of zero (0) to the facility's discharge (Part 1.2.4.4)
6. Added specific eligibility provisions in lieu of an ambiguous eligibility requirement for new discharges to impaired waters without TMDLs (Part 1.2.4.9)
7. Deleted information on initiating a new source review and on NEPA requirements after state assumption of the MSGP ([MSGP 2000 Parts 1.2.4.2, 1.2.4.3])

8. Revised and clarified water quality provisions and discharge standards: Numeric Effluent Limitations (Part 1.4.1), Benchmarks (Part 1.4.2), and Water Quality Standards (Part 1.4.3)
9. Clarified what a facility must do when there is a determination that a facility's discharge does not comply with applicable water quality standards (Part 1.4.3)
10. Added information on coverage under the MSGP for discharges of pollutants of concern to waters for which there is a Total Maximum Daily Load (TMDL); emphasized verification of compliance with a wasteload allocation (WLA) through monitoring (Part 1.4.4.1)
11. Added information on coverage under the MSGP for discharges to an impaired water without an established TMDL (Part 1.4.4.2)
12. Clarified that NOIs must be submitted in accordance with the deadlines specified in Table 1-2 of the permit (Part 1.5.1) and added Table 1-2
13. Changed authorization to discharge from 2 days to 30 days after EPA posts a facility's complete NOI on the e-NOI website (Part 1.5.2)
14. Described the exact time of termination and requirement for still complying with the conditions of the permit until an NOT is submitted (Part 1.6.1)

## **2.2 MSGP 2006 Part 2**

1. Added SWPPP site description requirements of impervious surface estimate and precipitation information (Part 2.1.2)
2. Added description of the locations of surface water bodies requirements to be included in the site description (Part 2.1.3 [MSGP 2000 Part 4.2.2.3.3])
3. Included a requirement to determine relevant water quality standards, TMDLs and impaired water status for receiving waters (Parts 2.1.3.1 and 2.1.3.2)
4. Emphasized that facilities are responsible to include a description of location and source of run-on from adjacent property, and to evaluate how those sources impact the quality of discharges from the facility (Part 2.1.2 [MSGP 2000 Part 4.2.2.3.10])
5. Added requirement that if a facility discharges through a municipal separate storm sewer system (MS4), the facility must identify the operator of that MS4 and the receiving water body (Part 2.1.3 [MSGP 2000 Part 4.2.3])
6. Changed notification deadline from 180 days to 14 days when a facility is unable to provide the certification required for the elimination of unauthorized discharges (Part 2.1.4.4 [MSGP 2000 Part 4.4.1.3])
7. Added salt storage as a category under potential pollutant sources (Part 2.1.4.6)
8. Updated information to consider when selecting BMPs (Part 2.1.5 [MSGP 2000 Parts 4.2.7.1.1 through 4.2.7.1.2])

9. Added a reference to the *Guidance Manual for Conditional Exclusion from Stormwater Permitting Based on “No Exposure” of Industrial Activities to Stormwater* (Part 2.1.5.2 [MSGP 2000 Part 4.2.7.2.1.2])
10. Clarified that regular preventive maintenance measures are distinct from specific BMP improvement needs discovered during inspections or as a result of monitoring (Part 2.1.5.3 [MSGP 2000 Part 4.2.7.2.1.3])
11. Added examples of preventive measures for spills (Part 2.1.5.4)
12. Clarified spill response procedures and added new requirement that employees who may cause, detect or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. Also, if possible, one of these individuals should be a member of the facility’s Pollution Prevention Team. Added requirement for including in the SWPPP contact information for individuals and agencies that must be notified in the event of a spill (Part 2.1.5.4 [MSGP 2000 Part 4.2.7.2.1.4])
13. Added requirement for documenting in the SWPPP all training sessions and the employees who received the training (Part 2.1.5.6 [MSGP 2000 Part 4.2.7.2.1.6])
14. Deleted outdated reference to the User’s Guide to the MSGP-2000 (MSGP 2000 Part 4.2.7.2.2.2)
15. Added that if repairs to existing BMPs that are not operating effectively cannot be performed prior to the next anticipated rainfall, that back-up measures must be in place, and justification for the extended repair schedule be included in the SWPPP (Part 2.2 [MSGP 2000 Part 4.3])
16. Changed deadline for completion of BMP modification or addition to be within 60 days instead of 12 weeks after discovery of any deficiency or discharge standard exceedance. Added an opportunity to have EPA approve an extended deadline when appropriate. (Parts 2.3 [MSGP 2000 Part 4.9.3])
17. Deleted requirement of including a copy of the permit in the facility’s SWPPP (MSGP 2000 Part 4.7)
18. Clarified SWPPP availability requirements (Part 2.4 [MSGP 2000 Part 8.2])

### **2.3 MSGP 2006 Part 3**

1. Defined “qualified personnel” (Part 3.1.2 [MSGP 2000 Part 4.2.7.2.1.5])
2. Clarified, as part of the comprehensive site compliance evaluation, that outfall or discharge location inspections include looking for evidence of pollutants discharging to surface waters at facility outfall(s) and the condition of and around the outfall, including flow dissipation measures to prevent scouring (Part 3.1.3 [MSGP 2000 Part 4.9.2])
3. Added modifications to quarterly benchmark monitoring scheduling, based on precipitation patterns (Part 3.2.2.1)
4. Moved initiation of quarterly benchmark monitoring from the 2<sup>nd</sup> year of permit coverage to the 1<sup>st</sup> year of permit coverage (Part 3.2.2.1 [MSGP 2000 5.1.2.1])

5. Modified the benchmark monitoring requirements such that no additional benchmark monitoring is required (for a given pollutant) when, following 4 quarters of monitoring, the average of the 4 quarterly samples does not exceed the benchmark (Part 3.2.2.3 [MSGP 2000 5.1.2.2])
6. In MSGP 2000 an additional 4 quarters of benchmark monitoring was required in year 4 when the average of the year 2 monitoring exceeded the benchmark. In the proposed MSGP 2006 an additional 4 quarters of monitoring commences in the 2<sup>nd</sup> year of permit coverage if the average of the 1<sup>st</sup> year monitoring exceeds the benchmark, if the operator determines that modifications to the SWPPP are necessary, and once corrective actions have been implemented (Part 3.2.2.4 [MSGP 2000 5.1.2.1])
7. Clarified the provision to review the SWPPP after the average of the 4 monitoring values exceeds the benchmark, and determine if improvements to the SWPPP and BMPs are needed. Added a provision to make a determination that modifications are not needed, in which case the justification must be included in the SWPPP, and monitoring may be reduced to once per year. When modifications are needed, corrective actions must be taken and an additional 4 quarter of monitoring undertaken (Part 3.2.2.4)
8. Extended the benchmark monitoring waiver to any inactive and unstaffed site, not just those remote facilities where monitoring is not feasible, but added the prerequisite that no industrial materials or activities be exposed to stormwater (Part 3.2.2.5 [MSGP 2000 Part 5.1.2.3])
9. Added a requirement for monitoring applicable pollutants of concern in discharges to impaired waters (Part 3.2.5)
10. Updated requirement of storm event total volume data to be reported in liters instead of gallons (Part 3.2.6.2 [MSGP Part 5.2.3])
11. Added a specific section to clarify the requirement to take immediate corrective action when there is an exceedance of an effluent limitation, a water quality standard, or other limitation stipulated in Part 5; when inspections or evaluations identify inadequacies in stormwater controls, or; when the SWPPP review following a benchmark exceedance (average of 4 monitoring events) reveals inadequacies (Part 3.3)
12. Deleted additional reporting for dischargers to a large or medium municipal separate storm sewer system (MSGP 2000 Part 7.2)
13. Added follow-up monitoring requirements for pollutants with effluent limitation guidelines, coalpile runoff and wasteload allocations (pollutants for which only annual monitoring is otherwise required) when results indicate discharge exceeds the numeric effluent limitation, or when the discharge has been found to cause or contribute to a water quality standard exceedance, to verify that BMPs have been adequately modified to protect water quality (Part 3.4)
14. Added requirements for reporting results of follow-up monitoring exceedances (Part 3.4)
15. Added requirement for facilities' administrative records to accurately reflect a traceable historical record of BMP installation, maintenance, monitoring results, and revision of practices and data collected to support continued maintenance of those practices or their

- abandonment in lieu of more effective control mechanisms (Part 3.6 [MSGP 2000 Part 8.1])
16. Updated information for Region 4 indicating that coverage is not available under this permit (Part 3.7.4 [MSGP 2000 Part 8.3.4])
  17. Updated information for Region 5 indicating that coverage will be available under this permit (Part 3.7.5 [MSGP 2000 Part 8.3.5])
  18. Updated information for Region 6 indicating that coverage is not available under this permit for Arkansas (Part 3.7.6 [MSGP 2000 Part 8.3.6])
  19. Updated information for Region 8 indicating that coverage is not available under this permit (Part 3.7.8 [MSGP 2000 Part 8.3.4])
  20. Updated Region 10 states to include Alaska (Part 3.7.10 [MSGP 2000 Part 8.3.10])

#### **2.4 MSGP 2006 Part 4 (Specific Requirements for Industrial Activity [MSGP 2000 Section 6, Sector-Specific Requirements for Industrial Activity])**

All information previously included in Section 6, “Sector-Specific Requirements for Industrial Activity,” is now in Part 4, “Specific Requirements for Industrial Activity.” The content of this section has also been updated, as detailed below.

1. The Benchmark Monitoring Requirement for Total Suspended Solids (TSS) was added to each Sector where it was not otherwise included in the MSGP 2000. It should be noted that monitoring for this parameter is required for the sectors and subsectors that did not have any benchmark monitoring requirements in the MSGP 2000 in addition to those sectors and subsectors that did have benchmark monitoring requirements in the MSGP 2000. These sectors and subsectors that previously did not have benchmark monitoring requirements are listed below.
  - I. Oil and Gas Extraction and Refining
  - P. Land Transportation and Warehousing
  - R. Ship and Boat Building and Repairing Yards
  - T. Treatment Works
  - V. Textile Mills, Apparel, and Other Fabric Product Manufacturing; Leather and Leather Products
  - W. Furniture and Fixtures
  - X. Printing and Publishing
  - Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries

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- Z. Leather Tanning and Finishing
  - AB. Transportation Equipment, Industrial or Commercial Machinery
  - AC. Electronic, Electrical, Photographic, and Optical Goods
  - AD. Non-classified Facilities
2. New benchmarks for chromium and phenols were added to the wood preserving (SIC 2491) subsector of sector A, timber products.
  3. New benchmarks for ammonia, lead, nickel, zinc and nitrate-nitrite nitrogen were added to sector I, oil and gas extraction and refining.
  4. A new benchmark for lead was added to the rubber manufacturing subsectors of sector Y, rubber, miscellaneous plastic products, and miscellaneous manufacturing industries: Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices, and Rubber Hoses and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011-3069, rubber manufacturing only).
  5. New benchmarks for copper and lead were added to the electronic and electrical equipment and components except computers (SIC 3612-3699) subsector of sector AC, electronic, electrical, photographic, and optical goods.
  6. Updated description of India ink and water colors (Part 4.C.2.7 [MSGP 2000 Part 6.C.2.7])
  7. Changed inspection frequency to monthly (Part 4.F.3.4 [MSGP 2000 Part 6.F.3.4])
  8. Facility information updated (Part 4.G.1 [MSGP 2000 Part 6.G.1])
  9. Added information on covered discharges from exploration and development of metal mining and/or ore dressing facilities (Part 4.G.1.3)
  10. Added information on covered discharges from facilities at mining sites and undergoing reclamation (Part 4.G.1.4)
  11. Added information on reclamation of mining sites (Part 4.G.2.3)
  12. Included discussion of contaminated seeps and spring discharging from waste rock dumps (Part 4.G.3.2 [MSGP 2000 Part 6.G.3.2])
  13. Changed text from “Exploration and Construction Phase” to “Exploration and Development Phase” (Part 4.G.4.2 [MSGP 2000 Part 6.G.4.2])
  14. Added text on final stabilization (Part 4.G.4.8)
  15. Simplified text on clearing, grading, and excavation activities (Part 4.G.5 [MSGP 2000 Part 6.G.5])
  16. Deleted text describing activities disturbing 5 or more acres of earth ([MSGP 2000 Part 6.G.5.1]) and on cessation or earth-disturbing activities ([MSGP 2000 Part 6.G.5.2])
  17. Added text on management practices for clearing, grading, and excavation activities (Part 4.G.5.1), requirements for inspection of clearing, grading, and excavation activities

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- (4.G.5.2), maintenance of controls for clearing, grading, and excavation activities (4.G.5.3), and requirements for cessation of clearing, grading, and excavation activities (4.G.5.4)
18. Clarified Stormwater Pollution Prevention Plan (SWPPP) requirements (Part 4.G.6 [MSGP 2000 Part 6.G.6])
  19. Removed requirement of including acreage estimates under nature of industrial activities (Part 4.G.6.1 [MSGP 2000 Part 6.G.6.1.1])
  20. Site map requirements clarified to include locations of all permitted discharges covered under an individual NPDES permit, outdoor equipment storage, materials handling areas, outdoor storage, outdoor chemicals, and reclaimed areas (Part 4.G.6.2 [MSGP 2000 Part 6.G.6.1.2])
  21. Changed site inspection requirements to quarterly inspections unless adverse weather conditions make the site inaccessible and monthly inspections of outstanding waters or waters which are impaired for parameters listed in Table G-2 (Part 4.G.6.4 [MSGP 2000 Part 6.G.6.1.4])
  22. Added documentation requirement of employee training requirement in SWPPP (Part 4.G.6.5 [MSGP 2000 Part 6.G.6.1.5])
  23. Deleted requirement of explaining why one or more of the BMPs listed are not appropriate for a particular facility (Part 4.G.6.6 [MSGP 2000 Part 6.G.6.1.6])
  24. Updated treatment of stormwater runoff requirements (Part 4.G.6.6.5 [MSGP 2000 Part 6.G.6.1.6.5])
  25. Clarified that all outfalls covered under the MSGP must be tested or evaluated (Part 4.G.6.6.6 [MSGP 2000 Part 6.G.6.1.6.6])
  26. Deleted SWPPP requirements for inactive metal mining facilities ([MSGP 2000 Part 6.G.6.2])
  27. Title updated to include inactive sites and sites undergoing reclamation; updated monitoring frequency requirements to include analytic monitoring quarterly in the first year of coverage for the parameters listed in Table G-2 and G-3; samples must be collected as specified (Part 4.G.7.2 [MSGP 2000 Part 6.G.7.2])
  28. Monitoring of discharges from waste rock and overburden piles frequency changed from twice per year for the permit term to quarterly in the first year of coverage (Part 4.G.7.3 [MSGP 2000 Part 6.G.7.2.1])
  29. Added termination of permit coverage requirements (Part 4.G.8)
  30. Added additional discussion on stormwater discharges subject to effluent limitation guidelines (Part 4.I.3.1 [MSGP 2000 Part 6.I.3.1.7])
  31. Changed “Good Housekeeping Measures” to “Contact with Waste Water Pollutants at Exploration and Production Facilities” and added descriptive text (Part 4.I.4.5 [MSGP 2000 Part 6.I.4.5])

32. Added covered discharges from inactive facilities (Part 4.J.1.1), covered discharges from active and temporarily inactive facilities (Part 4.J.1.2), covered discharges from exploration and development of metal mining facilities (Part 4.J.1.3), covered discharges from facilities at mining sites and undergoing reclamation (Part 4.J.1.4), prohibition of stormwater discharges (Part 4.J.3.1), prohibition of non-stormwater discharges (Part 4.J.3.2), and final stabilization (Part 4.J.4.8)
33. Added reclamation of mining sites under “Industrial Activities covered by Sector J” (Part J.2.3)
34. Simplified clearing, grading, and excavation activities (Part 4.J.5 [MSGP 2000 Part 6.J.5])
35. Deleted text on obtaining coverage under the Construction General Permit ([MSGP 2000 Part 6.J.5.1]) and cessation of exploration and construction activities ([MSGP 2000 Part 6.J.5.2])
36. Added management practices for clearing, grading, and excavation activities (Part 4.J.5.1), requirements for inspection of clearing, grading, and excavation activities (Part 4.J.5.2), maintenance of controls for clearing, grading, and excavation activities (Part 4.J.5.3), and requirements for cessation of clearing, grading, and excavation activities (Part 4.J.5.4)
37. Clarified Stormwater Pollution Prevention Plan (SWPPP) requirements (Part 4.J.6 [MSGP 2000 Part 6.J.6])
38. Deleted inspection requirements ([MSGP 2000 Part 6.J.6.1])
39. Added nature of industrial activities (Part 4.J.6.1), site map (Part 4.J.6.2), potential pollutant sources (Part 4.J.6.3), site inspections (Part 4.J.6.4), employee training (Part 4.J.6.5), stormwater controls (Part 4.J.6.6)
40. Simplified limitations on coverage (Part 4.K.3 [MSGP 2000 Part 6.K.3]) and moved some text to Part 4.K.3.2
41. Updated inspection frequency to monthly and added information to include inspection of areas where hazardous materials, including mercury switches, and general automotive fluids are stored (Part 4.M.3.4 [MSGP 2000 Part 6.M.3.4])
42. Updated employee training to include proper handling of mercury-containing contact switches (Part 4.M.3.5 [MSGP 2000 Part 6.M.3.5])
43. Added suggestion for mercury spill kits for spills from storage of mercury switches as a good housekeeping measure for scrap and waste recycling facilities as part of the Scrap and Waste Material Stockpiles and Storage (Covered or Indoor Storage) (Part N.4.2.4 [MSGP 2000 Part N.4.2.4])
44. Added suggestion for using a mercury spill kit for any release of mercury from switches, anti-lock brake systems, and switch storage areas (Part N.4.2.7 [MSGP 2000 Part N.4.2.7])

45. Added suggestion for mercury spill kit and emphasis on not vacuuming spilled or leaking mercury to BMP options for waste recycling facilities as part of the Waste Material Storage (Indoor) (Part N.4.3.1 [MSGP 2000 Part N.4.3.1])
46. Changed “Quarterly Inspections” to “Inspections” for consistency, changed the frequency of inspections to monthly, and changed “Quarterly Inspection Program” to “Inspections” (Part 4.N.4.3.4 [MSGP 2000 Part 6.N.4.2.8])
47. Added additional descriptive text (Part 4.P.1 [MSGP 2000 Part 6.P.1])
48. Added detailed description of facilities covered (Part 4.P.2 [MSGP 2000 Parts 6.P.2, 6.P.2.1, and 6.P.2.2])
49. Added special coverage conditions (Part 4.P.3)
50. Updated text to include illicit plumbing connections between shop floor drains and the stormwater conveyance system(s) (Part 4.P.4.2 [MSGP 2000 Part 6.P.3.2])
51. Added requirement for SWPPP to describe specific good housekeeping control measures used in each of the facility areas (Part 4.P.4.3 [MSGP 2000 Part 6.P.3.3])
52. Added description of types of facilities (Part S.1 [MSGP 2000 Part 6.S.1])
53. Examples added (Part 4.S.2 [MSGP 2000 Part 6.S.2])
54. Deicing season requirements added (Part 4.S.4.2.1)
55. Added requirement that SWPPP must describe the specific good housekeeping control measures used in each of the facility areas (Part 4.S.4.3 [MSGP 2000 Part 6.S.5.3])
56. Requirement added for describing the controls used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow (Part 4.S.4.3.7 [MSGP 2000 Part 6.S.5.3])
57. Added vehicle and equipment washwater requirements (Part 4.S.4.6)
58. Specified that the frequency of inspection is monthly (Part 4.U.4.3 [MSGP 2000 Part 6.U.4.3])
59. Added electrical and electronic equipment and components (Part 4.AC.2.5)
60. Simplified text under covered stormwater discharges (Part 4.AD.1 [MSGP 2000 Part 6.AD.1]) and under eligibility for permit coverage (Part 4.AD.1.1 [MSGP 2000 Part 6.AD.1.1])

## **2.5 MSGP Part 5** (Permit Conditions Applicable to Specific States, Indian Country Lands, and Territories [MSGP 2000 Part 13])

Permit conditions applicable to specific States, Indian Country Lands, and Territories will be provided by those entities prior to finalization of this permit as their Clean Water Act § 401 certifications.

## **2.6 MSGP 2006 Appendix A (Definitions and Acronyms, Part A.1 [MSGP 2000 Part 12], Part A.2 [MSGP 2000 Addendum G])**

A.1 - Several definitions were deleted, some were added, and some were changed (see below). In addition overall minor changes were made, including replacing “means” with a hyphen and removing the quotation marks around the word defined.

The following definitions were deleted:

- Commencement of construction
- CWA
- Discharge of stormwater associated with construction activity
- Discharge of stormwater associated with industrial activity
- Flow-weighted composite sample
- Large and medium municipal storm sewer systems
- NOI
- NOT

The following definitions were added:

- Co-located industrial activities
- Control measure
- Discharge of a pollutant
- New discharger
- New source
- Person
- Primary industrial activity
- Significant materials

The definitions for industrial activity and industrial stormwater were slightly revised to remove extraneous language.

The definition for municipal storm sewer system was completely revised.

The definition for pollutant was revised to include incinerator residue, filter backwash, munitions, and agricultural waste discharged into water

Stormwater associated with industrial activity was completely revised and now is stormwater discharges associated with industrial activity

A.2 - Several abbreviations and acronyms were deleted and some were added (see below).

The following abbreviations and acronyms were deleted:

- CNMI
- DEQ
- GPCA
- LOEL
- MRF
- MSWLF
- PPED
- SWQB

The following abbreviation and acronyms were added:

- BAT
- BOD5
- COD

## **2.7 MSGP 2006 Appendix B** (Standard Permit Conditions [MSGP 2000 Part 9])

Added text describing the standard permit conditions in Appendix B (Appendix B [MSGP 2000 Part 9])

Clarified penalties for a second or subsequent conviction for a negligent violation (Part B.1.B.1.1.1 [MSGP 2000 Part 9.1.2.1.1])

Clarified penalties for a second or subsequent conviction for a knowing violation (Part B.1.B.1.1.2 [MSGP 2000 Part 9.1.2.1.2])

Clarified penalties for a second or subsequent conviction for knowing endangerment (Part B.1.B.1.1.3 [MSGP 2000 Part 9.1.2.1.3])

False statement information simplified to state that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the act will upon conviction be punished by various penalties; clarified penalties for any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the permit (Part B.1.B.1.1.4, Part B.10.E [MSGP 2000 Part 9.1.2.1.4])

Maximum penalty amount updated for civil penalties to \$32,500 per day for each violation. This is standard for NPDES program penalties, and not specific to MSGP. EPA is required to adjust civil and administrative penalties in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359-69366, as

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corrected in 62 FR 54, March 20, 1997, pp.13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. The Agency is required to review its penalties at least once every 4 years and to adjust them as necessary for inflation according to a specified formula. Additional information is available at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr13fe04-10.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr13fe04-10.pdf) (Part B.1.B.2 [MSGP 2000 Part 9.1.2.2])

Maximum Class I penalty amount updated to \$32,500 per day for each violation (Part B.1.B.3.3.1 [MSGP 2000 Part 9.1.2.3.1])

Maximum Class II penalty supporting information updated (Part B.1.B.3.3.2 [MSGP 2000 Part 9.1.2.3.2])

Continuation of expired permit information rearranged and simplified under a heading of “duty to reapply” (Part B.2 [MSGP 2000 Part 9.2])

Duty to mitigate updated to include sludge use or disposal (Part B.4 [MSGP 2000 Part 9.4])

Emphasis on signing SWPPPs added and text rearranged (Parts B.11.B, B.11.B.1, B.11.B.2 [MSGP 2000 Parts 9.7.2, 9.7.2.1, 9.7.2.2, 9.7.2.3])

Deleted information on severability ([MSGP 2000 Part 9.11]), Director’s notification ([MSGP 2000 Part 9.12.4]), and state/tribal environmental laws ([MSGP 2000 Part 9.13])

Inspection and entry information updated to allow only EPA or an authorized representative under this permit to inspect (Part B.9 [MSGP 2000 Part 9.15])

Clarified that inspection practices or operations regulated or required under this permit are to be inspected at reasonable times (Part B.9.C [MSGP 2000 Part 9.15.3])

Added text allowing EPA or an authorized representative to sample or monitor any substances or parameters at any location for the purposes of assuring permit compliance or otherwise authorized under the Clean Water Act at reasonable times (Part B.9.D)

Clarified that samples and measurements must be representative of the volume and nature of the monitored activity (Part B.10.A [MSGP 2000 Part 9.16.1])

Records retention requirements updated to include all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit; requirements updated so that permittees must submit records to the Director upon request (Part B.10.B, B.8 [MSGP 2000 Parts 9.16.2, 9.16.2.1])

Deleted retention of SWPPP information ([MSGP 2000 Part 9.16.2.2])

Record contents requirements updated so that the individual(s) who performed the sampling instead of sampler's initials must be included (Parts B.10.C.2, B.10.C.4 [MSGP 2000 Parts 9.16.3.2, 9.16.3.5]); deleted requirement for time(s) analyses were initiated ([MSGP 2000 Part 9.16.3.4])

Sludge use or disposal information added to monitoring results (Part B.10.D [MSGP 2000 Part 9.16.4])

Permit action information updated to include termination (Part B.6 [MSGP 2000 Part 9.17])

Transfer of permit coverage information simplified (Part B.12.C [MSGP 2000 Part 11.1])

Deleted Notice of Termination information on NPDES permit number ([MSGP 2000 Part 11.2.1]), name and address ([MSGP 2000 Part 11.2.3]), name and street address ([MSGP 2000 Part 11.2.4]), latitude and longitude ([MSGP 2000 Part 11.2.5]), certification ([MSGP 2000 Part 11.2.6]), addresses ([MSGP 2000 Part 11.3]), and facilities eligible for "No Exposure" exemption ([MSGP 2000 Part 11.4])

Added detailed reporting requirements for planned changes (Part B.12.A), anticipated noncompliance (Part B.12.B), monitoring reports (Part B.12.D), compliance schedules (Part B.12.E), twenty-four hour reporting (Part B.12.F), and other noncompliance (Part B.12.G)

Added bypass definitions (Part B.13.A.1), bypasses not exceeding limitations (Part B.13.B), notice of bypasses (Part B.13.C), and prohibited bypasses (Part B.13.D)

Added upset definition (Part B.14.A), effect of an upset (Part B.14.B), conditions necessary for a demonstration of an upset (Part B.14.C), and burden of proof (Part B.14.D)

## **2.8 MSGP 2006 Appendix C (Areas Covered [MSGP 2000 Part 1.1])**

Updated information for Region 4 indicating that coverage is not available under this permit (Part C.4 [MSGP 2000 Part 1.1.4])

Updated information for Region 5 indicating that coverage will be available under this permit (Part C.5 [MSGP 2000 Part 1.1.5])

Updated information for Region 8 indicating that coverage is not available under this permit (Part C.8 [MSGP 2000 Part 1.1.8])

Updated Region 10 states to include Alaska (Part C.10 [MSGP 2000 Part 1.1.10])

## **2.9 MSGP 2006 Appendix D (Activities Covered [MSGP 2000 Part 1.2.1])**

Clarified Sector K facilities to include those that are operating under interim status or a permit under subtitle C of RCRA

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Clarified Sector L facilities as those facilities that receive or have received any industrial wastes including those that are subject to regulation under subtitle D of RCRA

Clarified Sector O facilities to include coal handling sites

Clarified Sector T facilities and described what facilities are not included such as farm lands and domestic gardens used for sludge management where sludge is beneficially reused and which are not physically located within the confines of the facility

Updated SIC codes for measuring, analyzing, and controlling instruments; photographic and optical goods, watches and clocks Subsector of Sector AC from 3812 to 3812 – 3873.

## **2.10 MSGP 2006 Appendix E** (Endangered Species Act Procedures [MSGP 2000 Part 1.2.3.6 and Addendum A])

A new eligibility criterion for operators to consider that involves their independent coordination with the FWS or NMFS has been added. This coordination must address the effects of the operator's stormwater discharges on endangered species or critical habitat and must include a written statement from the Services that there will be no adverse effects on species or habitat.

## **2.11 MSGP 2006 Appendix F** (National Historic Properties Act Guidance [MSGP 2000 Part 1.2.3.7 and Addendum B])

For today's MSGP 2006 reissuance, EPA has proposed the following modifications:

Criterion A was revised to specify that the discharger is certifying that its stormwater discharges and allowable non-stormwater discharges "do not have the potential to cause effects" to historic properties as specified in the National Historic Preservation Act (See 36 CFR 800.3(a)(1)). The previous language required that the discharger certify that its discharge or discharge-related activities "do not affect" historic properties. See Section 1.2.4.7. Further discussion is provided in Appendix F.

Another option (Criterion B) was added. You are eligible for coverage if your discharge-related activities (i.e., construction and/or installation of stormwater BMPs that involve subsurface disturbance) will not affect historic properties. This criterion is selected only if you have documented evidence that either no historic properties are present on your site or prior disturbance precluded the existence of historic properties. See Section 1.2.4.7. Further discussion is provided in Appendix F.

Criterion C (previously called Criterion B in the 2000 MSGP) was revised to require written agreements only where the discharge or discharge-related activities have the "potential to cause effects" to historic properties. This criterion now includes a reference to Tribal representatives because MSGP coverage extends to Tribal lands and Tribal representatives play a

central role in the protection of historic resources. See Section 1.2.4.7. Further discussion is provided in Appendix F.

A fourth option (Criterion D) for obtaining permit coverage has been added. Permit coverage is granted if you have contacted the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other tribal representative in writing regarding your potential to cause effects to an historic property, and you did not receive a response within 30 days. See Section 1.2.4.7. Further discussion is provided in Appendix F.

The Notice of Intent (NOI) form language has been modified to include the four criteria for permit coverage so that operators must identify which of the four options they are using to ensure eligibility for permit coverage under the MSGP.

The NHPA guidance has also been modified to reflect the above changes and appears in Appendix F rather than Addendum B.

## **2.12 MSGP 2006 Appendix G (Notice of Intent Components) [MSGP 2000 Section 2 and Addendum D]**

Changes to the new form

- The new form asks simply for a Permit Number. The old form asked for a Permit Selection and a New Permit Number.

### *Under Facility Operator Information*

- An IRS employer Information Number is now required.
- An e-mail address now required.
- A Fax number (optional) has been added

### *Under Facility/Site Information*

- The phrase “This facility is  New  Existing If your facility is existing and you had coverage under the MSGP 2000, provide the Tracking Number” has been added.
- The “county” entry on the old permit has been expanded in the new permit to “county or similar government subdivision.”
- Latitude must now be specified in either 1. degrees, minutes, seconds; 2. degrees, minutes and decimals; or 3. decimal.
- Longitude must now be specified in 1. degrees, minutes, seconds; 2. degrees, minutes and decimals; or 3. decimal.
- Added “Is this facility federal?  Yes  No.”
- Added that if the facility was located on Indian Country lands, provide the “name of reservation, or if not part of a reservation, put “Not Applicable.”

- Applicants are now asked to “List the code that best represents your Standard Industrial Classification (SIC) Code(s) for your industrial activity.”
- The subsection “*Stormwater Pollution Prevention Plan Contact Information and Location*” has been added. This section asks for “Name,” “Location Address (street, city, state, zip code and URL address of stormwater prevention plan (if applicable).”
- Under the new *Endangered Species Act Eligibility* subsection, applicants must select the criterion that they satisfied their Endangered Species Act obligations under and are directed to Appendix E of the MSGP. In the old form, they were directed to Addendum A of the MSGP and did not have to select the criterion.
- In the same section, applicants must now choose from five criteria – A, B, C, D, E and F – to prove they’ve satisfied their ESA obligations.
- If applicants choose criterion F, they must “provide [the] permit tracking number of the operator under which you are certifying eligibility.”
- A new subsection *National Historic Preservation Act Eligibility* has been added.
- Applicants must select the criterion that they satisfied their National Historic Preservation Act obligations under and are directed to “Appendix F of the MSGP” for instructions on these permit criteria. In the old form, they were directed to Addendum B of the MSGP and did not have to select the criterion.
- Under subsection *Certifier Name and Title*, applicants are now asked for their “Title.”

#### Deletions from the old form

- The subsection “Permit Selection” has been eliminated.
- Removed “Permit Applicant:  Federal  State  Tribal  Private  Other public entity.”
- The 30 boxes that represented applicable sectors of industrial activity (Sector A through AD) have been replaced in the new form by a simplified 2-character data entry point.

### **2.13 MSGP 2006 Appendix H (Notice of Termination Components) [MSGP 2000 Section 11 and Addendum E]**

#### Changes to the new form

- An “NPDES Permit Tracking Number” is now required. The old form asked for an NPDES Stormwater General Permit Number.
- Applicants are now given four choices to explain their reasons for terminating coverage: “A. You transferred operational control to another operator. B. You terminated facility operations. C. You obtained coverage under an alternative NPDES permit. D. You qualified for a No Exposure Exemption. If you answered yes to “D,” you must fill out the No Exposure form instead of the NOT form.” The old form had only two choices.

- Under subsection *Facility Operator Information*, applicants are asked for their IRS Employer Identification Number. Applicants are also asked for their fax number (optional) and their e-mail address.
- Under *Facility Information*, the phrase “County or similar government subdivision” has been added. A facility’s latitude and longitude must now be specified as either 1. degrees, minutes, seconds; 2. degrees, minutes, decimal, or 3. decimal.
- Under *Certifier Name and Title*, applicants are asked for their “Title.”

### **3. Discussion of Notable Permit Provisions**

Today's proposed MSGP 2006 accompanies this fact sheet. The fact sheet does not discuss every provision of the proposed permit, especially if the provision is straight-forward, easily understood and has not changed from MSGP 2000. However, a number of provisions in the proposed MSGP 2006 are worthy of explanation. EPA invites comment on any of these proposed provisions, as well as any other provision of the proposed permit. Where commenters are concerned about specific provisions of this permit, EPA requests that the commenter suggests specific alternatives.

#### **3.1 Extension of Administrative Continuance for Existing Dischargers**

MSGP 2000 expired before the issuance of MSGP 2006. Existing dischargers are covered under an administrative continuance, but this continuance is only good until the effective date of MSGP 2006. Because operators cannot submit NOIs until MSGP 2006 has been issued, and because of the 30 day waiting period, EPA is proposing the following provision to ensure that existing dischargers do not have a gap in permit coverage: if an entity is covered by MSGP 2000 on the effective date of MSGP 2006, permit coverage is automatically extended under the MSGP 2000 for a period of up to 120 days provided that the entity submits a timely and complete NOI in accordance with the deadlines in Table 1-2 of MSGP 2006.

#### **3.2 Permit Compliance**

EPA specifies that failure to meet any requirement of this permit is an enforceable permit violation. EPA has added emphasis and explanation about what constitutes a permit violation in several places in the permit in order to avoid any ambiguity. However, provisions where this emphasis has not been included are also enforceable requirements.

#### **3.3 Discharge Authorization Waiting Periods**

Today's proposed permit includes a new 30 day waiting period for authorization (Part 1.5.2). The 30 day period begins on the day that EPA posts the completed Notice of Intent on the e-NOI web site, <http://www.epa.gov/npdes/stormwater/noisearch>. The purpose of the 30-day wait is twofold: 1) to provide U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) an opportunity to review the proposed discharge for protection of threatened and endangered species and critical habitat consistent with the goals of the Endangered Species Act, and 2) to provide the public an opportunity to comment on the discharge.

The Services may request that EPA delay authorization beyond the 30 day wait period in order to resolve any outstanding questions on the NOI or the discharge. In the event this happens, EPA will delay authorization until such time that EPA determines appropriate actions have been taken.

EPA is establishing a 30-day public comment opportunity in response to an expressed public desire to provide input on individual discharges. Anyone wishing to comment on an NOI, or the relevant proposed discharge, may submit comments to the appropriate EPA Regional Office listed in Part 3.7 of the permit. EPA clarifies that this 30 day period is not a formal permit public notice period; MSGP 2006 is undergoing the formal public notice process right now. However, in the interest of providing the public a chance to comment on individual discharges, EPA will consider any comments received during the 30 day period. EPA does not plan to provide formal response to comments documents on comments received. However, EPA will review comments, and if there is valid concern about the proposed discharge, EPA will take the necessary steps to address the concern, e.g., require the relevant industrial operator to make improvements to the SWPPP. Depending on the nature of the issue and the timing of the comments, EPA will require appropriate action either prior to or following discharge authorization. In addition, EPA may delay authorization if comments received warrant such a delay, or may determine that the discharge is not eligible for authorization under MSGP 2006. The potential burden to EPA of taking public comment on discharges requesting authorization under this general permit is very significant, and thus EPA is hesitant to promise a specific process at this juncture. EPA fully intends to honor a public comment process, but needs some case-by-case flexibility on how this is accomplished.

In order for EPA to act on comments, commenters must be specific, detailed, and address issues over which EPA has authority. EPA cautions that comments lacking clear and relevant information may not be actionable. To ensure that EPA can read, understand and therefore properly respond to public comments, EPA prefers that commenters cite, where possible, the paragraph(s) or sections in the proposed permit, fact sheet or supporting documents to which the comment refers. Commenters should use a separate paragraph for each issue discussed. EPA notes that much of the information about a discharge and controls for the discharge are contained in the Stormwater Pollution Prevention Plan (SWPPP), and not the NOI. Members of the public may request a copy of the SWPPP from the operator of the industrial facility (see discussion below, *Requirement for Availability of SWPPP*). EPA will still receive and consider comments after the 30 day comment period has ended.

EPA also requests comments on whether the 30 day public comment period should be waived for new operators who submit NOIs during the first 30 days after MSGP 2006 goes into effect. The purpose of this would be to allow new facilities no longer able to seek coverage under MSGP 2000 to seek coverage as soon as possible under MSGP 2006.

### **3.4 Requirement for Availability of SWPPP**

A copy of the SWPPP must be kept on site at the facility or be locally available for the use of EPA, or representatives of a State, Tribe, or local agency (e.g., MS4 operator) at the time of an onsite inspection (Part 2.4). The SWPPP must also be made available to any of these agencies and the Fish and Wildlife Service or National Marine Fisheries Service upon request. Since SWPPPs are living documents that change over time, access to the current and full version of the SWPPP is critical in assessing permit compliance.

SWPPPs are considered publicly available information. As with MSGP 2000, MSGP 2006 proposes that operators be required to provide a current copy of the SWPPP in a timely manner to any member of the public making such a request. The mechanism for providing the SWPPP is at the discretion of the operator (e.g., web-based, hard copy). EPA has not included a time limit within which operators must provide their current SWPPPs, only that it must be timely. EPA notes that no more than 2 weeks from receipt of the request should be entirely adequate unless there are extenuating circumstances. In the event an operator receives numerous requests, EPA would find it reasonable for the operator to make a copy available for review at a public and easily accessible location, such as a township office or library in the community where the facility is located. EPA encourages industrial operators to make their SWPPPs available electronically both for ease and timeliness of access for the public and for reduced costs for the operator. Operators may withhold from the public (but not from regulatory agencies) information legitimately justified to be Confidential Business Information.

### 3.5 Water Quality Standards

In February 2001 two industry groups, the *Federal Water Quality Coalition* and the *Utility Act Group* filed petitions in the Court of Appeals for the District of Columbia asserting that MSGP 2000 did not provide clarity on how the permittee was to meet water quality standards. In particular, the dischargers did not have a clear idea of what constituted compliance with water quality standards and permit eligibility. EPA and the petitioners entered into an agreement in January 2005 in which EPA agreed to take comment, during the public notice period for the proposed MSGP 2006, on specific permit language acceptable to the petitioners. That language, provided in the form of edits to language in MSGP 2000, included as Attachment A to the settlement, follows:

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#### *Begin Appendix A, Settlement Agreement*

##### PROPOSED MSGP LANGUAGE

(The boldface and strikeout markings signify differences between the language already incorporated into the 2000 MSGP and the proposed language EPA is considering for the 2005 MSGP (now MSGP 2006))

1.2.3.5 Discharge Compliance with Water Quality Standards. You are not authorized for storm water discharges that the Director, **prior to authorization under this permit**, determines will cause, or have reasonable potential to cause or contribute to, ~~violations of~~ **an excursion above any applicable** water quality standards. Where such determinations have been made **prior to authorization**, the Director may notify you that an individual permit application is necessary in accordance with Part 9.12. However, the Director may authorize your coverage under this permit after you have included **in your Storm Water Pollution Prevention Plan** appropriate controls and implementation procedures designed to bring your discharges into compliance with water quality standards ~~in your Storm Water Pollution Prevention Plan.~~

1.2.3.8.2 ~~You are not authorized to discharge any pollutant into any water for which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA unless your discharge is consistent with that TMDL.~~

**a. You are not eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is a Total Maximum Daily Load (TMDL) established or approved by EPA unless you incorporate into your SWPPP measures or controls, and conditions applicable to your discharge, that are consistent with the assumptions and requirements of such TMDL. If a specific wasteload allocation has been established that would apply to your discharge, you must incorporate that allocation into your SWPPP and implement necessary steps to meet that allocation.**

**b. In a situation where an EPA-approved or established TMDL has specified a general wasteload allocation applicable to industrial storm water discharges, but no specific requirements for industrial storm water discharges have been identified in the TMDL, you should consult with the State or Federal TMDL authority to confirm that adherence to a SWPPP that meets the requirements of the MSGP will be consistent with the approved TMDL. Where an EPA-approved or EPA-established TMDL has not specified a wasteload allocation applicable to industrial storm water discharges, but has not specifically excluded these discharges, adherence to a SWPPP that meets the requirements of the MSGP will generally be assumed to be consistent with the approved TMDL. If the EPA-approved or EPA-established TMDL specifically precludes such discharges, the operator is not eligible for coverage under this permit.**

### 1.3.1 Basic Eligibility

You may be authorized under this permit only if you have a discharge of storm water associated with industrial activity from your facility. In order to obtain authorization under this permit, you must:

1.3.1.1 Meet the Part 1.2 eligibility requirements; and

1.3.1.2 Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) (see definition in Part 12) according to the requirements in Part 4 of this permit.

1.3.1.3 Submit a complete Notice of Intent (NOI) in accordance with the requirements of Part 2 of this permit. Any new operator at a facility, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to be covered for discharges for which they are the operator.

### **3.3 Attainment of Discharge Compliance With Water Quality Standards After Authorization**

**At any time after authorization, the Director may determine that your storm water discharges may cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. If such a determination is made, the Director may require you within a specified time period to:**

**A. Develop and implement a supplemental BMP action plan describing SWPPP modifications in accordance with Subpart 4.10 to address adequately the identified water quality concerns;**

**B. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or**

**C. Submit an individual permit application according to Subpart 9.12.**

**All written responses required under this Subpart must include a signed certification consistent with Subpart 9.7.**

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

#### 4.1 Storm Water Pollution Prevention Plan Requirements

You must prepare a Storm Water Pollution Prevention Plan (SWPPP) for your facility before submitting your Notice of Intent for permit coverage. Your SWPPP must be prepared in accordance with good engineering practices **include BMPs that are selected, installed, implemented and maintained in accordance with good engineering practices to minimize pollutants in the discharge so that the discharge will not cause or contribute to an excursion above any applicable water quality standards.** Use of a registered professional engineer for SWPPP preparation is not required by the permit, but may be independently required under state law and/or local ordinance. Your SWPPP must:

4.1.1 Identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from your facility;

4.1.2 Describe and ensure implementation of practices which you will use to reduce the pollutants in storm water discharges from the facility; and

4.1.3 assure compliance with the terms and conditions of this permit.

**4.1.4 include all necessary measures to ensure that the discharge is consistent with any relevant TMDL that has been established or approved by EPA, as required by Subpart 1.2.3.8.2.**

#### 10.1 Water Quality Protection

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause, or contribute to ~~a violation of a~~ **an excursion above any applicable** water quality standard, you may be required to obtain an

individual permit **or an alternative general permit** in accordance with Part 3.3 of this permit, or the permit may be modified to include different limitations and/or requirements.

***End Appendix A, Settlement Agreement***

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EPA invites comment on the language in Settlement Appendix A, above. Although EPA has reorganized the contents of the sections, in general, the concepts presented in the above language are incorporated into the 2006 MSGP.

Today's proposed MSGP makes clear that the dischargers requirements for meeting water quality standards applied to permit requirements and not to eligibility requirements. Under MSGP 2000 a discharger, discovering possibly a year or more after authorization that a water quality standards provision is not being met, is faced with the situation of having been ineligible for coverage. Petitioners asserted that this situation is ambiguous for the permittee, providing liability not just for the water quality standards violation, but also for an unpermitted discharge believed initially to be authorized.

From EPA's perspective, making the distinction between eligibility and permit requirements is important for getting the most effective resolution of water quality problems. EPA believes that problematic discharges can be much more rapidly remedied within the framework of a permit requirement, including the compliance and enforcement provisions of a permit. Therefore EPA is proposing to include the water quality standards provisions of this permit (Part 1.4) as permit requirements rather than eligibility requirements.

The MSGP 2000 language "Your discharge must not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standards" has been difficult for many operators to apply since their receiving waters are usually subject to dozens of water quality standards, and because the permit does not specify conditions or limitations specific to each one of those standards. Therefore, EPA has not included this general phrase in MSGP 2006. Most of the clarifications suggested by the petitioners are included in MSGP 2006 though most are not verbatim, largely because MSGP 2006 is organized differently from MSGP 2000.

The MSGP, like other NPDES permits, must include provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards in the receiving water [Clean Water Act § 301(b)(1)(C) and 402(p)(3)(A), as well as 40 CFR 122.44(d)(4)]. In MSGP 2006 EPA is proposing to clarify discharge standards, to update benchmarks to reflect current water quality criteria, to strengthen SWPPP requirements, to strengthen accountability requirements (inspections, monitoring, reporting and record-keeping) to assure compliance, and has attempted to remove any ambiguity about what constitutes an enforceable permit violation. EPA believes that a tighter, clearer permit will be easier for operators to understand, and much more protective of water quality.

The proposed MSGP 2006 does include a requirement (Part 2.1.3.1) for operators to determine the water quality standards relevant to their receiving water(s). Applicable water quality standards are compiled at <http://www.epa.gov/waterscience/standards/states/> and are also available from state environmental protection or water quality regulatory agencies. EPA believes

that this information is relatively easy to acquire, and will be very useful for operators to have as they plan their BMPs.

EPA has not fully incorporated the framework (articulated in Appendix A Parts 1.2.3.5 and 3.3 of the Settlement Agreement) regarding pre- and post-authorization water quality standards exceedances, in which full responsibility for discovering water quality standard exceedances and requiring corrective action rests with EPA. EPA does not believe that an operator seeking coverage under the MSGP should be relieved entirely of responsibility regarding water quality standards-related concerns. It is not practical to expect EPA to evaluate the in-stream water quality effects of individual discharges covered under a general permit on a regular basis. Rather than requiring each discharger to submit all necessary data for EPA to perform a reasonable potential analysis, EPA is relying on the use of key benchmark parameters and the aforementioned provisions regarding permittee responsibilities to act on identified water quality concerns. EPA believes that if an operator were to discover that the discharge contributed to an exceedance of a water quality standard then he/she is obligated to act on that knowledge. The proposed MSGP 2006 describes a process for both the operator and EPA when a water quality standard exceedance is discovered, regardless of the party making the discovery. The permittee is not obligated to seek out water quality standards exceedances through ambient water quality monitoring, but is not relieved of responsibility to respond should he discover or be made aware of a water quality exceedance.

EPA has clarified a requirement to review the SWPPP and take appropriate corrective actions when a discharge is causing or contributing to a water quality standard exceedance, and to conduct follow-up monitoring to verify that the discharge is no longer contributing to an exceedance. Failure to take and carefully document appropriate corrective action or conduct follow-up monitoring is a permit violation. EPA may also decide that an individual permit may be more appropriate for a particular discharge and require the operator to submit an application for an individual permit. EPA believes that this provides a fair and enforceable mechanism for resolving water quality standard exceedances, and relieves the petitioner's primary concern of liability for two specific situations: 1) when there are water quality standard exceedances for pollutants that operators do not believe are present in their discharges and for which the permit does not stipulate specific discharge standards, and thus for which they have not implemented controls, and 2) when BMPs are appropriately planned and implemented, and benchmarks and effluent limits (if applicable) are being met, but due to site- or waterbody-specific circumstances, are not adequately protective of water quality.

EPA requests comments on any of the proposed modifications to how water quality standard requirements are incorporated into this permit.

### **3.6 Water Quality Impaired and Water Quality Limited Receiving Waters**

Today's permit clarifies both eligibility and permit provisions for discharges to water quality impaired and water quality limited receiving waters. EPA has eliminated language from the 2000 MSGP that the discharge must "be consistent with" a TMDL. That terminology was not clear about necessary controls or discharger expectations, and as a result EPA believes that many

dischargers undertook no additional measures to reduce pollutants of concern in their discharges, or ensure that their discharges complied with TMDL wasteload allocations.

As an eligibility provision MSGP 2006 prohibits authorization when a TMDL specifically articulates a wasteload allocation requiring more stringent controls than can be achieved with this permit. ‘Specifically articulates’ means that the TMDL, the TMDL implementation plan, or the TMDL authority must stipulate that the discharge (either specifically or categorically) must be authorized under an individual permit, an alternative general permit, or specifically excludes authorization under MSGP. In a situation where an EPA-approved or established TMDL has specified a general wasteload allocation applicable to industrial storm water discharges, but no specific requirements for individual sites have been identified in the TMDL, you should consult with the State or Federal TMDL authority to confirm that adherence to a SWPPP that meets the requirements of the MSGP will be consistent with the approved TMDL. In addition MSGP 2006 prohibits authorization when a TMDL applies a wasteload allocation of zero to a discharge (either specifically or categorically). Because, to date, most TMDLs do not include these kinds of wasteload allocations for stormwater, this provision is not likely to preclude authorization under this permit of very many industrial stormwater discharges. EPA does believe, however, that this is an important provision in the handful of situations where it may apply.

A large number of MSGP-eligible discharges are to impaired waters, and therefore EPA believes that the best water quality protection is to stipulate clear requirements and a specific process for those facility operators. Some consultation with federal or state TMDL authorities may be necessary, and EPA emphasizes that the responsibility for this initial contact is the industrial operator’s. Given the number of state, territorial and tribal areas that today’s proposed permit covers EPA does not believe this is an unrealistic framework. EPA has tried to include the necessary direction for those consultations, and welcomes suggestions for improvement. EPA has also clearly stipulated that compliance with the MSGP is adequate if the TMDL authority does not stipulate additional requirements when specifically asked. Operators must document these discussions in their Stormwater Pollution Prevention Plans (SWPPPs).

Today’s proposed MSGP 2006 includes provisions for both TMDL and pre-TMDL waters, including a new monitoring requirement for the pollutant(s) of concern. Operators are required to implement TMDL wasteload allocations where one has been established, contact TMDL authorities for clarity where the wasteload allocation is not clear, document all measures taken to comply, monitor their discharge(s) (annually at a minimum) for the pollutant(s) of concern, take corrective actions when endpoints are not being met, and report to EPA all data including exceedances. When the wasteload allocation is expressed only as specific BMP requirements, monitoring may be waived after one year if the pollutant of concern is not detected in the discharge, and the required BMPs have been implemented and documented in the SWPPP.

Discharges to pre-TMDL waters or to TMDL waters where a numeric wasteload allocation has not been expressed are also required to comply with any additional measures that may be stipulated by EPA or the state, territorial or tribal authority. These discharges must also be monitored for the pollutant of concern. If state or tribal authorities have not specified an alternate schedule, the monitoring requirement is waived after one year if the pollutant of concern is not detected in the stormwater discharge, and the operator documents in the SWPPP

that there is no exposure of the pollutant of concern to stormwater at the site. Lists of waterbodies with approved TMDLs may be obtained from appropriate State environmental offices or their Internet sites and from EPA's TMDL Internet site at <http://www.epa.gov/owow/tmdl/index.html>.

EPA invites comment on any proposed provision for discharges to impaired waters.

### **3.7 Benchmark Monitoring**

Benchmark Framework. Benchmarks have been included in prior MSGPs, and have been intended to serve as indicators for permittees about whether or not their stormwater controls are adequate. Exceedances of benchmark concentrations have been intended to serve as action-levels to help operators improve BMPs. Based on repeated exceedances of benchmark values reported to EPA by some facilities, as well as failure of many facilities to report any monitoring data, EPA believes that additional clarity and enhanced accountability are needed (see "DMR Review MSGP – Memo titled Review of Discharge Monitoring Report Data for the MSGP 2000" for more details). Benchmark exceedances do not necessarily indicate that a SWPPP is inadequate, but they do indicate a need for careful review of the SWPPP to ensure that appropriate BMPs are being implemented. Under MSGP 2000 permittees did not begin monitoring until the 2<sup>nd</sup> year of permit coverage. Based on an evaluation of the discharge monitoring data collected under that permit, EPA determined that a number of pollutant discharge problems went unrecognized for over a year (see "DMR Review MSGP" for more details). Therefore EPA is modifying the permit to require that monitoring begin in the first quarter of permit coverage.

Today's proposed MSGP 2006 provides that following one year (4 quarterly monitoring events) of monitoring, if the average of the 4 monitoring values does not exceed the benchmark, the permittee has fulfilled the monitoring requirements for the duration of the permit term for that pollutant. If the average of the 4 quarterly benchmark monitoring values for a given pollutant exceeds the benchmark concentration, this exceedance immediately triggers a requirement to review the SWPPP to determine whether it includes all appropriate BMPs to eliminate or reduce the pollutant of concern in the discharge. Where the operator determines that the SWPPP does not meet the provisions of Part 2 of the permit he/she must modify the SWPPP within 14 days and implement the revised BMPs prior to the next rainfall event if possible, but in no case later than 60 days, except as otherwise provided by EPA. The operator must then continue quarterly monitoring for 4 more quarters to ensure that corrective actions are effective. EPA emphasizes that even though a benchmark exceedance itself is not a permit violation, failure to review the SWPPP, and take necessary corrective actions determined by the SWPPP review within the stipulated time frames is a violation. In addition, an exceedance may be indicative of other permit violations, such as failure to adequately maintain BMPs.

In some instances, following an exceedance of a benchmark by the average value of the 4 monitoring events, an operator may conduct the SWPPP review and determine that modifications to the SWPPP and BMPs are not warranted. EPA recognizes that there may be circumstances where benchmarks may not be reasonably achieved because of elevated background levels of pollutants. For example, high natural background levels of iron in soils or groundwater could

contribute to exceedances of a benchmark. Concern has also been expressed that there may be other circumstances when an operator has taken all economically reasonable and appropriate measures to control pollutants, but a benchmark may still be exceeded. To address these situations, MSGP 2006 is proposing to provide an opportunity for permittees, following a review of their SWPPP, to determine that they are implementing all reasonable and appropriate BMPs to reduce pollutants in the discharge, and to document the basis for this determination in the SWPPP. Following the operator's determination that the SWPPP is adequate, the operator may reduce benchmark monitoring to once per year for the remainder of the permit term. EPA requests comment of all aspects of this proposed provision.

MSGP 2000 Benchmark Data Analysis. EPA undertook an analysis of the monitoring requirements of the MSGP 2000 that included: how effective existing controls on these discharges have been based on the history of discharge monitoring data; Toxics Release Inventory (TRI) data; and results and conclusions from the University of California Los Angeles Final Report, *Industrial Storm Water Monitoring Program Existing Statewide Permit Utility and Proposed Modifications*. One of the primary purposes of these analyses was to determine if elimination of, or modification or addition to, benchmark monitoring requirements was warranted. The full analyses and documentation are included in the docket for this proposed permit (<http://www.epa.gov/edocket/>, docket number OW-2005-0007). Conclusions from those analyses are presented here.

EPA was prepared to drop any benchmark monitoring requirement where data indicated that a pollutant was not present in the discharge, or occurred consistently at such low levels that monitoring would provide no indicator value to the operator with respect to discharge quality. However, based upon review of TRI data and MSGP 2000 monitoring data EPA only found one benchmark that could be eliminated. EPA dropped the benchmark for manganese because there were no EPA established criteria (there was only Colorado state chronic water quality criteria). However, EPA may consider adding a manganese benchmark back into future permits. Based on this criterion, EPA did conclude that additional benchmarks are necessary to ensure that receiving waters will be adequately protected.

New Benchmark Monitoring Requirements for Certain Sectors. The total suspended solids (TSS) benchmark (100 mg/L), which applies to a number of sectors under MSGP 2000, has been expanded to all discharges authorized under MSGP. TSS is a reasonable screen or indicator of stormwater discharge quality since many stormwater pollutants are themselves suspended solids, or enter receiving waters attached to solids. TSS is a relatively inexpensive parameter to measure, and TSS data are not difficult to interpret for the simple purpose of providing operators an indication of whether or not their BMPs need additional attention.

Inspection of TRI data indicated that the wood preservation subsector (SIC 2491) of sector A (timber products) appeared to be missing some key parameters identified both in the updated industry fact sheets and in the TRI discharge data. SIC 2491 comprises only 27% of the total dischargers reporting to TRI from sector A, however in examining the discharge to stormwater data it was noted that 78% of the total number of discharges to stormwater for the entire sector were from this SIC.

New proposed benchmarks for the wood preserving subsector are chromium, which was targeted for potential historical chromated copper arsenate (CCA) treated wood storage, and phenols as an indicator for pentachlorophenol (PCP), and methyl phenols. While chemical oxygen demand (COD) is a good indicator of organics, PCP was considered a key target due to prevalence of historical use and its overall toxicity. Rather than monitor for PCP directly (which is an expensive approach), a decision was made to use phenols as an indicator. This indicator benchmark targets the current recommended water quality standard of 0.019 mg/L for pentachlorophenol (“EPA-Recommended Ambient Water Quality Criteria” Acute Aquatic Life Freshwater (EPA 822-R-02-047 November 2002)).

TRI data for sector I, oil and gas extraction and refining, revealed that future investigation is warranted for possible inclusion of ammonia, lead, nickel, nitrate-nitrite, and zinc. These pollutants appear at a frequency indicating that they are regularly handled at these facilities, which may pose an unacceptable risk for continued coverage under the MSGP without additional monitoring.

TRI data for sector Y, rubber, miscellaneous plastic products, and miscellaneous manufacturing industries, indicate additional consideration of monitoring for lead, as 32 of 526 incidences of lead and lead compounds were reported discharged to stormwater. While this frequency is somewhat limited, the numbers of occurrences of these compounds in the TRI may be sufficient to warrant additional investigation. The new benchmark monitoring requirement for lead applies only to the following subsectors in sector Y: manufacture of rubber products: tires and inner tubes; rubber footwear; gaskets, packing and sealing devices; rubber hoses and belting; and fabricated rubber products not elsewhere classified.

For the electronic and electrical equipment and components except computers (SIC 3612-3699) subsector of sector AC (electronic, electrical, photographic, and optical goods), monitoring of copper, lead, manganese, and nickel were recommended for additional consideration based on frequency of TRI occurrences. Further inspection of the TRI data revealed that manganese and nickel were not reported at a frequency to warrant additional monitoring. Copper and copper compounds, and lead and lead compounds were observed 872 and 1848 times, respectively with discharge to stormwater reported in 10 and 4.6% of those instances, respectively.

No additional monitoring was added for dioxins and dioxin-like compounds, primarily due to the costs associated with that type of monitoring (\$700-\$900 per sample). TRI data for dioxins and dioxin-like compounds were reported approximately 150 times between 1999 and 2002, and 25 of those included discharge to stormwater. EPA will continue to monitor TRI data for dioxin and reconsider for the next reissuance of MSGP whether or not dioxin monitoring is appropriate.

EPA welcomes comments on any of these proposed new benchmark monitoring provisions.

Updated Benchmark Values in the 2006 MSGP. Benchmark values are based primarily on water quality criteria. In the 1995 and 2000 MSGP, where an applicable water quality criterion was below the minimum level (ML) of quantification for the most sensitive available

analytic method, EPA instead used a value equal to 3.18 times the method detection limit (MDL) for that pollutant in lieu of the water quality criterion. (For a full discussion of EPA's initial approach for the derivation of the benchmarks see the fact sheet for the 1995 MSGP (60 FR 50825).

For the 2006 MSGP, EPA has identified methods for all but two pollutant parameters (total magnesium and total phenols) that have an ML below the applicable water quality criterion. Where there are no established EPA water quality criteria, EPA used other sources of data to determine the appropriate benchmark value. The process that EPA followed in selecting the benchmark values for the 2006 MSGP is as follows: 1) First, if there is an EPA promulgated acute criterion then EPA selected that value for the benchmark; 2) If there is no EPA acute criterion, then EPA selected the chronic criterion as the benchmark value; 3) Finally, in the remaining few instances where there were neither EPA acute or chronic criteria available for a specific pollutant, then EPA selected the benchmark value based on data from runoff studies or technology-based standards.

Table 1 includes all of the pollutants for which the proposed MSGP 2006 specifies benchmarks. Where a benchmark has changed, it has been for one of the following reasons:

The values for 9 benchmarks (arsenic, cadmium, copper, cyanide, lead, mercury, nickel, selenium, and silver) have been revised (e.g., switching from an MDL to an ambient water quality criterion, or updated to reflect a revised WQ criterion).

The values for 4 benchmarks (antimony, lead, magnesium, and zinc) have been rounded to two significant figures.

The existing turbidity benchmark, 5 NTU above background, requires the permittee to monitor both the discharge and the receiving stream. The proposed new benchmark (50 NTU) requires the permittee to monitor only the discharge.

**Table 1 below shows a comparison the MSGP 2000 and MSGP 2006 benchmark values and the source of those values. The MSGP 2006 proposed changes to the MSGP 2000 benchmark values are highlighted in the table.**

<b>Comparing Benchmark Monitoring Pollutants Sources for 2000 and 2006 MSGP</b>					
<b>Pollutant</b>	<b>2000 MSGP Benchmark</b>	<b>2000 MSGP Source</b>	<b>2006 MSGP Proposed Benchmark</b>	<b>2006 MSGP Source</b>	<b>Different basis?</b>
Ammonia*	19 mg/L	10	19 mg/L	1	No
Biochemical Oxygen Demand (5 day)	30 mg/L	4	30 mg/L	4	No
Chemical Oxygen Demand	120 mg/L	5	120 mg/L	5	No
Total Suspended Solids	100 mg/L	7	100 mg/L	7	No
Turbidity	5 NTU above	13	50 NTU	9	Yes

<b>Comparing Benchmark Monitoring Pollutants Sources for 2000 and 2006 MSGP</b>					
<b>Pollutant</b>	<b>2000 MSGP Benchmark</b>	<b>2000 MSGP Source</b>	<b>2006 MSGP Proposed Benchmark</b>	<b>2006 MSGP Source</b>	<b>Different basis?</b>
	background				
Nitrate + Nitrite Nitrogen	0.68 mg/L	7	0.68 mg/L	7	No
Total Phosphorus	2.0 mg/L	6	2.0 mg/L	6	No
pH	6.0 - 9.0 s.u.	4	6.0 - 9.0 s.u.	4	No
Aluminum, Total (pH 6.5 - 9)	0.75 mg/L	10	0.75 mg/L	1	No
Antimony, Total	0.636 mg/L	8	0.64 mg/L	12	Yes
Arsenic, Total	0.16854 mg/L	8	0.15 mg/L	3	Yes
Beryllium, Total	0.13 mg/L	2	0.13 mg/L	2	No
Cadmium, Total <sup>†</sup>	0.0159 mg/L	8	0.0021 mg/L	1	Yes
Chromium, Total <sup>†</sup>	N/A	N/A	1.8 mg/L	1	Yes; added as a new benchmark in 2006 MSGP
Copper, Total* <sup>†</sup>	0.0636 mg/L	8	0.014 mg/L	1	Yes
Cyanide	0.0636 mg/L	8	0.022 mg/L	1	Yes
Iron, Total	1.0 mg/L	11	1.0 mg/L	3	No
Lead, Total* <sup>†</sup>	0.0816 mg/L	10	0.082 mg/L	1	No
Magnesium, Total	0.0636 mg/L	8	0.064 mg/L	8	No
Mercury, Total	0.0024 mg/L	10	0.0014 mg/L	1	criteria updated
Nickel, Total <sup>†</sup>	1.417 mg/L	10	0.47 mg/L	1	criteria updated
Phenols, Total	N/A	N/A	0.016 mg/L	8	Yes; added as a new benchmark in 2006 MSGP
Selenium, Total*	0.2385 mg/L	8	0.005 mg/L	3	Yes
Silver, Total* <sup>†</sup>	0.0318 mg/L	8	0.0038 mg/L	1	Yes
Zinc, Total <sup>†</sup>	0.117 mg/L	10	0.12 mg/L	1	No; criteria updated

\* New criteria are currently under development, but values are based on existing criteria.

<sup>†</sup> These pollutants are dependent on water hardness. The benchmark value listed is based on a hardness of 100 mg/L. If you analyze your water samples for hardness, then an alternate benchmark may apply if you use the equations provided in Part 4.

#### Sources

1. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Freshwater (EPA-822-R-02-047 November 2002-CMC)

2. "EPA Recommended Ambient Water Quality Criteria for Beryllium." LOEL Acute Freshwater (EPA-440-5-80-024 October 1980)
3. "EPA-Recommended Ambient Water Quality Criteria." Chronic Aquatic Life Freshwater (EPA-822-R-02-047 November 2002-CCC)
4. Secondary Treatment Regulations (40 CFR 133)
5. Factor of 4 times BOD5 (5 day biochemical oxygen demand) concentration - North Carolina benchmark
6. North Carolina stormwater benchmark derived from NC Water Quality Standards
7. National Urban Runoff Program (NURP) median concentration
8. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18
9. Combination of simplified variations on *Stormwater Effects Handbook*, Burton and Pitt, 2001 and water quality standards in Idaho, in conjunction with review of DMR data.
10. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Freshwater. This is an earlier version of the criteria document that has subsequently been updated. (See source #1)
11. "EPA Recommended Ambient Water Quality Criteria." Chronic Aquatic Life Freshwater. This is an earlier version of the criteria document that has subsequently been updated. (See source #3)
12. "EPA Recommended Ambient Water Quality Criteria" Human Health For the Consumption of Organism Only (EPA-822-R-02-047 November 2002)
13. Consistent with many state numeric Water Quality Criteria. This benchmark was agreed to in negotiations for the 1998 modification to the 1995 MSGP (63 FR 42534).

In most cases, benchmarks have not been significantly revised since the 1995 MSGP. However, six of the benchmarks now have new values based on EPA water quality criteria, which are lower than the previous values. These are cadmium, copper, cyanide, selenium, silver, and nickel. For the first five of these, the values have been changed from 3.18 times the MDL for a particular analytical method, to ambient water quality criteria. In each case, EPA has identified one or more alternate methods with lower detection limits. The changes in methods and MDLs are as follows. (Note: The source of the cost for each method was based on laboratories that specialize in effluent monitoring analysis).

#### Methods, MDL, and Cost Table.

Pollutant	Previous Analytic Method			New Analytic Method		
	Method ID	MDL	\$/sample	Method ID	MDL	\$/sample
Cadmium	200.7	4 ug/L	\$10	200.8	0.5 ug/L	\$12
Copper	220.1	20 ug/L	\$20	200.8	0.09 ug/L	\$12
Cyanide	335.2	20 ug L	\$40	335.3	4 ug/L	\$40
Selenium	200.7	75 ug/L	\$10	270.2	2 ug/L	\$20
Silver	272.1	10 ug/L	\$20	200.8	0.11 ug/L	\$12

Additional supporting data is available in the docket for this permit (see Previous and New Analytical Methods for MSGP). EPA recognizes that use of the more sensitive methods will involve somewhat higher analytical costs, and notes that the estimated cost increases are between \$2 (20%% increase) and \$10 (100% increase) per sample, but EPA believes these higher costs are justified because use of the more sensitive methods that have an ML below the applicable acute (or chronic) value will provide information to EPA that may be used to assess

whether or not the discharge may have the reasonable potential to cause or contribute to an exceedance of water quality standards. In the case of nickel, the acute WQ standard that formed the basis of the previous benchmark was revised downward in 1996, but the lower benchmark will not require use of a new analytical method.

EPA requests comment on 1) the benchmark values as a screening tool to guide SWPPP revisions and evaluate whether a discharge may have the potential to cause or contribute to an exceedance of a water quality standard and the appropriate bases for these values; 2) the detection levels and estimated additional costs of the more sensitive analytic methods that will be required for some benchmarks; and, 3) the availability of labs within the United States to conduct analyses using the more sensitive methods.

In addition to the revised benchmark values, EPA has revised the benchmark provisions in the 2006 MSGP as follows. If the annual average of four quarterly monitoring results exceeds a benchmark, the permittees are now required to review their SWPPP and document the results of this review. EPA expects that this review would also include consideration of other relevant data, such as results of on-site inspections and visual monitoring, as appropriate. EPA recognizes that exceeding a benchmark does not necessarily mean that changes to the SWPPP are needed, but believes that permittees should review their SWPPPs and document the results of this review. If the permittee determines that no changes to the SWPPP are needed, this must be documented in the SWPPP. In this case, the permittee must continue to monitor for the pollutant exceeding the benchmark for the remainder of the permit term, but the frequency of such monitoring is reduced to annually. On a case-by-case basis, EPA may review monitoring results, as well as background concentrations in the stream, State mixing zone policies, and other relevant data to determine whether a discharge consistently exceeding benchmarks has a reasonable potential to cause or contribute to a violation of State water quality standards. If the permittee determines as a result of the SWPPP review that the SWPPP does not satisfy the requirements of Section 2 of this permit, the permittee must take corrective action and document it in the SWPPP. In this case, the permittee must continue quarterly monitoring of the benchmark parameter for an additional four quarters.

EPA does not intend to change the basic framework for benchmark monitoring established in the 1995 and 2000 permits. During its development of the 2000 permit, EPA received substantial public comment questioning the value of analytic monitoring. EPA responded to these comments, in part, as follows:

“EPA acknowledges that, considering the small number of samples required per monitoring year (four), and the vagaries of storm water discharges, it may be difficult to determine or confirm the existence of a discharge problem as a commenter claimed. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job. EPA believes there is presently no alternative that provides stakeholders with an equivalent indicator of program effectiveness.” (FR 65/210, Oct 20, 2000, p 64796)

This response continues to represent EPA's thinking regarding the appropriate use of analytic monitoring. However, EPA believes it would improve SWPPP implementation to require that permittees document their review of their SWPPP when benchmarks are exceeded and take corrective action where needed. EPA requests comment on the revised benchmark values and documentation requirements.

In the Fact Sheet to the 2000 permit, EPA also committed to "...using data from the 1995 and 2000 permits to evaluate the effectiveness of management practices on an industry sector basis and to evaluate the need for changes in the monitoring protocols for the next permit." EPA has prepared an analysis of benchmark data, which is available in the docket for this permit (see DMR Review MSGP – Memo titled "Review of Discharge Monitoring Report Data for the MSGP 2000"). EPA determined, based on this analysis, that available analytic monitoring data indicated that many facilities report routine exceedances of benchmark values. However, EPA has not yet been able to complete this analysis to determine whether these exceedances provide useful indicators of SWPPP inadequacies or potential water quality problems. In developing the 2011 permit, EPA intends to conduct further analysis on selected industry sectors that are discharging to both impaired and unimpaired water bodies to evaluate the usefulness of the monitoring data to the permittee or permitting authority in determining the adequacy of the SWPPP or the potential for water quality standards exceedances. As part of this analysis, EPA will assess the extent to which benchmark exceedances correlate with determinations that corrective action or additional measures to address water quality are needed. EPA requests comment on the following: 1) given the variability of analytic results, are benchmark exceedances a useful indicator of the need for corrective action, 2) are they a useful indicator of reasonable potential to cause or contribute to a violation of water quality standards, 3) are there other values besides water quality criteria that should be considered as the bases for benchmark values, and 4) are there approaches other than analytic monitoring that would be effective in ensuring that SWPPPs are properly designed and implemented? EPA intends to engage interested stakeholders in the development of the study design.

### **3.8 Inactive and Unstaffed Sites**

Today's MSGP allows for a waiver from benchmark monitoring for facilities that are both inactive and unstaffed, when the facility no longer has industrial activities or materials exposed to stormwater. EPA believes that a facility with no industrial activity and no exposed materials should not be contributing pollutants to stormwater discharges. These facilities could alternatively submit a No Exposure Certification, and terminate permit coverage. However, EPA realizes that there are some facilities that may plan to commence industrial activity in the future that would include exposure, and may wish to keep active permit coverage. To qualify for this waiver permittees must certify in their SWPPPs that they are inactive and unstaffed, and that there are no industrial activities or materials exposed to stormwater. Permittees are not required to obtain advance approval for this waiver. This waiver applies only to benchmark monitoring. Annual monitoring requirements for effluent limitation guideline pollutants or other parameters are not waivable.

MSGP 2000 provides a benchmark monitoring waiver only for inactive and unstaffed sites that are remote, because monitoring may be deemed impractical. However, the provision does not require ‘no exposure’ of industrial materials. The proposed permit expands the waiver to any inactive and unstaffed facility. However, because discharge of pollutants does not cease when industrial materials are still outside, EPA believes that elimination of exposure is a reasonable pre-requisite for this monitoring waiver. EPA requests comment on this provision.

### **3.9 Representative Outfalls**

As with MSGP 2000, today’s proposed MSGP allows a facility to reduce its overall benchmark monitoring burden when discharges through separate outfalls are essentially identical. This provision applies to benchmark monitoring requirements, and has been expanded in MSGP 2006 to apply to visual monitoring as well. The ‘representative outfall’ determination should be based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfalls. When such a determination is made, the permittee may test the effluent of one such outfall and report that the quantitative data also apply to the essentially identical outfall(s). To do this the permittee must include in the SWPPP a description of the location of the outfalls and a detailed explanation of why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low [under 40 percent], medium [40 to 65 percent], or high [above 65 percent]) must be provided in the plan. Because of the highly variable nature of outdoor activities at industrial facilities EPA cautions operators to carefully consider all factors before selecting this option. Permittees do not need EPA approval to claim that discharges are representative, provided they have documented their rationale within the SWPPP. However, the Director may determine that the discharges are not representative and may require sampling of all non-identical outfalls. Facilities that change any conditions affecting any of the ‘representative outfall’ discharges are required to reassess their eligibility for this provision.

### **3.10 Reduced Benchmark Monitoring for Performance Track Facilities**

The National Environmental Performance Track Program is a voluntary EPA program that recognizes and rewards private and public facilities that demonstrate strong environmental performance beyond current requirements. Performance Track currently has about 370 members. The program is based on the premise that government should complement its existing programs and regulations with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring innovation. The Performance Track program (PT) is a facility-based program (not company-wide or corporate). There are four basic criteria that applying facilities must meet: 1) an Environmental Management System (EMS) in place for at least one full cycle that has been assessed by an independent party; 2) a history of sustained compliance; 3) past environmental achievements and a commitment to quantified continuous environmental improvement; and 4) community outreach and annual reporting. Once accepted, members remain in the program for three years, as long as they continue to meet the

program criteria. After three years they may apply to renew their membership through a streamlined application process. The program encourages participation by small, medium, and large facilities, and its members are located throughout the United States, including Puerto Rico. Through its members over the past three years the Performance Track program has produced substantial environmental results beyond the legal requirements for the facilities. See <http://www.epa.gov/performancetrack/> for more information about the Performance Track program.

EPA is considering reduced benchmark monitoring for facilities that are participating in the National Environmental Performance Track Program. Specifically, EPA is considering waiving benchmark monitoring for the remainder of the permit term by Performance Track facilities if they do not exceed their benchmark monitoring values in either of the first two quarters of monitoring. Alternatively, EPA could waive benchmark monitoring entirely for Performance Track facilities.

The benchmark monitoring requirements in the MSGP serve as a tool for permittees to determine if their BMPs are adequately controlling pollutants in stormwater. However, EPA recognizes that pollution prevention and self-assessment are also inherent components of an Environmental Management System. Therefore, EPA believes that it is appropriate to reduce the burden on those facilities that have taken the extra step toward continuous environmental improvement through the Performance Track program. Under these circumstances EPA considers two quarters of monitoring to be sufficient for demonstrating that the benchmark values will not be exceeded. EPA requests comments on considering reduced benchmark monitoring for Performance Track members.

EPA welcomes comments on benchmark monitoring waivers for Performance Track facilities.

EPA welcomes comments on any of the proposed benchmark provisions.

### **3.11 Numeric Effluent Limitations**

Numeric effluent limitations have been included in previous MSGPs. The effluent limitation guidelines for certain industry-specific discharges and limitations for runoff from coal piles in the 2000 permit are retained in today's proposed MSGP 2006. Monitoring for these parameters must be conducted once each year for the duration of permit coverage.

As with all other types of exceedances, the proposed MSGP 2006 clarifies the requirement for corrective action whenever there is an exceedance of a numeric effluent limit. EPA also clarifies that these numbers are effluent limitations, and an exceedance is a permit violation.

There is also now a requirement to conduct follow up monitoring within 30 days of completing corrective action, or during the next runoff event, in order to verify that modified stormwater controls have satisfactorily reduced pollutants in the discharge. EPA believes that this verification is an important component of accountability, and helps ensure that problems are

fixed quickly rather than persisting until the next regularly scheduled monitoring event, which generally would be a year away.

### **3.12 Quarterly Visual Monitoring**

Today's proposed MSGP retains the requirements of the 1995 and 2000 MSGP for quarterly visual examinations of stormwater discharges that EPA continues to believe provide a useful and inexpensive means for permittees to evaluate the effectiveness of their SWPPPs (with immediate feedback), and to make any necessary modifications to address the results of the visual examinations. All sectors of today's proposed MSGP are required to conduct these examinations.

The MSGP requires that grab samples of stormwater discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of stormwater pollution. The grab samples must be taken within the first 30 minutes after stormwater discharges begin, or as soon as practicable, but no longer than 1 hour after discharges begin. The sampling must be conducted four times a year, though not necessarily strictly quarterly. In arid or semi-arid climates for instance, areas subject to prolonged dry seasons, one sample must be collected during a dry season storm event, while the remaining three may be collected during the wet season; in the Northeast, stormwater sampling must be designed to attempt capture of the first flush during snow melt, with the balance of sampling distributed throughout the year. The goal of sampling is to capture meaningful data regarding the effectiveness of BMPs and the SWPPP more than to characterize the temporal variability of the stormwater discharge. The reports summarizing these quarterly visual stormwater examinations must be maintained on-site with the SWPPP.

The examination of the sample must be made in well-lit areas. The visual examination is not required if there is insufficient rainfall or snow-melt to run off or if hazardous conditions prevent sampling. Whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible in recording observations.

When conducting a stormwater visual examination, the pollution prevention team or team member should attempt to relate the results of the examination to potential sources of stormwater contamination on the site. For example, should an oil sheen be observed facility personnel (preferably members of the pollution prevention team) should conduct an inspection of the area of the site draining to the examined discharge to look for obvious sources of spilled oil, leaks, etc. If a source can be located, then this information allows the facility operator to immediately conduct a clean-up of the pollutant source, and/or to design a change to the SWPPP to eliminate or minimize the contaminant source from recurring.

If the visual examination results in an observation of floating solids, the personnel should carefully examine the solids to see if they are raw materials, waste materials, or other known products stored or used at the site. If an unusual color or odor is sensed, the personnel should attempt to compare the color or odor to the colors or odors of known chemicals and other

materials used at the facility. If the examination reveals a large amount of settled solids, the personnel may check for unpaved, unstabilized areas or areas of erosion. If the examination results in a cloudy sample that is very slow to settle out, the personnel should evaluate the site draining to the discharge point for fine particulate material, such as dust, ash, or other pulverized, ground, or powdered chemicals.

To be most effective, the personnel conducting the visual examination should be fully knowledgeable about the SWPPP, the sources of on-site contaminants, the industrial activities exposed to stormwater, and the day-to-day operations that may cause unexpected pollutant releases.

If the visual examination results in a clean and clear sample of the stormwater discharge, this may indicate that no pollutants are present and would be an indication of a high quality result. However, the visual examination will not provide information about dissolved contamination.

EPA believes that this quick and simple assessment will help permittees to determine the plan effectiveness on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the stormwater discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. More frequent visual examinations may be conducted to achieve better assessments of the effectiveness of the SWPPP. The frequency of this visual examination will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the examinations. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on examination will enhance the staff's understanding of the site's stormwater problems and the effects of the management practices that are included in the plan.

Operators of inactive and unstaffed sites may exercise a visual monitoring waiver if they eliminate all exposure of industrial activities and materials to stormwater and also document the no exposure in the SWPPP. Operators with essentially identical outfalls (more fully described in 3.8) may also elect to undertake quarterly visual monitoring at one representative outfall.

### **3.13 Monitoring Required by a State or Tribe**

Where a State or Tribe has imposed a numeric effluent limitation, has established a wasteload allocation, or has stipulated specific monitoring requirement(s) as a condition for certification under CWA §401, a minimum monitoring frequency of once per year has been included in the final permit. This annual monitoring frequency would apply only if a State failed to provide a monitoring frequency along with their conditional §401 certification.

### **3.14 Collection and Analysis of Samples**

Today's proposed MSGP retains the same requirements as the 1995 and 2000 MSGPs regarding the type of sampling (Part 3.2.6.1). Certain industries have specialized requirements. Permittees should check the industry-specific requirements in Part 4, Section A through Section AD to the permit to confirm these requirements. Grab samples may be used for all monitoring unless otherwise stated. All such samples must be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval may be waived by the permittee when the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour requirement may also be waived by the permittee where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. The grab sample must be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger must submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. At least one grab is required. When the discharge to be sampled contains both stormwater and non-stormwater, the facility must sample the stormwater component of the discharge at a point upstream of the location where the non-stormwater mixes with the stormwater, if practicable.

### **3.15 Storm Event Data**

Information on the sampled storm event must be documented (Part 3.2.6.2), and must include date and duration of the storm event(s) sampled, rainfall measurements or estimates of the event that generated runoff, the duration between the storm event and the previous event that produced measurable runoff (greater than 0.1 inch), and an estimate of the total volume of the discharge samples.

### **3.16 Adverse Weather Conditions**

When truly adverse weather conditions make sampling dangerous, event monitoring may be postponed to the next runoff event (Part 3.2.6.3). This provision applies only to serious weather conditions such as lightning, flash flooding, and hurricanes. This provision should not be used as an excuse for not conducting sampling under conditions associated with more typical storm events. This provision does not apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations that are difficult to access. This provision applies to all monitoring requirements of MSGP 2006.

### **3.17 National Historic Preservation Act**

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of "Federal undertakings" on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term "Federal undertaking" is

defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 802(o). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 802(e).

Federal undertakings include EPA's issuance of general NPDES permits, including the Multi-Sector General Permit. As part of the EPA's own obligations under the NHPA, applicants seeking coverage under the MSGP are required to make certain certifications regarding the potential effects of their stormwater discharge, allowable non-stormwater discharge, and discharge-related activities on properties listed or eligible for listing on the National Register of Historic Places.

In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1995 and 2000 MSGP for the consideration of the effects to historic properties. The 2000 MSGP further enhanced the protection of historic properties required under the 1995 MSGP by making permit coverage available only if:

- Stormwater, allowable non-stormwater discharges, and "discharge-related activities" did not affect historic properties; or
- The applicant obtained, and was in compliance with, a written agreement between the applicant and the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to historic property. See Part 1.2.3.7, 65 FR 64746 (September 30, 2000).

Discharge-related activities are defined to include activities which cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction and operation of best management practices (BMPs) to control, reduce, or prevent pollution in the discharges. Discharge-related activities are included to ensure compliance with NHPA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the stormwater and non-stormwater discharges. Because this change was minor, EPA relied on its 1995 and 1998 consultations with the Advisory Council on Historic Preservation as its basis for reissuance of the 2000 MSGP.

EPA consulted with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers prior to the proposal of MSGP 2006. The discussion included possible scenarios where stormwater discharges, allowable non-stormwater discharges, and discharge-related activities may impact historic properties. It was determined that subsurface historic artifacts, records, or remains would have the only potential to be affected. These historic properties would be impacted if the ground was physically disturbed while constructing, installing, or modifying selected best management practices (BMPs) that are less than 1 acre in size. In general, if the operator's activities do not disturb the subsurface of the

ground the operator will not have the potential to cause effects on historic properties, and may certify eligibility under criterion A.

Facilities seeking coverage under MSGP 2006 that cannot certify compliance with the NHPA requirements must submit individual permit applications to the permitting authority. For facilities already covered by the existing MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (90 days after the effective date for MSGP 2006).

### **3.18 Endangered Species Act**

The Endangered Species Act (ESA) of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (both of these federal agencies are collectively known as the “Services”), that any Federal actions carried out by the Agency (e.g., EPA-issued permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any species that are federally-listed as endangered or threatened (“listed”), or result in the adverse modification or destruction of habitat that is federally-designated as critical (“critical habitat”). See 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c).

FWS and NMFS are responsible for administration of the ESA and as such are responsible for maintaining a list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitats are areas determined to be essential for the conservation of a species and may not necessarily be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

EPA began conducting informal consultation with the Services on December 8, 2004 to achieve concurrence with EPA’s finding of no likelihood of adverse effects on threatened and endangered species and critical habitat resulting from the issuance of the MSGP 2006. EPA is using a permitting approach similar to the endangered species procedures and requirements in the Construction General Permit, effective July 1, 2003, but with clarifications and slight modifications to meet the needs of industrial dischargers.

Operators also have an independent ESA obligation to ensure that any of their activities do not result in prohibited “takes” of listed species. (Section 9 of the ESA prohibits any person from “taking” a listed species [e.g., harassing or harming it] with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538.) This prohibition generally applies to private individuals, businesses and government entities. Many of the measures required in the MSGP and in these instructions to protect species may also assist operators in ensuring that their industrial activities (as opposed to their stormwater discharges) do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who intend to undertake industrial activities in areas that harbor

endangered and threatened species may need to be protected from potential takings liability under ESA section 9 by obtaining either an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process. Operators unsure of what is needed for takings protection should confer with the appropriate FWS or NMFS office.

As with previous stormwater permits, coverage is only available if stormwater and allowable non-stormwater discharges and “discharge-related activities” associated with industrial activity, as defined in Appendix A, will not adversely affect listed species or critical habitat. “Discharge-related activities” are defined to include activities which cause, contribute to or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction and operation of best management practices (BMPs), to control, reduce or prevent pollution in the discharges. Discharge-related activities are included for compliance with the ESA requirement to consider the effects of activities which are related to the activity being permitted, i.e., the stormwater and allowable non-stormwater discharges.

In addition, operators seeking coverage under MSGP 2006 must certify on their NOI forms that they are eligible for coverage under one of the following six criteria options (see Part 1.2.4.6 of the permit):

- A. There are no endangered or threatened species or critical habitat present, determined after checking the various references given in the MSGP for the presence of species or habitat in proximity to the facility. “In proximity” refers to species being located in the stormwater and allowable non-stormwater discharge flow path, or down-gradient areas from the industrial activities to the point of discharge into the receiving water, including around the discharge outfall. A species is also in proximity if it is located in the area of a site where discharge-related activities occur.
- B. In the course of a separate federal action involving the facility (e.g., EPA processing an application for an individual NPDES permit, issuance of a CWA Section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with one or both of the Services under Section 7 of the ESA has been concluded. The consultation must have addressed the effects of the stormwater discharges, allowable non-stormwater discharges, and discharge-related activities on listed species and critical habitat. The result must have been either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the stormwater discharges, allowable non-stormwater discharges, and discharge-related activities are not likely to jeopardize listed species or critical habitat.
- C. The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the stormwater discharges, allowable non-stormwater discharges, and discharge-related activities on listed species and critical habitat.
- D. The operator, after determining listed species or critical habitat are nearby, has coordinated with the appropriate Service(s) to address the effects of the stormwater discharges, allowable non-stormwater discharges, and discharge-

elated activities on listed species and critical habitat. The result of the coordination must be a written statement from the Services that there are not likely to be any adverse effects to federally-listed species or Federally-designated critical habitat. All prerequisites or stipulations resulting from the coordination become permit requirements.

- E. The operator, after determining listed species or critical habitat are nearby, has evaluated the effects of the stormwater discharges, allowable non-stormwater discharges, and discharge-related activities on the species / habitat and concluded there will not likely be any adverse effects. To arrive at this conclusion, the operator must consider whether there is potential jeopardy to species / habitat and what measures are needed to minimize the jeopardy. Typically this would employ the skills of staff members or consultants with expertise in the biology and needs of the species / habitat in question. Rigorous documentation to support the Criterion E selection must be included in the SWPPP.
- F. The stormwater and allowable non-stormwater discharges and discharge-related activities were already addressed in another operator's certification of eligibility under Criteria A – E above, provided both facilities' activities and sites are addressed. By certifying eligibility under this Part, an operator agrees to comply with any measures or controls upon which the other operator's certification was based.

All the options listed above except D are similar to the eligibility provisions of previous stormwater general permits. Option D was added to allow operators to certify eligibility after interacting with the Services independently as part of their endangered species due diligence. Option F, while not likely to be widely used, is meant for situations such as airports where one operator (e.g., the airport authority) has covered the entire airport through its certification.

Appendix E of the MSGP 2006 provides instructions for determining whether a facility is eligible for permit coverage with regard to endangered species (i.e., if and how any of the six eligibility criteria can be met). The process and results of the endangered species investigation must be documented and included in the SWPPP. This information, including any other relevant piece of information such as the SWPPP, may be requested by the Services or EPA for review before permit coverage is authorized, or by an inspector after the fact.

Operators who cannot determine if they meet one of the endangered species eligibility criteria cannot submit an NOI to gain coverage under the MSGP 2006; instead they must apply to EPA for an individual NPDES permit. As appropriate, EPA will conduct an ESA section 7 consultation when issuing individual permits. If there are concerns that MSGP coverage for a particular facility is not sufficiently protective of species / habitat, EPA or the Services, through the EPA, may hold up discharge authorization until such concerns are adequately addressed. Regardless of an operator's eligibility certification under one of the six criteria, EPA may require an application for an individual permit on the basis of possible jeopardy to species /habitat.

### **3.19 Stormwater Pollution Prevention Plan (SWPPP) Requirements**

Like the 1995 and 2000 MSGPs, MSGP 2006 requires that all facilities that intend to be covered by the MSGP for stormwater discharges associated with industrial activity prepare and implement a SWPPP. The MSGP addresses stormwater pollution prevention plan requirements for a number of categories of industries. These common requirements may be amended or further clarified in the sector-specific SWPPP requirements, which are found in Part 4 of the proposed permit. These industry-specific requirements are additive for facilities where co-located industrial activities occur.

BMPs should be a suite of stormwater controls that are effective at pollution prevention and reduction AND are also economically reasonable and appropriate in light of current industry practice for your type of facility. “Best” refers to cost-effective measures using controls appropriate for the situation that will result in the necessary pollutant reductions. Prevention measures, such as keeping areas clean, storing materials inside, and properly maintaining equipment, will usually be sufficient. EPA does not typically expect or recommend implementation of highly engineered, complex treatment systems for most industrial sectors or pollutants, although in some cases more advanced treatment may be necessary, such as to address water quality standards exceedances. This would most likely be the case where a wasteload allocation in a total maximum daily load (TMDL) approved or established by EPA called for treatment of stormwater to address a particularly difficult water quality problem. EPA does not require the use of a registered professional engineer to prepare the SWPPP, but this may be independently required under State law and/or local ordinance.

### **3.20 Pollution Prevention Team**

As a first step in the process of developing and implementing a SWPPP, permittees are required to identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation (Part 2.1.1). In selecting members of the team, the facility manager should draw on the expertise of all relevant departments within the facility to ensure that all aspects of facility operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan, and it must be readily accessible to all team members either electronically or in paper format. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. A pollution prevention team may consist of one individual where appropriate (e.g., in certain small businesses with limited stormwater pollution potential).

### **3.21 Site Description and Receiving Waters and Wetlands**

Each SWPPP must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to stormwater runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or stormwater drainage

systems that drain the facility. This assessment of stormwater pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aiding in the selection of appropriate structural and nonstructural control techniques. Some operators may find that significant amounts of pollutants are running onto the facility property. Such operators should identify and address the contaminated run-on in the SWPPP. If the run-on cannot be addressed or diverted by the permittee, the permitting authority should be notified. If necessary, the permitting authority may require the operator of the adjacent facility to obtain a permit.

The site description (Part 2.1.2) should include activities at the facility, an estimate of impervious surface area, precipitation information, a general location map and a site map. The site map must include a number of features including the location of outfalls covered by the permit (or by other NPDES permits), the pattern of stormwater drainage, an indication of the types of discharges contained in the drainage areas of the outfalls, structural features that control pollutants in runoff,<sup>1</sup> surface water bodies (including wetlands, intermittent streams, dry sloughs, and arroyos), places where significant materials<sup>2</sup> are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the date of developing or updating your SWPPP. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. The map must indicate the direction of stormwater flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified. You must also identify all surface waters to which you discharge stormwater (Part 2.1.3).

### **3.22 Summary of Potential Pollutant Sources**

The description of potential pollution sources should clearly address activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to stormwater (Part 2.1.4). Any such activities, materials or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust- or particulate-generating processes, and on-site waste disposal practices (Part 2.1.4.1). The assessment must list any significant pollutants (e.g., biochemical oxygen demand, suspended solids) associated with each source (Part 2.1.4.2).

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<sup>1</sup>Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

<sup>2</sup>Significant materials include, but are not limited to, the following: raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge, that have the potential to be released with stormwater discharges. (See 40 CFR 122.26(b)(8).)

### 3.23 Significant Spills and Leaks

The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the date the SWPPP is developed or amended (Part 2.1.4.3). Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under section 311 of the CWA (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or hazardous substances.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional procedures necessary to fulfill the requirements set forth in Part 2.1.5.4.

### 3.24 Elimination of Unauthorized Discharges

Each SWPPP must include a certification, signed by an authorized person, that discharges from the site have been tested or evaluated for the presence of non-stormwater discharges, and that all unauthorized discharges have been eliminated (Part 2.1.4.4). The certification must describe any test and/or evaluation conducted to detect such discharges, the results of those evaluations, and measures taken to eliminate any unauthorized discharges that were discovered. Acceptable test or evaluation techniques include dye tests, television surveillance, visual observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics.<sup>3</sup> A combination of these mechanisms may be necessary to complete a thorough evaluation.

When unauthorized discharges are discovered, the certification must also include a description of how those discharges were eliminated. Common unauthorized discharges and common resolutions include: re-routing sanitary wastes (e.g., sinks, drinking fountains, toilets) to sanitary sewer systems; obtaining an appropriate NPDES permit for cooling water or industrial process wastewater discharges; capping or plugging floor drains; and prohibiting practices such as paint brush washing or wash bucket dumping into storm drain inlets.

EPA recognizes that full certification might not be feasible where facility personnel do not have access to an outfall, manhole, or other point of discharge. The permit allows less than full certification provided that the plan must describe why certification was not feasible. Permittees that are not able to certify that discharges have been evaluated and unauthorized discharges eliminated must so notify EPA within 14 days after submitting the NOI. Failure to certify that unauthorized discharges have been eliminated, or alternately provide the appropriate notification that certification cannot be completed, is a permit violation.

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<sup>3</sup>In general, smoke tests should not be used for evaluating the discharge of non-stormwater to a separate storm sewer as many sources of non-stormwater typically pass through a trap that would limit the effectiveness of the smoke test.

### **3.25 Monitoring Data**

Any existing data on the quality or quantity of stormwater discharges from the facility must be described in the plan (Part 2.1.4.7). At a minimum the operator should include data gathered in the 5 years prior to development or update of this SWPPP, including discharge monitoring data collected in fulfillment of MSGP 2000 requirements. These data may be useful for locating sources and causes of stormwater pollutants.

### **3.26 Selection and Implementation of Stormwater Controls**

Following completion of the source identification and assessment phase, the permit requires the permittee to evaluate, select, and describe the pollution prevention measures, and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, installed devices, structures, vegetation and other management practices that prevent or minimize the discharge of pollutants in stormwater runoff.

Sections 402(p)(3)(A) and 301 of the Clean Water Act require that permits for discharges of industrial stormwater meet all applicable provisions for technology-based and water quality-based controls. Best Management Practices are considered Best Available Technology economically achievable (BAT) and Best Conventional Technology (BCT) for most stormwater discharges. BMPs are also usually adequate to meet the water quality requirements of the Act. Therefore proper design and implementation of BMPs form the foundation of stormwater controls. MSGP 2006 does stipulate a number of sector-specific BMPs (Part 4), and also requires all operators to implement certain types of BMPs (Part 2.1.5). Each operator is required to design effective controls for the relevant set of pollutants, operations and site conditions. To achieve this each operator has some discretion in designing a suite of BMPs for his/her industrial operation. Failure to adequately design, implement or maintain appropriate BMPs is a violation of the permit.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Pollution prevention measures include preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, eliminating exposure, diverting stormwater around handling and storage areas, and proper materials management. Where such practices are not appropriate or do not effectively reduce pollutant discharges, other economically reasonable and appropriate measures may be necessary.

The SWPPP must discuss how selected controls and practices will, individually and in conjunction with each other, address one or more of the potential pollution sources identified in the plan. The plan must also include a schedule specifying how each control or practice will be implemented, including the schedule of activities where appropriate.

### 3.27 Required Stormwater Controls

- Good Housekeeping (Part 2.1.5.1). Good housekeeping involves using practical, cost-effective methods to maintain a clean and orderly facility and keep contaminants out of stormwater discharges. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment, and training employees in good housekeeping techniques. Good housekeeping measures are often quite simple and practical, and include tasks such as sweeping loading docks on a regular basis; keeping dumpster lids closed; and cleaning up filings, shavings and sawdust. These protocols must be described in the plan and communicated to appropriate plant personnel.
- Eliminating and Minimizing Exposure (Part 2.1.5.2). Protecting potential pollutant sources from exposure to stormwater is an important control option. Operators should try to maximize opportunities to store materials and conduct industrial activities, such as loading and unloading, inside or under cover. Elimination of all exposure to stormwater may also make the facility eligible for the “No Exposure Certification” exclusion from permitting at 40 CFR 122.26(g).
- Preventive Maintenance (Part 2.1.5.3). Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of stormwater management devices and other equipment and systems. The program description must identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For stormwater management devices such as catch basins and oil and water separators, the preventive maintenance program must provide for periodic removal of debris to ensure that the devices are operating efficiently. For other equipment and systems, the program must reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.
- Spill Prevention and Response Procedures (Part 2.1.5.4). Based on an assessment of possible spill scenarios, permittees must specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and, in the event of a spill, enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill prevention and response program to be effective, employees must clearly understand the proper procedures and requirements and have the appropriate spill response supplies and equipment readily available.
- Routine Facility Inspections (Part 2.1.5.5). In addition to the comprehensive site evaluation, facilities are required to conduct periodic inspections of designated equipment and areas of the facility. Inspections are to be conducted monthly unless another frequency is justified in the SWPPP. Industry-specific requirements for such inspections, if any, are set forth in Part 4. When inspections are required, qualified

- personnel must be identified to conduct the inspections at appropriate intervals specified in the plan. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained. These periodic inspections are different from the comprehensive site evaluation, although the former may be incorporated into the latter. Equipment, area, or other inspections are typically visual and are normally conducted on a regular basis (e.g., daily inspections of loading areas).
- Employee Training (Part 2.1.5.6). The SWPPP must describe a program for informing personnel at all levels of responsibility of the components and goals of the SWPPP. The training program should address topics such as good housekeeping, materials management, and spill response procedures. When appropriate, contractor personnel also must be trained in relevant aspects of stormwater pollution prevention. A schedule for conducting training must be provided in the plan. EPA recommends that facilities conduct training at least annually. However, more frequent training might be necessary at facilities with high employee turnover or where employee participation is essential to carrying out the SWPPP.
  - Erosion and Sedimentation Controls (Part 2.1.5.7). The SWPPP must identify areas that, because of topography, activities, soils, cover materials, or other factors, have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.
  - Management of Runoff (Part 2.1.5.8). The plan must contain a description of stormwater management practices that divert, infiltrate, reuse, or otherwise manage stormwater runoff to reduce contact with pollutants and reduce the discharge of pollutants. Appropriate measures may include vegetative swales, collection and reuse of stormwater, inlet controls, snow management, and infiltration practices.
  - Salt Storage Piles or Piles Containing Salt (Part 2.1.5.9). The plan must contain a description of how the salt pile will be covered or enclosed. The plan must also include a description of how materials and runoff from handling activities, i.e. adding to or removing from the pile, will be managed.
  - Sector Specific BMPs (Part 2.1.5.10 referencing sector specific sections of Part 4). The plan must include a description of all BMP requirements stipulated in Part 4 of the permit.
  - Controls on other Specific Activities (Part 2.1.5.11). The proposed MSGP includes a requirement to implement controls on solid materials, including floating debris. In addition, off-site tracking of raw, final, or waste materials or sediment and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized.
  - All other necessary controls (Part 2.1.5.12). The operator must determine if BMPs, in addition to those in 2.1.5.1 through 2.1.5.11, are necessary to adequately control pollutants in stormwater discharges to meet the provisions of the permit. If so, the SWPPP must include a description of those measures.

### **3.28 Controls for Allowable Non-Stormwater Discharges**

Where an allowable non-stormwater discharge has been identified, appropriate controls for that discharge must be included in the SWPPP (Part 2.1.4.5). In many cases, the same types of controls for contaminated stormwater would suffice, but the nature and volume of potential pollutants in the non-stormwater discharges must be taken into consideration in selecting controls.

### **3.29 Special Requirements for Discharges Associated with Specific Industrial Activity**

A number of changes to SWPPP requirements were introduced for specific industrial sectors. The sector-specific sections of Part 4 of the proposed MSGP 2006 provide requirements for each industrial sector. The following describe notable changes to industrial sectors:

Sector G – Metal Mining. Added the construction requirements applicable to the mining section.

Sector I – Oil and Gas Refining. Clarification on limitations of coverage in I.3.1 for discharges subject to effluent limitations guidelines of 40 CFR 419 and 435, and added discussion of why most Sector I stormwater discharges are not eligible for MSGP coverage. Changed the title and added discussion regarding contact with wastewater pollutants at exploration and production facilities in the place of “Good Housekeeping”.

Sector J – Mineral Mining. Many of the same changes from Sector G and Construction General Permit were incorporated here.

Sector K - Hazardous Waste Treatment, Storage, or Disposal Facilities. For facilities identified under activity code HZ, primary comments are in limitation on coverage for commercial TSD facilities, and several are region specific.

Sector Y - Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries. The most significant changes added industrial dischargers active in the manufacture of Pens, Pencils, and other Artists’ Materials (SIC 3951-3955, except 3952 as Specified in Sector C); Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal (SIC 3961, 3965); and Miscellaneous Manufacturing Industries (SIC 3991-3999)

Sector AC - Electronic and Electrical Equipment and Components, Photographic and Optical Goods. Revisions included adding the broader activity description for manufacture of electrical and electronic equipment and components to the industrial activities covered under sector AC in AC.2.5, and added specific SIC codes to Table AC-1.

Sector AD – Stormwater Discharges Designated by the Director as Requiring Permits. Clarification regarding facilities identified as needing permits, but not falling into one of the established industrial sectors.

### **3.30 Mercury Switch Removal**

For the MSGP 2006, EPA is considering a requirement for Sectors M (Automobile Salvage Yards) and N (Scrap Recycling and Waste Recycling Facilities) to properly remove, store and dispose of mercury-containing switches from automobiles. BMP options could include: (a) pop out mercury-containing “capsules” from hood and trunk unit; (b) remove anti-lock braking system units that contain mercury switches; (c) store switches and ABS units indoors in a secure container marked “Universal Waste” until sufficient numbers are collected to be recycled; (d) send mercury switches as Universal Waste to a mercury recycler that is permitted under the Resource Conservation and Recovery Act (RCRA) or to the state mercury switch collection facility; and, (e) provide employee training for the management of mercury switches.

For this requirement a readily available practice for facilities in Sectors M and N would be to participate in, or to purchase car hulks that have come through, state programs that ensure mercury switch removal. Consideration of these provisions for the stormwater permit is part of EPA’s overall effort to avoid mercury releases related to the recycling of automobiles. EPA has been examining state programs and other voluntary and regulatory approaches with state regulators, as well as with representatives of affected industries and other stakeholders.

EPA could include this requirement for all relevant facilities in Sectors M and N, or could apply this provision only to facilities that crush automobiles, since this is the process that releases mercury to the environment. EPA solicits comment on whether or not mercury switch removal should be a requirement of MSGP 2006, and if so, how broadly it should be applied.

### **3.31 State or Tribal Requirements**

Part 5 of the final MSGP 2006 will contain conditions provided by States and Tribes as part of Clean Water Act § 401 certification. Those provisions are not included in the proposed MSGP 2006, but will be included in the final MSGP 2006. Any requirement stipulated by a State or Tribe in the final permit must be incorporated into the SWPPP and implemented.

### **3.32 Maintenance**

All BMPs identified in the SWPPP must be maintained at all times in effective operating condition (Part 2.2).

### **3.33 Comprehensive Site Compliance Evaluation**

Today’s proposed MSGP requires that the SWPPP describe the scope of the comprehensive site evaluation (Part 3.1). Inspections must be conducted by qualified personnel, and the inspection team must include at least one member of the Pollution Prevention Team. Qualified personnel are those who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at your facility, and who can also evaluate the

effectiveness of BMPs selected. While EPA does not stipulate specific qualifications for these personnel, a combination of relevant education, training and experience is necessary.

Note that the comprehensive site evaluations are not the same as routine inspections. Routine inspections are relatively frequent and informal checks to ensure that problems are not developing. Comprehensive site evaluations, as the term implies, include a much more in-depth review of the site and all operations, as they relate to stormwater management and the requirements of the SWPPP. However, in the instances when frequencies of routine inspections and the comprehensive site compliance evaluation overlap, they may be combined to allow for efficiency as long as the requirements for both types of inspections are met. The plan must indicate the frequency of comprehensive evaluations, which must be at least once a year. Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors must also observe erosion controls and structural stormwater management devices to ensure that each is operating correctly. Equipment needed to implement the SWPPP, such as that used during spill response activities, must be inspected to confirm that it is readily available and in proper working order.

The results of each comprehensive site evaluation must be documented in a report signed by an authorized company official. The report must describe the scope of the comprehensive site evaluation, the personnel making the comprehensive site evaluation, the date(s) of the comprehensive site evaluation, and any major observations relating to implementation of the SWPPP.

Based on the results of each comprehensive site evaluation, the description in the plan of potential pollution sources and measures and controls must be revised as appropriate within 14 calendar days after each comprehensive site evaluation. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm, or not more than 60 days after completion of the comprehensive site evaluation unless this time frame is extended by EPA. EPA reiterates that this time frame is not a grace period from permit violations.

### **3.34 Signature**

The SWPPP must be signed and certified in accordance with Appendix B, section 11 of the permit.

### **3.35 Purpose of Corrective Action Schedules**

Several provisions of MSGP 2006, including Parts 2.3 and 3.3, stipulate time limits for implementing actions to remedy deficiencies. EPA emphasizes that these time frames are not grace periods within which an operator is relieved of any liability for a permit violation. If the original inadequacy constitutes a permit violation, then that violation is not deferred by the time frame EPA has allotted for corrective action. The time limits are those that EPA considers reasonable for making the necessary repairs or modifications, and are included specifically so

that inadequacies are not allowed to persist indefinitely. Failure to take the necessary corrective action within the stipulated time limit constitutes an additional and independent permit violation.

### **3.36 Reporting**

EPA has included reporting requirements in MSGP 2006 that ensure that EPA, and other parties as necessary, are made aware of potential water quality problems. Discharge monitoring reports must be submitted to EPA no later than 30 days after all analytical data from a monitoring event are received. This is a change from MSGP 2000 where operators could submit results of multiple monitoring events once per year.

EPA will have on-line electronic reporting associated with the e-NOI system by the time MSGP 2006 is finalized, so that permittees may electronically report discharge monitoring data. EPA also intends to develop electronic reporting for follow-up monitoring reports (Part 3.4) and reports of spills and other unauthorized discharges (Part 3.5.1), though these components of the e-reporting system may not be available until a later date.

Follow-up monitoring results should be reported via the electronic system (when available) or in writing to the appropriate EPA Regional Office (Part 3.7) within 30 days of receiving the results. The report should include the permit identification number; facility name, address and location; receiving water; monitoring data from this and the preceding monitoring event(s); an explanation of the situation; what has been done and shall be done to further reduce pollutants in the discharge; and an appropriate contact name and phone number.

In addition, MSGP 2006 clarifies that spills and other unauthorized discharges must be reported to EPA. In the case where discharges may affect drinking water supplies, recreational waters, elicit fish kills, or may otherwise endanger human health or the environment the discharge must be reported orally to the appropriate EPA regional office within 24 hours from the time of discovery, followed by an electronic or written report (per the requirements of Appendix B, section 12(F)) within 5 days. EPA also encourages operators to report the releases that may have human health ramifications to the appropriate local authorities, e.g., public water supply operator, health department. EPA requests comments on whether or not reporting to these local authorities should be encouraged or required.

## **4. Eligible Discharges**

### **4.1 Areas Covered**

Today's proposed MSGP would authorize discharges associated with industrial activities in areas where EPA is the permitting authority (see Appendix C of the permit).

#### *Proposed Coverage for Arizona Non-Indian Lands*

The 2006 MSGP is being proposed to cover non-Indian lands in the State of Arizona even though EPA authorized the State of Arizona to administer the NPDES permit program in late 2002. EPA's 2002 decision to grant program authorization to the State was challenged by two petitions which contended that the decision was inconsistent with the requirements of the Endangered Species Act. On August 22, 2005, the Ninth Circuit Court of Appeals agreed with the petitioners and vacated EPA's decision to authorize the State of Arizona to administer the program. Defenders of Wildlife v. EPA, No. 03-71439.

The Court decision has not yet become effective pending the outcome of the requests for a rehearing which have been filed by EPA and certain other parties. However, if the Court decision does become effective the authority to issue and enforce NPDES permits in non-Indian lands in Arizona would revert to EPA.

The Arizona Department of Environmental Quality (ADEQ) has been administering EPA's 2000 MSGP since ADEQ assumed responsibility for NPDES permitting in 2002. ADEQ is also in process of issuing its own MSGP to replace the 2000 MSGP. However, ADEQ could no longer continue its program if the Court decision were to go into effect.

In view of the large number of industrial facilities subject to stormwater permitting, and the similarity of most discharges, EPA believes that general permitting is the most appropriate permitting option for most facilities. EPA is proposing the 2006 MSGP in non-Indian lands in Arizona as a contingency measure to ensure that general permitting continues to be available if the Court decision does take effect. It is still possible that the Court decision may be modified or reversed as a result of future requests for rehearing filed with the Court. If so, EPA's proposed MSGP may never be finalized for non-Indian lands in Arizona, and the ADEQ permitting program could continue.

### **4.2 Industrial Sectors Covered**

Today's proposed MSGP would authorize stormwater discharges associated with industrial activity from the categories of facilities shown in Table 2.

<b>Table 2. Industrial Sectors and Subsectors in Proposed MSGP 2006</b>		
<b>Subsector</b>	<b>SIC code</b>	<b>Activity represented</b>
<b>Sector A. Timber Products</b>		
1	2421	General Sawmills and Planing Mills
2	2491	Wood Preserving
3	2411	Log Storage and Handling
4	2426	Hardwood Dimension and Flooring Mills
	2429	Special Product Sawmills, Not Elsewhere Classified
	2431-2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W)
	2448, 2449	Wood Containers
	2451, 2452	Wood Buildings and Mobile Homes
	2493	Reconstituted Wood Products
	2499	Wood Products, Not Elsewhere Classified
<b>Sector B. Paper and Allied Products</b>		
1	2611	Pulp Mills
2	2621	Paper Mills
3	2631	Paperboard Mills
4	2652-2657	Paperboard Containers and Boxes
5	2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes
<b>Sector C. Chemical and Allied Products</b>		
1	2812-2819	Industrial Inorganic Chemicals
2	2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers, Except Glass
3	2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; <i>in Vitro</i> and <i>in Vivo</i> Diagnostic Substances; Biological Products, Except Diagnostic Substances
4	2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations
5	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products
6	2861-2869	Industrial Organic Chemicals
7	2873-2879	Agricultural Chemicals, Including Facilities That Make Fertilizer Solely from Leather Scraps and Leather Dust
8	2891-2899	Miscellaneous Chemical Products
9	3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints, and Artist's Watercolors
<b>Sector D. Asphalt Paving and Roofing Materials and Lubricants</b>		
1	2951, 2952	Asphalt Paving and Roofing Materials

<b>Table 2. Industrial Sectors and Subsectors in Proposed MSGP 2006</b>		
<b>Subsector</b>	<b>SIC code</b>	<b>Activity represented</b>
2	2992, 2999	Miscellaneous Products of Petroleum and Coal
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Products		
1	3211	Flat Glass
	3221, 3229	Glass and Glassware, Pressed or Blown
	3231	Glass Products Made of Purchased Glass
	3281	Cut Stone and Stone Products
	3291-3292	Abrasive and Asbestos Products
	3296	Mineral Wool
	3299	Nonmetallic Mineral Products, Not Elsewhere Classified
2	3241	Hydraulic Cement
3	3251-3259	Structural Clay Products
	3261-3269	Pottery and Related Products
	3297	Non-Clay Refractories
4	3271-3275	Concrete, Gypsum, and Plaster Products
	3295	Minerals and Earths, Ground or Otherwise Treated
Sector F. Primary Metals		
1	3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills
2	3321-3325	Iron and Steel Foundries
3	3331-3339	Primary Smelting and Refining of Nonferrous Metals
4	3341	Secondary Smelting and Refining of Nonferrous Metals
5	3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
6	3363-3369	Nonferrous Foundries (Castings)
7	3398, 3399	Miscellaneous Primary Metal Products
Sector G. Metal Mining (Ore Mining and Dressing)		
1	1011	Iron Ores
2	1021	Copper Ores
3	1031	Lead and Zinc Ores
4	1041, 1044	Gold and Silver Ores
5	1061	Ferroalloy Ores, Except Vanadium
6	1081	Metal Mining Services
7	1094, 1099	Miscellaneous Metal Ores
Sector H. Coal Mines and Coal Mining-Related Facilities		
NA	1221-1241	Coal Mines and Coal Mining-Related Facilities
Sector I. Oil and Gas Extraction and Refining		
1	1311	Crude Petroleum and Natural Gas
2	1321	Natural Gas Liquids
3	1381-1389	Oil and Gas Field Services
4	2911	Petroleum refineries

<b>Table 2. Industrial Sectors and Subsectors in Proposed MSGP 2006</b>		
<b>Subsector</b>	<b>SIC code</b>	<b>Activity represented</b>
Sector J. Mineral Mining and Dressing		
1	1411	Dimension Stone
	1422-1429	Crushed and Broken Stone, Including Rip Rap
	1481	Nonmetallic Minerals, Except Fuels
2	1442, 1446	Sand and Gravel
3	1455, 1459	Clay, Ceramic, and Refractory Materials
4	1474-1479	Chemical and Fertilizer Mineral Mining
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels
Sector K. Hazardous Waste Treatment, Storage, and Disposal Facilities		
NA	HZ	Hazardous Waste Treatment, Storage, or Disposal
Sector L. Landfills, Land Application Sites, and Open Dumps		
NA	LF	Landfills, Land Application Sites, and Open Dumps
Sector M. Automobile Salvage Yards		
NA	5015	Automobile Salvage Yards
Sector N. Scrap Recycling Facilities		
NA	5093	Scrap Recycling Facilities
Sector O. Steam Electric Generating Facilities		
NA	SE	Steam Electric Generating Facilities
Sector P. Land Transportation and Warehousing		
1	4011, 4013	Railroad Transportation
2	4111-4173	Local and Highway Passenger Transportation
3	4212-4231	Motor Freight Transportation and Warehousing
4	4311	United States Postal Service
5	5171	Petroleum Bulk Stations and Terminals
Sector Q. Water Transportation		
NA	4412-4499	Water Transportation
Sector R. Ship and Boat Building and Repairing Yards		
NA	3731, 3732	Ship and Boat Building and Repairing Yards
Sector S. Air Transportation Facilities		
NA	4512-4581	Air Transportation Facilities
Sector T. Treatment Works		
NA	TW	Treatment Works
Sector U. Food and Kindred Products		
1	2011-2015	Meat Products
2	2021-2026	Dairy Products
3	2032	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties
4	2041-2048	Grain Mill Products
5	2051-2053	Bakery Products

<b>Table 2. Industrial Sectors and Subsectors in Proposed MSGP 2006</b>		
<b>Subsector</b>	<b>SIC code</b>	<b>Activity represented</b>
6	2061-2068	Sugar and Confectionery Products
7	2074-2079	Fats and Oils
8	2082-2087	Beverages
9	2091-2099	Miscellaneous Food Preparations and Kindred Products
	2111-2141	Tobacco Products
Sector V. Textile Mills, Apparel, and Other Fabric Product Manufacturing; Leather and Leather Products		
1	2211-2299	Textile Mill Products
2	2311-2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials
	3131-3199 (except 3111)	Leather and Leather Products, Except Leather Tanning and Finishing (see Sector Z).
Sector W. Furniture and Fixtures		
NA	2511-2599	Furniture and Fixtures
	2434	Wood Kitchen Cabinets
Sector X. Printing and Publishing		
NA	2711-2796	Printing, Publishing, and Allied Industries
Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries		
1	3011	Tires and Inner Tubes
	3021	Rubber and Plastics Footwear
	3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastics Hose and Belting
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
2	3081-3089	Miscellaneous Plastics Products
	3931	Musical Instruments
	3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods
	3951-3955 (except 3952 as specified in Sector C)	Pens, Pencils, and Other Artists' Materials
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal
3991-3999	Miscellaneous Manufacturing Industries	
Sector Z. Leather Tanning and Finishing		
NA	3111	Leather Tanning and Finishing
Sector AA. Fabricated Metal Products		
1	3411-3499	Fabricated Metal Products, Except Machinery and Transportation Equipment and Coating, Engraving, and Allied Services
	3911-3915	Jewelry, Silverware, and Plated Ware
2	3479	Coating, Engraving, and Allied Services

<b>Table 2. Industrial Sectors and Subsectors in Proposed MSGP 2006</b>		
<b>Subsector</b>	<b>SIC code</b>	<b>Activity represented</b>
Sector AB. Transportation Equipment, Industrial, and Commercial Machinery		
NA	3511-3599 (except 3571-3579)	Industrial and Commercial Machinery (except Computer and Office Equipment - see Sector AC)
NA	3711-3799 (except 3731, 3732)	Transportation Equipment (except Ship and Boat Building and Repairing - see Sector R)
Sector AC. Electronic, Electrical, Photographic, and Optical Goods		
NA	3612-3699	Electronic and Electrical Equipment and Components, Except Computer Equipment
	3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic and Optical Goods, Watches, and Clocks
	3571-3579	Computer and Office Equipment
Sector AD. Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director		

"NA" indicates industry sectors in which subdivision into subsectors was determined to be not applicable.

Although the Office of Management and Budget's North American Industry Classification System is intended to replace the 1987 Standard Industrial Classification Code, EPA has decided to continue using the 1987 SIC code system as the primary classification system under the MSGP because the stormwater regulations (40 CFR 122.26(b)(14)) refer to these codes and because this code system identifies facilities adequately.

## **5. Cost Estimates**

EPA has prepared an analysis of costs of complying with this permit. The analysis includes low, average and high level facility costs and shows both the total costs and incremental costs relative to the 2000 MSGP permit.

EPA observed that 3,656 facilities were covered by the 2000 MSGP in July, 2005. The Agency used the same number of facilities to estimate costs for the 2006 permit. This was done to look at changes in the permit and the impact of only those changes; in other words, the analysis was performed such that the Agency could make like comparisons. However, there are likely to be some additional permittees in the 2006 permit.

Initial EPA analysis indicated that average additional incremental cost to MSGP 2006 from MSGP 2000 will be approximately \$60 per year. Based on specific laboratory cost information obtained after the conclusion of this analysis, EPA believes that this estimate is conservative, and costs will be somewhat less. EPA estimates that the low end total cost for existing facilities is approximately \$1,000 per facility per year. The high end cost is estimated at approximately \$27,000 per facility per year. However, EPA estimates that the actual cost will be far closer to the low end estimate for the majority of facilities and has estimated an average cost estimate of approximately \$2,000 per year per existing facility. Furthermore, EPA estimates the median cost will be below \$2,000 per facility per year. The complete cost analysis is available in the docket for the proposed permit. Several specific cost elements are described below. See "Cost Analyses" file in the docket for more detail on cost analyses.

### **5.1 Analytical Benchmark Monitoring**

Some sectors and subsectors that did not previously perform benchmark monitoring will be required to do so. Generally, the monitoring requirements will be for TSS, a relatively inexpensive laboratory test. Using a conservative estimation scheme, the Agency estimates an increased cost of approximately \$126 dollars per year in monitoring costs for these facilities. Based on analytical cost data obtained after this analysis was completed, the agency believes this estimate is high.

### **5.2 Reporting**

EPA will release a new electronic reporting system in concurrence with the final permit that will reduce time required per reporting event. In the 2000 Permit, EPA estimated that facilities would need 2 hours per annual reporting event. However, in the 2006 Permit, EPA estimates that facilities will need 1 hour for the first quarterly reporting event, and 15 minutes for each event thereafter. If the 2000 reporting mechanism applied to the MSGP 2006, EPA estimates an increased burden of approximately 900 hours in the first year and 1200 hours in the second year. Hence, the new reporting mechanism should save 2,100 hours, or approximately 0.6 hours or \$26 per facility over the course of the 5 year permit.

EPA no longer will require permittees to contact their local municipalities. EPA estimates that this will save \$19 in the first year for all facilities.

Some facilities will need to check with their TMDL authorities if they discharge to impaired waters to see what steps they need to take. EPA calculated a high end estimate of \$300 incurred the first year for these select facilities. These costs are reflected in the high end estimate.

## **6. Economic Impact (Executive Order 12866)**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

EPA has determined that the proposed MSGP is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

## **7. Unfunded Mandates Reform Act**

Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub.L. 104-4, generally requires Federal agencies to assess the effects of their “regulatory actions” on State, local, and Tribal governments and the private sector. EPA has determined that today’s MSGP reissuance does not result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector, in any one year.

The Agency also believes that the proposed MSGP will not significantly nor uniquely affect small governments. For UMRA purposes, “small governments” is defined by reference to the definition of “small governmental jurisdiction” under the RFA. (See UMRA Section 102(1), referencing 2 U.S.C. 658, which references Section 601(5) of the RFA.) “Small governmental jurisdiction” means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

Today’s proposed MSGP also will not uniquely affect small governments because compliance with the final permit conditions affects small governments in the same manner as any other entities seeking coverage under the final permit.

## **8. Paperwork Reduction Act**

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed MSGP under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of MSGP 2000 have already been approved in previous submissions made for the NPDES permit program under the provisions of the CWA. The paperwork requirements in the proposed MSGP 2006 are similar to those of MSGP 2000. EPA is currently evaluating whether the existing PRA approval adequately covers the paperwork requirements in MSGP 2006. EPA requests comments on these requirements. EPA will seek approval of the Office of Management and Budget for any paperwork requirements it determines are not adequately covered in an existing Information Collection Request (ICR) approval.

## 9. Impact on Small Business

EPA considered the impact of this general permit on small businesses, small organizations, and small governmental jurisdictions. A small entity is defined as: (1) a small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the general permit requirements on small entities, the Agency believes that this action will not have a significant economic impact on a substantial number of small entities. The Agency has reached the conclusion that the majority of associated costs with the MSGP were covered by the initial 1991 Phase I rule analysis, with additional analysis being performed for the 1995 MSGP. The Agency has reviewed summary statistics from the 2002 Economic Census from the United States Census Bureau (available at: <http://www.census.gov/econ/census02/>). These values were then inflated from 2002 to 2005 dollars by using a conversion factor of 1.075. The agency surveyed statistics for companies with 0-4 employees from approximately 12 industry groups representative of various subsectors. Facilities with 0-4 employees were selected because they were assumed to be the smallest businesses and those that would see the greatest percentage of their gross revenue committed to the permit. Groups selected included Leather and Tanning, Paper Mills, Wood Kitchen Cabinets, Household Furniture, Fluid Milk Manufacturing, Creamery Butter manufacturing, Cheese manufacturing, Carpet & rug mills, Gold ore mining, and Iron Ore Mining. For all groups, the additional incremental cost associated with the MSGP 2006 permit appears to be 0.00% (Iron Ore and Gold Ore Mining) to 0.15% (Wood Kitchen Cabinets) of average gross revenue. In order for the MSGP permit to be greater than 3% of gross revenue, implementation costs would need to exceed from approximately \$2,600 per facility per year (Wood Kitchen Cabinets) to \$ 41,000 per facility per facility per year (cheese manufacturing). Based on EPA's estimates of full implementation cost of the permit, the total cost should not exceed 3% per year of gross revenue, and will be well under 1% of gross revenue for almost all facilities. Average gross revenue was calculated by dividing the total value of shipments per sector by the total number of facilities with 0-4 employees per sector. We also surveyed Water Transportation, but 2002 numbers were not broken down by the number of employees. We instead looked at inland water transportation, Excursion and Sightseeing, assuming industries in this sector would be smaller businesses. This sector will also remain well below the 3% threshold, requiring approximately \$192,000 per facility per year to cross the 3% limit. Numerous other sectors for which data is available in the economic census were scanned to be sure their results were consistent with this analysis.