



## Archived Publication

This information provided in this document is for reference. Please be aware that the information in this document may be outdated or superseded by additional information.



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](http://www.epa.gov/npdes/stormwater/msgp) to view the final 2008 MSGP and supporting documents.



## IX. Summary of Responses to Comments on the Proposed MSGP

EPA received comments from 45 individuals in response to the proposed permit. A summary of the Agency's responses to those comments appears below. Responses to each comment is available from the Water Docket, whose address and hours of operation are listed in the introduction to this notice.

### Section 1.2 Eligibility

*Comment a:* One commenter requested clarification on the responsibilities military bases, which resemble small municipalities, have with regard to non-industrial areas of the base. The commenter expressed concern that examples of co-located industrial activities in Section VI.B.3 of the fact sheet and Part 1.2.1.1 of the proposed permit could be interpreted to require coverage for all vehicle maintenance activities at a base, even those unrelated to an industrial activity. The commenter further noted that bases in urbanized areas would require base-wide storm water management programs anyway as Small Municipal Separate Storm Sewer Systems under Phase II of the Storm Water Program.

*Response a:* EPA agrees that municipalities and military or other governmental installations are only responsible for obtaining permits for storm water associated with industrial activity for those portions of their municipality or installations where they have a storm water discharge that is covered under the definition of "storm water associated with industrial activity." Under this interpretation, even though a military base may choose to submit a single NOI for all industrial activities on the base, the SWPPP would only need to identify facilities/areas associated or not associated with industrial activities and that have a SWPPP covering the industrial activity areas. The SWPPP required under the MSGP would not need to address storm water controls for the non-industrial areas of the base. A note has been added to Part 4.1 (Storm Water Pollution Prevention Plans) of the permit to clarify the scope of the SWPPP.

*Comment b:* The proposed limitations on transfer of storm water discharges from a previous permit to the MSGP could result in undue restrictions. The commenter felt that there could be reasons, e.g., for consistent management of storm water across a site, etc. that either the permittee or the permitting authority would want to address all storm water at a facility under a general permit.

*Response b:* EPA has reconsidered the Part 1.2.3.3.2 restrictions and Part 1.2.3.3.2.1 of the proposed permit has been eliminated. Part 1.2.3.3.2.1 would only have allowed permittees to seek MSGP coverage for storm water discharges previously covered by another permit if that previous permit contained only storm water and eligible non-storm water (i.e., an individual permit for wastewater, etc. would no longer be required if coverage under the MSGP was allowed). EPA's review did identify some unintended consequences and unresolved issues that could result from this restriction.

A facility (including new facilities) that never had storm water discharges covered by an individual permit, or which was located where access to a municipal wastewater treatment plant for wastewater discharges was available, would have an opportunity for burden reduction that would not be available to a facility with even cleaner storm water that happened to have storm water discharges covered in a previous permit and could not eliminate their wastewater discharges. There could be cases where a smaller and "cleaner" facility would not be able to take advantage of the savings (e.g., individual permit application sampling is not required) the MSGP offered their competitors simply because they had a minor wastewater discharge that could not be eliminated.

While the main purpose of the proposed Part 1.2.3.3.2.1 restriction was to discourage dual permits at a facility, there are already many facilities that have permit coverage split between an individual permit and the MSGP and dual permit coverage would still be available in many cases anyway. Currently, some of these "dual permit" facilities have only wastewater under an individual permit and all their storm water discharges under the MSGP, while at others, the individual wastewater permit includes some of the storm water discharges, with the remaining storm water discharges covered by the MSGP. This ability to have split coverage in at least some situations is necessary to address situations where at least interim coverage under a general permit for a new storm water discharge is necessary or desirable from either the permittee's or the permitting authority's standpoint.

EPA has determined that the proposed restrictions in Part 1.2.3.3.2 relating to discharges for which a water quality-based limit had been developed and discharges at a facility for which a permit had been (or was in the process of being) either denied or revoked by the permitting authority were necessary to

address the anti-backsliding requirements of the Clean Water Act or to ensure that discharges from a facility requiring the additional scrutiny of an individual permit application were not inadvertently allowed under the general permit. In any event, only those storm water discharges under the previous permit that met all other eligibility conditions of the MSGP could even be considered for transfer.

EPA periodically promulgates new effluent limitation guidelines, some of which, such as the those for landfills published February 2, 2000, contain storm water effluent limitation guidelines. Under Part 1.2.2.1.3 of the MSGP, a storm water discharge subject to a promulgated effluent limitation guideline is only eligible for coverage if that guideline is listed in Table 1-2. A new guideline promulgated during the term of the permit would thus alter the eligibility for the permit not only for new dischargers, but also for discharges already covered by the permit. In order to avoid the situation where a discharge would suddenly become ineligible upon promulgation of a new guideline, Part 1.2.2.1.3 has been modified to allow interim coverage under the permit where a storm water effluent guideline has been promulgated after the effective date of the permit, but the permit has not yet been modified to include the new guideline. This will allow continued coverage until the new storm water guideline could be added to the permit. Where the new guideline includes new source performance standards, "new sources" would need to comply with Part 1.2.4 prior to seeking permit coverage.

### Section 1.4 Terminating Coverage

*Comment:* (Comment also addresses Section 11.1 Transfer of Permit Coverage) Several commenters viewed the submittal of an NOI by the old operator and the submittal of an NOI by the new operator in order to transfer permit coverage after a change in ownership as a new and overly burdensome requirement (Parts 1.4 and 11.1). An alternative suggested was a simple notice to the permit file of the ownership change.

*Response:* EPA has determined that the most effective method for accommodating and tracking a change in the owner/operator at a facility covered by the general permit is to have the old operator submit a Notice of Termination certifying that they are no longer the operator of the facility, and for the new operator to submit a Notice of Intent certifying their desire and eligibility to be covered by the general permit. In fact, this is not a new

requirement since the same process was required under the 1995 MSGP (see Part II.A.4 and Part XI.A at 60 FR 51113 and 51122, respectively). The only "new" aspect of the process is the 30 day timeframe for submittal of the NOT by the old operator and a clarification that simple name changes in a particular company (e.g., Jones Industrial Manufacturing, Co. changing to JIMCO) can be made with a simple update to the company's NOI and a NOT would not be required. Submittal of the NOT by the old operator documents that the old operator believes he no longer needs coverage under the MSGP for any storm water discharges. In addition, EPA is more able to maintain a cleaner database of facilities actually covered by the permit both currently and in the past. The NOI/NOT process for transfers under the general permit is thus essentially a streamlined parallel process to what would otherwise be required under 40 CFR 122.61.

The permit transfer procedures at 40 CFR 122.61 are designed to avoid the time delays and resource burdens associated with issuance of a new permit for a facility just because there is a new owner/operator. Under this process, transfer of the permit to the new owner/operator cannot be made without an actual permit modification (a lengthy process especially for general permits), unless the old operator submits a thirty day advance notice and a written agreement between the parties containing a specific date for transfer of permit responsibility, coverage, and liability between them.

The nature of a general permit is such that there is no actual permit issued to any individual facility, but rather that multiple dischargers are in effect "registering" their intent to use the discharge authority offered by the general permit to anyone who is eligible. This "registration" is accomplished by an operator's submittal of the Notice of Intent to be covered by the general permit as little as two days before they need permit coverage. In fact, regulations at 40 CFR 122.28(b)(2) specifically require submittal of an NOI in order for an operator to be authorized under a general permit for discharges of storm water associated with industrial activity. EPA thus views the requirements for the new operator to file an NOI as little as two days prior to the transfer and for the old operator to file an NOT within thirty days after the transfer to be less burdensome than the thirty day advance notice and written agreements that would otherwise be required under the permit transfer requirements of 40 CFR 122.61.

### *Section 1.5 Conditional Exclusion for No Exposure*

*Comment:* EPA should insert the No Exposure Certification form and guidance within the permit since many facility operators are unaware of its existence.

*Response:* EPA has generated a document, "Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water," and a separate no exposure announcement to help operators understand and apply for the conditional permitting exclusion. The guidance is available in hard copy from EPA's Water Resource Center. In addition, EPA also sent a mass mailing alerting all EPA permittees as well as stakeholder groups to the MSGP-2000 and the no exposure exclusion. To provide the No Exposure Certification in as many possible places, EPA is publishing the form and instructions as an addendum to the MSGP-2000.

### *Section 2.1 Notice of Intent (NOI) Deadlines*

*Comment:* Commenters requested an extension of the 90 day timeframe for submission of their NOI to 270 days. Commenters said they needed the additional time to complete their Storm Water Pollution Prevention Plan (SWPPP), application for an alternate permit, or their endangered species consultation or adverse impact investigation. A commenter also requested clarification of coverage during the 90 days between this publication and their submission of their NOI.

*Response:* The fact sheet clarifies that SWPPPs are to be prepared at the time the NOI is submitted. Since most permittees are already covered under the current MSGP and have a requirement to update their SWPPP as the need arises, there is no basis for an automatic extension to 270 days. However, facilities may seek an extension up to 270 days to develop their SWPPP, or to obtain an alternate permit, on a case-by-case basis. Similarly, facilities can request an extension up to 270 days if they need to conduct an endangered species consultation or adverse impact investigation. Permittees covered under the current MSGP will continue to be covered during the next 90 days as long as they meet the conditions set forth in the 1995 MSGP.

### *Section 2.2 Contents of Notice of Intent (NOI)*

*Comment a:* Clarify how to complete the NOI form in situations where an

MS4 has industrial activities and is conveying the pollutants to its own storm drainage system.

*Response a:* The intent of Section 2.2.2.5 was to identify the municipal separate storm sewer system under the assumption that it would be under different ownership. If there is not a separate owner, this requirement is unnecessary. This section has been revised to clarify "the name of the municipal operator if the discharge is through a municipal separate storm sewer system under separate ownership."

*Comment b:* A commenter questioned whether EPA was requiring or encouraging permittees to consult FWS and NMFS in making its endangered species finding.

*Response b:* The facility is responsible for obtaining the threatened or endangered species list to make sure that listed specie or critical habitat is not located in or around the vicinity of your facility. That list may be obtained by phoning or mailing the FWS or NMFS, visiting EPA's website, or by some other means. Thus, the permittee is not required to contact the two agencies if he can meet his obligation in another manner.

*Comment c:* Do not include latitude/longitude information on the NOI.

*Response c:* EPA requires all regulated facilities to submit latitude and longitude information. The information is critical in overseeing compliance with endangered species assessments and coordinating compliance assistance and enforcement activities across media programs.

### *Section 2.3 Use of NOI Form*

*Comment a:* Do not add check boxes related to NHPA and ESA compliance.

*Response a:* EPA believes the additional information improves the Agency's ability to oversee implementation of the permit and compliance with ESA and NHPA requirements. Because the permittee is already responsible for conducting the analysis, there is minimal additional burden associated with indicating on the NOI form how the analysis was conducted. Therefore, EPA intends to retain this requirement. The NOI form requires review by the Office of Management and Budget. Until the new form is approved, permittees should use the current form. EPA's ability to issue today's permit is contingent upon its compliance with ESA and NHPA; thus, provisions related to those statutes is part and parcel of today's permitting action.

*Comment b:* Commenters supported EPA's proposal to allow facilities to

submit NOIs, notices of termination, and discharge monitoring reports electronically. However, they cautioned that EPA continue to allow hard copy filing since not all permittees have internet access.

*Response b:* The final permit retains the requirement of paper filing for NOIs, NOTs, and DMRs. While EPA believes that electronic filing will be incorporated as an option in the future, it is currently not available.

### Section 3.3 Compliance with Water Quality Standards

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that the MSGP ensure compliance with State water quality standards for all discharges which "will cause, have the reasonable potential to cause, or contribute" to an exceedance of a State standard. With the wide variety of facilities to be permitted under the MSGP, EPA believes that reasonable potential to cause or contribute to exceedances of water quality standards is likely to exist at least for some facilities. Therefore the MSGP must include appropriate provisions to ensure compliance with State standards. For general permits, EPA's guidance document entitled "General Permit Program Guidance" (February, 1988) suggests an overall narrative statement requiring compliance with State standards to address the fact that the permit will cover a wide variety of facilities subject to different standards depending on their location. Part 3.3 of the proposed MSGP included a narrative statement in accordance with this guidance to ensure compliance with 40 CFR 122.44(d)(1)(i). Part 1.2.3.5 of the proposed MSGP also included an exclusion from permit coverage for facilities which EPA has determined may cause or contribute to violations of State standards. Commenters raised a number of concerns regarding the provisions of the proposed MSGP related to compliance with State standards. However, after review of the comments, EPA believes that the provisions of the proposed MSGP were appropriate and these provisions have been retained in the final MSGP. Following below are EPA responses to the specific issues raised by the commenters:

#### Lack of Coverage for Facilities With Reasonable Potential

*Comment a:* A commenter was puzzled by the exclusion from coverage in Part 1.2.3.5 of the proposed MSGP and requested additional explanation.

*Response a:* EPA believes that facilities which are shown to cause, or have the reasonable potential to cause or contribute to exceedances of State

standards may be more appropriately permitted under individual permits or a separate general permit with alternate permit requirements designed to ensure compliance with State standards. This is the basis for the exclusion. Part 1.2.3.5 also provides, however, that MSGP coverage may be available if the control measures in the storm water pollution prevention plan (SWPPP) are sufficient to ensure compliance with State standards.

*Comment b:* Part 1.2.3.5 of the proposed MSGP could prove burdensome and could lead to permit backlogs depending on the extent of its use.

*Response b:* Given the large number of facilities covered by the MSGP, it is not practical for EPA to individually review the status of all facilities covered by the MSGP prior to submittal of the NOI. EPA has developed eligibility criteria for coverage under the MSGP-2000 which should, if applied appropriately by the facility operator, screen out facilities which have "reasonable potential" to exceed a state standard. In addition, where EPA determines there is a "reasonable potential," the Director will require the facility to submit an individual permit or take other appropriate action.

*Comment c:* MSGP coverage should not be allowed until the absence of reasonable potential had been demonstrated by the discharger.

*Response c:* As noted above, EPA does not believe this is practical for all facilities given the large number of dischargers covered by the permit. Moreover, as discussed in EPA's "Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits" (61 FR 43761, November 26, 1996), there will likely be circumstances where inadequate information is available to perform the reasonable potential analysis.

#### Are Discharges with Reasonable Potential a Permit Violation?

*Comment d:* Several commenters objected to Part 3.3 of the proposed MSGP which indicated that discharges which have occurred would be violations of the MSGP if they are later shown to have the reasonable potential to cause or contribute to exceedances of State standards.

*Response d:* EPA believes that such discharges are appropriately characterized by the MSGP as violations. The narrative statement in the MSGP requiring compliance with water quality standards in effect incorporates into the permit all numeric effluent limitations which are necessary to ensure compliance with State

standards. When a discharge is shown to have reasonable potential, this implies that discharges are occurring which would exceed the permit limits needed to ensure compliance with State standards. Since the narrative statement incorporates all limits needed to ensure compliance with State standards, the discharges are appropriately characterized as violations of the permit.

#### Process for Terminating Coverage Under the MSGP

*Comment e:* Several commenters expressed concern regarding the process for terminating coverage under the MSGP and ensuring due process for dischargers to contest such actions by EPA.

*Response e:* EPA believes that the MSGP does ensure due process for dischargers. Part 9.12 of the MSGP provides that EPA may require an individual permit application from a discharger, or require the discharger to seek coverage under an alternate general permit. If an individual permit application were required, a draft permit would be prepared and a full opportunity would be provided to the discharger in accordance with 40 CFR Part 124 to comment on the draft permit and contest any final determination. Further, any alternate general permit would provide (in accordance with 40 CFR 122.28(b)(3)(iii)) that the discharger could seek coverage under an individual permit rather than the alternate general permit. Such a request would also be processed in accordance with the procedures at 40 CFR Part 124.

*Comment f:* A number of commenters also asked whether a notice of violation of Part 3.3 of the MSGP for violations of State water quality standards would be in writing.

*Response f:* Dischargers would be notified in writing by EPA of any violation of Part 3.3.

#### Permit as a Shield Concerns

*Comment g:* Section 402(k) of the Clean Water Act shields permittees from the requirements of Part 3.3 of the MSGP to comply with water quality standards.

*Response g:* EPA disagrees with the commenters on this matter. Section 402(k) provides that compliance with an NPDES permit is considered to be compliance, for purposes of section 309 and 505 enforcement, with sections 301, 302, 306, 307 and 403 of the Clean Water Act. However, the violations which are envisioned by Part 3.3 of the MSGP would be violations of an NPDES permit itself, *i.e.*, the water quality-based effluent limitations which are

incorporated into the MSGP by virtue of the narrative statement. Section 402(k) does not provide a shield for such violations.

#### *Concerns about Applying State Water Quality Standards to Storm Water*

*Comment h:* Water quality standards cannot apply to storm water discharges since special wet weather standards have not been developed to address episodic events.

*Response h:* EPA disagrees that State water quality standards cannot apply in the absence of special wet weather standards. Section 402(p)(3)(A) of the Clean Water Act specifically requires that industrial storm water dischargers comply with State water quality standards. EPA has recognized, however, the difficulties in developing appropriate water quality-based effluent limitations for storm water discharges. In response to concerns such as those raised by the commenter, EPA has developed an "Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits" (61 FR 43761, November 26, 1996). Where numeric water quality-based effluent limitations are infeasible (due for example to inadequate information on which to base the limitations), best management practices (BMPs) such as those in the SWPPP would serve as the water quality-based effluent limitations.

*Comment i:* Clarify whether mixing zones would apply to the storm water discharges.

*Response i:* Mixing zones would apply to the extent that State water quality standards provide for their use.

#### *Required Actions if Violations of Standards Occur*

*Comment j:* A commenter was unclear concerning the modifications of the SWPPP that would be required by Part 3.3 of the MSGP if violations of State water quality standards occur.

*Response j:* The SWPPP must be modified to include additional BMPs to the extent necessary to prevent future violations.

*Comment k:* Clarify who would determine the additional control measures that would be required by Part 3.3 of the MSGP.

*Response k:* The discharger would at least initially be responsible for determining the additional control measures. However, Part 4.10 of the MSGP also provides that EPA may require modifications of the SWPPP if it proves to be inadequate.

#### *Can a Reasonable Potential Analysis Occur at Any Time During the Permit Term?*

*Comment l:* Part 3.3 of the MSGP should not require a reasonable potential analysis at any time during the term of the permit.

*Response l:* The information to support a reasonable potential determination would be based on additional information that becomes available concerning a particular discharge (from monitoring results, for example). As such, the permit appropriately provides that a reasonable potential analysis (possibly leading to an individual permit or separate general permit) may be required at such a time.

*Comment m:* Discharges of a pollutant which increase during the term of the permit should not be considered a permit violation.

*Response m:* EPA disagrees with the commenter on this issue. The narrative statement in Part 3.3 of the MSGP requires that dischargers comply with all State water quality standards throughout the term of the permit. Dischargers must ensure that, if there are increases in the discharges of a particular pollutant, the increases are not sufficient to cause or contribute to exceedances of water quality standards.

#### *Questions Regarding the Benchmark Concentrations*

*Comment n:* Part 3.3 of the proposed MSGP would undermine EPA's use of the benchmark values in the MSGP.

*Response n:* EPA disagrees with the commenters in this regard. The benchmark values are concentrations which are used to evaluate whether a generally effective SWPPP is being implemented. The SWPPP is required to ensure compliance with the technology-based discharge requirements of the Clean Water Act. Exceedance of a benchmark value is not a permit violation. However, if a permittee complies with the benchmarks, the permittee is eligible for the monitoring waiver in year 4 of the term of the permit and this provides an incentive to implement an effective SWPPP. Part 3.3 of the MSGP is required to ensure compliance with the water quality-based requirements of the Clean Water Act, which are in addition to the technology-based requirements. Part 3.3 of the MSGP does not undermine the benchmarks. Part 3.3 is simply a separate requirement of the Clean Water Act which must be included in the permit in addition to the technology-based requirements.

#### *General Comment on Water Quality Standards Requirements*

*Comment o:* One commenter lodged a general objection to Part 3.3 of the proposed MSGP, but did not elaborate on specific concerns.

*Response o:* As discussed above, EPA believes that Part 3.3 is appropriate and necessary to ensure compliance with State water quality standards. As such, Part 3.3 was retained in the final MSGP.

#### *Section 4.1 Storm Water Pollution Prevention Plan (SWPPP) Requirements*

*Comment a:* EPA should not measure progress solely on the number of BMPs applied.

*Response a:* As stated, EPA's intention in requiring the comprehensive site compliance evaluation is to determine the effectiveness of BMPs in use at the site, and to assess compliance with the terms and conditions of the permit. Additional new BMPs are not prescribed as part of this requirement; the options to include BMPs to replace those which are not working appropriately, or to augment existing BMPs to ensure better performance, rests solely with the facility operator, based on the findings of the compliance evaluation.

*Comment b:* Clarify the frequency of training required.

*Response b:* Some industrial sectors covered by this permit are required to provide training at least once per year. In other sectors, it is left to the discretion of the operator. EPA's fact sheet recommends that facilities conduct employee training annually at a minimum, and acknowledges that, for some facilities, a more frequent training schedule may be appropriate to ensure that personnel at all levels of responsibility are informed of the components and goals of the site's SWPPP.

*Comment c:* Clarify the term "locally available."

*Response c:* EPA intends the term "locally available" to mean a facility office which need not actually be located on-site, but co-located with other facility operations. It is not necessary for a permittee to maintain a local presence near an unstaffed site for the purposes of maintaining availability of the SWPPP.

*Comment d:* Fourteen days is an unrealistic timeframe for modifying a SWPPP in response to a discharge of a reportable quantity of oil.

*Response d:* EPA does not consider the requirement to revise the SWPPP within 14 days after a discharge of a reportable quantity of oil to be unrealistic. Changes to accommodate a

description of the release, date and circumstances of the release, as well as a description of the actions taken to address the problem and any necessary changes to the BMPs to prevent future releases are inherently necessary to prevent water quality degradation.

*Comment e:* It is standard practice to keep a copy of their SWPPPs with their permit and, therefore, there is no objection to this requirement.

*Response e:* EPA acknowledges that many industrial facilities already keep a copy of the storm water permit with their SWPPP, and the Agency is formalizing that practice as a requirement of the permit for all facilities.

#### Section 4.2 Contents of Plan

*Comment a:* A commenter believed EPA was requiring velocity dissipation devices to minimize erosion due to flow velocity.

*Response a:* EPA's intention is to require facilities to evaluate the need for velocity dissipation devices where it is necessary to minimize erosion due to flow velocity. Facilities should use their best judgment when considering if velocity dissipation devices are needed. The language in the permit has been clarified.

*Comment b:* Specify a set of minimum management practices for coverage under the permit.

*Response b:* Due to the variety of industries covered by the Multi-Sector General Permit, there is no "minimum" list of best management practices that would suitably address the multiple situations found at different industrial sites. EPA considers it sufficient to outline minimum criteria that each facility operator must consider to minimize discharges from their property, and allow facility operators to identify and implement BMPs that are appropriate for their site.

*Comment c:* Do not require the SWPPP to identify oil spills or leaks below reportable quantities. Only those sites that have not been cleaned up to appropriate levels should be included in the site description and shown on the site map.

*Comment d:* EPA has not changed the basic intent of this permit requirement: a facility must keep a record of significant spills or leaks of both hazardous substances or oil and, for releases in excess of reportable quantities under 40 CFR Parts 117 or 302, revise its pollution prevention plan as necessary to prevent the reoccurrence of such releases. A spill or leak may not meet the threshold of a "reportable quantity" but may still be sufficiently significant to cause water quality

impairment, and therefore should be acknowledged and mitigated by the permittee. EPA does not intend that "reportable quantity" defines the minimum amount of a substance which should be appropriately managed. In regards to including previous spill and/or leak areas in the site map and associated descriptions, the Agency views the inclusion of all areas where spills have occurred over the last three years from the date of NOI submittal as important information which may be useful in assessing future risks.

*Comment d:* The provision prohibiting discharge of "solid materials" is too broad and should be eliminated.

*Response d:* EPA intends the reference to "solid materials, including floating debris" and "Off-site tracking of raw, final, or waste materials or sediment, and the generation of dust" as having the generally accepted plain language meanings, and that facility operators should use their best professional judgment in applying this requirement to their discharge. The reference is not necessarily meant to apply in particular to suspended soil. EPA has purposefully allowed for reasonable flexibility in allowing each facility to determine whether "solid materials," "floating debris" and/or "dust" are a component of their storm water discharge. The Agency acknowledges that many areas have state or local ordinances prohibiting the off-site tracking and generation of dust; therefore, this requirement does not pose a hardship on facility operators. While not prohibiting the discharge of waters containing soils, the permit still requires that discharges must comply with state/local water quality standards.

*Comment e:* The requirement for "routine inspections" and "records of inspections" are too broad.

*Response e:* EPA acknowledges that most industrial facilities conduct regular inspections of plant conditions. As discussed in Part 4.2.7.1.5 of the permit, facility operators must explicitly outline in the SWPPP the frequency of regular inspections at their facility which will incorporate inspections of industrial activities or materials that are exposed to storm water. Records of these specific storm water inspections, along with records of any followup actions taken as a result of these inspections, must be kept with the SWPPP. This facility-specific schedule of periodic inspections is what EPA is referring to as "routine facility inspections."

*Comment f:* An evaluation of groundwater impacts or concerns is

beyond the scope of a stormwater pollution prevention plan.

*Response f:* In some cases, groundwater beneath a facility may be hydrologically connected to surface waters. EPA's intent for including an evaluation of impacts to groundwater when considering appropriate BMPs is to ensure that facility operators are fully cognizant of the hydrology of their area, and have evaluated any appropriate BMPs in the event that such a situation exists for their property. If there are no possible impacts to groundwater, this fact should be acknowledged in the SWPPP.

#### Section 4.4 Non-Storm Water Discharges

*Comment a:* Include swimming pool discharges as an allowable storm water discharge.

*Response a:* EPA does not include swimming pool discharge as an allowable non-storm water discharge in the Multi-Sector General Permit, as this is a general permit to cover storm water discharges from industrial activity. The Agency is unclear as to how many industrial facilities have swimming pools that would necessitate this specific exemption. The inclusion of nonchlorinated swimming pool discharges as an allowable non-storm water discharge will be better suited to the upcoming EPA Small Multiple Separate Storm Sewer General Permit, which will be available by December 2002.

*Comment b:* The permit should allow for case-by-case determinations for inclusion of de minimus non stormwater sources.

*Response b:* By its very nature, a general permit is meant to cover many similar discharges from a variety of similar sources. Case-by-case determinations for de minimus non-stormwater discharges would be extremely time-intensive, and it is not possible to provide for such individual determinations in the context of a general permit. Specific examples of de minimus discharges were not provided by the commenter; therefore, the Agency is not inclined to include such a provision at this time.

*Comment c:* Delete "drinking fountain water:" from Section 1.2.2.2.3 and cite only "potable water including water line flushings."

*Response c:* EPA agrees with the issues presented by the commenter, and that the term "drinking fountain water," in itself, is imprecise. Both the draft MSGP fact sheet and permit specifically authorize potable water as an allowable non-storm water discharge. The

“drinking fountain water” language has been deleted.

#### *Section 4.7 Copy of Permit Requirements*

*Comment:* Recommend electronic website access in lieu of paper copy of permit.

*Response:* The new requirement that a hard copy of the Multi-Sector General Permit be kept with a facility’s Storm Water Pollution Prevention Plan is intended to ensure that the permit requirements are easily and readily available to all facility staff who are or may be responsible for implementing the provisions of the permit. Internet access may not be available to staff in all situations; therefore, for ease of reference, EPA is requiring that at least one copy of the permit be retained along with the SWPPP. The sections referring to EPA’s acceptance of the electronic medium is contingent, in both cases cited by the commenter, upon the future viability of electronic submittal of NOIs and DMRs to the Agency.

#### *Section 4.9 Timeline*

*Comment a:* The fact sheet and permit need to provide consistent timeframes for SWPPP revisions.

*Response a:* The fact sheet and permit language were consistent on revising the SWPPP within 14 days of the site evaluation, but were somewhat confusing on how long the permittee had to implement the revisions. To clarify this time period, EPA has revised Part 4.9.3 of the permit to state: “If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm event, or not more than 12 weeks after completion of the comprehensive site evaluation.”

*Comment b:* Thirty days to correct deficiencies in the SWPPP following notification by the Director is insufficient.

*Response b:* EPA intends for corrections to the Storm Water Pollution Prevention Plan to be accomplished in a timely manner, particularly when deficiencies are identified formally by the Director. The Agency feels that thirty days, as outlined in the existing permit language, is a reasonable amount of time for such changes to be made; if revisions are significant, the permittee may request, and the Director can provide, additional time for revisions to be accomplished.

*Comment c:* Fourteen days to modify a SWPPP is insufficient.

*Response c:* The Agency feels that revising the Storm Water Pollution Prevention Plan appropriately to

address deficiencies within 14 days is a reasonable timeframe in which to address changes administratively; additional time is provided to actually put those revisions into place.

*Comment d:* The SWPPP must be completed and in place prior to issuance of the permit.

*Response d:* Part 4.1 of the permit states that a SWPPP must be prepared for the facility before submitting a Notice of Intent for permit coverage. EPA’s issuance of the MSGP–2000 does not automatically confer coverage to permittees; therefore, EPA feels the requirement that a site-specific SWPPP be in place for the facility operations prior to seeking coverage by way of the submittal of a NOI is sufficient to prevent environmental degradation.

#### *Section 4.12 Additional Requirement: EPCRA Section 313 Reporting*

*Comment:* Many commenters supported removal of EPCRA Section 313 reporting requirements from the permit. Two commenters objected to identifying areas with pollutants that must be reported under EPCRA Section 313 and to develop appropriate storm water controls for these areas.

*Response:* EPA acknowledges the general support for revisions to this section. The intent of these modifications is to eliminate the redundant requirements of the existing MSGP for permittees subject to reporting requirements under Section 313 of EPCRA, which includes the 20+ categories of Toxic Release Inventory chemicals. The Agency believes that the MSGP–2000 places no additional burden on facility operators with TRI chemicals. Identification of EPCRA 313 chemicals in the SWPPP acknowledges that these chemicals are pollutants of concern. Facilities with any of these pollutants need to develop appropriate storm water controls to contain them. As noted in the fact sheet, EPA believes these concerns have been addressed through existing state and federal requirements which can be referenced in the SWPPP.

#### *Section 4.13 Public Availability for Review*

*Comment a:* The public should be able to obtain access to and comment upon a SWPPP and “no exposure” claim before they are finalized.

*Response a:* EPA has, in response to this comment, included a provision in the final permit requiring facility operators to make a hard copy of their SWPPP available to the public when requested in writing. EPA believes this requirement is an acceptable compromise between the facility

operator’s concerns about having members of the public at their site and the need of the public to understand potential impacts on their environment. EPA does not receive SWPPPs routinely, and, therefore, cannot make them available at its offices or provide them to local government offices. As with the previous MSGP, members of the public have the option of contacting the NOI Center or the Regional EPA Storm Water Coordinators directly to inquire about a facility’s permit status.

EPA does not intend to require public comment on SWPPPs, nor require public hearings, because SWPPPs are intended to be modified as necessary to address changes at the facility or when periodic inspections indicate that a portion of the SWPPP is proving to be ineffective. Requirements for public comment and public hearings would delay needed modifications to, not to mention development of, the SWPPP, be burdensome and serve as disincentives to plan updates.

At any time the Agency can conclude that a facility is no longer eligible for coverage under a general permit and require the facility to apply for a general permit. In that event, there would be significant opportunity for public input in the decision-making process.

*Comment b:* The following should be available in paper copy and on the web: NOI, SWPPP, and “no exposure” certification.

*Response b:* EPA has found that having a central location for processing NOIs is an efficient and effective way of managing the tremendous amount of data which the Storm Water program generates. Very shortly, members of the public will be able to access information from the NOI database online. The NOI database contains facility information, including the type of industrial activity taking place, facility contact information, and receiving water body information. Also available online will be information on facilities that have submitted “no exposure certifications.” Regarding SWPPPs, EPA does not receive them routinely and, therefore, cannot make them available on-line. EPA has, in response to this comment, included a provision in the final permit requiring facility operators to make a hard copy of their SWPPP available to the public when requested in writing. EPA believes this requirement is an acceptable compromise between the facility operator’s concerns about having members of the public at their site and the need of the public to understand potential impacts on their environment.

### Section 5.1 Types of Monitoring Requirements and Limitations

*Comment a:* A commenter requested language clarification for the first paragraph under Part 5.1, Quarterly Visual Monitoring.

*Response a:* Quarterly visual monitoring is required for all permittees covered under the MSGP. The visual inspection must cover all outfalls at the facility from which there are storm water discharges associated with industrial activity.

*Comment b:* A commenter indicated that Part 5.1.1.4 was clear regarding the visual monitoring waiver for inactive and unstaffed sites. However, it was unclear if a similar waiver for benchmark monitoring applies to inactive and unstaffed sites.

*Response b:* EPA has clarified in Part 5 that a permittee may exercise a waiver for benchmark monitoring at unstaffed and inactive sites.

### Section 5.3 General Monitoring Waivers

*Comment a:* Commenters supported the adverse sampling condition waiver, as long as the permittee doubles sampling during the next event or eliminates the substitute sampling requirement for areas with extended frozen conditions.

*Response a:* EPA has decided to keep this temporary waiver, since the main purpose of this specific waiver is to allow the permittees the opportunity to take samples under no adverse nor threatening weather conditions.

*Comment b:* Allow permittees to waive benchmark monitoring in years 2 and 4 of the MSGP-2000 with the result of the 1995-MSGP; waive difficult logistical conditions or location access similar to those for unstaffed/inactive facilities; and impractical sample collection at large facilities.

*Response b:* Under Section 402 of the CWA, EPA is required to issue permits which apply and ensure compliance with any applicable requirements of sections 301, 302, 306, 307, and 403. Since these permits are issued with fixed terms not exceeding five (5) years, EPA needs to ensure that permittees continue to comply with applicable requirements. EPA believes that benchmark monitoring is not overly burdensome and provides useful information to the permittee and the Agency. Therefore, EPA will require permittees covered under the reissued MSGP to ensure continued compliance with permit conditions and requirements. In addition, EPA has determined that the general monitoring waivers provided in the previous permit

are adequate, and that additional waivers are not needed. With regard to problems facilities encounter when monitoring their storm water discharges, such as difficult logistical conditions, access to discharge locations or impractical sample collection at large facilities, EPA recommends permittees review the "NPDES Storm Water Sampling Guidance Document" which suggest solutions to these sampling problems.

### Section 6.E Sector E—Glass, Clay, Cement, Concrete and Gypsum Products

*Comment a:* Separate the concrete pipe manufacturing from the cement, ready mixed and concrete block manufacturing sector.

*Response a:* Based on the characterization of the concrete pipe manufacturing industry and the cement, ready mixed and concrete block manufacturing industry, EPA has determined that the two industries are similar and, thus, has retained the industrial sectors as described in the 1995 permit.

*Comment b:* Section 6.E.3.1 of the draft permit was not reflective of the September 30, 1998 modification.

*Response b:* The commenter is correct. The final permit has been changed to reflect the September 30, 1998 modification which removed the limitations of coverage for various industries. Paragraph 6.E.3 has been removed and the remaining paragraphs have been renumbered accordingly.

### Section 6.F Sector F—Primary Metals

*Comment a:* Do not propose any new BMPs for the steel industry in the MSGP-2000.

*Response a:* Similarly to the 1995 MSGP, the MSGP-2000 prefers the implementation of structural and non-structural BMPs for stormwater management from Primary Metals facilities. It is up to the individual operators to decide which BMPs most effectively meet their needs. This does not preclude the use of additional or new technologies should they be found to be more effective in any given application.

*Comment b:* The BMPs provided at Parts 6.F.3.2 and 6.F.3.3 omit the most obvious qualifier, which is that inventories of exposed material and housekeeping should be mandated by the MSGP only where the exposed materials have a potential to contact storm water that is discharged from a point source to a water of the United States. In many cases, the types of materials and activities discussed in the above referenced parts occur in areas where precipitation is collected and

contained, and is not discharged. Thus, site inventories and BAT practices discussed in these parts are not relevant except in areas where they affect storm water discharges authorized by the MSGP. Parts 6.F.3.2 and 6.F.3.3 should be clarified (similarly to Part 6.F.3.1) with a statement that these activities are required only in areas where such activities could result in a discharge of pollutants to waters of the United States.

*Response b:* One of the underlying premises of the MSGP is that if there is a potential for contact between storm water and environmental contaminants, then the facility should apply for coverage under the MSGP. If there is no potential for contact, the facility may be able to submit a "no exposure" certification form, and not be required to obtain permit coverage. Where there is a potential for contact between storm water and industrial activities and/or materials, then the operator needs to obtain permit coverage and take appropriate measures to mitigate the discharge of pollutants.

*Comment c:* Part 6.F.3.4 includes a requirement for inspections performed under the 2000-MSGP to, among other things, evaluate air pollution control equipment. This activity does not belong under the MSGP. It is a Clean Air Act requirement and an activity performed under each facility's Clean Air Act permit. Such inspections under the MSGP are redundant, inappropriate and extend EPA's CWA authority into the CAA. Inspections of air pollution control equipment should not be a component of any SWPPP or compliance certification under the CWA.

*Response c:* EPA understands why inspection requirements which routinely fall under the purview of one environmental program (in this case the Air Program) would appear inappropriate under another environmental program (in this case the Water Program). However, if one looks at the potential sources of pollution at primary metals facilities, one will soon discover that one of the principal sources of contamination is from the air pollution control devices. The purpose of the storm water regulations is to keep storm water from coming into contact with any contaminants, regardless of the environmental media from which it arose. If inspections are routinely conducted at a facility pursuant to one environmental statute, that same inspection will generally be accepted by another program. For example, if the facility routinely inspects its air pollution control devices as a requirement of its CAA permit, that

same inspection, with the possibility of a few additional observations, *e.g.*, to see if there is any evidence of run off, should also be accepted as part of the SWPPP. The SWPPP can cross reference inspection protocols for the CAA permit. Thus, EPA does not agree with the commenter that these requirements are either redundant, inappropriate or extend EPA authority.

*Section 6.G. Sector G —Metal Mining (Ore Mining and Dressing)*

*Comment a:* Include Table G-4, published in the August 7, 1998 modifications, in MSGP-2000. Also, table titles in this section are confusing since they appear to imply that effluent guideline limitations apply to waste rock and overburden piles.

*Response a:* We have included the revised table G-4 from the August 7, 1998 modification in the fact sheet for today's permit. The titles of tables G-1 and G-2 are consistent with the titles in the other sectors of the final permit. All monitoring tables in Part 6 of the permit are titled "SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING." The Agency doesn't not believe that this title is misleading because each table contains a column labeled "Numeric Limitation" which either contains a numerical value or is blank. For those Sectors where there are no values listed in the numeric limitation column it is clear that numeric limitations do not apply. EPA recognizes that benchmark concentrations are not effluent limitations and is provided specific language in the permit to that effect.

*Comment b:* The commenter opposes EPA's disallowance of sampling waivers from monitoring requirements for waste rock and overburden piles. Another commenter argued that another waiver based on "not present or no exposure" had also been deleted. A third commenter noted that monitoring requirements were also inconsistent with the 1998 permit modifications.

*Response b:* The restriction on sampling waivers was not intended to exclude the "Adverse Climatic Conditions Waiver" in Part 5.3.1 of the permit. The final permit has been revised to correct this error. Also, Part 6.G.7.2 has been modified to reflect that the monitoring requirements only apply to discharges from active ore mining and dressing facilities and that these requirements remain unchanged from the 1998 permit modification. The second waiver in Part 5.3 which is based on "not present or no exposure" was not part of the August 1998 notice, and was not intended for sector G facilities.

*Comment c:* The limitation on coverage for adit drainage and contaminated springs or seeps should be modified to exclude only those that do not result from precipitation events. The proposed Certification of Discharge language is confusing since it implies an obligation for testing or evaluation of mining-related discharges that are composed entirely of non-storm water covered by an NPDES permit.

*Response c:* Adit drainage and contaminated springs and seeps are discharges that originate below the surface of the ground. Often they discharge during dry periods and, while in some instances these flows may increase in response to a storm event, they may continue to flow well after the precipitation has ended. Therefore, EPA has determined that the restriction (*i.e.*, prohibition) for MSGP coverage of discharges from adit drainage, contaminated springs and seeps should remain as proposed.

The "Certification of Discharge Testing" language has been modified to clarify that certification must be provided to show that any mining-related discharge has been "tested or evaluated for the presence of non-storm water discharges." Additional wording has been added to Part 6.G.6.1.6.6 to make it consistent with the language in the 1995 MSGP.

*Comment d:* Provide guidance in Section 6.G.6.1.6.6 on what type of test should be performed.

*Response d:* The language has been modified to allow for a certification based on "tested or evaluated" information. Additional wording has been added to Part 6.G.6.1.6.6 to make it consistent with the language in the 1995 MSGP.

*Comment e:* The definition of "reclamation phase" is inconsistent with most state programs.

*Response e:* The definition of the three general phases of mining was taken from the fact sheet to the 1995 MSGP. The intent was to recognize that "mining" is comprised of several distinct activities, not to set a standard for each phase. EPA acknowledges that reclamation requirements are typically set by state programs, and therefore the permit language defining the reclamation phase has been modified to reflect other post-mining land uses.

*Comment f:* In reformatting the permit language, EPA introduced new requirements which are inconsistent with the settlement EPA reached with NMA in 1998.

*Response f:* The draft MSGP-2000 intended to incorporate all the requirements from the 1998 notice resulting from the settlement with

NMA. However, in making the changes and converting to a more "readable" format some unintended errors occurred. The revisions to the monitoring requirements have been made so the final permit language is consistent with the 1998 **Federal Register** publication (63 FR 42534, Aug 7, 1998).

*Comment g:* Delete the phrase "directly or indirectly" from coverage of "storm water discharges that have come into contact (directly or indirectly) with any overburden, raw material, intermediate product\* \* \*" since it is inconsistent with prior versions of the permit.

*Response g:* The storm water regulations (Section 122.25(b)(14)(iii)) require permit coverage for "facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products\* \* \*" When revisions were made to the draft MSGP 2000 language to make the permit more "readable," some of the words were changed. In order to be consistent with the storm water regulations, the permit language has been revised. The words "come into contact (directly or indirectly)" have been deleted and replaced with "contaminated by contact or that has come into contact."

*Comment h:* EPA was incorrect in stating that all facilities permitted in this sector are "no discharge" facilities.

*Response h:* The monitoring discussion in the Fact Sheet to the permit is a summary of the data available at the time the draft permit was published for public comment. The main focus of the summary was on data from the second year of permit coverage. Of those sector G facilities that submitted information in year 2 of the permit none of them reported a discharge. The 1998 MSGP modification which reflected the settlement with NMA and added monitoring requirements for sector G was much later in the permit term. The final fact sheet language has been changed to recognize the later data and discharge status of sector G facilities covered by the permit.

*Comment i:* Water technically qualifying as mine drainage but which meets all applicable surface water quality standards should be approved for use in lieu of fresh water for dust control on roads at mine sites.

*Response i:* The quality of the mine drainage can change from source to source and over time within the same mine. The MSGP would need to specify a process (*e.g.*, monitoring frequency) to ensure that the quality of the mine

drainage is protective of water quality. This type of facility specific considerations and potential monitoring requirements would be better addressed under an individual permit issued to the facility.

*Sections 6.G and 6.J Construction Requirements for Sector G—Metal Mining and Sector J—Mineral Mining*

*Comment a:* Commenters questioned why EPA was requiring coverage under a construction general permit for earth disturbing activities during the “exploration and construction phase” of a mining operation.

*Response a:* This requirement was originally contained in the 1995 MSGP Fact Sheet for Sector J (it was inadvertently not duplicated in the metal and coal mining [Sector G] sectors). It therefore represents a clarification or technical correction to the original MSGP. To clarify the applicability of the MSGP regarding construction activity at metal mining sites and to make metal mining requirements consistent with mineral mining provisions (Sector J), Sector G has been modified to indicate that earth-disturbing activities occurring in the “exploration and construction phase” of a mining operation must be covered under EPA’s Construction General Permit (63 FR 7858, February 17, 1998) or under an individual permit if the area disturbed is one acre or more. Earth-disturbing activities during exploration/construction affecting less than one acre must be covered under the MSGP-2000. If permittees then opt to actively mine the site they are required to transition to the MSGP-2000 (they should terminate their coverage under the CGP, but there is no requirement to do so). This procedure removes commenters’ “dual-permit requirement” fear. Once in the active phase, any subsequent mine enlargement would be covered under the MSGP-2000. All phases of a mining operation must be covered which includes the “reclamation phase.” EPA believes the appropriate level of environmental protection for initial land-disturbing mining activities is a construction permit. SWPPP requirements under a construction permit are more effective for the often temporary conditions found during the initial phase versus that which would be appropriate for a more permanent mining operation. Many of the BMPs and other SWPPP requirements of the Construction General Permit could be incorporated in the MSGP-2000 SWPPP, thereby minimizing any duplicative efforts.

*Comment b:* For Sector J for Region 9, the proposed MSGP only authorized

mine dewatering discharges from crushed stone, construction sand and gravel, and industrial sand mines in Arizona. For Regions 1, 2, 6, and 10, coverage was proposed throughout the areas of these regions covered by the MSGP. Expressions of interest in MSGP coverage for these discharges have been received for other areas, such as Indian country in Nevada and California.

*Response b:* For consistency with the other regions, coverage for the discharges has been extended throughout the areas of Regions 3, 8 and 9 covered by the permit, provided the dischargers meet all other permit eligibility requirements.

*Section 6.I Sector I—Oil and Gas Extraction*

*Comment:* One commenter expressed concern that while refineries were covered under Sector I—Oil and Gas Extraction, refining was not usually considered “oil and gas extraction” and the title of Sector I could thus cause refinery operators to overlook permit conditions that could apply to them.

*Response:* EPA welcomes this suggestion to make the permit easier to use and the title for Sector I has been changed to “Oil and Gas Extraction and Refining” in Table 1-1 and in Part 6.I. Note however, that any storm water at a refinery that is subject to storm water effluent limitation guidelines at 40 CFR 419 is not eligible for permit coverage.

*Section 6.R Sector R—Ship and Boat Building or Repair Yards*

*Comment:* One commenter requested that the provisions of part 6.R.4.3.1. be clarified to note that pressure washing to remove paint would require a separate NPDES permit.

*Response:* EPA agrees that if pressure washing occurs to remove paint, the discharge of that wash water would require separate NPDES permit coverage. EPA also intends for the discharge of wash waters removing marine growth to be permitted separately. The source of the discharge is not storm water and, as a general rule, the MSGP only authorizes the discharge of storm water. The non-storm water discharges that are authorized by the MSGP are a specific list found in Part 1.2.2.2. of the permit and the list does not include pressure wash waters.

*Section 6.S Sector S—Air Transportation*

*Comment:* Commenters had concerns regarding the execution of site compliance evaluations and inspections of deicing areas. They also requested EPA to limit the inspection obligation to

once per month during periods of deicing operations.

*Response:* The MSGP-2000 has been clarified to state that compliance evaluations shall be conducted during a period when deicing activities are likely to occur (vs. a month when deicing activities would be atypical or during an extended heat wave), not necessarily during an actual storm or when intense deicing activities are occurring. This requirement is not seen as onerous, as EPA believes that most weather conditions can be reasonably anticipated and the evaluation can be planned for. EPA generally agrees that regularly scheduled, monthly inspections of deicing areas during the deicing season (e.g., October through April) are sufficient at airports with highly effective, rigorously implemented SWPPPs. However, if unusually large amounts of deicing fluids are being applied, spilled or discharged, weekly inspections should be conducted and the Director may specifically require such weekly inspections. In addition, personnel who participate in deicing activities or work in these areas should, as the need arises, inform the monthly inspectors of any conditions or incidents constituting an environmental threat, especially those needing immediate attention. EPA requires permittees to record, to the best of their ability, the quantity of all deicing chemicals applied on a monthly basis (not just glycols and urea, e.g., potassium acetate), as discharges of large quantities of these chemicals can have an adverse impact on receiving waters. The capability to record usage of chemicals should not depend on the type of chemical used. EPA never intended to provide a comprehensive list of technologies and BMP options for airport operators to consider, nor to provide a discussion of the relative merits of each. EPA’s discussion was simply an introduction of the many options available and was intended to stimulate thought on the variety of BMPs available. EPA intends that storm water personnel use their best professional judgment to select site-appropriate measures for inclusion in their SWPPPs. For a more thorough source of information on deicing fluid control and airport deicing operations in general, stakeholders can check the EPA publication “Preliminary Data Summary, Airport Deicing Operations” at <http://www.epa.gov/ost/guide/airport/index.html>.

*Section 6.T Sector T—Treatment Works*

*Comment:* Clarify that treatment works smaller than 1.0 MGD are not

defined as industrial activities and, therefore, are not subject to the permit.

*Response:* The final permit language has been modified to be consistent with the industrial definition of § 122.26(b)(14)(ix). The requirements of Sector T are intended to apply only to those treatment works with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program.

#### Section 8 Retention of Records

*Comment:* Clarify the Retention of Records language.

*Response:* EPA has clarified the Retention of Records language used in this permit. Part 8.1 states that the permittee will retain, for three (3) years after the permit expires or is terminated, the SWPPP and all documents/reports needed to complete their Notice of Intent form. In addition, Part 9.16.2.1 addresses the retention of records for the permit monitoring requirements for three (3) years from the date of sample, measurement, evaluation or inspection, or report. Permittees are required to submit Discharge Monitoring Reports for compliance and/or analytical monitoring.

#### Section 9 Standard Permit Conditions

*Comment a:* Several comments were received on Part 9.12.1 for requiring coverage under an individual permit or an alternative general permit. Commenters suggest that the permittee be allowed to appeal a Director's decision; provide for determination of non eligibility and semblance of surety available by a permittee who demonstrates eligibility and compliance with the MSGP; and authorize automatic transfer provided all storm water permitting conditions and obligations are met.

*Response a:* EPA may modify, revoke and reissue, or terminate a permit during its term. Causes for modification, revocation and reissuance, and termination are set forth in 40 CFR § 122.62 and 122.64. Specific causes may include: noncompliance by the permittee with any condition of the permit; failure in the application or during the permit issuance process to disclose fully all relevant facts; determination that the permitted discharge endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharges controlled by the permit. In addition, EPA recently published a final rule which revises certain regulations

pertaining to the NPDES program, including the procedures for appealing an EPA determination on NPDES permits. See *Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations; Round II*, 65 Fed. Reg. 30886 (May 15, 2000). Included in the rule are revisions to the permit appeals process that replace evidentiary hearing procedures with direct appeal to the Environmental Appeals Board (EAB). The website for the EAB is "http://www.epa.gov/eab/". The webpage has a frequently asked question section, "http://www.epa.gov/eab/eabfaq.htm". Questions 1 through 9 deal with filing issues, which the commenter can refer to for instructions on how to proceed in filing an appeal with EAB. EPA does not allow automatic transfer from individual permits into other individual or general permits since EPA needs to maintain adequate records of permittees and make periodic evaluations of the adequacy of their measures to comply with permit requirements.

*Comment b:* EPA should extend coverage to facilities wishing to apply after the expiration date of the MSGP until the permit is reissued.

*Response b:* Where EPA fails to reissue a permit prior to the expiration of a previous permit, EPA has the authority to administratively extend the permit for facilities already covered. However, EPA does not have the authority to provide coverage to "new" facilities seeking coverage under an expired permit. This concern is not applicable in this instance to the MSGP since the MSGP-2000 was issued before the MSGP-1995 expired.

#### Section 13 Permit Conditions Applicable to Specific States, Indian Country Lands

*Comment:* The Agency should not require compliance with provisions of state rules that it cannot specifically identify. For example, EPA requires compliance with state anti-degradation provisions. The Agency provides no assistance with regard to how a small business might somehow ascertain what those provisions are, who has them, and how they might apply to the facility's discharge. See 65 Fed. Reg. at 17021. The Agency must specify precisely how a company would obtain appropriate data and how it should apply that data to its operations. Without this necessary guidance, this new provision should be removed from the final permit.

*Response:* The permit states that discharges are not covered if they violate, or contribute to the violation of, a state water quality standard. An anti-degradation policy is one component of

a state's water quality standards program. The permittee is responsible for checking to ensure compliance with these provisions. Facility operators can check with the EPA official listed in this permit to obtain the name of the appropriate state contact.

#### Section I.A General Opposition to Proposed Changes

*Comment:* A commenter objected to several of the proposed modifications to the "Limitations on Coverage" provisions in the Proposed MSGP-2000, including the proposed revisions to the Endangered Species Act requirements (Section 1.2.3.6), the addition of the antidegradation provision (Section 1.2.3.9), the addition of the impaired waters and TMDL provisions (Section 1.2.3.8), and the addition of the compliance with water quality standards provisions in Section 3.3.

*Response:* The Agency acknowledges the comment. Justifications for each of the positions cited by the commenter are provided in the fact sheet accompanying the permit. Specific objections to these provisions are addressed elsewhere in the comment response document.

#### Section I.B General Support to Proposed Changes

*Comment a:* Several commenters supported EPA's continued use of a general NPDES permit for regulating storm water discharges associated with industrial activity. The commenters indicated that this was an efficient and effective means for achieving the goals of the Clean Water Act.

*Response a:* EPA agrees with the commenters regarding the appropriateness of general permits for the majority of industrial storm water discharges. The issuance of the final MSGP is consistent with these comments.

*Comment b:* A commenter supported the proposal to authorize incidental windblown mist discharges from cooling towers as an authorized non-storm water discharge under the MSGP.

*Response b:* These discharges are included in the final MSGP consistent with the recommendation of the commenter.

*Comment c:* A commenter supported the provision in the proposed MSGP to allow termination of permit coverage based on the "no exposure exemption" (40 CFR 122.26(g)) provided under EPA's Phase II storm water regulations of December 8, 1999 (64 Fed. Reg. 68722).

*Response c:* Although the no exposure exemption would be available whether or not it is specifically included in the

MSGP, EPA has retained the provision in the final MSGP to highlight its availability for those facilities which qualify.

#### *Section I.C Fact Sheet*

*Comment a:* It is imperative that EPA conduct an environmental justice analysis for the MSGP to ensure that the permit is consistent with the goals of EPA's Environmental Justice Strategy of April 3, 1995, the President's 1994 Executive Order on Environmental Justice and Title VI of the Civil Rights Act. The notice of intent (NOI) must include demographic information. EPA must seek comments of minority and low-income communities regarding the MSGP.

*Response a:* EPA disagrees with the commenter that an environmental justice analysis is necessary prior to the reissuance of the MSGP. Regarding Title VI requirements, EPA has recently proposed guidance (65 *Fed. Reg.* 39649, June 27, 2000) for assisting recipients of Federal funding which administer environmental programs (such as state environmental agencies), as well as guidance for investigating alleged disparate environmental impacts stemming from permitting programs administered by these agencies. The guidance is also appropriate for EPA permits, such as the MSGP.

The Title VI guidance encourages permitting authorities to integrate environmental justice into their permitting programs. However, an environmental justice analysis is not required for every permit issued by a state permitting authority or by EPA. No information was provided by the commenter that a disparate impact on minorities would exist as a result of the MSGP. The MSGP includes numerous effluent limitations and other conditions which should be protective of water quality for all neighborhoods in which permitted facilities are present. EPA does intend to integrate environmental justice considerations explicitly into its permitting programs as outlined in the Title VI guidance. However, this will likely be a longer term process (extending beyond the time frame for reissuance of the MSGP) given the many complexities of the issue.

EPA's Environmental Justice Strategy of April 3, 1995 (developed pursuant to the President's 1994 Executive Order) has similar goals as Title VI of the Civil Rights Act. Again, however, an environmental justice analysis is not required for every permit issuance. The integration of the goals of the Environmental Justice Strategy into the NPDES permit program will also take

time given the many complexities of the environmental justice issue.

EPA is committed to implementing the Executive Order on Environmental Justice. As a practical matter, environmental justice concerns are community specific. EPA will work with a specific community that may express concerns related to a specific source or other environmental burdens. If and when a community raises such issues, EPA can then consider a proper course of action. In the case of the MSGP which will largely permit existing facilities, EPA will engage the community that has raised the issue and, if appropriate, work with the State and local agencies to address their concerns. If violations of any applicable standards are identified, EPA can pursue possible enforcement actions. The MSGP also provides that an alternate general permit could be issued for any geographic area which may be identified in the future as subject to disparate environmental impacts.

EPA has public noticed its intent to reissue the MSGP and has requested comments throughout the areas potentially affected by the permit, including areas where minority and low-income communities are present. EPA believes that its outreach activities have been sufficient for the permitting action which was proposed. However, EPA's Environmental Justice Strategy also provides for additional outreach activities in the future which may include outreach to minority and low-income communities specifically regarding the MSGP.

EPA disagrees that demographic information should be required with the NOI. The NOI does include location information for industrial facilities seeking coverage under the permit. Using this information it is possible to locate facilities covered by the permit relative to the locations of different demographic groups. As such, it is not necessary for the NOI to include demographic information.

*Comment b:* A commenter expressed concern that some non-storm water discharges may be improperly characterized as storm water by certain facilities. The commenter recommended that EPA carefully review permit applications and conduct inspections to ensure that such discharges are treated as point source discharges and not covered by the MSGP.

*Response b:* Point source discharges would violate the Clean Water Act unless they are authorized by a separate NPDES permit. The MSGP also requires that operators review their facilities for the presence of unpermitted non-storm water discharges which are not

authorized by the MSGP. When such discharges are located, the MSGP requires that the discharges be permitted or terminated. This requirement should minimize the possibility that inappropriate non-storm water discharges are discharged under the MSGP. As recommended by the commenter, EPA does conduct periodic inspections of facilities permitted under the NPDES permit program to evaluate the compliance status of a facility with the requirements of the Clean Water Act, including the presence of any unpermitted discharges. Although the permit application for the MSGP (the notice of intent) does not specifically address the issue of non-storm water discharges, EPA believes that the other requirements of the MSGP, along with EPA's inspection program, adequately address the commenter's concern.

#### *Section II.A Organization and Clarity*

*Comment a:* Virtually all commenters supported EPA's effort to make the MSGP smaller and easier to understand. Several comments did express concern that the reorganization and clarification of the permit may have resulted in some substantial changes in permit requirements that may not have been identified and explained in the preamble to the proposed permit. The issue of whether or not explanation and guidance contained in the 1995 MSGP preamble could still be relied upon was also raised.

*Response a:* EPA went to great lengths to make the permit shorter and easier to understand and believes all substantive changes were identified and discussed in the preamble to the proposed permit. Responses to specific comments on areas where a commenter felt that adequate explanation for changes was not included in the proposal are provided in responses to that comment. With regard to the more specific explanation of sector-specific activities, etc. in the preamble to the 1995 MSGP, this information was incorporated by reference into the proposal of today's permit and may still be relied upon to the extent it does not conflict with the MSGP-2000 documents or is superseded by later guidance. Commenters noted several instances where EPA unintentionally changed requirements through the reformatting. EPA has corrected the permit and identified these instances throughout the comment response document.

*Comment b:* Based on EPA's use of incorporation by reference in the proposed permit's preamble to avoid reprinting material from the 1995 MSGP's preamble, one commenter expressed concern that the requirement

in Part 4.7 to have a copy of the final permit with the Storm Water Pollution Prevention Plan would be difficult if the entire permit was not in a single package. This commenter also was concerned that references to multiple Internet sites for more information would further compound this problem. The commenter further suggested that a copy of the permit and relevant guidance be included with the NOI "confirmation" letter sent by EPA in response to a complete NOI. Another commenter supported making all relevant information available in a single document.

*Response b:* The entire permit, appropriate addendums, the preamble "fact sheet," and comment response summary are being published today in the **Federal Register** and will, therefore, be easily available from several Internet sites and from Federal Depository Libraries. The information not repeated in the proposed permit notice was primarily background and fact sheet information from the preamble to the 1995 MSGP. While the preamble and response to comments sections of the final permit notice will undoubtedly be valuable to many permittees, the Part 4.7 requirement to have a copy of the permit language with the Storm Water Pollution Prevention Plan refers only to the permit language itself, including addendums. Based on experience with the previous permit, EPA believes the benefits of keeping the size and complexity of the permit to manageable (*i.e.*, less intimidating, easier to use) level far outweigh the benefit of making all supporting and guidance information, much of which will apply to only a small portion of potential permittees, available in a single document. EPA does expect that for convenience, many permittees will simply attach a copy of the entire **Federal Register** notice of the final permit to comply with Part 4.7.

EPA believes the references throughout the permit and preamble to various Internet sites is a sensible alternative to publishing information, only a small part of which may apply to any one facility or which will be changing over time and quickly become outdated. For example, due to periodic updates that must be made to the endangered species list based on new species being listed or old ones delisted, the county-species list was not published with the final permit. This omission saves tax dollars on publication, keeps the size of the permit package down (the current list would double the size of the permit while any one facility only needs to look at a page or so of information), and avoids the

inadvertent use of an outdated species list that could result not only in failure to consider potential adverse effects on an endangered species, but also negate a discharger's permit coverage. EPA relies heavily on electronic distribution of documents and guidance, but will be able to provide hard copy or telephone-based information to those who have no access to the Internet or Federal Depository Libraries.

As noted above, the complete permit has been printed and EPA intends to make guidance available, primarily through the Internet. The suggestion to include a copy of the permit and guidance with the NOI "confirmation" letter is impractical since most of this information would have been necessary to develop the Storm Water Pollution Prevention Plan that must be developed before the NOI can be submitted.

### *Section III Geographic Coverage of Proposed MSGP*

*Comment:* Several commenters and attendees of meetings on the proposed permit identified an inconsistency between Part 6.J.3 of the permit, where mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone mines were apparently eligible only in Arizona and both the previous permit and the preamble to the proposed MSGP-2000 where such discharges were also eligible in all of the permits for Region 1, 2, 6, and 10. One commenter referred to pages 17025 and 17034 of the preamble to the proposed permit in support of their belief that the proposed permit had been intended to provide coverage in Regions 1, 2, 6, and 10 and in Arizona.

*Response:* The typographical error in Part 6.J.3 has been corrected. As supported by item 4 on page 17025 and item 2 on page 17034 of the **Federal Register** notice of the proposed permit (65 FR 17025 and 17034), coverage for mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone mines in not only Arizona, but also Regions 1, 2, 6, and 10 was intended.

### *Section V.A Historic Preservation*

*Comment a:* It would be more in keeping with balancing the agency's CWA mandate and NHPA obligation to not preclude general permit coverage for those discharges that may affect historic properties. Instead, require the general permittee to notify the agency of the existence of a listed historic property that will be affected along with any preventive or mitigation measures, if necessary, that it plans to implement. EPA could then decide if any further consideration or action is warranted,

including any comment by the Council. The obligations established under § 106 are placed upon the agency, not on the permittee.

*Response a:* EPA agrees and acknowledges that NHPA Section 106 imposes obligations only on federal agencies and not on third parties. EPA's action in issuing permits, however, triggers NHPA Section 106. In order to issue a general permit, EPA included historic preservation-related application and eligibility provisions in order to ensure that it could "filter" out permitting activities that might otherwise trigger advanced procedures under NHPA Section 106. Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who intends to avoid requirements of section 106 (64 FR 95 May 18, 1999). To meet this responsibility, EPA requires the applicant to do one of the following: (1) Determine that historic properties are not in the path of permit activities, (2) determine that permit activities have no impact on historic properties, or (3) the permittee reaches agreement with appropriate authorities on measures to mitigate or prevent adverse effects. Thus, it is quite possible for facilities having an impact on historic properties to be covered by the MSGP. Authorization to discharge under the MSGP is a privilege, not a right, which carries with it certain procedural and timing advantages for the permittee. Therefore, it is incumbent upon the permittee, not EPA, to conduct whatever investigations and consultations are necessary consistent with EPA's obligation to satisfy NHPA provisions.

*Comment b:* The notice states that the provisions in Part 1.2.3.7, are "likely to change as a result of consultations" under the NHPA. The procedures set forth in Addendum B are described as being "models" of what the NHPA guidance "may look like." These provisions are critical for permittees to determine their eligibility for coverage under MSGP-2000, and any substantive changes in these areas should be subject to review and comment by the regulated community before they are adopted.

*Response b:* There are no changes to these provisions as a result of NHPA consultations.

*Comment c:* Part 2.1.2.2, which deals with discharges that are authorized under the 1995 MSGP, but not clearly eligible for coverage under this permit, does not allow adequate transition time for those permittees who do not have up-to-date determinations pursuant to the NHPA.

*Response c:* Within 90 days the permittee must apply for MSGP coverage and certify his compliance with other permit provisions. He then has up to 180 additional days of interim coverage under the MSGP while he conducts the consultation and determines whether he meets the criteria for coverage under the MSGP. EPA believes that 270 days is a sufficient period to conduct and conclude this consultation and take whatever action is necessary to ensure continued permit coverage.

*Comment d:* EPA states that, "For existing dischargers \* \* \* a simple visual inspection may be sufficient \* \* \*" (emphasis added). This statement is somewhat disingenuous because a "simple visual inspection" is rarely sufficient to determine historic eligibility of an area because many historic resources are often located underground. EPA should provide reasonable guidance worded specifically to shield permittees from liability.

*Response d:* EPA believes that, for existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic properties are affected. However, for facilities which are new industrial storm water dischargers and for existing facilities which are planning to construct BMPs for permit eligibility, applicants should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, applicants should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (e.g., they are "eligible for listing"). Thus, the Agency does not imply that a visual inspection is always sufficient. In instances of uncertainty, the permittee is encouraged to consult with authorities who can advise on the likelihood of historic properties above or below ground.

Given the Agency's obligation to comply with the NHPA and its efforts to coordinate that obligation with the implementation of general permits, the historic preservation-related eligibility restrictions cannot provide an ironclad shield from liability. The permit guidance provides a common sense approach to an historic property assessment. Facility operators are encouraged to consult with local authorities who can advise on the likelihood of historic properties at the facility.

*Comment e:* Portions of the text are reproduced and other portions not

reproduced in columns 1 and 2 of page 17018 of the notice. See 65 F.R. at 17018. Due to this problem, the commenter is unable to provide any comments on EPA's proposed new changes to the MSGP since he is uncertain what EPA intends or proposes. The commenter suggests that EPA fix the language related to the proposed MSGP and re-issue that correction for public review and comment.

*Response e:* EPA apologizes for the typing error which resulted in a number of sentences being listed twice on p. 1018. Despite this confusion, EPA believes the intent of the section is clear and does not require reproposal.

#### Section V.B Endangered Species

*Comment a:* The term "unacceptable effects" is used almost interchangeably with "likely to adversely affect" (See 65 Fed. Reg. 17051), which is similarly undefined in the permit and in pertinent regulation. The correct term for purposes of ESA compliance is the "no jeopardy" standard set forth in Section 7 of the ESA (17 U.S.C § 1536(a)(2)).

*Response a:* EPA agrees with the commenter regarding the term "avoid unacceptable effects." Therefore, EPA has deleted the term and uses the "no jeopardy" language as stated in part 1.2.3.6.6.

*Comment b:* The definition of "discharge-related activities" is so all-encompassing that it could include virtually all activities at a mine, from drilling and blasting to loading, hauling and dumping and equipment maintenance, in addition to any activities that are part of a Storm Water Pollution Prevention Plan (SWPPP). There is no justification for a requirement to certify ESA compliance for all of these activities in order to obtain coverage under the MSGP. This requirement clearly exceeds EPA's authority under the Clean Water Act.

*Response b:* The endangered species provision covers only those activities that are associated with storm water industrial activity. The phrase "discharge-related activities" is intended to clarify that EPA considers a broad range of activities related to storm water discharges to be covered by the permit and, therefore, subject to ESA and NHPA provisions. This broader list of activities could result in environmental impairment if not addressed through a SWPPP. Since the permit covers this broad range, and EPA's permit authority is subject to ESA provisions, then this broader range of activities is subject to the "no jeopardy" finding. BMPs, whether already in place

or added, which serve to satisfy the criteria for coverage under the MSGP, are thus subject to the endangered species provisions.

*Comment c:* While transitional discharge authorization is available for up to 270 days from the date of publication of the permit in the **Federal Register**, that transitional coverage is only available if the permittee submits an application for an alternative permit (most likely an individual permit) within 90 days after publication. Since formal Section 7 consultation is nominally a 135-day process (as stated in the Construction General Permit, see 63 Fed. Reg. 7872), permittees, in order to ensure continuous coverage, would be required to prepare and submit an application for an individual permit before they knew whether they were eligible for coverage under MSGP-2000. This is an unnecessary burden, on both the permittee and the agency. EPA should extend these time limits—for submission of an application for an alternative permit to 180 days, and for transitional coverage to one year.

*Response c:* EPA will retain the requirement that all applicants must submit their Notice of Intent (NOI) in 90 days. Those applicants who are entering into endangered species consultations or adverse impact investigations could apply for extensions up to 180 days and be covered by an interim permit until their application is completed. EPA believes that 270 days is a sufficient period to conduct and conclude this consultation and take whatever action is necessary to ensure continued permit coverage. The County Species list is available on EPA's web site or by contacting a local official. EPA will update its web site list every 90 days.

*Comment d:* EPA indicates that the proposed species-related requirements could change, before final issuance, based on consultation with the Fish and Wildlife Service. The public will not have an opportunity to participate in that process, including through commenting on any additional requirements suggested by the Service. If the Service does suggest any substantial changes in MSGP-2000, the public should have an opportunity to review and comment on those changes before EPA makes a decision as to whether to incorporate them into the final permit.

*Response d:* There are no changes to these provisions as a result of NHPA and ESA consultations, except that, based on comments to the proposed permit, EPA has deleted the inclusion of proposed species on the endangered species list.

*Comment e:* The duty triggered by the section of the Endangered Species Act (ESA) upon which EPA relies falls not upon the discharger but upon EPA. Thus under EPA's proposal, it would be EPA's duty to assess the impact of each discharger applying for coverage, and if this provision is not removed, EPA loses the benefit of the general permit. The action of adopting the general permit itself triggers EPA's duty, and so EPA, not the discharger, must assess ESA impacts now, not after the fact of the permit.

*Response e:* EPA is bound by the ESA and attempted to coordinate general permit implementation with its ESA obligations. Authorization to discharge under the MSGP is a privilege which carries with it certain procedural and timing advantages for the permittee. Therefore, it is incumbent upon the permittee, not EPA, to conduct whatever investigations and consultations are necessary to satisfy the ESA-related eligibility provisions. Since EPA cannot predetermine which facilities will apply for coverage under the MSGP, it is impossible for EPA to conduct the site-specific assessments required under the ESA at the time of general permit issuance.

*Comment f:* Despite previous consultation on the problems of earlier MSGP drafts, certain problems persist, including the gray area language that has fueled citizen suits against permittees. Not only has the agency failed to adequately address this issue, it has increased the liability potential by increasing the requirements for permittees to comply with other agency rules. EPA should clarify language to eliminate the potential for liability for permittees and should reduce the cost and paperwork burdens for compliance with ESA and NHPA.

*Response f:* Given the operation of the regulatory innovation, the "general permit," EPA cannot provide an ironclad shield from liability in the way the commenter proposes. The permit guidance provides a common sense approach to endangered species and historic property assessments. Facility operators are encouraged to consult with local authorities who can advise on the likelihood of endangered or threatened species, critical habitat, or historic properties at the facility. EPA believes the additional burden associated with the expanded NOI form is minimal because permittees are required to make the findings which are reflected on the form. The additional information provides greater assurance that the assessment has been conducted, but does not in itself constitute the requirement for the assessment. EPA

acknowledges that, until such time as the revised form has been cleared by OMB, permittees will continue to use the current NOI form (as modified slightly to conform to changes made elsewhere to the permit).

*Comment g:* The endangered species section of the permit relating to endangered species is cumbersome and appears to go beyond the intent of the Clean Water Act and beyond the EPA's authority set in the CWA.

*Response g:* EPA acknowledges the comment, but disagrees. EPA believes these provisions are essential to carry out its responsibility not to issue a permit which could jeopardize an endangered or threatened species, or critical habitat. EPA has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to ensure compliance with the Endangered Species Act. The "discharge-related activities" restriction on eligibility also implements the Agency's obligations under NHPA Section 106.

*Comment h:* The permit should clarify that coverage of the MSGP, and certification by the permittee, need address only new impacts resulting from new changes in operations for which discharges are covered and authorized by the MSGP. In other words, the "baseline" for assessment of effects or impacts should be the date of reissuance of the MSGP or, if later, initiation of new activities to be covered by the MSGP.

*Response h:* All activities covered by the permit, whether new or existing, are subject to the provisions. It is inappropriate to interpret that these provisions apply only to new activities.

*Comment i:* The endangered species section suggests that a potential permittee utilize "due diligence" in determining whether or not a potential impact to an endangered or threatened species may exist. This language is too vague and subjective—differing interpretations what constitutes due diligence exist. This is particularly true when dealing with an issue as complex as impact to endangered species or their habitats, where the expertise necessary to make this determination is usually beyond the reach of most industrial operators. It is likely that this could become the focal point of efforts to block permit issuance by those with differing agendas. Further clarification of what is required under "due diligence" is required.

*Response i:* EPA believes that the language must provide flexibility to reflect the case-by-case decisions which must be made. In response to the commenter's concern, EPA has replaced the "due diligence" phrase with "best

judgment." Consultations with local endangered species officials is advised if the permittee is uncertain how to apply these provisions to his facility.

*Comment j:* Only those species that have been listed should be identified on this list and used in the determination of permit coverage; not those that have not gone through the entire listing process.

*Response j:* EPA acknowledges the comment and has revised the language to exclude proposed listing requirements.

*Comment k:* In this section, an applicant is expected to determine whether endangered species are "in proximity" to the stormwater discharges or discharge-related activities at the facility. In proximity is described as being "in the path or down gradient" or in the "immediate vicinity of or nearby," the facility. These definitions are far too vague, and could refer to the presence of species located a considerable distance from a facility, not merely those located close enough to a facility to be affected by that facility's stormwater discharge. This section requires clarification.

*Response k:* EPA has retained this language from the 1995 MSGP. EPA believes that the language must provide flexibility to reflect the case-by-case decisions which must be made. Consultations with local endangered species officials is advised if the permittee is uncertain how to apply these provisions to his facility.

*Comment l:* This section provides that "where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species (and presumably those proposed for listing as well) the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate." It is clear that this will provide ample opportunity to those who would seek to delay or deny permit issuance, even in those circumstances where an actual impact to species or habitat does not exist. This procedure should be a formal one in which the permit remains in force until EPA, after careful and rigorous scientific evaluation of the potential impact, determines whether or not an impact exists and, if so, whether or not an alternative permit is warranted.

*Response l:* Opportunity for public input is an essential component of any government regulatory program. As the commenter suggests, the permit would remain in effect until such time as EPA

concludes that the activity is no longer eligible for coverage under the permit.

*Section V.C 303(d)*

*Comment a:* Several commenters challenged Parts 1.2.3.8. of the permit because they believe it inaccurately applies 40 CFR 122.4(i) regarding compliance with water quality standards to discharges covered by a general permit. Several commenters believe that one doesn't have to consider 40 CFR 122.4(i) if they only add an outfall and similarly one commenter believes that new dischargers under Phase 2 do not have to consider 40 CFR 122.4(i).

Commenters stated that any provisions added to the reissued MSGP regarding impaired waters or TMDLs are premature until the new TMDL rule is final. It seems that the major concern is that previously unpermitted discharges would be disallowed coverage under this Part.

*Response a:* EPA, in Sections 1.2.3.8.1 and 1.2.3.8.2, was merely conditioning a discharger's eligibility for coverage under the MSGP upon meeting certain existing conditions and requirements in EPA's NPDES regulations which apply in all applicable circumstances involving both individual and general permits. In doing so, EPA intended to merely restate those existing conditions and requirements as eligibility requirements under the MSGP. Specifically, EPA's intention in section 1.2.3.8.1 was to condition a new discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory conditions under 40 CFR 122.4(i). A new discharger, therefore would not be eligible for coverage under the MSGP if its discharge would "cause or contribute to a violation of a water quality standard." As mentioned, this regulation is applicable to all new dischargers irrespective of the type of permit they are seeking coverage under; there is no language in this regulation that exempts new dischargers seeking coverage under a general permit. EPA, in section 1.2.3.8.1 of the MSGP, did not intend to create any confusion or change any existing interpretation of the current regulatory language referred to in that section. To avoid confusion EPA is therefore amending the language in section 1.2.3.8.1 to state that "you are not authorized to discharge if your discharge is prohibited under 40 CFR 122.4(i)."

EPA's intention in section 1.2.3.8.2 was to condition a discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory requirements under existing 40 CFR

122.44(d)(1)(vii)(B). This section of EPA's regulations requires permitting authorities to develop effluent limits in permits that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7" (EPA's existing TMDL regulations). This requirement applies to all NPDES permits both individual and general permits.

*Comment b:* One commenter expressed confusion about what is meant by "new discharges" as this term is not defined in 40 CFR 122.2.

*Response b:* The final permit will omit the term "new discharge" since it is not necessary for the requirement and it has caused confusion. Today's permit will change the term "new discharge" to simply "discharge" in the first sentence of Part 1.2.3.8.1.

*Comment c:* Eligibility restrictions of the permit should be limited to those discharges of pollutants actually listed in a TMDL.

*Response c:* Section 1.2.3.8.2 of the MSGP contains the eligibility requirement that discharges be consistent with an EPA established or approved TMDL. EPA agrees with the commenter's suggestion that Section 1.2.3.8.2 should clearly state that such requirement is only applicable to facilities discharging the pollutant for which the TMDL is established. EPA is therefore, adding this language to Section 1.2.3.8.2.

*Comment d:* Discharges to 303(d) listed or 303(e) listed waters should be monitored for contaminants that impair or threaten water quality; however, monitoring requirements should be relaxed for other contaminants that do not impair or threaten receiving water quality. Several commenters wanted either exclusive or additional monitoring of discharges to impaired waters for pollutants of concern in lieu of the eligibility requirements based on whether or not a facility causes or contributes to the impairment.

*Response d:* EPA acknowledges that the MSGP may not contain monitoring requirements for a pollutant for which a waterbody is listed as impaired. This does not eliminate the burden of the discharger in determining that its effluent does not cause or contribute to a violation of water quality standards. Section 1.2.3.8.1 in the MSGP is an eligibility provision which restates existing regulatory requirements, it does not create new restrictions on any dischargers. If a discharger cannot meet the eligibility requirements, then that discharger is not authorized to discharge under the MSGP. Under existing

regulations, EPA has the discretion to establish whatever eligibility requirements that it believes are appropriate. Section 1.2.3.8.1 is an eligibility provision that does no more than restate existing regulatory requirements as a condition of being authorized to discharge under the permit. It does not dictate, establish or restrict the use of any particular framework, effluent limits or permit conditions within the permit itself or describe or restate any new interpretation of the underlying regulations which it refers to.

*Comment e:* Several commenters were not clear how to determine or implement loadings imposed by TMDLs. Further they requested that loadings based on the TMDL be excluded from the MSGP and addressed separately so that the regulated community could have an opportunity to comment on them. One commenter stated that the eligibility requirement of Part 1.2.3.8. is not appropriate because there was no opportunity to comment on the TMDL.

*Response e:* It is not necessary that all dischargers receive individual wasteload allocations. EPA's regulations at 40 CFR 130.2 define a wasteload allocation as the portion of the receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. EPA has interpreted this regulation to mean that each point source must be given an individual wasteload allocation when it is feasible to calculate such a wasteload allocation. EPA believes that states may find it infeasible to calculate individual wasteload allocations for all point sources covered by a specific general permit. In that case, the TMDL would establish individual wasteload allocations for dischargers subject to individual permits whereas dischargers subject to a general permit would be accounted for in the aggregate under a single wasteload allocation specific to the general permit under which they are authorized to discharge.

In addition, wasteload allocations can be expressed in different ways, including, percent loading reductions. See 40 CFR 130.2(i) " \* \* \* TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measures. \* \* \* " Effluent limitations must be consistent with (but not identical to) the wasteload allocations in TMDLs. See 40 CFR 122.44(d)(1)(vii)(B). Effluent limitations for point source discharges of storm water may be narrative limitations that are expressed in terms of best management practices (BMPs). This policy is consistent with EPA's approach in its Interim Permitting

Approach For Water Quality-Based Effluent Limitations in Storm Water Permits (September 1996, EPA 833-D-96-001). This interim approach allows limits to be expressed in the form of BMPs as a means of satisfying the requirement that limits derive from and comply with water quality standards and are consistent with an EPA approved or established TMDL.

All dischargers who discharge the pollutant for which the waterbody is impaired must be accounted for in the TMDL. Every point source discharger located on the impaired waterbody and discharging the pollutant for which the waterbody is impaired must be accounted for under a wasteload allocation. The State may choose, however, to give a discharger a wasteload allocation that would not require any reduction in loading. In other words, all facilities discharging the pollutant for which the waterbody is impaired must be subject to a wasteload allocation but all facilities subject to a wasteload allocation may not be required to reduce their loads.

*Comment f:* Several commenters requested guidance on how to adequately evaluate a discharge's eligibility under Part 1.2.3.8 and 1.2.3.9 of the permit.

*Response f:* EPA intends the analysis to be similar to what a permittee under the previous MSGP had to do in accordance with Part I.B.3.f. of that permit. The applicant must avail himself of all discharge characterization data or estimation of discharge character and determine compliance. If the permittee is able to evaluate eligibility on his own because he has access to State Water Quality Standards, 303(d) lists, TMDLs etc. (all of which are available either from the permit issuing authority or in some cases, online) then he can make his determination, document the determination process in his pollution prevention plan, and sign the NOI. In other cases, the Director may notify him that he is not eligible for coverage if such a determination is made independently, and may require an application for an individual permit.

*Comment g:* One commenter requested confirmation that Part 1.2.3.8.1 applies to facilities constructed after August 13, 1979 that have not yet been issued an NPDES permit.

*Response g:* Part 1.2.3.8.1 applies to discharges, not facilities, that have begun after August 13, 1979 that have not yet been authorized by an NPDES permit.

#### Section V.D—Antidegradation

*Comment a:* The proposed requirements do not accurately reflect

States' anti-degradation policy. Commenters stated that anti-degradation does not hold a permittee accountable until a State's policy is interpreted into a permit. The State's review of the general permit under the CWA 401 is the extent of applicable anti-degradation review. Therefore, delete Part 1.2.3.9. since an individual discharger applying for general permit coverage cannot determine how the State's anti-degradation policy, especially regarding the Tier 2 "high quality water" provisions, will be implemented at a particular facility.

*Response a:* EPA, in Sections 1.2.3.8.1 and 1.2.3.8.2, was merely conditioning a discharger's eligibility for coverage under the MSGP upon meeting certain existing conditions and requirements in EPA's NPDES regulations which apply in all applicable circumstances involving both individual and general permits. In doing so, EPA intended to merely restate those existing conditions and requirements as eligibility requirements under the MSGP. Specifically, EPA's intention in section 1.2.3.8.1 was to condition a new discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory conditions under 40 CFR 122.4(i). A new discharger, therefore would not be eligible for coverage under the MSGP if its discharge would "cause or contribute to a violation of a water quality standard." As mentioned, this regulation is applicable to all new dischargers irrespective of the type of permit they are seeking coverage under; there is no language in this regulation that exempts new dischargers seeking coverage under a general permit. EPA, in section 1.2.3.8.1 of the MSGP, did not intend to create any confusion or change any existing interpretation of the current regulatory language referred to in that section. To avoid confusion EPA is therefore amending the language in section 1.2.3.8.1 to state that "you are not authorized to discharge if your discharge is prohibited under 40 CFR 122.4(i)."

EPA acknowledges that the MSGP may not contain monitoring requirements for a pollutant for which a waterbody is listed as impaired. This does not eliminate the burden of the discharger in determining that its effluent does not cause or contribute to a violation of water quality standards. Section 1.2.3.8.1 in the MSGP is an eligibility provision which restates existing regulatory requirements, it does not create new restrictions on any dischargers. If a discharger cannot meet the eligibility requirements, then that discharger is not authorized to discharge

under the MSGP. Under existing regulations, EPA has the discretion to establish whatever eligibility requirements that it believes are appropriate. Again, section 1.2.3.8.1 is an eligibility provision that does no more than restate existing regulatory requirements as a condition of being authorized to discharge under the permit. It does not dictate, establish or restrict the use of any particular framework, effluent limits or permit conditions within the permit itself or describe or restate any new interpretation of the underlying regulations which it refers to.

EPA's intention in section 1.2.3.8.2 was to condition a discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory requirements under existing 40 CFR 122.44(d)(1)(vii)(B). This section of EPA's regulations requires permitting authorities to develop effluent limits in permits that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7" (EPA's existing TMDL regulations). This requirement applies to all NPDES permits both individual and general permits.

Wasteload allocations can be expressed in different ways, including, percent loading reductions. See 40 CFR 130.2(i) " \* \* \* TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measures \* \* \* ." Effluent limitations must be consistent with (but not identical to) the wasteload allocations in TMDLs. See 40 CFR 122.44(d)(1)(vii)(B). Effluent limitations for point source discharges of storm water may be narrative limitations that are expressed in terms of best management practices (BMPs). This policy is consistent with EPA's approach in its Interim Permitting Approach For Water Quality-Based Effluent Limitations in Storm Water Permits (September 1996, EPA 833-D-96-001). This interim approach allows limits to be expressed in the form of BMPs as a means of satisfying the requirement that limits derive from and comply with water quality standards and are consistent with an EPA approved or established TMDL.

The commenter correctly recognizes the difficulty in determining what defines "necessary to accommodate important economic or social development" in accordance with 40 CFR Section 131.12(a)(2). By statute, this determination involves public participation, the assurance that water quality will be protected, and several other factors. EPA would have to modify

the permit for each discharge in question in order to comply with 40 CFR Section 131.12(a)(2). Individual considerations such as these are contrary to the concept of a general permit. In addition, public participation would be impossible since the permit issuing authority would not know about the particular discharge to tier 2 waters before a NOI was submitted. Therefore, a facility operator must seek coverage under an individual permit to discharge to tier 2 waters under 40 CFR Section 131.12(a)(2)'s allowable degradation provisions to satisfy the requirements for public participation and protection of water quality. The only discharges allowed coverage under today's permit are those which do not degrade the use of a tier 2 water below its existing levels, even though those existing levels exceed levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water.

*Comment b:* While the eligibility requirements disallow the discharge to cause and contribute to the impaired water, the permit doesn't require monitoring for the pollutant of concern. This presents the potential for the permit issuing authority to determine that a discharge causes or contributes at a later date than the submittal of the NOI, effectively creating a violation of the permit without the permittee being able to know of it or prevent it.

*Response b:* There will be situations where an NOI is accepted by the permit issuing authority and coverage provided to a facility that did not meet the eligibility requirements. Other situations include changes, such as the approval of a TMDL, which may cause a discharge to no longer be eligible. Upon learning of these types of situations, the Director may either require the permittee to submit an application for an individual NPDES permit, take an enforcement action, allow the facility to eliminate the concern, or any combination of these actions.

*Comment c:* The eligibility requirements require the permittees to predict the final requirements of the TMDL rule and the final loadings of TMDLs approved in the future. Part 1.2.3.8.1 shouldn't be included in the permit because it inaccurately applies 122.4(i) to general permittees.

*Response c:* EPA, in Sections 1.2.3.8.1 and 1.2.3.8.2, was merely conditioning a discharger's eligibility for coverage under the MSGP upon meeting certain existing conditions and requirements in EPA's NPDES regulations which apply in all applicable circumstances involving both individual and general

permits. In doing so, EPA intended to merely restate those existing conditions and requirements as eligibility requirements under the MSGP. Specifically, EPA's intention in section 1.2.3.8.1 was to condition a new discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory conditions under 40 CFR 122.4(i). A new discharger, therefore would not be eligible for coverage under the MSGP if its discharge would "cause or contribute to a violation of a water quality standard." As mentioned, this regulation is applicable to all new dischargers irrespective of the type of permit they are seeking coverage under; there is no language in this regulation that exempts new dischargers seeking coverage under a general permit. EPA, in section 1.2.3.8.1 of the MSGP, did not intend to create any confusion or change any existing interpretation of the current regulatory language referred to in that section. To avoid confusion EPA is therefore amending the language in section 1.2.3.8.1 to state that "you are not authorized to discharge if your discharge is prohibited under 40 CFR 122.4(i)."

EPA's intention in section 1.2.3.8.2 was to condition a discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory requirements under existing 40 CFR 122.44(d)(1)(vii)(B). This section of EPA's regulations requires permitting authorities to develop effluent limits in permits that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7" (EPA's existing TMDL regulations). This requirement applies to all NPDES permits both individual and general permits.

*Comment d:* The final permit needs to be clear that the requirements of Part 1.2.3.8.2 only apply to the pollutant of concern in the TMDL actually being discharged by the facility. This idea is in Part 1.2.3.8.1, and should be included in 1.2.3.8.2 as well. Similarly, EPA should lift the new source and new discharger restrictions if there is not a storm water component of the approved TMDL. The final permit should clarify that a facility may not have a specific allocation in an approved TMDL and as such may still be eligible for the general permit.

*Response d:* Section 1.2.3.8.2 of the MSGP contains the eligibility requirement that discharges be consistent with an EPA established or approved TMDL. EPA agrees with the commenter's suggestion that Section

1.2.3.8.2 should clearly state that such requirement is only applicable to facilities discharging the pollutant for which the TMDL is established. EPA is therefore, adding this language to Section 1.2.3.8.2.

*Comment e:* The eligibility requirements in Part 1.2.3.9 defeat the concept of efficiency of a general permit and should be removed. EPA does not have the authority to require the applicant to assess if they support the use classification of the receiving water because it increases the cost of applying for general permit coverage which has not been evaluated by EPA under the Unfunded Mandates Reform Act. Furthermore, the duty to determine whether or not a discharge supports the use classification of a receiving water is the permit issuing authority's responsibility.

*Response e:* The concept of the general permit is to reduce the administrative burden on EPA and the regulated community by issuing one permit for many facilities that would otherwise all have exactly the same conditions in their individual permits. If a facility is not like other ones where it would have different permit conditions it should not apply for the general permit in question. This general permit only applies to facilities that support the use classification of the receiving waters. If they do not, EPA is not obligated to change the general permit to include them. The applicant must seek alternate permit coverage. It is the permit issuing authority's responsibility to ensure that the conditions of the general permit support use classifications. It is not their responsibility to ensure that each individual discharge authorized by the permit supports the use. The eligibility requirements are there to indicate the type of facility that can be covered under the permit. The efficiency intended by a general permit is to reduce the number of individual permits and to make application for NPDES permit easier for those who qualify for the coverage under the general permit.

*Comment f:* The final permit needs to be clear that a facility may not have a specific allocation in an approved TMDL and as such may still be eligible for the general permit.

*Response f:* EPA agrees in part with the commenter that there may be circumstances under which it is not necessary that all dischargers receive individual wasteload allocations. EPA's regulations at 40 CFR 130.2 define a wasteload allocation as the portion of the receiving water's loading capacity that is allocated to one of its existing or

future point sources of pollution. EPA has interpreted this regulation to mean that each point source must be given an individual wasteload allocation when it is feasible to calculate such a wasteload allocation. EPA believes that states may find it infeasible to calculate individual wasteload allocations for all point sources covered by a specific general permit. In that case, the TMDL would establish individual wasteload allocations for dischargers subject to individual permits, whereas dischargers subject to a general permit would be accounted for in the aggregate under a single wasteload allocation specific to the general permit under which they are authorized to discharge.

*Comment g:* Lift the new source/new discharger restriction if there is not a storm water component of the approved TMDL.

*Response g:* EPA, in Sections 1.2.3.8.1 and 1.2.3.8.2, was merely conditioning a discharger's eligibility for coverage under the MSGP upon meeting certain existing conditions and requirements in EPA's NPDES regulations which apply in all applicable circumstances involving both individual and general permits. In doing so, EPA intended to merely restate those existing conditions and requirements as eligibility requirements under the MSGP. Specifically, EPA's intention in section 1.2.3.8.1 was to condition a new discharger's eligibility for coverage under the MSGP upon meeting the existing regulatory conditions under 40 CFR 122.4(i). A new discharger, therefore would not be eligible for coverage under the MSGP if its discharge would "cause or contribute to a violation of a water quality standard." As mentioned, this regulation is applicable to all new dischargers irrespective of the type of permit they are seeking coverage under; there is no language in this regulation that exempts new dischargers seeking coverage under a general permit. EPA, in section 1.2.3.8.1 of the MSGP, did not intend to create any confusion or change any existing interpretation of the current regulatory language referred to in that section. To avoid confusion EPA is therefore amending the language in section 1.2.3.8.1 to state that "you are not authorized to discharge if your discharge is prohibited under 40 CFR 122.4(i)."

#### *Section V.E Discharges Not Previously Covered by an Individual Permit*

*Comment:* One commenter requested clarification of the permit requirement at Part 1.2.3.3.2.3 to include any specific storm water BMPs from the old individual permit in the Storm Water

Pollution Prevention Plan when transferring from an individual permit to the MSGP. The commenter interpreted this condition to mean that only those specific storm water BMPs from the old individual permit (and areas associated with outfalls from the old permit) needed to be included in the Plan, and noted an apparent inconsistency on page 17021, Item F, of the preamble which states that the Plan must address the entire facility.

*Response:* When transferring from an individual permit to the MSGP, the requirement at Part 1.2.3.3.2.3 to include any specific storm water BMPs from the old individual permit in the Storm Water Pollution Prevention Plan is in addition to and not in lieu of the basic requirements in Part 4. However, the BMPs brought over from the old individual permit may satisfy one or more of the "basic" Storm Water Pollution Prevention Plan requirements under Part 4 and/or the sector-specific requirements under Part 6. There could be areas at a facility (e.g., employee parking lots) that do not need to be addressed under the permit (and SWPPP) unless the runoff from such areas commingles with storm water associated with industrial activity (or was previously permitted).

#### *Section VI.A Notification Requirements*

*Comment a:* The commenter supported the use of electronic filing of NOIs, but expressed concern that facilities without Internet access would be at a disadvantage.

*Response a:* It is not the intention of EPA to only accept electronic submittals. Electronic submittal is another alternative which, hopefully, will be available to the regulated community in the near future.

*Comment b:* The commenter does not support any changes to the NOI form, and expects any changes to comply with the Paperwork Reduction Act.

*Response b:* Any changes to the NOI form that result in an increase in burden for the applicant must first be reviewed and approved by the Office of Management and Budget. Part of this review includes compliance with the requirements of the Paperwork Reduction Act. Changes to the NOI form published in today's permit were limited to those that provide clarification in information, as well as those changes that reflect changes in the storm water permits issued by EPA. EPA has determined that these changes do not represent an increase in burden for completing the NOI form. As noted in Section 2.2, the more extensive changes listed in the March 30, 2000 proposal

need to complete their OMB review before they can be included in the NOI form.

*Comment c:* A commenter supported inclusion of the no exposure certification form as an addendum to the MSGP-2000.

*Response c:* EPA agrees that providing the form with the permit is a convenience for facilities qualifying for the no exposure exemption. The certification form is an addendum to the permit.

#### *Section VI.B Special Conditions*

*Comment a:* The Agency is shifting its responsibility regarding meeting minimum technology standards in NPDES permits to the discharger.

*Response a:* EPA expects that when a facility submits an NOI they are familiar with both the permit and their facility. They should be able to determine their eligibility. The permitting authority may concur with the facility's assessment, or not. EPA does not believe that it has shifted its responsibility on this matter.

*Comment b:* There was a request to clarify the requirements in the MSGP-2000 regarding co-located facilities.

*Response b:* A facility is considered co-located if there is a second industrial activity occurring which meets the definition of storm water discharge associated with industrial activity. For example, a facility operates an auto salvage yard and also has an area onsite for scrap recycling. The facility as a whole would meet the requirements for Sector M—Auto salvage. The area where scrap recycling occurs would meet the requirements for Sector N—Scrap Recycling. Any storm water discharges from the scrap recycling area needs to meet the requirements for both sectors. The second activity may or may not be related to the primary industrial activity. The determination as to whether something is co-located rests in the definition of storm water discharges associated with industrial activity. If a second activity exists at a facility which meets one of the categories in the definition, then the facility has co-located industrial activities.

#### *Section VI.C Common Pollution Prevention Plan Requirements*

*Comment a:* A commenter expressed concern about various interpretations and implementation of the storm water program, including incorporation of effluent limits, and stressed " \* \* \* It is imperative that the Agency maintains that SWPPP requirements be interpreted and implemented in a practicable and economically feasible manner."

*Response a:* EPA believes that proper implementation of storm water BMPs

will achieve compliance with water quality standards. EPA is responsible for implementation of the storm water program in eight states, various territories, including Puerto Rico and District of Columbia; and various Indian Country lands throughout the country. For the remaining 42 states, the state agency is responsible for program implementation. They have the authority to interpret and implement the program as appropriate for their state. It continues to be EPA's policy not to include effluent limitations in storm water permits. However, a state may choose to follow a different policy than EPA's.

*Comment b:* There is not a specific mention of catch basin inserts or fillers on the listing of BMPs.

*Response b:* In discussions concerning BMPs, EPA attempted to provide some examples of various types of BMPs. By no means is the listing intended to be all inclusive. EPA acknowledges that there are other BMPs, such as catch basin inserts or fillers, that were not mentioned in discussions but may be appropriate in various circumstances.

#### *Section VI.E Monitoring and Reporting Requirements*

*Comment a:* Monitoring results are an unreliable indicator of a discharge problem and they do not provide confirmation of a problem. Permittees cannot use results to support facility management.

*Response a:* EPA believes that since analytic monitoring has been performed by substantial numbers of permittees only during the fourth year of the 1995 MSGP (many facilities complying with monitoring requirements in the fourth year were covered under the earlier baseline general permit during the second monitoring year and, consequently, had no equivalent monitoring requirement), it is premature to make any final conclusions regarding the value of the Agency's acquisition of the monitoring data or to consider dropping the monitoring. In essence, the fourth-year monitoring data set EPA received represents the baseline of pollutant discharge information under the sector-specific industrial general storm water permit. Several rounds of monitoring significantly enhances the utility of the results for evaluating the effectiveness of management practices at the site as well as for the industry sector as a whole. EPA commits to using data from the 1995 and 2000 permits to evaluate the effectiveness of management practices on an industry sector basis and to evaluate the need for changes in monitoring protocols for the next permit.

EPA acknowledges that, considering the small number of samples required per monitoring year (four), and the vagaries of storm water discharges, it may be difficult to determine or confirm the existence of a discharge problem as a commenter claimed. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job. EPA believes there is presently no alternative that provides stakeholders with an equivalent indicator of program effectiveness.

*Comment b:* Monitoring results are not necessarily an indicator of BMP effectiveness and EPA never justified that they are.

*Response b:* While not practicable for EPA to require an increase in monitoring, operators are encouraged to sample more frequently to improve the statistical validity of their results. Unless the proper data acquisition protocol for making a valid BMP effectiveness determination is rigorously followed, any other method used to assess BMP effectiveness would be qualitative, and therefore less reliable. The least subjective approach, and most beneficial to operators and stakeholders, EPA believes, remains a combination of visual and analytic monitoring, using analyte benchmark levels to target potential problems. Statistical uncertainties inherent in the monitoring results will necessitate both operators and EPA exercising best professional judgment in interpreting the results. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job.

*Comment c:* Alternate test methods can be used for determining effectiveness of BMPs at a facility, and benchmarks will need modifying to account for variability in test methods.

*Response c:* A technically valid, deterministic investigation of BMP effectiveness would necessarily involve collecting discharge pollutant load data before and after the BMP. The constraints inherent in monitoring preclude requiring this kind of investigation. All other methods used to make an assessment of SWPPP/BMP effectiveness are qualitative. The least subjective approach, and most

beneficial to operators and stakeholders, EPA believes, is a combination of visual and analytic monitoring, using analyte benchmark levels (or "targets") as an indicator of potential problems.

Vagaries of storm discharges and statistical concerns will necessitate operators and EPA exercising best professional judgment in interpreting the results of any monitoring. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job.

*Comment d:* (a) The presumption of an impact on water quality standards by storm water is inappropriate given the episodic nature of storms. (b) EPA recognizes that during a storm, water quality standards will not always be met, so EPA shouldn't rely on water quality standards at a discharge point to determine if a facility is in compliance. (c) Monitoring has marginal value in assessing and protecting water quality.

*Response d:* (a) It is true that many impacts of storm water are short-term and that many pollutants are not really toxic or bioaccumulative. A short term water quality standard violation is not necessarily going to persist long enough to be toxic. (b) In the absence of establishing discharge pollutant loads that correlate directly to a receiving water, as would be done for an individual permit, EPA settled on benchmark levels which would, under nearly all scenarios, be protective of water quality standards. Recognizing the shortcomings of these generic pollutant levels, EPA only intends for them to be used as indicators of possible problems and as a flag to reevaluate the SWPPP—not as a trigger to begin mandatory SWPPP or operational revisions unless, after employing BPJ, the operator deems such revisions are necessary. (c) While end-of-pipe/end-of-property analytic monitoring for storm water may not reflect potential impacts to water quality, EPA does not intend to use the data for that purpose.

*Comment e:* EPA needs to reevaluate the validity of benchmark values.

*Response e:* Universal benchmark levels cannot be established; the next best thing would be storm water pollutant loadings vis-a-vis water segment-specific TMDLs. But when used as a target or indicator, without requiring specific corrective actions beyond using BPJ to reassess present conditions and make any changes deemed necessary, the present

benchmarks are adequate. In specific situations operators may reasonably conclude, after analyzing monitoring results above benchmarks, their present SWPPPs/BMPs are adequately protective of water quality, or that other conditions such as discharging to low-quality, ephemeral streams may obviate the need for SWPPP/BMP revisions.

*Comment f:* Monitoring diverts resources from more effective implementation of SWPPPs. EPA should focus on pollution prevention, instead.

*Response f:* In developing the monitoring requirements, *i.e.*, pollutants of concern, monitoring waivers, etc., along with providing sampling and monitoring guidances, EPA endeavored to make the financial burden as minimal as possible. Four quarterly samples is a minimal data set for evaluating the effectiveness of SWPPPs. Those least able to afford expansive monitoring programs, *i.e.*, small businesses, likely have few outfalls to begin with. EPA believes that if monitoring is required at a facility, it should be planned for and budgeted as a cost of doing business.

*Comment g:* Permittees fear benchmark limits would be viewed as effluent limitations.

*Response g:* EPA agrees that benchmark limits are not effluent limitations and should not be used, in and of themselves, as the basis for issuing an enforcement violation.

*Comment h:* Storm water discharge variability can be caused by atmospheric/dry deposition, run on and fate in transport; facilities with structural leachate are at a disadvantage vis-a-vis those without the problem.

*Response h:* EPA acknowledges the potential for adding pollutants to a facility's discharges from external or structural sources. A permittee is, nonetheless, still legally responsible for the quality of all discharges from his/her site—but not from pollutants that may be introduced outside the boundaries of his/her property or the areas where his/hers structures, industrial activities or materials are located. Anything that increases the pollutant load in the runoff prior to leaving the site, whether originating from air deposition, run-on from nearby sites, or leachate from on-site structures, remains the responsibility of the permittee. This was affirmed in the ruling by the Environmental Appeals Board against the General Motors Corp. CPC-Pontiac Fiero Plant in December 1997.

*Comment i:* Allow pollutant credits for background sources of pollution.

*Response i:* Pollutant credits for background sources of pollution is unfeasible for storm water. Either EPA or the permittee would have to

determine the pollutant loads of both the run-on and runoff to calculate pollutant credits. Resources are insufficient to implement this practice.

*Comment j:* Differences in monitoring results may result from changes in business conditions; changes in personnel doing monitoring can make observations/discharge examinations unreliable.

*Response j:* EPA published guidance on both monitoring and sampling procedures (available from EPA's Office of Water Resource Center) to standardize data collection practices.

*Comment k:* The same person cannot always do monitoring. Having to rely on different people is bad for consistency in recording observations and making discharge examinations.

*Response k:* EPA requires that personnel implementing the SWPPP be provided training as an element of the SWPPP. This training must cover program elements to ensure the quality and validity of all information collected.

*Comment l:* Sampling can be dangerous.

*Response l:* EPA provides waivers and options such that extreme weather or perilous conditions are accounted for.

*Comment m:* Determining whether a storm qualifies to be monitored is difficult.

*Response m:* EPA has always defined what constitutes a storm event worthy of monitoring. Modern weather forecasting is making it easier to anticipate and plan for qualifying storms.

*Comment n:* Monitoring in remote west or arid/semi-arid areas is difficult and burdensome.

*Response n:* EPA has always had accommodations and waivers for lack of qualifying storm events. See EPA Response o below.

*Comment o:* EPA should reduce analytic monitoring and visual monitoring based on average rainfall (similar to Phase II regulations).

*Response o:* EPA already allows permittees to skip monitoring in any quarter in which no qualifying storm events occur.

*Comment p:* Some discharges (in the west) occur only infrequently and sometimes only to isolated, ephemeral streams (which may have no indigenous biota).

*Response p:* Ephemeral streams may still eventually flow into permanent waters of the U.S.; hence, protective measures may still be needed to protect water quality. If there are truly no water quality standards established for an ephemeral stream and the outflow does not feed another water body, then it's likely there would not be a "point

source discharge" and no permit would be required. Only those point source discharges to waters of the U.S. need to be included in a SWPPP.

*Comment q:* Continuation of monitoring is not justified, especially for mining sectors.

*Response q:* EPA believes that since analytic monitoring has been performed by substantial numbers of permittees only during the fourth year of the 1995 MSGP (many facilities complying with monitoring requirements in the fourth year were covered under the earlier baseline general permit during the second monitoring year and, consequently, had no equivalent monitoring requirement), it is premature to make any final conclusions regarding the value of the Agency's acquisition of the monitoring data or to consider dropping the monitoring. In essence, the fourth-year monitoring data set EPA received represents the baseline of pollutant discharge information under the sector-specific industrial general storm water permit. Several rounds of monitoring significantly enhance the utility of the results for evaluating the effectiveness of management practices at the site as well as for the industry sector as a whole. EPA commits to using data from the 1995 and 2000 permits to evaluate the effectiveness of management practices on an industry sector basis and to evaluate the need for changes in monitoring protocols for the next permit.

EPA acknowledges that, considering the small number of samples required per monitoring year (four), and the vagaries of storm water discharges, it may be difficult to determine or confirm the existence of a discharge problem as a commenter claimed. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job. EPA believes there is presently no alternative that provides stakeholders with an equivalent indicator of program effectiveness.

*Comment r:* EPA has not provided guidance on monitoring snow melt events.

*Response r:* EPA does not have any specific guidance on this matter at the present time. Guidance may be developed in the future. In the interim, however, EPA believes that facilities should be able to obtain reasonably representative samples using their best judgment. Two important points must be considered to ensure the snow melt

sample is representative: (1) The melted runoff must come in contact with any pollutants of concern present and not be overly "contaminated" with concentrated surficial deposits of hydrocarbons, dirt, salt, etc., and (2) the melted runoff must have characteristics that approximate those of a monitoring-qualifying rain storm (0.1 inch runoff volume, sampled within the first 1/2 up to 1 hour).

*Comment s:* (a) In addition to monitoring results, EPA should also require submission of a description of storm water controls being implemented. (b) EPA should require facilities to monitor for pollutants similar to what would be done under an individual permit (to ensure BMPs are being implemented). (c) Monitoring will aid the permittee, permitting authority and the public in understanding the sources and toxicity of storm water at a site.

*Response s:* (a) EPA already requires that all BMPs and other controls be described in the SWPPP, including inspections, maintenance, etc. Any BMP changes or additions must be added to an updated SWPPP, so EPA will not require this information be formally submitted. If EPA needs to inspect a facility or determine an enforcement issue, the facility's SWPPP will be reviewed for BMP information. (b) Customizing a facility's monitoring requirements is tantamount to writing an individual permit for the facility, which would require the same application package as for an individual permit. This is an option for those facilities where discharges or receiving waters are a concern but, otherwise, EPA believes the requirements of the present general permit with the identified pollutants of concern is sufficient for a large majority of facilities. (c) EPA agrees that monitoring can be used as an indicator of potential problems or toxicity concerns.

*Comment t:* Submit Discharge Monitoring Reports (DMRs) along with NOIs to prove compliance. If no DMRs were submitted under the current MSGP, require quarterly monitoring for all five years of MSGP-2000.

*Response t:* DMR and NOI submission deadlines have not coincided in the past and, from a regulatory perspective, it is not feasible to link them. Past instances of non-compliance are an enforcement issue with established penalties in the CFRs, but these instances do not automatically preclude future permit coverage nor can EPA include separate "penalties" such as 5-year monitoring in the permit for them.

*Comment u:* Analytic monitoring may be good for general info, which may be

of use to the facility and regulatory agency, but it should not be required under the permit. Only visual monitoring should be required. One commenter indicated that analytic monitoring may be good for watershed-wide indications of general trends.

*Response u:* EPA believes that since analytic monitoring has been performed by substantial numbers of permittees only during the fourth year of the 1995 MSGP (many facilities complying with monitoring requirements in the fourth year were covered under the earlier baseline general permit during the second monitoring year and, consequently, had no equivalent monitoring requirement), it is premature to make any final conclusions regarding the value of the Agency's acquisition of the monitoring data or to consider dropping the monitoring. In essence, the fourth-year monitoring data set EPA received represents the baseline of pollutant discharge information under the sector-specific industrial general storm water permit. Several rounds of monitoring significantly enhance the utility of the results for evaluating the effectiveness of management practices at the site as well as for the industry sector as a whole. EPA commits to using data from the 1995 and 2000 permits to evaluate the effectiveness of management practices on an industry sector basis and to evaluate the need for changes in monitoring protocols for the next permit.

EPA acknowledges that, considering the small number of samples required per monitoring year (four), and the vagaries of storm water discharges, it may be difficult to determine or confirm the existence of a discharge problem. When viewed as an indicator, analytic levels considerably above benchmark values can serve as a flag to the operator that his SWPPP needs to be reevaluated and that pollutant loads may need to be reduced. Conversely, analytic levels below or near benchmarks can confirm to the operator that his SWPPP is doing its intended job. EPA believes there is presently no alternative that provides stakeholders with an equivalent indicator of program effectiveness. A technically valid, deterministic investigation of BMP effectiveness would necessarily involve collecting discharge pollutant load data before and after the BMP. The constraints inherent in monitoring preclude requiring this kind of investigation. All other methods used to make an assessment of SWPPP/BMP effectiveness are qualitative. Quarterly visual monitoring of storm water discharges has always been a permit requirement, for many of the same reasons why commenters favor it,

and will continue to be so. The least subjective approach, and most beneficial to operators and stakeholders, EPA believes, is a combination of visual and analytic monitoring, using analyte benchmark levels (or "targets") as an indicator of potential problems. Variability of storm discharges and statistical concerns will necessitate operators and EPA exercising best professional judgement in interpreting the results of any monitoring.

Monitoring in impaired water bodies would focus attention on the problem water bodies and possible pollutant sources. However, not all impaired water bodies and their impairments have been determined. The goal of EPA's storm water program is also to protect and maintain water quality, not just remediate impaired waters, so focusing on impaired waters only does not fulfill all the program's responsibilities.

*Comment v:* If monitoring results are below the benchmark, facilities should not be required to monitor unless there are major changes to the facility.

*Response v:* Several rounds of monitoring significantly enhances the utility of the results for evaluating the effectiveness of management practices at the site as well as for the industry sector as a whole. EPA is keeping the monitoring requirement for all specified sectors at least one more time to provide stakeholders with continued assurance that SWPPPs are being implemented, concerted efforts to protect water quality are ongoing, and a mechanism is in place to indicate potential problems. The previous second year monitoring waiver for facilities with pollutant levels below the benchmark level is being retained.

*Comment w:* Substantially identical outfalls reduces burden and is beneficial to SWPPP implementation.

*Response w:* Noted.

#### Visual Monitoring

*Comment x:* Numerous commenters supported dropping analytic monitoring from the MSGP-2000 in favor of just requiring quarterly visual monitoring. Commenters claimed visual monitoring is adequate to ensure compliance and environmental protection (especially coupled with training), and is least burdensome.

*Response x:* Quarterly visual monitoring of storm water discharges has always been a permit requirement, for many of the same reasons why commenters favor it, and will continue to be so. EPA will also be retaining analytic monitoring because we believe the best way to ensure SWPPP effectiveness and protection of water

quality is through a combination of visual and analytic monitoring. The reasons for not adopting visual monitoring only are explained further in the rationale for justifying quarterly analytic monitoring.

*Comment y:* Operators need flexibility to collect representative samples for visual monitoring.

*Response y:* EPA believes the same representative sample reduction provided for analytic monitoring is inappropriate for the quarterly visual monitoring. A visual examination of all discharges is the least that operators can do to ensure all discharges are clean and would provide greater confirmation to themselves and other stakeholders that the representative discharge sample reduction claimed for analytic monitoring is, in fact, justified.

*Comment z:* Support visual monitoring with use of field test kits, which are cheaper and easier than 40 CFR 136.

*Response z:* Field test kits have not yet been confirmed as being as reliable as currently required analytical methods. Therefore, EPA is not allowing the use of kits in place of currently required analytical methods at this time.

*Comment aa:* Make visual evaluations standard.

*Response aa:* EPA has standard protocols for storm water sampling (the storm water sampling guidance can be obtained from EPA's Office of Water Resource Center at 202-260-7786) and the permit describes the examination procedures, parameters to be examined, meaning of results, etc.

*Comment bb:* Visual monitoring should be reduced commensurately in arid climates.

*Response bb:* EPA already allows permittees to document in their monitoring records that no discharge occurred during a monitoring quarter.

#### Annual Reporting

*Comment cc:* One option suggested by commenters was for an annual report, possibly using a standardized form, to be submitted to EPA detailing the permittee's SWPPP highlights and revisions/additions, inspections, compliance evaluations, visual monitoring results, etc. One comment against this option stated that the volume of data submitted would be too great for the Agency to evaluate. Other opponents to this option indicated that the reports would not contain enough information to evaluate SWPPP effectiveness, ensure water quality protection, or provide the information necessary to make long-term management plans. Commenters in support of the annual report concept

held that it would provide a record of the permittee's commitment to storm water control, was better for evaluating SWPPP effectiveness, and would provide information to EPA to determine if sampling or a site inspection is needed.

*Response cc:* Information on SWPPP highlights and revisions/additions, inspections, compliance evaluations, visual monitoring results, etc. is already required to be documented in a facility's SWPPP, which, if deemed necessary, must be provided to EPA on demand. If no monitoring data were available, an annual report could be used to ensure that a facility is implementing its SWPPP. The reports could also be used to prioritize sites for inspection. However, EPA agrees that it would be very burdensome to review all the reports and very difficult to assess the effectiveness of a facility's SWPPP based on that review alone. The subjectivity inherent in annual reporting makes it an undesirable substitute for analytic monitoring. Documenting the kind of information in the annual report is already a SWPPP requirement and is, therefore, available to operators for assessing and improving their storm water programs. For these reasons, EPA will not require reports containing essentially the same information required in SWPPPs to be submitted in lieu of analytic monitoring.

#### Group Monitoring

*Comment dd:* Commenters also suggested group monitoring. In this option a consortium of like permittees would do sampling at one facility, possibly on a rotating basis. The sample results would represent all the facilities in the consortium. A variation of group monitoring is for the consortium to retain a consultant to do representative sampling and provide storm water program guidance and evaluations. Supporters of this concept said it may allow for comparisons of effectiveness of different SWPPP practices (e.g., sweeping vs. catchment basin for solids control). One commenter pointed out that the feasibility of the group concept is suspect due to the fact that individual facilities may have different topography, soil and other natural conditions.

*Response dd:* EPA believes that technically valid BMP comparisons could be done under this type of program. However, it would be difficult and very resource-intensive for EPA to establish criteria for group eligibility and then monitor to ensure that groups met these criteria.

#### Watershed Monitoring

*Comment ee:* Commenters suggested conducting watershed monitoring rather than monitoring at the facility. This option involves replacing the monitoring of discrete storm water discharges with ambient receiving water monitoring on a watershed basis.

*Response ee:* Watershed monitoring is invaluable to making real conclusions regarding storm water impacts of water quality, and will be employed in making total maximum daily load (TMDL) determinations. However, watershed monitoring cannot replace facility-specific storm water discharge monitoring to determine the loads contributed by the facilities and to evaluate the effectiveness of the SWPPP.

#### Monitoring Only in Impaired Waters

*Comment ff:* Several commenters supported requiring monitoring only in impaired water bodies and for pollutants that cause the impairment.

*Response ff:* Although this option would focus attention on the problem water bodies and possible pollutant sources, EPA and a commenter point out that not all impaired water bodies and their impairments have been determined. The goal of EPA's storm water program is also to protect and maintain water quality, not just remediate impaired waters, so focusing on impaired waters only does not fulfill all the program's responsibilities.

#### Section VII Cost Estimates for Common Permit Requirements

*Comment:* EPA incorrectly estimated costs associated with the original MSGP. The new permit imposes even more costs. EPA must better estimate these costs, especially for small businesses. EPA should conduct a Regulatory Flexibility Analysis as well as perform a Small Business Regulatory Enforcement Fairness Act (SBREFA) consultation.

*Response:* The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis.

The MSGP-2000 provides facilities the option of obtaining a general permit

rather than applying for individual permits; it does not extend coverage of the existing NPDES regulations. Therefore, the costs associated with obtaining a permit were already addressed when the NPDES regulations were issued. Furthermore, the MSGP-2000 is intended to reduce costs by providing a streamlined procedure for obtaining permit coverage. For these reasons, there was no requirement on EPA to conduct a separate analysis to support the MSGP-2000.

#### **X. Economic Impact (Executive Order 12866)**

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the reissued MSGP is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

#### **XI. Unfunded Mandates Reform Act**

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That

section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law \* \* \*"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that today's MSGP reissuance does not result in expenditures of \$100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the final MSGP will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

Today's final MSGP also will not uniquely affect small governments because compliance with the final permit conditions affects small governments in the same manner as any other entities seeking coverage under the final permit.

#### **XII. Paperwork Reduction Act**

EPA has reviewed the requirements imposed on regulated facilities resulting from the final MSGP under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the MSGP have already been approved in previous submissions made for the NPDES permit program under the provisions of the CWA.

#### **XIII. Regulatory Flexibility Act**

The Agency has determined that the final MSGP being published today is not subject to the Regulatory Flexibility Act ("RFA"), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a

substantial number of small entities. By its terms, the RFA only applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") or any other statute. Today's final MSGP is not subject to notice and comment requirements under the APA or any other statute because the APA defines "rules" in a manner that excludes permits. See APA section 551(4), (6), and (8).

APA section 553 does not require public notice and opportunity for comment for interpretative rules or general statements of policy. In addition to finalizing the new MSGP, today's notice repeats for the convenience of the reader an interpretation of existing regulations promulgated almost twenty years ago. The action would impose no new or additional requirements.

#### **Authorization to Discharge Under the National Pollutant Discharge Elimination System**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*), operators of discharges associated with industrial activities that submit a complete Notice of Intent in accordance with Part 2.2 for a discharge that is located in an area specified in Part 1.1 and eligible for permit coverage under Part 1.2 are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on October 30, 2000.

This permit and the authorization to discharge expire at midnight, October 30, 2005.