



Archived Publication

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The Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP), issued in October 2000, expired at midnight on October 30, 2005. A new permit, the 2008 Multi-Sector General Permit (2008 MSGP) was issued on September 29, 2008. Visit www.epa.gov/npdes/stormwater/msgp to view the final 2008 MSGP and supporting documents.



Appendix F
Eligibility and screening procedures relating to historic properties and the National
Historic Preservation Act

Appendix F – Eligibility and screening procedures relating to historic properties and the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR 800.16(1).

EPA’s issuance of the Multi-Sector General Permit is a Federal undertaking within the meaning of the NHPA regulations. To address any issues relating to historic properties in connection with issuance of the permit, EPA has included criteria for certifications by applicants that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate Federal undertakings, the screening criteria and certifications provide an appropriate site-specific means of addressing historic property issues in connection with EPA’s issuance of the permit. Applicants seeking coverage under the MSGP are thus required to make certain certifications regarding the potential effects of their stormwater discharge, allowable non-stormwater discharge, and discharge-related activities on properties listed or eligible for listing on the National Register of Historic Places.

You must meet one or more of the following four criteria (A-D) to be eligible for coverage under this permit:

- Criterion A. Your stormwater discharges and allowable non-stormwater discharges do not have the potential to have an effect on historic properties and you are not constructing or installing stormwater BMPs – or, for existing facilities seeking renewal of previous permit coverage, new BMPs – on your site that cause less than 1 acre of subsurface disturbance; or
- Criterion B. Your discharge-related activities (i.e., construction and/or installation of stormwater best management practices that involve subsurface disturbance) will not affect historic properties; or
- Criterion C. Your stormwater discharges, allowable non-stormwater discharges, and discharge-related activities have the potential to have an effect on historic properties, and you have obtained and are in compliance with a written agreement with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties; or
- Criterion D. You have contacted the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other tribal representative in writing informing them that

you have the potential to have an effect on historic properties and you did not receive a response within 30 days.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. EPA has reason to believe that the vast majority of activities authorized under the MSGP have no potential to have effects on historic properties. The purpose of this permit is to control pollutants that may be transported in stormwater runoff from industrial facilities. EPA does not anticipate effects on historic properties from the pollutants in the stormwater and allowable non-stormwater discharges from these industrial facilities. Thus, to the extent EPA's issuance of this general permit authorizes discharges of such constituents, confined to existing stormwater channels or natural drainage areas, the permitting action does not have the potential to cause effects on historic properties.

In addition, the overwhelming majority of sources covered under this permit will be facilities that are seeking renewal of previous permit coverage. These existing dischargers should have already addressed NHPA issues in the 2000 MSGP as they were required to certify that they were either not affecting historic properties or they had obtained written agreement from the applicable State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) regarding methods of mitigating potential impacts. Both existing and new dischargers must follow the historic property screening process to determine their eligibility. EPA is not aware of any impacts on historic properties under the 2000 MSGP, or, for that matter, any need for a written agreement. Therefore, to the extent this permit authorizes renewal of prior coverage without relevant changes in operations, it has no potential to have an effect on historic properties.

Activities with Potential to Have an Effect on Historic Properties

EPA believes this permit may have some potential to have an effect on historic properties where the MSGP authorizes the construction and/or installation of stormwater best management practices (BMPs) that involve subsurface disturbance and impact less than 1 acre of land. (Ground disturbances of 1 acre or more require coverage under a different permit, the Construction General Permit.) Where you have to disturb the land through the construction and/or installation of BMPs, there is a possibility that underground artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing BMPs to manage your stormwater that will involve subsurface ground disturbance of less than 1 acre, you will need to ensure that historic properties will not be impacted by your activities or that you are in compliance with a written agreement with the SHPO, THPO, or other tribal representative that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties.

Examples of BMPs Which Involve Subsurface Disturbance

EPA reviewed all BMPs currently employed to determine which practices involve some level of earth disturbance. The following is a non-inclusive list of BMPs that are presumptively expected to cause subsurface ground disturbance:

Dikes	Berms	Catch Basins
Ponds	Ditch	Trench
Culvert	Land manipulation: contouring, sloping, and grading	Channels
Perimeter Drain	Swales	Other

EPA cautions dischargers that this list is non-inclusive. Any installation and/or construction of BMPs that involve earth disturbing activities that are not on this list will need to be further examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit (see Section 1.2.4.7). The following three steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step One: *Are you an existing facility that is reapplying for certification under the 2006 MSGP?*

If you are an existing facility you should have already addressed NHPA issues. To gain coverage under the 2000 MSGP you were required to certify that you were either not affecting historic properties or had obtained written agreement from the relevant SHPO or THPO regarding methods of mitigating potential impacts. As long as you are not constructing or installing any new stormwater BMPs then you have met eligibility Criterion A of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If you are an existing facility and will construct or install stormwater BMPs that require subsurface disturbance of less than 1 acre then you should proceed to Step 2.

If you are a new facility then you should proceed to Step 2.

Step Two: *Are You Constructing or Installing Any Stormwater BMPs That Require Subsurface Disturbance of Less Than 1 acre?*

If, as part of your coverage under this permit, you are not building or installing BMPs on your site that cause less than 1 acre of subsurface disturbance, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If the answer to the Step 2 question is yes, then you should proceed to Step 3.

Step 3: *Have Prior Earth Disturbances Determined That Historic Properties Do Not Exist, or Have Prior Disturbances Precluded the Existence of Historic Properties?*

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If the answer to the Step 3 question is no, then you should proceed to Step 4.

Step 4: *Contact the Appropriate Historic Property Authorities*

Where you are building and/or installing BMPs affecting less than 1 acre of land to control stormwater or allowable non-stormwater discharges associated with this permit, and the answer to Step 3 is no, then you should contact the relevant SHPO, THPO, or other tribal representative to determine the likelihood that subsurface artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of BMPs, you should contact the relevant SHPO, THPO, or tribal representative in writing and request to discuss mitigation or prevention of any adverse effects. The letter should describe your facility, the nature and location of subsurface disturbance activities that are contemplated, any known or suspected historic properties in the area, and any anticipated effects on such properties. The letter should state that if the SHPO, THPO, or tribal representative does not respond within 30 days of receiving your letter, you may submit your NOI. EPA encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to an historic property.

If you receive a response within 30 days and enter into, and comply with, a written agreement with the SHPO, THPO, or other tribal representative regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

If you receive a response within 30 days but an agreement cannot be reached between you and the SHPO, THPO, or other tribal representative, you should contact the appropriate EPA Regional Office (addresses listed in Part 3.8) or EPA Headquarters (Water Permits Division, Mail Code 4203M, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0001).

If you have contacted the SHPO, THPO, or other tribal representative in writing regarding your potential have an effect on historic properties and did not receive a response within 30 days, you have met eligibility Criterion D. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review

your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold authorization based on concerns about potential adverse impacts to historic properties.

Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (<http://www.achp.gov/programs.html>). In instances where a Tribe does not have a Tribal Historic Preservation Officer, you should contact the appropriate Tribal government office when responding to this permit eligibility condition.

You are reminded that you must comply with applicable State, Tribal, and local laws concerning protection of historic properties and include documentation supporting your determination of permit eligibility with regard to Part 1.2.4.7 (Historic Places) within your Stormwater Pollution Prevention Plan (SWPPP) (See Part 2.1.6.2 for documentation regarding historic properties that must be included in your Stormwater Pollution Prevention Plan).