

## Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

Implementation Action Tiers	Action Trigger	Action Required	Exception(s)
2015 MSGP	<ul style="list-style-type: none"> <li>Average of 4 quarterly sampling results &gt; benchmark</li> <li>Sum of less than 4 quarterly sample results &gt; 4 x benchmark</li> </ul>	<ul style="list-style-type: none"> <li>Review SWPPP to determine if modifications are necessary</li> <li>Immediately take reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational</li> <li>Complete additional actions within 14 days, or 45 days if 14-day window is infeasible.</li> <li>If run-on to facility causes exceedance, review/ revise SWPPP and notify operators of contributing run-on to abate their pollutant contribution</li> </ul>	<ul style="list-style-type: none"> <li>Exceedance is solely attributable to natural background sources</li> <li>No further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice</li> </ul>
Tier 1	<ul style="list-style-type: none"> <li>Annual average &gt; benchmark</li> <li>Single sample result &gt; 4 x benchmark</li> </ul>	<ul style="list-style-type: none"> <li>Immediately review selection, design, installation, and implementation of control measures to determine whether modifications are required</li> <li>Implement modifications within 14 days, or no later than 45 days if 14-day window infeasible</li> </ul>	<ul style="list-style-type: none"> <li>Exceedance is solely attributable to natural background sources</li> <li>EPA agreement that exceedances is solely attributable run-on sources</li> </ul>
Tier 2	<ul style="list-style-type: none"> <li>2 consecutive annual averages each &gt; benchmark</li> <li>2 sample results w/in a 2-year period each &gt; 4 x benchmark</li> <li>Single sample result &gt; 8 x benchmark</li> </ul>	<ul style="list-style-type: none"> <li>Implement all feasible control measures for applicable sector</li> <li>Implement controls within 14 days, or no later than 45 days if 14-day window infeasible</li> </ul>	<ul style="list-style-type: none"> <li>Exceedance is solely attributable to natural background sources</li> <li>EPA agreement that exceedances is solely attributable run-on sources</li> <li>If single sample result (8 x benchmark) constituted an aberration: <ul style="list-style-type: none"> <li>document in facility SWPPP measures to prevent reoccurrence</li> <li>conduct follow up sampling in next qualifying rain event to confirm</li> <li>Note: aberration exception only available on time per parameter per outfall</li> </ul> </li> </ul>

## Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

Implementation Action Tiers	Action Trigger	Action Required	Exception(s)
Tier 3	<ul style="list-style-type: none"> <li>3 consecutive annual averages each &gt; benchmark</li> <li>3 sampling results w/in a 3-year period each &gt; 4 x benchmark</li> <li>2 sampling results w/in a 3-year period each &gt; 8 x benchmark</li> <li>4 consecutive samples &gt; benchmark and the average &gt; 2 x benchmark</li> </ul>	<ul style="list-style-type: none"> <li>Install structural source controls (e.g., berms, secondary containment, etc.) and/or treatment controls (e.g., oil-water separators, infiltration structures, etc.), with assistance from a professional engineer or geologist</li> <li>Install controls within 30 days, or no later than 90 days if 30-day window is infeasible</li> <li>Controls must be installed at all substantially identical outfalls</li> </ul>	<ul style="list-style-type: none"> <li>Exceedance is solely attributable to natural background sources</li> <li>EPA agreement that exceedances is solely attributable run-on sources</li> <li>Facility demonstrates to EPA within 30 days that the discharge does not result in the exceedance of water quality standards, and EPA approves               <ul style="list-style-type: none"> <li>Facility demonstrations would be made publicly available.</li> </ul> </li> </ul>
N/A	<ul style="list-style-type: none"> <li>Sample results for a parameter continue to exceed benchmark after structural source or treatment controls are installed</li> </ul>	<ul style="list-style-type: none"> <li>EPA may require facility to apply for an individual NPDES permit</li> </ul>	N/A

*Beveridge & Diamond's 100 lawyers – including 50 litigators – concentrate their practice on environmental, sustainability, and natural resources law, litigation, and dispute resolution. Widely recognized as one of the premier environmental law and litigation firms in the U.S., the Firm helps clients in diverse industry sectors resolve critical environmental and sustainability issues relating to their facilities, products, and operations around the world. Learn more at [www.bdlaw.com](http://www.bdlaw.com).*