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May 29, 2020

Emily Halter
U.S. Environmental Protection Agency
Office of Water, Office of Wastewater Management (4203M)
1200 Pennsylvania Avenue NW,
Washington D.C. 20460

Re: 2020 Draft Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities (Docket ID: EPA-HQ-OW-2019-0372)

Dear Ms. Halter,

On behalf of the New Mexico Environment Department (NMED), enclosed please find our comments on the 2020 Draft Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities, Docket ID No. EPA-HQ-OW-2019-0372. *See* 85 FR 12288 (March 2, 2020). Please note that a separate 401 Certification with State Certification Conditions will be submitted to EPA Region 6 by June 22, 2020.

Thank you for the opportunity to comment.

Sincerely,

Shelly Lemon
Chief, Surface Water Quality Bureau

Attachment (1)

cc: Rebecca Roose, Director, NMED Water Protection Division
Sarah Holcomb, Program Manager, SWQB Point Source Regulation Section
Jennifer Foote, Supervisor, SWQB Industrial and Stormwater Team

New Mexico Environment Department (NMED) Comments on 2020 Draft Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities

Part 1.1.7 / EPA's Request for Comment (RFC) 1: NMED supports expanding the requirement to monitor stormwater discharges to CERCLA sites to all EPA Regions. Instead of a static list of sites in Appendix P of the MSGP, a link to an updatable database would be useful.

Part 1.1.8 / RFC 2: More instruction in the permit is needed to help a Facility operator determine "coal tar sealcoat" from other pavement sealant brand names or synonyms. EPA should add additional information (e.g., chemical or product synonyms; Chemical Abstracts Service (CAS) 8007-45-2, if applicable). NMED supports additional monitoring to determine the effects of coal tar use.

Part 1.1.8 / RFC 3: It makes sense to have similar requirements for specific pollutants notifications for all types of stormwater discharge permits. It should be simple to submit a Change NOI for these types of notifications, if usage of these chemicals was unforeseen at the time of permit application.

Part 1.2.2.1: Information and data, if available, on how the permittee knows the groundwater or spring water is uncontaminated should be documented in the facility SWPPP.

Part 1.3.3 and Table 1-2 / RFC 4: Yes, the additional 30 days for new coverage with pending enforcement action sites should apply, however it should not delay implementation of controls and monitoring.

Part 1.3.4.2 / RFC 5: Yes, paper Change NOI forms should be available.

Part 1.3.6 / RFC 6: If EPA decides to include signage requirements, then the MSGP should include an exemption or waiver process if there are local zoning law or codes preventing or limiting proposed permanent sign requirements or providing options such as posting information on a board inside the building at the public entrance.

Part 1.5 / RFC 7: NMED agrees "NEC" more accurately represents No Exposure Certification.

Part 2.1: Justification of rationale for selection of all BMPs (not just ones deviating from manufacturer's specifications) should be included in the SWPPP.

Part 2.1.1.8 / RFC 8:

If EPA includes conditions on the use of Federal Emergency Management Agency's (FEMA) Flood Maps, then the relevant and applicable age and updates of the maps should be clarified in the MSGP. Including information in their SWPPP on past flooding events at the facility and effectiveness of flooding controls may also help permittees select and design enhanced measures.

Part 2.1.2.4.c: Completion of spill response training by staff should be documented in accordance with 6.2.5.1.e.

Part 3.1.1: Please add that inspectors should verify that all documents are certified by properly authorized representatives per Appendix B.11.

Part 3.2.2.2: Autosamplers or a passive sampler should be allowed at locations where it may be unsafe to take visual samples during a storm event. Even though odor and foam may disperse, it may be more useful than no visual monitoring at all.

Part 3.2.4.2: Permittees should document rainfall events or lack thereof in the SWPPP records. They may find it useful to document the typical amount of rainfall that produces a discharge at their facility as evidence that smaller events may not produce discharges.

Part 4.2.1 / RFC 9 and 10: Universal benchmarking is appropriate to collect baseline data on how BMPs (both structural and non-structural) are performing and meeting requirements to protect water quality. This is also important from an antidegradation standpoint to ensure that narrative standards are protected. If a permittee takes more than four samples to determine the average, each sample should still be considered to determine when AIM is implemented.

Part 4.2.1.1: EPA proposed adding PFAS as a toxic chemical to the Emergency Planning and Community Right-to-Know Act. PFAS monitoring should be implemented for facilities under sectors under the NAICS codes listed (<https://www.federalregister.gov/documents/2019/12/04/2019-26034/addition-of-certain-per--and-polyfluoroalkyl-substances-community-right-to-know-toxic-chemical>).

Part 4.2.1.1 / RFC 11: Visual monitoring of discharges may be a simple and effective enough method to determine if there is high turbidity in the runoff. "Low risk facilities" could include those that have met their benchmarks or are inactive. Inspector qualifications should be documented in the SWPPP, but requiring a certification for small facilities seems excessive.

Part 4.2.1.1 / RFC 12: Yes, benchmark monitoring is appropriate for sectors I, P and R

Part 4.2.1.2 / RFC 13: NMED supports the approach that baseline parameters pH, TSS and COD should be required for the entire permit term.

Part 4.2.1.2 / RFC 14, 19: NMED does not support allowing operators that repeatedly exceed the benchmark values to use the 2016 aquatic life criteria on a site specific basis and discontinue comparisons to national benchmarks.

Part 4.2.4.1: EPA should clarify requirements for impaired waters monitoring, specifically when temperature is a pollutant of concern and facilities may be a source, and additionally when a water is listed as impaired because of toxics (such as PCBs) in fish tissue.

Part 4.2.1.2 and Part 8: EPA should provide an update on the implementation into the MSGP of latest recommended aquatic life criteria in Federal Register Notice, Final Aquatic Life Criteria for Aluminum in Freshwater dated December 21, 2018 which is based on the water chemistry data for pH, hardness and dissolved organic carbon (DOC) entered into the criteria calculator for a given location (see <https://www.epa.gov/wqc/aquatic-life-criteria-aluminum>).

Part 5.2 / RFC 21, 22, 23, and 26: EPA should not name the Additional Implementation Measures "Tiers" which may be confused with Tier 1, 2, 2.5 and 3 waters. EPA's trigger analyses appear to be complex, and NMED recommends moving trigger examples to an Appendix. EPA's electronic reporting DMR database and software should be updated/upgraded to flag and notify facility operators when triggers are met. Alternatively, EPA should develop a spreadsheet tool. If EPA decides to include Additional Implementation Measures triggers, then the MSGP should include example scenarios when there is "no discharge," below detection, or below quantification.

EPA should clarify if facilities must monitor natural background every time benchmark samples are collected to determine triggers.

Part 5.2.4.1 / RFC 24: If the combination of natural background and facility contributions continues to result in a benchmark or other monitoring exceedance, then an impacts analysis on the receiving water to show effect may be warranted.

Determination of natural background would be complex. Runoff pollutant concentrations would depend on several factors (e.g., rainfall intensity that varies during the storm event, storm duration, drought, etc.). Any subtracting of natural background concentrations from the total benchmark exceedance would need to be based on an upland and benchmark monitoring sample collection at relatively the same time.

The proposed 2020 MSGP does not appear to explain or provide timeframes for the EPA Regional Office concurrence process in Part 4.2.4.1 (impaired waters) for natural background sources. Part 4.2.4.1 states "you may discontinue monitoring for that pollutant only after submitting a Change NOI with the appropriate justification." However, Part 7.4.1 requires EPA Regional concurrence. EPA should clarify that a facility may discontinue monitoring only after concurrence. EPA should also include notification to state, tribes and public for review and comment of a facility determination justification before Regional concurrence decisions.

Part 5.2.4.1 / RFC 25: NSQD data may not be appropriate for use in showing background levels of pollutants. It needs to be a site-specific analysis because of the wide variety of types of facilities, the varied locations and ecoregions across the state, resulting in different contributions to stormwater from geology and other natural conditions.

Part 5.3.3 / RFC 26: Operators should be required to self-select AIM tiers as appropriate during quarterly monitoring and reporting.

Part 6.1: In addition to Professional Engineer or Professional Geologist, EPA should add nationally certified SWPPP Preparer to the list of certifiers for revisions to SWPPPS found inadequate. This will not endorse a specific company. NMED suggests adding a requirement to include a description of the qualifications of the SWPPP Preparer in the SWPPP. Knowledge of the effectiveness of stormwater controls is adequate for an inspector, however the SWPPP Preparer needs deeper knowledge. The permit should address required education and ability: personnel must be familiar with the use of soil loss prediction models and design of erosion and sediment control systems based on these models.

Part 7.4.4: Add "No Discharge Report" to section heading (e.g., 7.4.4 Submission Deadline for Benchmark Monitoring Data, including No Discharge Report). EPA should include clear language (e.g., "You must submit DMR no later than 30 days after the end of the reporting period even if there was no discharge") for each type of monitoring. EPA may need to include more instruction on submitting "no discharge" and no discharge (NODI) codes in DMRs, including which codes indicate non-compliance.

Part 7.9.6: Update EPA Region 6's mailing address to 1201 Elm Street, Suite 500, Dallas, TX 75202

Part 8.G.4.2.3 and Similar Parts for Sectors H and J: Requirements for Natural Buffers provide a link to the 2017 CGP appendix. EPA should include the document in the MSGP Appendix, not provide a link to another general permit that is on a different effective date cycle.

Appendix D: Please add private and government to the description of covered facilities (e.g. "Your permit eligibility is limited to discharges from private and government facilities in the "sectors" of industrial activity summarized in Table D-1.").