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Stormwater Forecast: Prepare for More Aggressive Benchmark Monitoring and Corrective Action Requirements under the Next Proposed MSGP

EPA is expected to propose a revised system of benchmark monitoring and corrective action requirements to replace those of the current 2015 Multi-Sector General Permit for Stormwater Associated with Industrial Activities ("MSGP"). EPA has just entered into a settlement agreement with environmental groups that challenged EPA's issuance of the 2015 MSGP, under which EPA has agreed to propose a number of new conditions for incorporation into the next version of the permit. The settlement agreement has no effect on the terms and conditions of the current 2015 MSGP, which remains in place until June 2020, however, facilities subject to benchmark monitoring should take note of the changes expected to be proposed, particularly for those facilities consistently facing benchmark exceedances. Under the current permit, benchmark exceedances do not on their own result in non-compliance, but can trigger the need for enhanced stormwater management practices.

Benchmark Monitoring

The settlement agreement covers several stormwater management issues but places a strong emphasis on benchmark monitoring. EPA has agreed to both study the effectiveness of the 2015 MSGP's benchmark monitoring provisions and to propose a tiered set of corrective action measures. The proposed tiered system's structure builds on sample results from year-to-year, and its increasingly sophisticated action requirements will translate into a need to make greater capital expenditures and to consult more regularly with professional engineers.

We summarize the proposed tiers in the attached table, with a comparison point to the 2015 MSGP's requirements in the first row of the chart.

Eligibility Under MSGP

EPA has also agreed to propose a provision extending the discharge authorization date from 30 to 60 days for new dischargers (i.e., facilities not covered under the 2015 MSGP) that submit an NOI while subject to a pending stormwater enforcement action by EPA, a state, or a citizen group, including any facility that has received a citizen group's Notice of Intent to Sue. This means that EPA would be alerted of alleged stormwater violations at the time of a

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facility's application for permit coverage and may take the opportunity to impose additional stormwater control requirements.

EPA will also propose that facilities with pavement coated with coal tar sealant will not be eligible for permit coverage under the MSGP. Facilities would need to eliminate the discharge of PAHs from the coal tar sealant before seeking permit coverage, which would likely require repaving.

Other Provisions

In addition, EPA also agreed to the following:

- Fund a study by the National Resource Council to evaluate and provide recommendations on:
 - o Suggested improvements to the current MSGP's benchmark monitoring requirements;
 - o Feasibility of numeric retention standards; and
 - o Identification of the highest priority industrial facilities or industrial sectors to consider for more stringent discharge requirements.
- Revise EPA's sector-specific fact sheets to incorporate emerging stormwater control measures that reflect industry practices for Best Available Technology ("BAT") and Best Control Technology ("BCT").
- Propose in the next MSGP to extend the eligibility criterion for facilities discharging to federal CERCLA sites to all EPA Regions.
- Propose in the next MSGP annual monitoring requirements for stormwater discharging to impaired waters without a TMDL.

While the proposed MSGP will not be issued for at least three years, facilities subject to the 2015 MSGP should be aware that the study recommendations together with the conceptual benchmark and eligibility provisions described above could significantly change facilities' response obligations to monitoring and sampling requirements under the permitting program. It could also widen the net of facilities subject to the permitting program, or even result in a shift in focus to specific "high-priority" industrial sectors.

Facilities currently struggling to meet benchmark thresholds may want to start the planning process to consider the steps that can be taken to reduce benchmark exceedances. If EPA ultimately adopts the proposed conditions, facilities with consistently high benchmark exceedances may expose themselves to increased federal or citizen group oversight.

For questions involving EPA's MSGP, please contact the authors.

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

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"> 3 consecutive annual averages each > benchmark 3 sampling results w/in a 3-year period each > 4 x benchmark 2 sampling results w/in a 3-year period each > 8 x benchmark 4 consecutive samples > benchmark and the average > 2 x benchmark 	<ul style="list-style-type: none"> 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 Install controls within 30 days, or no later than 90 days if 30-day window is infeasible Controls must be installed at all substantially identical outfalls 	<ul style="list-style-type: none"> Exceedance is solely attributable to natural background sources EPA agreement that exceedances is solely attributable run-on sources 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"> Facility demonstrations would be made publicly available.
N/A	<ul style="list-style-type: none"> Sample results for a parameter continue to exceed benchmark after structural source or treatment controls are installed 	<ul style="list-style-type: none"> EPA may require facility to apply for an individual NPDES permit 	N/A

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