



Dedicated to protecting and improving the health and environment of the people of Colorado

DATE: June 1, 2020

TO: Emily Halter  
 Office of Water  
 United States Environmental Protection Agency  
 1200 Pennsylvania Avenue NW  
 Washington, DC 20460

FROM: Water Quality Control Division, Colorado Department of Public Health and the Environment

RE: National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity  
 EPA-HQ-OW-2019-0372

Dear Ms. Halter:

The Colorado Department of Public Health and Environment, Water Quality Control Division (Colorado) appreciates the opportunity to comment on EPA’s Proposed 2020 National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2020 MSGP). Colorado has a vested interest in the 2020 MSGP as it serves as a model for our state permitting program and directly applies to discharges from four federal facilities in Colorado for which EPA has issued MSGP permits. The following are Colorado’s comments on the 2020 MSGP. We look forward to continuing to engage with EPA throughout the MSGP reissuance process.

<i>Requests for Comments</i>	
<b>Request for Comment 2:</b>	<p><i>EPA Request: Whether the permit should include an eligibility criterion related to the application of coal-tar sealcoat to paved areas where industrial activities are located.</i></p> <p>Colorado supports EPA’s eligibility criterion related to the application of coal-tar sealcoat to paved areas where industrial activities are located. Colorado supports this criterion because the available information on health risks and the existence of an affordable substitute (for instance, a HomeAdvisor website comparison of the costs of asphalt sealant versus coal tar sealant indicate that costs are comparable, <a href="https://www.homeadvisor.com/cost/landscape/seal-asphalt-paving/">https://www.homeadvisor.com/cost/landscape/seal-asphalt-paving/</a>) mean that the public health and water quality benefits resulting from this change would significantly outweigh any costs.</p>

	<p><i>EPA Request: Any studies that provide data on the level of PAHs from coal-tar sealed pavements, the sources of measured PAHs in the aquatic environment, the levels of PAHs in fish and seafood, and associated chemical and biological impacts that may occur via stormwater discharges.</i></p> <p>Please see USGS Fact Sheet <i>Coal-Tar-Based Pavement Sealcoat, Polycyclic Aromatic Hydrocarbons (PAHs), and Environmental Health</i>, available at <a href="https://pubs.usgs.gov/fs/2011/3010/pdf/fs2011-3010.pdf">https://pubs.usgs.gov/fs/2011/3010/pdf/fs2011-3010.pdf</a>.</p> <p>Highlights from the fact sheet include the following:</p> <ul style="list-style-type: none"> <li>• “Dust from pavement with coal-tar-based sealcoat has greatly elevated PAH concentrations compared to dust from unsealed pavement.</li> <li>• Coal-tar-based sealcoat is the largest source of PAH contamination to 40 urban lakes studied, accounting for one-half of all PAH inputs.</li> <li>• Coal-tar-based sealcoat use is the primary cause of upward trends in PAHs, since the 1960s, in urban lake sediment.</li> <li>• Residences adjacent to parking lots with coal-tar-based sealcoat have PAH concentrations in house dust that are 25 times higher than those in house dust in residences adjacent to parking lots without coal-tar based sealcoat.</li> <li>• PAHs move from a sealcoated surface into our environment by many mechanisms: storm runoff, adhesion to tires, wind, foot traffic, and volatilization.”</li> </ul> <p><i>EPA Request: Whether or to what extent requiring facilities to implement specific stormwater control measures under the MSGP to control and treat PAH-laden discharges from surfaces paved with coal-tar sealcoat is an appropriate alternative to the proposed eligibility criterion, and if so, what those control measures should be.</i></p> <p>Colorado does not support an alternative of allowing new or resealed coal tar sealcoat with control measures. Product substitution is an affordable practice that is more protective of water quality.</p>
Request for Comment 6	<p><i>EPA Request: EPA requests comment on whether the 2020 MSGP should include a requirement that MSGP operators must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility, as is required of other NPDES permittees. EPA requests comment on whether this notice should also include information that informs the public on how to contact EPA if stormwater pollution is observed in the discharge. EPA also requests comment on what other information could be included on any sign or other notice.</i></p>

	<p>Colorado supports public transparency and building awareness for concerned citizens. The public often calls us to report potentially unpermitted sites and we find it is important that a copy of the permit and SWPPP is available and on site for review during an inspection and ultimately that the SWPPP is implemented. Please note, however, that requiring signage would also require the development of variance procedures when local governments do not allow such signage.</p>
<p>Request for Comment 11:</p>	<p><i>EPA Request: EPA requests comment on whether the permit should include an inspection-only option for “low-risk” facilities in lieu of conducting benchmark monitoring, as recommended in the NRC study. EPA requests comment on ways to identify facilities that would be eligible for an inspection-only option, what frequency would be appropriate for such an inspection, what the inspection should entail, and what qualifications or certifications an inspector should have. See discussion in the Fact Sheet for Part 4.2.1.1.</i></p> <p>The division would support a potential option of inspection only for low risk sites instead of benchmark monitoring requirements. Many facilities in Colorado already claim no discharge due to the arid nature of the climate. In addition, many permittees are challenged by the complexity of the DMR submittal process. An allowance of inspection only at low risk sites allows facilities to devote more resources to high quality inspections versus paying consultants or facility personnel to submit DMRs.</p>
<p>Request for Comment 18:</p>	<p><i>EPA Request: EPA requests comment on any information related to the acute effects of iron on aquatic organisms that would warrant retaining an iron benchmark in the 2020 MSGP. See Fact Sheet discussion for Part 4.2.1.2.</i></p> <p>Colorado has not established acute iron statewide standards for the protection of aquatic life. See 5 CCR 1002-31, Table III. Colorado does not support removal of the iron benchmark until EPA develops acute aquatic life criteria for iron.</p>
<p>Request for Comment 24</p>	<p><i>EPA Request: EPA requests comment on changing the threshold for the natural background exception throughout the permit from the 2015 MSGP, which required no net facility contributions, to the proposed 2020 MSGP method of subtracting natural background concentrations from the total benchmark exceedance to determine if natural background levels are solely responsible for the exceedance. EPA requests comment on implications of this change and other factors the Agency should consider in proposing this change to the exception.</i></p> <p>Colorado does not support this change. EPA’s proposed threshold for natural background allows dischargers to contribute pollutants in amounts greater than the benchmark and could cause or contribute to water quality</p>

	<p>impairments. If the natural background is due to run-on from neighboring sources that are not industrial facilities (and is naturally occurring) and concentration in this run-on is less than the concentration that the facility would otherwise discharge or is actually discharging, then the background is diluting the site's runoff. On the contrary, the proposed subtraction method essentially allows for permittees to discharge higher concentrations than previously allowed without triggering corrective actions. This is an attractive alternative to permittees as it could reduce requirements to provide control measures. Reduced control measures would result in an increase in pollutants discharged. When considering the compounding effects of additional permittees seeking natural background credit, this could lead to potential increases in water quality impacts that would trigger antidegradation review requirements under Colorado Regulation 31.8(3).</p> <p>Please note that keeping this provision in the final permit may mean that this permit may not comply with the applicable provisions of sections 301 and 302 of the Clean Water Act as applicable to Colorado and thus could be grounds for a conditional certification or certification denial for this permit by the state of Colorado. 33 USC § 1341.</p>
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**Other Comments**

<p>Add new Part 2.1.2.11</p>	<p>The division requests the below text be added to the MSGP because PFAS in stormwater, even in very low quantities, can represent a significant threat to human health. PFAS are a component of some fire-fighting foams used for training, testing, and emergency fire-fighting. These activities are sometimes associated with certain industrial activities. In addition to fire fighting, PFAS are present in numerous non-firefighting products that may be present at industrial facilities.</p> <p><b><u>PFAS storage and release.</u></b></p> <p><i>Pollution prevention requirements for Aqueous Film Forming Foam:</i> With the exception of emergency fire-fighting activity, minimize the discharge of AFFF by substituting products that do not contain PFAS. For emergency fire-fighting, evaluate types of fires where foams that do not contain PFAS may be used. If foam containing PFAS is anticipated to be used for emergency firefighting, develop procedures to prevent or minimize releases to stormwater including removal of residuals.</p> <p>All fire-fighting foams containing PFAS must be contained, collected, and legally disposed of without re-introduction to wastewater or surface water.</p>
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	<p><i>Pollution prevention requirements for other products containing PFAS:</i> Any other materials containing PFAS must be contained, collected, and legally disposed of without re-introduction to wastewater or surface water. A list of common substances that may contain PFAS is provided below; however, you are responsible for identifying other sources of PFAS at your industrial facility.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Chemguard foam</li> <li><input type="checkbox"/> Scotchgard</li> <li><input type="checkbox"/> Tridol</li> <li><input type="checkbox"/> Dry chemicals used for type B fires</li> <li><input type="checkbox"/> ANKOR WETTING AGENT F</li> <li><input type="checkbox"/> Clepo Chrome Mist Control</li> <li><input type="checkbox"/> Fumetrol 140 Mist Suppressant</li> <li><input type="checkbox"/> Benchmark Benchbrite STX</li> <li><input type="checkbox"/> Benchmark CFS</li> <li><input type="checkbox"/> MacDermid Proquel B</li> <li><input type="checkbox"/> MacDermid Macuplex STR</li> <li><input type="checkbox"/> Plating Process Systems PMS-R</li> <li><input type="checkbox"/> Femetrol-140</li> <li><input type="checkbox"/> Brite Guard AF-1 fume control</li> <li><input type="checkbox"/> Goretex</li> <li><input type="checkbox"/> Teflon or teflon-type coating (including PTFE coatings)</li> <li><input type="checkbox"/> Electrostatic control agents</li> <li><input type="checkbox"/> Friction control agents</li> <li><input type="checkbox"/> Dirt repellent</li> <li><input type="checkbox"/> Anti-adhesives</li> </ul> <p>Please note that adding this provision, or something similar regarding the containment, collection and storage of PFAS-containing materials, in the final permit for permittees discharging to stream segments with Water Supply classifications may be needed in order to comply with Colorado’s narrative water quality standard, 5 CCR 1002-31, Reg. 31.11(1)(a)(iv) (“...state surface waters shall be free from substances attributable to human-caused point source or nonpoint source discharge in amounts, concentrations or combinations which are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life.”). If the final draft of this permit lacks such provisions, this permit may not comply with the applicable provisions of sections 301 and 302 of the Clean Water Act as applicable to Colorado and thus could be grounds for a conditional certification or certification denial for this permit by the state of Colorado. 33 USC § 1341.</p>
Add new 6.2.3.7	The division requests the below text be added to the MSGP.

	<p>Document in your SWPPP the locations of materials containing PFAS that have been stored or used.</p> <p>See comment above. In order to effectively control the release of PFAS in stormwater permittees must first have an awareness of their existence. By inventorying and locating PFAS on a site, the permittee can then develop appropriate procedures for their safe storage, use, and disposal.</p>
8.S.5.2	<p>Add to end of paragraph:</p> <p>If PFAS materials are stored, the location, quantity, and method of storage.</p>
8.S.5.4	<p>Document control measures for storage and transfer of PFAS containing materials and their proper collection and disposal methods in the event of a release from their container. If the final draft of this permit lacks such provisions, this permit may not comply with the applicable provisions of sections 301 and 302 of the Clean Water Act as applicable to Colorado and thus could be grounds for a conditional certification or certification denial for this permit by the state of Colorado. 33 USC § 1341.</p>
4.2.1.2.b	<p>Benchmark “annual average” needs to be better defined or described in this section for situations where there are less than 4 discharge events during a year, either because of arid conditions and/or because of the use of infiltration control measures, ponds, and other conditions where discharge events are infrequent. In these instances the permittee would need more than one year to collect four benchmark samples. The division suggests changing the text to “If the <del>annual average for any parameter</del> average of the first four quarterly benchmark samples for any parameter does not exceed the benchmark threshold...”</p>
5.2.1 throughout section	<p>The term “annual average” needs to be better defined or described in this section for situations where there are less than 4 discharge events during a year, either because of arid conditions and/or because of the use of infiltration control measures, ponds, and other conditions where discharge events are infrequent. In these instances the permittee would need more than one year to collect four benchmark samples. The division suggests that “annual average” be changed to “average of the set of four quarterly benchmarks” or “four sample set average”</p>