

Rewetting the Ink on Washington's Industrial Stormwater General Permit: Significant Modifications Coming Down the Pipes



The Washington Department of Ecology (Ecology) released the [draft 2020 Industrial Stormwater General Permit](#) (ISGP) for public comment. The draft permit contains a number of changes from the existing ISGP, including adding two new industry groups that will require coverage (marine construction, and construction, transportation, and mining equipment rental and leasing), changing the timing of the first flush, and revising requirements for consistent attainment.

Failure to comply with all permit requirements can result in enforcement actions and/or citizen suits. Facilities can minimize risk now by becoming familiar with, and preparing for, the expected permit changes.

Background

In Washington, industrial stormwater discharges are regulated under both the federal Clean Water Act (CWA) and state Water Pollution Control Act. The Washington Department of Ecology enforces state and federal industrial stormwater requirements using a single general permit—the Industrial Stormwater General Permit. Facilities with industrial stormwater discharges apply for coverage under the ISGP, rather than applying for individual discharge permits. Once covered, the facility must comply with all terms of the ISGP.

The current ISGP expires on December 31, 2019. The final 2020 ISGP will take effect in the beginning of 2020. Facilities currently

June 20, 2019

AUTHORS

[Kirstin Gruver](#)

Associate

+1.206.315.4819

kgruver@bdlaw.com



[Erika Holsman](#)

Associate

+1.206.315.4815

eholsman@bdlaw.com



ABOUT B&D

Beveridge & Diamond's over 100 lawyers in eight U.S. offices focus on environmental and natural resources law, litigation and alternative dispute resolution. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations.

Learn more at bdlaw.com

under ISGP coverage need to reapply for coverage under the forthcoming 2020 ISGP by July 1, 2019.

ISGP Permit Changes

There are a number of proposed changes in the draft 2020 ISGP. A summary of the main changes follows. A redline version of the ISGP, reflecting all proposed changes, is available [here](#).

Permit Coverage

ISGP coverage is only required if a facility (1) conducting industrial activities (2) discharges stormwater (3) to a surface waterbody or storm sewer system that drains to a surface waterbody and (4) does not qualify for a Categorical No Exposure (CNE) exemption.

The current ISGP identifies “facilities conducting industrial activities” by reference to 1987 Standard Industrial Classification (SIC) codes. If a facility’s SIC is listed in Table 1 of the permit, the facility is within the scope of the ISGP. The draft 2020 ISGP proposes to switch from SIC codes to 2017 North American Industry Classification System (NAICS) codes for identifying the sectors required to apply for permit coverage. In areas where SIC codes and NAICS closely track one another, this change will not be significant. For example, warehousing. In other cases where the codes do not line up, this change may have a substantive effect on coverage. It is important for facilities to check whether their NAICS code is listed in the draft 2020 ISGP Table 1.

Facilities currently under ISGP coverage need to reapply for coverage by July 1, 2019.

Significantly, the draft 2020 ISGP permit adds two new sectors that will be required to obtain permit coverage and comply with the same:

1. Construction, transportation, mining, and forestry machinery and equipment rental and leasing.
2. Marine construction.

Complying with ISGP permit requirements may be a heavy lift for facilities in these previously excluded sectors. The facilities may want to start preparing now to ensure they will be able to comply with permit requirements come 2020.

The draft ISGP does not alter Ecology’s eleven criteria by which a facility can qualify for a CNE, but it does clarify the process for obtaining a CNE. The draft 2020 permit requires all CNE applications to be submitted electronically through Ecology’s Water Quality Permitting Portal.

Application for Coverage

The draft 2020 ISGP clarifies that permit coverage is obtained by submission of a permit coverage Notice of Intent through Ecology’s Water Quality Permitting Portal rather than a traditional “permit application.”

Stormwater Pollution Prevention Plan

Stormwater Pollution Prevention Plans (SWPPPs) must contain a site map. The draft 2020 ISGP adds a number of additional features site maps are required to include. It is important for facilities to review their existing site maps against this updated list. In many cases, existing site maps will no longer be sufficient to comply with the 2020 requirements.

The draft 2020 ISGP includes a few clarifications regarding SWPPP Best Management Practice (BMP) requirements. For example, dumpster lids should be storm proof and that UL approved double-walled tanks may be used in lieu of containment berms or dikes.

First Flush Timing

Facilities are required to sample the “first fall storm event each year” (i.e. first flush), in addition to other sampling requirements. The draft 2020 ISGP proposes to change the definition of “first fall storm event” from the first rain event after October 1 to the first rain event after September 1. Facilities will want to take caution not to miss this earlier requirement.

Consistent Attainment

Under the existing permit, if a facility achieves “constituent attainment” for a parameter—defined as eight consecutive quarterly samples below benchmark values, or in the case of pH within the 5.0-9.0 range—then it can suspend sampling of that parameter for three years (12 quarters). Under the draft 2020 ISGP, complete suspension is discontinued. Instead, facilities with consistent attainment status must still take at least one sample during the fourth quarter of each of the three years.

Additional Industry Specific Benchmarks and Sampling Requirements

All covered facilities must sample for the following baseline parameters: turbidity, pH, copper, and zinc (as well as monitor for oil sheens). Specific industries are required to sample for additional industry-specific parameters, as set forth in Table 3.

The draft 2020 ISGP adds additional parameters for a handful of previously covered industries as well as additional parameters for the two new sectors requiring permit coverage. For example, in addition to the baseline parameters, machinery manufactory will need to start sampling for lead and petroleum hydrocarbons, wood product manufacturing will need to start sampling for chemical oxygen demand (COD) and total suspended solids (TSS), and facilities engaged in marine industrial construction will need to sample for arsenic, PAH compounds, p-cresol, phenol, total suspended solids (TSS), and petroleum hydrocarbons (diesel fraction). Facilities should carefully review the updated Table 3 to ensure they are sampling for all required parameters beginning in 2020.

The draft 2020 ISGP also sets stricter benchmarks for lead (64.6 μl instead of 81.6 μl) and silver (3.4 μl instead of 3.8 μl), which impacts some sectors such as hazardous waste treatment, storage, and disposal facilities.

Electronic Requirements

The 2020 ISGP makes electronic reporting through Ecology’s Water Quality Permitting Portal mandatory absent a waiver from Ecology.

Stormwater Manuals

Condition S.3A.3 of the ISGP requires -BMPs to be consistent with Ecology-approved stormwater manuals. These manuals are also in the process of being updated. For facilities west of the crest of the Cascade Mountains, see the [Draft 2019 Stormwater Management Manual for Western Washington](#). For facilities east of the crest of the Cascade Mountains, see the [Draft 2019 Stormwater Management Manual for Eastern Washington](#). Ecology expects to release the final updated manuals in July 2019.

Implementation

Ecology's proposed ISGP changes range from procedural to substantive. However, compliance with all changes will be necessary. Facilities impacted by the proposed changes may want to consider submitting comments. The draft ISGP is available for public comment through June 29, 2019. Facilities can also minimize liability exposure and risk by becoming familiar with, and where necessary preparing for, the new requirements coming down the pipes.

Beveridge & Diamond's [Water](#) practice group develops creative, strategically tailored solutions to challenges that arise under the nation's water laws. The firm's attorneys have represented clients in a range of industries in project planning as well as in litigation and enforcement proceedings on issues arising from the growing convergence of water supply, use, and quality issues. For more information, please contact the authors.