



Industries Urge EPA To Change Monitoring, Eligibility For Draft MSGP

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Industry groups are urging EPA to revise several aspects of its proposed industrial stormwater general permit, arguing the agency has failed to show the provisions will improve water quality, that some of the permit's measures mischaracterize a settlement agreement that led to the proposed permit and that the permit will be overly burdensome to small businesses.

"Many of the new regulatory mandates in the [proposed permit] have little if any environmental benefit but pose significant economic impact," a large coalition of industry groups says in [June 1 comments](#), adding that President Donald Trump's [recent executive order](#) calls on EPA to ease regulatory standards that may inhibit economic recovery from the coronavirus pandemic.

Modifying the draft multi-sector general permit (MSGP) before finalization "would ensure that industrial sources subject to the permit are provided the necessary flexibility to ensure that cost-effective and appropriate stormwater controls are implemented based on site-specific assessments, while recognizing the challenges of a broad-based general permitting scheme," the comments from the Federal Water Quality Coalition (FWQC) and Federal StormWater Association (FSWA) say.

FWQC membership includes entities in the aluminum, agricultural, automobile, chemicals, coke and coal chemicals, electric utility, home building, iron and steel, mining, municipal, paper, petroleum, pharmaceutical, rubber, and other sectors. FSWA is a group of industrial, municipal, and construction-related entities.

The joint comments respond to [EPA's proposal](#) to change a dozen aspects of the MSGP compared to the 2015 version and the agency's request for comment on another eight areas of possible change.

The permit is only binding in the four states and other non-state territories where the agency directly administers Clean Water Act permits, but many states with their own permit regimes use the MSGP terms as a model for their permits.

The proposed permit strives to incorporate recommendations from a 2019 [National Academy of Sciences report](#) and a [2016 settlement agreement](#) among EPA, the industry coalitions and environmental groups.

Benchmark monitoring, where facilities compare their stormwater samples against a set benchmark value, is a key measure of demonstrating compliance with the MSGP.

The proposed permit would make a number of changes to benchmark monitoring, including requiring all facilities to conduct benchmark monitoring for pH, total suspended solids (TSS) and chemical oxygen demand (COD) on a quarterly basis and setting new benchmarks for some industrial sectors.

But the industry groups say EPA should not adopt the new benchmark requirements. "In particular, EPA's expansion of benchmark monitoring to all facilities subject to the permit (as opposed to less than 50 percent of the sectors that have been subject to benchmark monitoring since 1995) is an unwarranted expansion of benchmark monitoring that will have significant cost and compliance impacts on many small businesses and other regulated parties," they write.

Benchmark Program

In general, the industry groups oppose the use of the benchmark program, arguing benchmarks have not achieved their intended objectives and tend to overstate the lack of compliance with the MSGP or water quality-based effluent limits.

"In light of the repeated shortcomings and lack of justification for the benchmark monitoring program over the last twenty-five years, the FWQC and FSWA recommend that EPA eliminate the benchmark monitoring program entirely,"

the comments say. Instead, as a long-term project, EPA should initiate the development of wet-weather related water quality criteria, and while those are being developed, the agency should focus on annual reporting and quarterly visual inspections for most facilities subject to the MSGP.

EPA also has proposed new tiered “additional implementation measures” (AIM) that are triggered by benchmark monitoring exceedances.

The industry groups say they support the permit containing various triggers for corrective actions, whether related to inspections or limited monitoring.

But they say the AIM “scheme that EPA has built from the prior MSGP settlement misrepresents the settlement negotiations and creates unjustified confusion and related financial impacts on regulated parties. To the extent EPA proceeds with the AIM program, it should provide for broad availability of the proposed exceptions for ‘aberrant’ events, pollutant run-on from neighboring properties, and natural background levels within the AIM protocol.”

Other aspects of the proposed permit drawing industry criticism are eligibility requirements tied to the use of coal-tar sealants and cationic treatment chemicals, as well as the consideration of major storm control measure enhancements to address flooding issues.

Additionally, the industry coalitions argue the proposed permit fails to comply with several executive orders. For example, EPA failed to properly assess the impacts on the industries subject to the MSGP related to universal benchmark monitoring and AIM corrective actions and failed to comply with the Regulatory Flexibility Act, including failing to assemble a Small Business Regulatory Enforcement Fairness Act review panel, they say.

The Small Business Administration Office of Advocacy raises similar concerns in [June 1 comments](#) about the permit’s impact on small businesses.

The office says EPA “must evaluate the economic impacts of the proposed revisions to the MSGP on small entities, and it should reconsider the elements of the proposed 2020 MSGP that impose an unreasonable burden without a clear scientific justification.”

Advocacy recommends that EPA adopt a tiered approach to benchmark monitoring, with a focus on gathering high quality data for future rulemakings rather than immediate burdensome regulatory requirements, to ensure that the 2020 MSGP will not have a significant economic impact on a substantial number of small entities.”

‘Serious Examination’

The Small Business Low-Risk Coalition (SBLRC) also calls on EPA in [June 1 comments](#) to make many of the same changes as FWQC and FSWA, including eliminating the benchmark program and developing new wet weather-based water quality standards, or at a minimum not requiring universal benchmark monitoring or expanding the types of facilities subject to such monitoring.

SBLRC’s members include the National Stone, Sand and Gravel Association, the Kitchen Cabinet Manufacturers Association, the National Association of Printing Ink Manufacturers, the American Coatings Association, the Pavement Coatings Treatment Council, the National Asphalt Pavement Association, and the Printing United Alliance.

Most of SBLRC’s members’ facilities currently have no monitoring requirements under either federal or state permits and could face analytical chemical monitoring for the first time under the proposed permit, the comments say.

“Although the coalition opposes all analytical monitoring, the coalition members have joined together to support the alternative approach in EPA’s proposal to exclude ‘low-risk’ facilities from analytical monitoring and to oppose the imposition of additional monitoring requirements on any facilities, especially coalition member facilities,” SBLRC says.

“In this time of severe economic hardship, as the economy still suffers and will suffer from the COVID-19 pandemic, the Agency must undertake a serious examination of the true benefits of these new questionable and costly requirements,” the coalition adds.

SBLRC says EPA’s proposal for universal benchmark monitoring and the AIM proposal could require the implementation of a long list of structural stormwater control measures, without any reasonable expectation of commensurate benefits, or possibly any benefits.

“This is a startling departure in the history of this permit and is particularly challenging to struggling small businesses at this time of great economic stress.” -- *Lara Beaven* (lbeaven@iwpnews.com)

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