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Part II

Environmental Protection Agency

Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6880–5]

Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES general permit.

SUMMARY: The Regional Administrators of EPA Regions 1, 2, 3, 4, 6, 8, 9 and 10 are today reissuing EPA's NPDES Storm Water Multi-Sector General Permit (MSGP). This general permit was first issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534) and September 30, 1998 (63 FR 52430). The reissuance of the MSGP was proposed by EPA on March 30, 2000 (65 FR 17010). Today's final MSGP will authorize the discharge of storm water from industrial facilities consistent with the terms of the permit.

DATES: This MSGP shall be effective on October 30, 2000. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the existing MSGP on October 1, 2000. Deadlines for submittal of notices of intent are provided in Section VI.A.2 of this fact sheet and Part 2.1 of the MSGP. Today's MSGP also provides additional dates for compliance with the terms of the permit.

ADDRESSES: The index to the administrative record for the final MSGP is available at the appropriate Regional Office or from the EPA Water Docket Office in Washington, DC. The administrative record, including documents immediately referenced in this reissuance notice and applicable documents used to support the original issuance of the MSGP in 1995, are stored at the EPA Water Docket Office at the following address: Water Docket, MC–4101, U.S. EPA, 401 M Street SW, room EB57, Washington, DC 20460. The records are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at (202) 260–3027. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

FOR FURTHER INFORMATION CONTACT: For further information on the final MSGP, contact the appropriate EPA Regional Office. The name, address and phone number of the EPA Regional Storm Water Coordinators are provided in Section VI.F of this fact sheet. Information is also available through the Internet on EPA's Office of Wastewater Management website at http://www.epa.gov/owm/sw.

SUPPLEMENTARY INFORMATION: The following fact sheet provides background information and explanation for today's notice of final MSGP reissuance, including a summary Response to Comments regarding the comments which were received on the proposed MSGP. The actual language of the final MSGP appears after this fact sheet.

Fact Sheet

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I. Background

The Regional Administrators of EPA Regions 1, 2, 3, 4, 6, 8, 9 and 10 are today reissuing EPA's NPDES Storm Water Multi-Sector General Permit (MSGP). The MSGP currently authorizes storm water discharges associated with industrial activity for most areas of the United States where the NPDES permit program has not been delegated. The MSGP was originally issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534) and September 30, 1998 (63 FR 52430). The proposed reissuance of the MSGP appeared in the **Federal Register** on March 30, 2000 (65 FR 17010).

The 1995 MSGP was the culmination of the group permit application process described at 40 CFR 122.26(c)(2). A group permit application was one of three options for obtaining an NPDES industrial storm water permit which

were provided by the 1990 storm water permit application regulations (55 FR 48063). The 1990 regulations also provided that industrial facilities could apply for coverage under an existing general NPDES permit or apply for an individual permit. In 1992, EPA issued a baseline general permit (57 FR 41175 and 57 FR 44412) to cover industrial facilities which did not select the group application option or submit an application for an individual permit.

In response to the group application option, EPA received applications from approximately 1,200 groups representing nearly all of the categories of industrial facilities listed in the storm water regulations at 40 CFR 122.26(b)(14). To facilitate permit issuance for the group applications, EPA consolidated the groups into 29 industrial sectors, with subsectors also included in certain sectors as appropriate.

In developing the requirements for the 1995 MSGP, EPA utilized and built upon the storm water pollution control requirements of the 1992 baseline general permit. The baseline permit had required a storm water pollution prevention plan (SWPPP) with generic best management practice (BMP) requirements which applied to all facilities covered by the permit. In addition, certain categories of facilities were required to monitor storm water discharges based on EPA's best professional judgment concerning the risks posed by the facilities.

The group permit applications included information concerning the specific types of operations which are present at the different types of industrial facilities, potential sources of pollutants at the facilities, industry-specific BMPs which are available, and monitoring data from the different types of facilities. Using this information, EPA developed SWPPP requirements for the MSGP which consisted of the generic requirements of the baseline permit plus industry-specific requirements developed from the group application information. Also, the monitoring requirements of the 1995 MSGP were developed using the monitoring data submitted with the group applications rather than EPA's best professional judgment.

On September 30, 1998 (63 FR 52430), EPA terminated the baseline general permit and required facilities which were previously covered by the baseline permit to seek coverage under the MSGP (or submit an individual permit application). EPA believed that the MSGP, with its industry-specific requirements, would provide improved water quality benefits as compared to the baseline permit.

For today's reissuance of the MSGP, EPA has re-evaluated the industry-specific requirements of the MSGP. In a few instances, additional requirements have been included based on new information which has been obtained since the original MSGP issuance in 1995. These changes are discussed in more detail in Section VIII of this fact sheet, and in the Response to Comments. EPA also re-evaluated the monitoring requirements of the existing MSGP. However, after review of the comments received from the public, and the monitoring data received during the term of the 1995 MSGP, EPA has retained the same monitoring requirements for the reissued MSGP as were found in the 1995 MSGP.

A. Pollutants in Storm Water Discharges Associated With Industrial Activities in General

The volume and quality of storm water discharges associated with industrial activity will depend on a number of factors, including the industrial activities occurring at the facility, the nature of the precipitation, and the degree of surface imperviousness. A discussion of these factors was provided in the fact sheet for the original proposed MSGP (58 FR 61146 Nov. 19, 1993), and is not being repeated here.

B. Summary of Options for Controlling Pollutants

Pollutants in storm water discharges from industrial plants may be reduced using the following methods: Eliminating pollution sources, implementing BMPs to prevent pollution, using traditional storm water management practices, and providing end-of-pipe treatment. A general discussion of each of these was included in the original proposed MSGP (58 FR 61146, Nov. 19, 1993), and is not being repeated here.

C. The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewer Systems

A key issue in developing a workable regulatory program for controlling pollutants in storm water discharges associated with industrial activity is the proper use and coordination of limited regulatory resources. This is especially important when addressing the appropriate role of municipal operators of large and medium municipal separate storm sewer systems in the control of pollutants in storm water associated with industrial activity which discharge through municipal separate storm sewer systems. The original proposed MSGP discussed several key policy factors (see 58 FR 61146).

II. Organization of Final MSGP and Summary of Changes From the 1995 MSGP and the March 30, 2000 Proposed MSGP

The organization of today's final MSGP has been revised from the 1995 MSGP to reduce the overall size of the permit. In Part XI of the 1995 MSGP, many requirements such as SWPPP and monitoring requirements which were common to each sector were repeated in each sector, greatly adding to length of the permit. For today's reissuance, such requirements are found only once in expanded sections of the permit (Parts 4 and 5) which include requirements common to each sector. Requirements which are genuinely unique to a given sector or subsector are found in Part 6 in the permit. Similarly, Section VIII of the fact sheet for the 1995 MSGP repeated certain explanatory information in the discussions of sector-specific requirements, and also included considerable descriptive information about the various sectors. To reduce the length of today's notice, most of this information is not being repeated. Section VIII of today's fact sheet focuses on the changes (if any) in the various sectors. The reorganization and reduction of duplication have reduced the size of the permit by approximately 75%.

Also note that the section/paragraph identification scheme of today's final MSGP has been modified from the 1995 MSGP. The original scheme utilized a sometimes lengthy combination of numbers, letters and Roman numerals (in both upper and lower cases) which many permittees found confusing. Today's reissuance identifies sections/paragraphs, and hence permit conditions, using numbers only, except in Part 6 (which also incorporates the sector letters from the 1995 MSGP for consistency). Under the original permit, only the last digit or letter of the section/paragraph identifier appeared with its accompanying section title/paragraph, making it difficult to determine where you were in the permit. In today's reissuance, the entire string of identifying numbers is listed at each section/paragraph to facilitate recognizing where you are and in citing and navigating through the permit. For example, paragraph number 1.2.3.5 tells you immediately that you are in Part 1, section 2, paragraph 3, subparagraph 5; whereas under the 1995 MSGP you would only see an ''e'', thereby forcing you to hunt back through the permit to

determine that you were in Part I.B.3.e. The exception to the numbering rule is in Part 6, where the Sector letters from the 1995 MSGP have been retained to correspond to the sectors of industry covered by the permit and make it easy to tell that you are in a section of the permit which has conditions which only apply to a specific industrial sector. For example, paragraph 6.F.3.4 immediately tells you that you are in Part 6 and looking at conditions that only apply to sector ''F'' facilities. In some cases, requirements which previously appeared in a single paragraph are now found listed out as separate individual items. The final MSGP is also written in EPA's ''readable regulations'' style using terms like ''you'' and ''your'' in referring to permittees, etc.

Following below is a list of the major changes included in the proposed MSGP of March 30, 2000 (as compared to the 1995 MSGP) and retained in today's final MSGP. These changes are discussed in more detail later in this fact sheet.

1. Requirements for co-located activities clarified (Part 1.2.1.1).
2. Incidental cooling tower mist discharges included as an authorized non-storm water discharge, subject to certain requirements (Parts 1.2.2.2.13 and 4.4.2.3).
3. Eligibility provided for coverage of inactive mining activities occurring on Federal Lands where an operator has not been identified (Part 1.2.3).
4. Clarified language for situations where a discharge previously covered by an individual permit can be covered under today's MSGP (Part 1.2.3.3).
5. Clarified/added language for compliance with water quality standards and requirements for follow-up actions if standards are exceeded (Parts 1.2.3.5 and 3.3).
6. ESA and NHPA eligibility requirements modified (Parts 1.2.3.6 and 1.2.3.7).
7. Eligibility requirements for discharges to water quality impaired/limited waterbodies added/clarified (Part 1.2.3.8).
8. Clarified that discharges which do not comply with anti-degradation requirements are not authorized by the permit (Part 1.2.3.9).
9. Deadline of 30 days for submission of an NOT added (Part 1.4.2).
10. Opportunity for termination of permit coverage based on the ''no exposure exemption'' from the Phase II storm water regulations (64 FR 68722, 12/8/99) added (Parts 1.5 and 11.4).
11. Notice of Intent requirements and modified form (Part 2.2 and Addendum D).
12. Permit will accommodate electronic filing of NOIs, NOTs, or DMRs, should these options become available during the term of the permit (Parts 2.3 and 7.1)
13. Prohibition on discharges of solid materials and floating debris and requirement to minimize off-site tracking of materials and generation of dust added (Part 4.2.7.2.3).
14. Requirement to include a copy of the permit with the storm water pollution prevention plan (SWPPP) was added (Part 4.7).
15. Special conditions for EPCRA 313 facilities were modified (Part 4.12).
16. Monitoring requirements reorganized and additional clarification/revisions on monitoring periods, waivers, default minimum monitoring for limitations added by State 401 certification, and reporting requirements added (Part 5).
17. Manufacturing of fertilizer from leather scraps (SIC 2873) moved from Sector Z—Leather Tanning and Finishing to Sector C—Chemical and Allied Products (Table 1–1 and Part 6.C).
18. New effluent limitations guidelines for landfills in Sectors K and L included; the final guidelines were published in the **Federal Register** on January 19, 2000 (65 FR 3007) (Parts 6.K.5 and 6.L.6).
19. Sector AD (Non-Classified Facilities) language clarified to say that facilities cannot choose coverage under Sector AD, but can only be so assigned by permitting authority (Part 6.AD).
20. Additional BMP requirements in Sectors S, T, and Y added (Parts 6.S, 6.T, and 6.Y).
21. NOI to continue coverage under the permit when it expires (without a replacement permit in place) is not required and the reapplication process has been clarified (Part 9.2).
22. Process for EPA to remove facilities from permit coverage clarified (Part 9.12).

Following below is another list which summarizes the provisions of today's final MSGP which differ from the proposed MSGP of March 30, 2000.

1. Reference to ''drinking fountain water'' removed from Part 1.2.2.2.3.
2. Part 1.2.3.3.2.1 of the proposed MSGP was deleted. This requirement had not allowed MSGP coverage for facilities previously covered by another permit, unless the other permit only covered storm water and MSGP authorized non-storm water discharges.
3. Part 2.2.3.6 revised to indicate that the NOI must include the name of the MS4 receiving the discharges only if it is different from the permittee.
4. Part 4.9.3 revised to clarify the time frame for implementation of revised SWPPP.
5. Part 4.11 revised to require permittees to provide a copy of their SWPPP to the public when requested in writing to do so.
6. Sector E coverage was modified for consistency with the September 30, 1998 MSGP modification.
7. In Sector G, language was added stating that non-storm water discharges must be tested or evaluated; this change ensures consistency with the 1995 MSGP. Also in Sector G, the definition of ''reclamation'' was revised.
8. The title for Sector I was changed to include ''Refining.''
9. Sector T revised for consistency with 40 CFR 122.26(b)(14)(ix) concerning size of POTWs covered.
10. Section V.C. deleted the requirement to consider species proposed for listing as endangered or threatened.

III. Geographic Coverage of Final MSGP

The geographic coverage of today's final MSGP includes the following areas:

EPA Region 1—for the States of Maine, Massachusetts and New Hampshire; for Indian Country lands located in Massachusetts, Connecticut, Rhode Island and Maine; and for Federal facilities in the State of Vermont.

EPA Region 2—for the Commonwealth of Puerto Rico.

EPA Region 3—for the District of Columbia and Federal facilities in the State of Delaware.

EPA Region 4—for Indian Country lands located in the State of Florida.

EPA Region 6—for the State of New Mexico; for Indian Country lands located in the States of Louisiana, New Mexico, Texas and Oklahoma (except Navajo lands and Ute Mountain Reservation lands); for oil and gas facilities under SIC codes 1311, 1381, 1382, and 1389 in the State of Oklahoma not on Indian Country lands; and oil and gas facilities under SIC codes 1311, 1321, 1381, 1382, and 1389 in the State of Texas not on Indian Country lands.

EPA Region 8—for Federal facilities in the State of Colorado; for Indian Country lands in Colorado, North Dakota, South Dakota, Wyoming and Utah (except Goshute and Navajo Reservation lands); for Ute Mountain Reservation lands in Colorado and New Mexico; and for Pine Ridge Reservation lands in South Dakota and Nebraska.

EPA Region 9—for the State of Arizona; for the Territories of Johnston Atoll, American Samoa, Guam, the

Commonwealth of Northern Mariana Islands, Midway and Wake Islands; for Indian Country lands located in Arizona, California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho, and the Fort McDermitt Reservation in Oregon and Nevada.

EPA Region 10—for the State of Idaho; for Indian Country lands located in Alaska, Oregon (except Fort McDermitt Reservation lands), Idaho (except Duck Valley Reservation lands) and Washington; and for Federal facilities in Washington.

For several reasons, the geographic area of coverage described above differs from the area of coverage of the 1995 MSGP. Indian country in Vermont and New Hampshire has been removed since there are no Federally recognized tribes in these States. Also, state NPDES permit programs have since been authorized in the States of South Dakota, Louisiana, Oklahoma (except for certain oil and gas facilities in Oklahoma) and Texas (again except for oil and gas facilities). In Oklahoma, EPA maintains NPDES permitting authority over oil and gas exploration and production related industries, and pipeline operations regulated by the Oklahoma Corporation Commission (See 61 FR 65049). Oklahoma received NPDES program authorization only for those discharges covered by the authority of the Oklahoma Department of Environmental Quality (ODEQ). In Texas, EPA maintains NPDES permitting authority over oil and gas discharges regulated by the Texas Railroad Commission (See 63 FR 51164). Texas received NPDES program authorization only for those discharges covered by the authority of the Texas Natural Resource Conservation Commission (TNRCC).

Specific additional conditions required in Region 6 as a result of a State or Tribal CWA Section 401 certification have been added for New Mexico, Oklahoma, and the Pueblos of Isleta, Pojoaque, San Juan, and Sandia. Numeric limitations for discharges in Texas contained in the previous permit pursuant to 31 TAC 319.22 and 319.23 have been continued in accordance with 40 CFR 122.44(d) and (l).

Federal facilities in Colorado, and Indian country located in Colorado (including the portion of the Ute Mountain Reservation located in New Mexico), North Dakota, South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska), Utah (except for the Goshute and Navajo Reservation lands) and Wyoming were not included in the 1995 MSGP, but are included in today's MSGP. Indian country lands in Montana are not included at this time due to a recent court order. Prior to today, industrial facilities in these areas were largely covered under an extension of EPA's 1992 baseline general permit for industries (57 FR 41175).

Also, subsequent to the issuance of the MSGP in 1995, coverage was extended to the Island of Guam on September 24, 1996 (61 FR 50020) and the Commonwealth of the Northern Mariana Islands on September 30, 1998 (63 FR 52430). Certification was not received from Arizona in time for that state to be included in this permit.

The 1995 MSGP was issued in the State of Alaska, except Indian Country, on February 9, 1996 (61 FR 5247). Industrial facilities in Alaska outside of Indian Country will continue to be covered under the 1995 MSGP through February 9, 2001. EPA will reissue the permit for Alaska at a later date, and will include any state-specific modifications or additions or additions applicable to parts 1 through 12 of this permit as part of the State's Clean Water Act Section 401 or Coastal Zone Management Act certification processes.

Lastly, today's MSGP reissuance differs from the March 30, 2000 MSGP proposal in that the State of Florida (except for Indian country) is not included. This is a result of the recent NPDES program delegation to the State of Florida.

There are some areas where the NPDES permit program has not been delegated (such as Indian country in states not listed above) where neither the MSGP nor an alternate general permit is available for authorization of storm water discharges associated with industrial activity. However, only a very small number of permittees exist in such areas and individual permits are issued as needed.

IV. Categories of Facilities Covered by the Final MSGP

Today's final MSGP authorizes storm water discharges associated with industrial activity from the categories of facilities shown in Table 1 below:

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE FINAL MSGP

Subsector	SIC code	Activity represented
Sector A. Timber Products		
1*	2421	General Sawmills and Planning Mills.
2	2491	Wood Preserving.
3*	2411	Log Storage and Handling.
4*	2426	Hardwood Dimension and Flooring Mills.
	2429	Special Product Sawmills, Not Elsewhere Classified.
	2431–2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood.
	2448, 2449	Wood Containers.
	2451, 2452	Wood Buildings and Mobile Homes.
	2493	Reconstituted Wood Products.
	2499	Wood Products, Not Elsewhere Classified.
Sector B. Paper and Allied Products Manufacturing		
1	2611	Pulp Mills.
2	2621	Paper Mills.
3*	2631	Paperboard Mills.
4	2652–2657	Paperboard Containers and Boxes.
5	2671–2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C. Chemical and Allied Products Manufacturing		
1*	2812–2819	Industrial Inorganic Chemicals.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE FINAL MSGP—Continued

Subsector	SIC code	Activity represented
2*	2821–2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Man-made Fibers Except Glass.
3	2833–2836	Medicinal chemicals and botanical products; pharmaceutical preparations,; invitro and invivo diagnostic substances; biological products, except diagnostic substances.
4*	2841–2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
5	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
6	2861–2869	Industrial Organic Chemicals.
7*	2873–2879	Agricultural Chemicals, Including Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
8	2891–2899	Miscellaneous Chemical Products.
9	3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers.		
1*	2951, 2952	Asphalt Paving and Roofing Materials.
2	2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing		
1	3211	Flat Glass.
	3221, 3229	Glass and Glassware, Pressed or Blown.
	3231	Glass Products Made of Purchased Glass.
	3281	Cut Stone and Stone Products.
	3291–3292	Abrasive and Asbestos Products.
	3296	Mineral Wool.
	3299	Nonmetallic Mineral Products, Not Elsewhere Classified.
2	3241	Hydraulic Cement.
3*	3251–3259	Structural Clay Products.
	3261–3269	Pottery and Related Products.
	3297	Non-Clay Refractories.
4*	3271–3275	Concrete, Gypsum and Plaster Products.
	3295	Minerals and Earth's, Ground, or Otherwise Treated.
Sector F. Primary Metals		
1*	3312–3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
2*	3321–3325	Iron and Steel Foundries.
3	3331–3339	Primary Smelting and Refining of Nonferrous Metals.
4	3341	Secondary Smelting and Refining of Nonferrous Metals.
5*	3351–3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
6*	3363–3369	Nonferrous Foundries (Castings).
7	3398, 3399	Miscellaneous Primary Metal Products.
Sector G. Metal Mining (Ore Mining and Dressing)		
1	1011	Iron Ores.
2*	1021	Copper Ores.
3	1031	Lead and Zinc Ores.
4	1041, 1044	Gold and Silver Ores.
5	1061	Ferroalloy Ores, Except Vanadium.
6	1081	Metal Mining Services.
7	1094, 1099	Miscellaneous Metal Ores.
Sector H. Coal Mines and Coal Mining-Related Facilities		
NA*	1221–1241	Coal Mines and Coal Mining-Related Facilities Sector.
Sector I. Oil and Gas Extraction and Refining		
1*	1311	Crude Petroleum and Natural Gas.
2	1321	Natural Gas Liquids.
3*	1381–1389	Oil and Gas Field Services.
4	2911	Petroleum refining.
Sector J. Mineral Mining and Dressing		
1*	1411	Dimension Stone.
	1422–1429	Crushed and Broken Stone, Including Rip Rap.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE FINAL MSGP—Continued

Subsector	SIC code	Activity represented
	1481	Nonmetallic Minerals, Except Fuels.
2*	1442, 1446	Sand and Gravel.
3	1455, 1459	Clay, Ceramic, and Refractory Materials.
4	1474–1479	Chemical and Fertilizer Mineral Mining.
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K. Hazardous Waste Treatment Storage or Disposal Facilities		
NA*	HZ	Hazardous Waste Treatment, Storage or Disposal.
Sector L. Landfills and Land Application Sites		
NA*	LF	Landfills, Land Application Sites and Open Dumps.
Sector M. Automobile Salvage Yards		
NA*	5015	Automobile Salvage Yards.
Sector N. Scrap Recycling Facilities		
NA*	5093	Scrap Recycling Facilities.
Sector O. Steam Electric Generating Facilities		
NA*	SE	Steam Electric Generating Facilities.
Sector P. Land Transportation		
1	4011, 4013	Railroad Transportation.
2	4111–4173	Local and Highway Passenger Transportation.
3	4212–4231	Motor Freight Transportation and Warehousing.
4	4311	United States Postal Service.
5	5171	Petroleum Bulk Stations and Terminals.
Sector Q. Water Transportation		
NA*	4412–4499	Water Transportation.
Sector R. Ship and Boat Building or Repairing Yards		
NA	3731, 3732	Ship and Boat Building or Repairing Yards.
Sector S. Air Transportation Facilities		
NA*	4512–4581	Air Transportation Facilities.
Sector T. Treatment Works		
NA*	TW	Treatment Works.
Sector U. Food and Kindred Products		
1	2011–2015	Meat Products.
2	2021–2026	Dairy Products.
3	2032	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
4*	2041–2048	Grain Mill Products.
5	2051–2053	Bakery Products.
6	2061–2068	Sugar and Confectionery Products.
7*	2074–2079	Fats and Oils.
8	2082–2087	Beverages.
9	2091–2099	Miscellaneous Food Preparations and Kindred Products.
	2111–2141	Tobacco Products.
Sector V. Textile Mills, Apparel, and Other Fabric Product Manufacturing		
1	2211–2299	Textile Mill Products.
2	2311–2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
	3131–3199 (except 3111)	Leather Products.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE FINAL MSGP—Continued

Subsector	SIC code	Activity represented
Sector W. Furniture and Fixtures		
NA	2511–2599	Furniture and Fixtures.
	2434	Wood Kitchen Cabinets.
Sector X. Printing and Publishing		
NA	2711–2796	Printing, Publishing and Allied Industries.
Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries		
1*	3011	Tires and Inner Tubes.
	3021	Rubber and Plastics Footwear.
	3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
2	3081–3089	Miscellaneous Plastics Products.
	3931	Musical Instruments.
	3942–3949	Dolls, Toys, Games and Sporting and Athletic Goods.
	3951–3955 (except 3952 as specified in Sector C).	Pens, Pencils, and Other Artists' Materials.
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
	3991–3999	Miscellaneous Manufacturing Industries.
Sector Z. Leather Tanning and Finishing		
NA	3111	Leather Tanning and Finishing.
Sector AA. Fabricated Metal Products		
1*	3411–3499	Fabricated Metal Products, Except Machinery and Transportation Equipment and Cutting, Engraving and Allied Services.
	3911–3915	Jewelry, Silverware, and Plated Ware.
2*	3479	Coating, Engraving, and Allied Services.
Sector AB. Transportation Equipment, Industrial or Commercial Machinery		
NA	3511–3599 (except 3571–3579)	Industrial and Commercial Machinery (except Computer and Office Equipment—see Sector AC).
NA	3711–3799 (except 3731, 3732)	Transportation Equipment (except Ship and Boat Building and Repairing—see Sector R).
Sector AC. Electronic, Electrical, Photographic and Optical Goods		
NA	3612–3699	Electronic, Electrical Equipment and Components, Except Computer Equipment.
	3812–3873	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods, Watches and Clocks.
	3571–3579	Computer and Office Equipment.
Sector AD. Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director		

*Denotes subsector with analytical (chemical) monitoring requirements.
NA indicates those industry sectors in which subdivision into subsectors was determined to be not applicable.

The final MSGP modification of September 30, 1998 (63 FR 52430) expanded the coverage of the 1995 MSGP to include a small number of categories of facilities which had been covered by the 1992 baseline industrial general permit but excluded from the MSGP. In Table 1 above, these categories have been included in the appropriate sectors/subsectors of the MSGP as determined by the September 30, 1998 modification.

With the September 30, 1998 modification, EPA believes that the MSGP now covers all of the categories of industrial facilities which may discharge storm water associated with industrial activity as defined at 40 CFR 122.26(b)(14) (except construction activities disturbing five or more acres which are permitted separately). However, the September 30, 1998 modification also added another sector to the MSGP (Sector AD) to cover any inadvertent omissions. EPA has retained Sector AD in today's reissued MSGP.

Sector AD is further intended to provide a readily available means for covering many of the storm water facilities which are designated for permitting in accordance with NPDES regulations at 40 CFR 122.26(g)(1)(i). These regulations provide that permit applications may be required within 180 days of notice for any discharges which contribute to a violation of a water quality standard, or are determined to be significant sources of pollutants.

EPA also recognizes that a new North American Industry Classification System (NAICS) was recently adopted by the Office of Management and Budget (62 FR 17288, April 9, 1997). NAICS replaces the 1987 standard industrial classification (SIC) code

system for the collection of statistical economic data. However, the use of the new system for nonstatistical purposes is optional. EPA considered the use of NAICS for the today's MSGP reissuance, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the previous system and this system has generally proven to be adequate for identifying the facilities covered by storm water regulations. EPA will consider transitioning to the new NAICS system in future rule making.

V. Limitations on Coverage

A. Storm Water Discharges Subject to Effluent Guideline Limitations, Including New Source Performance Standards

The general prohibition on coverage of storm water subject to an effluent guideline limitation in the 1995 MSGP has been retained in today's MSGP reissuance. Only those storm water discharges subject to the following effluent guidelines are eligible for coverage (provided they meet all other eligibility requirements):

TABLE 2.—EFFLUENT GUIDELINES APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE

Effluent guideline	New Source performance standards included in effluent guidelines?	Sectors with affected facilities
Runoff from material storage piles at cement manufacturing facilities [40 CFR Part 411 Subpart C (established February 23, 1977)].	Yes	E
Contaminated runoff from phosphate fertilizer manufacturing facilities [40 CFR Part 418 Subpart A (established April 8, 1974)].	Yes	C
Coal pile runoff at steam electric generating facilities [40 CFR Part 423 (established November 19, 1982)]	Yes	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas [40 CFR Part 429, Subpart I (established January 26, 1981)].	Yes	A
Mine dewatering discharges at crushed stone mines [40 CFR part 436, Subpart B]	No	J
Mine dewatering discharges at construction sand and gravel mines [40 CFR part 436, Subpart C]	No	J
Mine dewatering discharges at industrial sand mines [40 CFR part 436, Subpart D]	No	J
Runoff from asphalt emulsion facilities [40 CFR Part 443 Subpart A (established July 24, 1975)].	Yes	D
Runoff from landfills, [40 CFR Part 445, Subpart A and B (established February 2, 2000.]	Yes	K & L

Section 306 of the Clean Water Act (CWA) requires EPA to develop performance standards for all new sources described in that section. These standards apply to all facilities which go into operation after the date the standards are promulgated. Section 511(c) of the CWA requires the Agency to comply with the National Environmental Policy Act (NEPA) prior to issuance of a permit under the authority of Section 402 of the CWA to facilities defined as a new source under Section 306.

The fact sheet for the 1995 MSGP described a process for ensuring compliance with NEPA for the MSGP (60 FR 50809). This process, which is repeated below, has been retained for the reissued MSGP. Additional guidance is found in a new Addendum C to the final MSGP.

Facilities which are subject to the performance standards for new sources as described in this section of the fact sheet must provide EPA with an Environmental Information Document pursuant to 40 CFR 6.101 prior to seeking coverage under this permit. This information shall be used by the Agency to evaluate the facility under the requirements of NEPA in an Environmental Review. The Agency will make a final decision regarding the direct or indirect impact of the discharge. The Agency will follow all administrative procedures required in this process. The permittee must obtain a copy of the Agency's final finding prior to the submission of a Notice of Intent to be covered by this general permit. In order to maintain eligibility, the permittee must implement any mitigation required of the facility as a result of the NEPA review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage. In this way, EPA has established a procedure which allows for the appropriate review procedures to be completed by this Agency prior to the issuance of a permit under Section 402 of the CWA to an operator of a facility subject to the new source performance standards of Section 306 of the CWA. EPA believes that it has fulfilled its requirements under NEPA for this Federal action under Section 402 of the CWA.

B. Historic Preservation

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal undertakings, including undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term ''Federal undertaking'' is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 802(o). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 802(e).

Federal undertakings include EPA's issuance of general NPDES permits. In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1995 MSGP for the consideration of the effects to historic properties. That provision provided that an applicant is eligible for permit coverage only if: (1) the applicant's storm water discharges and BMPs to control storm water runoff do not affect a historic property, or (2) the applicant has obtained, and is in compliance with, a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to the historic property. See Part I.B.6, 60 FR 51112 (September 29, 1995). When applying for permit coverage, applicants were required to certify in

the NOI that they are in compliance with the Part I.B.6 eligibility requirements. Provided there are no other factors limiting permit eligibility, MSGP coverage was then granted 48 hours after the postmark on the envelope used to mail the NOI.

The September 30, 1998 modification included two revisions of the original MSGP with respect to historic properties. First, EPA amended the original Part I.B.6.(ii) to include a reference to Tribal Historic Preservation Officers (THPOs) because MSGP coverage extends to Tribal lands and in recognition of the central role Tribal governments play in the protection of historic resources. Second, EPA included NHPA guidance and a list of SHPO and THPO addresses in a new Addendum I to the MSGP to assist applicants with the certification process for permit eligibility under this condition.

For today's MSGP reissuance, EPA has modified slightly the requirements of the first option for obtaining permit coverage to enhance the protection of historic properties. Permit coverage is only available if storm water and allowable non-storm water discharges and ''discharge-related activities'' do not affect historic properties. ''Discharge-related activities'' are defined to include activities which cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce or prevent pollution in the discharges. Discharge-related activities are included to ensure compliance with NHPA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges. Because this change was minor, EPA is relying on its 1995 and 1998 consultations with the Advisory Council on Historic Preservation as its basis for reissuance of this permit.

Also, as discussed in Section VI.A.1 below, EPA intends to modify, contingent upon Office of Management and Budget review and approval, the Notice of Intent form to require that operators identify which of the above two options they are using to ensure eligibility for permit coverage under the MSGP. The NHPA guidance has also been modified to reflect the above pending changes, and appears in Addendum B in today's notice rather than Addendum I. Until the revised form is approved and issued, the current form (with minor clarifications) remains in effect.

Facilities seeking coverage under today's MSGP which cannot certify compliance with the NHPA requirements must submit individual permit applications to the permitting authority. For facilities already covered by the existing MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000).

C. Endangered Species

The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the ''Services''), that any actions authorized, funded, or carried out by the Agency (*e.g.*, EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)).

For the 1995 MSGP, EPA conducted formal consultation with the Services which resulted in a joint Service biological opinion issued by the FWS on March 31, 1995, and by the NMFS on April 5, 1995, which concluded that the issuance and operation of the MSGP was not likely to jeopardize the existence of any listed endangered or threatened species, or result in the adverse modification or destruction of any critical habitat.

The 1995 MSGP contained a number of conditions to protect listed species and critical habitat. Permit coverage was provided only where:

- The storm water discharge(s), and the construction of BMPs to control storm water runoff, were not likely to jeopardize species identified in Addendum H of the permit; or
- The applicant's activity had received previous authorization under the Endangered Species Act and established an environmental baseline that was unchanged; or,
- The applicant was implementing appropriate measures as required by the Director to address jeopardy.

For today's MSGP reissuance, EPA has modified the ESA-related requirements for obtaining permit coverage to enhance the protection of listed species. First, permit coverage is only available if storm water and allowable non-storm water discharges and ''discharge-related activities'' result in no jeopardy to listed species. ''Discharge-related activities'' are defined to include activities which cause, contribute to or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce or prevent pollution in the discharges. Discharge-related activities are included for compliance with ESA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges.

In addition, operators seeking coverage under the reissued MSGP must certify that they are eligible for coverage under one of the following five options which are provided in Parts 1.2.3.6.3.1 through 5 of the permit:

1. No endangered or threatened species or critical habitat are in proximity to the facility or the point where authorized discharges reach the receiving water; or

2. In the course of a separate federal action involving the facility (*e.g.*, EPA processing request for an individual NPDES permit, issuance of a CWA Section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under Section 7 of the ESA has been concluded and that consultation:

(a) addressed the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat and

(b) the consultation resulted in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the storm water and allowable non-storm water discharges and discharge-related activities are not likely to jeopardize listed species or critical habitat; or

3. The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat; or

4. Using due diligence, the operator has evaluated the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat and does not have reason to believe listed species or critical habitat would be jeopardized; or

5. The storm water and allowable non-storm water discharges and discharge-related activities were already addressed in another operator's

certification of eligibility under Part 1.2.3.6.3.1 through 1.2.3.6.3.4 which included the facility's activities. By certifying eligibility under this Part, a permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

The first four options listed above are similar to the eligibility provisions of the 1995 MSGP. Option 5 was added to account for situations such as an airport facility where one operator (*e.g.*, the airport authority) may have covered the entire airport through its certification. Option 5 allows other operators to take advantage of such a certification without repeating the reviews conducted by the first operator. Option 1 applies to operators who are not jeopardizing endangered species because listed species simply are not in proximity to their facility. Option 4 applies to operators who have endangered species nearby and must look more closely at potential jeopardy and may need to adopt measures to reduce the risk of jeopardy to listed species or critical habitat. The provision of the two options to determine that a facility is unlikely to jeopardize listed species, coupled with the pending new NOI requirement to indicate whether or not the Service was contacted in making the determination, will also allow for better oversight of the permit. Under the 1995 permit, there was no way to tell from the NOI information whether the decision on eligibility was due to no species in the county, a discussion with the Service, or a simple unilateral decision by the operator.

Addendum H of the 1995 MSGP provided instructions to assist permittees in determining whether they met the permit's ESA-related eligibility requirements. For today's reissued MSGP, this guidance has been updated to reflect the above requirements and appears as Addendum A. As noted in Section VI.A.1 below, EPA intends to modify the Notice of Intent form to conform with new ESA requirements discussed above.

Addendum H of the 1995 MSGP contained a list of proposed and listed endangered and threatened species that could be jeopardized by the discharges and measures to control pollutants in the discharges. EPA reinitiated and completed formal consultation with the Services for the September 30, 1998 modification of the MSGP. As a result of this consultation and in response to public comments on the modification, EPA updated the species list in Addendum H to include species that were listed or proposed for listing since the Addendum H list was originally compiled on March 31, 1995. EPA also decided to expand the list to include all of the terrestrial (*i.e.*, non-aquatic) listed and proposed species in recognition that those species may be impacted by permitted activities such as the construction and operation of the BMPs. The September 30, 1998 MSGP modification included the species list updated as of July 8, 1998 (63 FR 52494). The species list is also being updated on a regular basis and an electronic copy of the list is available at the Office of Wastewater Management website at ''http://www.epa.gov/owm/esalst2.htm''. The information may also be obtained by contacting the Services. The permittee is responsible for obtaining the updated information.

Based on comments received on the proposed MSGP on March 30, 2000 (65 FR 17010), the final permit requires facility operators to consider only listed endangered or threatened species, and not species proposed to be listed. Further explanation for the change can be found in Section IX of this notice.

On August 10, 2000, EPA initiated informal consultation with FWS and NMFS on EPA's finding of no likelihood of adverse effect on threatened and endangered species and critical habitat resulting from issuance of MSGP–2000. On September 22, 2000 FWS concurred with EPA's finding.

To be eligible for coverage under today's reissued MSGP, facilities must review the updated list of species and their locations in conjunction with the Addendum A instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the updated species list is found in the county in which the facility is located, then there is a likelihood of no jeopardy and they are eligible for permit coverage. Applicants must then certify that their storm water and allowable non-storm water discharges, and their discharge-related activities, are not likely to jeopardize species and will be granted MSGP permit coverage 48 hours after the date of the postmark on the envelope used to mail the NOI form, provided there are no other factors limiting permit eligibility.

If listed species are located in the same county as the facility seeking MSGP coverage, then the applicant must determine whether the species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities at the facility. A species is in proximity to a storm water or allowable non-storm water discharge when the species is located in the path or down gradient area through which or over which the point source discharge flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if it is located in the area of a site where discharge-related activities occur. If an applicant determines there are no species in proximity to the storm water or allowable non-storm water discharges, or discharge-related activities, then there is no likelihood of jeopardizing the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. The environmental baseline generally includes the past and present impacts of all Federal, state and private actions that were occurring at the time the initial NPDES authorization and current ESA section 7 action by EPA or any other federal agency was taken. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in the updated species list are in proximity to the discharges or discharge-related activities, then the applicant must determine whether there is any likely jeopardy to the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, as described in the instructions in Addendum A of the permit. If the applicant determines that there is no likely jeopardy to the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be any jeopardy, then the applicant is not eligible for MSGP coverage unless or until he or she can meet one of the other eligibility conditions.

All dischargers applying for coverage under the MSGP must provide in the application information on the Notice of Intent form: (1) A determination as to whether there are any listed species in proximity to the storm water or allowable non-storm water discharges or discharge related activity, and (2) (when

EPA receives approval from the Office of Management and Budget and issues the revised form) an indication of which option under Part 1.2.3.6.3 of the MSGP they claim eligibility for permit coverage, and (3) a certification that their storm water and allowable non-storm water discharges and discharge-related activities are not likely to jeopardize listed species, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers who cannot determine if they meet one of the endangered species eligibility criteria cannot sign the certification to gain coverage under the MSGP and must apply to EPA for an individual NPDES storm water permit. For facilities already covered by the 1995 MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000). As appropriate, EPA will conduct ESA section 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the basis of possible jeopardy to species or critical habitats. Where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species, 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.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the SWPPP, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. They significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency and the Services to focus their resources on those discharges that are indeed likely to jeopardize listed species. Straightforward mechanisms such as these allow applicants more immediate access to permit coverage, and eliminates ''permit limbo'' for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

D. New Storm Water Discharges to Water Quality-Impaired or Water Quality-Limited Receiving Waters

Today's final MSGP includes a new provision (Part 1.2.3.8) which establishes eligibility conditions with regard to discharges to water quality-limited or water quality-impaired waters. For the purposes of this permit, ''water quality-impaired'' refers to a stream, lake, estuary, etc. that is not currently meeting its assigned water quality standards. These waters are also referred to as ''303(d) waters'' due to the requirement under that section of the CWA for States to periodically list all state waters that are not meeting their water quality standards. ''Water quality-limited waters'' refers to waterbodies for which a State had to develop individual Total Maximum Daily Loads (TMDLs), a tool which helps waterbodies meet their water quality standards. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Water quality standards are set by States, Territories, and Tribes. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The CWA, section 303, establishes the water quality standards and TMDL programs.

Prior to submitting a Notice of Intent, any new discharger (see 40 CFR 122.2) to a 303(d) waterbody must be able to demonstrate compliance with 40 CFR 122.4(i). In essence, you are a new discharger if your facility started discharging after August 13, 1979 and your storm water was not previously permitted. Any discharger to a waterbody for which there is an approved TMDL must confirm that the TMDL allocated a portion of the load for storm water point source discharges. These provisions apply only to discharges containing the pollutant(s) for which the waterbody is impaired or the TMDL developed.

Part 1.2.3.8.1 (which applies to new storm water discharges and not to existing discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(i), which include certain special requirements for new discharges into impaired waterbodies. Lists of impaired waterbodies (sometimes referred to as 303(d) waterbodies) may be obtained from appropriate State environmental offices or their internet sites. NPDES regulations at 40 CFR 122.4(i) prohibit discharges unless it can be shown that:

1. There are sufficient remaining pollutant load allocations to allow for the discharge; and
2. The existing dischargers into that segment are subject to compliance schedules designed to bring the segments into compliance with applicable water quality standards.

Part 1.2.3.8.2 (which applies to both new and existing storm water discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. The eligibility condition prohibits coverage of new or existing discharges of a particular pollutant where there is a TMDL, unless the discharge is consistent with the TMDL. Lists of waterbodies with TMDLs may be obtained from appropriate State environmental offices or their internet sites and from EPA's TMDL internet site at *http://www.epa.gov/owow/tmdl/index.html*.

E. Storm Water Discharges Subject to Anti-Degradation Provisions of Water Quality Standards

Part 1.2.3.9 of today's final MSGP includes a new provision which clarifies that discharges which do not comply with applicable anti-degradation provisions of State water quality standards are not eligible for coverage under the MSGP. This eligibility condition is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. Anti-degradation provisions may be obtained from the appropriate State environmental office or their internet sites.

F. Storm Water Discharges Previously Covered by an Individual Permit

The 1995 MSGP contained general prohibitions on coverage where a discharge was covered by another NPDES permit (Part I.B.3.d) and where a permit had been terminated other than at the request of the permittee (Part

I.B.3.e.). It was therefore possible to obtain coverage by requesting termination of an individual permit and then submitting an NOI for coverage under the MSGP. This could be desirable from both the discharger's and EPA's perspective for a variety of reasons, for example, where a wastewater permit included storm water outfalls, but the wastewater outfalls had been eliminated. Being able to use the general permit would reduce the application cost to the permittee and the administrative burden of permit issuance to the Agency. Today's permit clarifies the conditions under which transfer from an individual permit to this general permit would be acceptable (Part 1.2.3.3.2).

In order to avoid conflict with the anti-backsliding provisions of the CWA, transfer from an individual permit to the MSGP will only be allowed where both of the following conditions are met:

- The individual permit did not contain numeric water quality-based effluent limitations developed for the storm water component of the discharge; and
- The permittee includes any specific BMPs for storm water required under the individual permit in their storm water pollution prevention plan.

Implementation of a comprehensive Storm Water Pollution Prevention Plan for the entire facility (as opposed to selected outfalls in an individual permit) and compliance with all other conditions of the MSGP is deemed to be at least as stringent a technology-based permit limit as the conditions of the individual permit. This assumption is only made where the previous permit did not contain any specific water quality-based effluent limitations on storm water discharges (e.g., storm water contained high levels of zinc and the individual permit contained a zinc limit developed to ensure compliance with the State water quality criteria).

G. Requiring Coverage Under an Individual Permit or an Alternate General Permit

Part 9.12 of today's final MSGP provides that EPA may require an individual permit or coverage under a separate general permit instead of today's MSGP. This is in accord with NPDES regulations at 40 CFR 122.28(b)(3). These regulations also provide that any interested party may petition EPA to take such an action. The issuance of the individual permit or alternate general permit would be in accordance with 40 CFR Part 124 and would provide for public comment and appeal of any final permit decision. The circumstances in which such an action would be taken are set forth at 40 CFR 122.28(b)(3).

VI. Summary of Common Permit Conditions

The following section describes the permit conditions common to discharges from all the industrial activities covered by today's final MSGP. These conditions are largely the same as the conditions of the 1995 MSGP.

A. Notification Requirements

General permits for storm water discharges associated with industrial activity must require the submission of a Notice of Intent (NOI) prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992 (57 FR 11394)). Consistent with these regulatory requirements, today's final MSGP establishes NOI requirements. These requirements apply to facilities currently covered by the 1995 MSGP, as well as new facilities seeking coverage. EPA made minor modifications to the NOI form to allow the discharger, the Agency and the public to more easily determine sector-specific conditions that will apply to the facility. Further modifications proposed on March 30, 2000 (65 FR 17010) require review and approval by the Office of Management and Budget under the Paperwork Reduction Act. EPA will have all appropriate approvals in place prior to requiring the use of the expanded NOI form. In the interim the NOI form with the minor modifications, contained in this notice, is in effect.

The information requirements of the revised NOI form are described below:

1. Content of NOI

a. An indication of which permit the operator is filing the NOI for (e.g., a facility in New Hampshire would be filing for coverage under permit NHR05*###, a facility located on Navajo Reservation lands in New Mexico under the AZR05*##I permit, a private contractor operating a federal facility in Colorado that is not located on Indian Country lands under the COR05*##F permit, etc.);

b. The name, address, and telephone number of the operator filing the NOI for permit coverage;

c. An indication of whether the owner of the site is a Federal, State, Tribal, private, or other public entity;

d. The name (or other identifier), address, county, and latitude/longitude of the facility for which the NOI is submitted (latitude/longitude will be accepted in either degree-minute-second or decimal format);

e. An indication of whether the facility is located on Indian Country lands;

f. An indication of whether the facility is a federal facility operated by the federal government;

g. The name of the receiving water(s);

h. The name of the municipal operator if the discharge is through a municipal separate storm sewer system prior to discharge to a water of the U.S.;

i. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products produced or services rendered, including hazardous waste treatment, storage, or disposal activities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage;

j. Identification of applicable sector(s) in this permit, as designated in Table 1, for facility discharges associated with industrial activity the operator wishes to have covered under this permit;

k. Certification that a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 has been developed (with a copy of the permit language in the SWPPP);

l. Based on the instructions in Addendum A, whether any listed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

m. Whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the facility or in proximity to the discharge;

n. A signed and dated certification, signed by a authorized representative of the facility as detailed in Part 9.7 and maintained with the SWPPP that certifies the following:

I certify under penalty of law that I have read and understand the Part 1.2 eligibility requirements for coverage under the multi-sector storm water general permit including those requirements relating to the protection of endangered or threatened species or critical habitat. To the best of my knowledge, the storm water and allowable non-storm discharges authorized by this permit (and discharged related activities), are not likely and will not likely, jeopardize endangered or threatened species or critical habitat, or are otherwise eligible for coverage under Part 1.2.3.6 of the permit. To the best of my knowledge, I further certify that such discharges and discharge related activities do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage under Part 1.2.3.7 of the permit. I

understand that continued coverage under the multi-sector storm water general permit is contingent upon maintaining eligibility as provided for in Part 1.2.

Two additional components of the form pending approval by the Office of Management and Budget are:

a. under which Part(s) of Part 1.2.3.6 (Endangered Species) the applicant is certifying eligibility and whether the FWS or NMFS was involved in making the determination of eligibility;

b. under which Part(s) of Part 1.2.3.7 (Historic Properties) the applicant is certifying eligibility and whether the SHPO or THPO was involved in the determination of eligibility.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI. Completed NOI forms must be submitted to the Storm Water Notice of Intent (4203), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

In the future (but not at the present time), EPA may also allow alternate means of NOI submission (such as electronic submission). An alternate means of NOI submission may be used by operators provided EPA has informed the operator of the acceptability of the alternative.

2. Deadlines

For facilities currently covered by the 1995 MSGP, the deadline for submission of an NOI requesting coverage under the reissued MSGP is January 29, 2001 (90 days after expiration of the 1995 MSGP). For these facilities, the requirements of the 1995 MSGP are incorporated into today's MSGP and continue to apply during the interim period subsequent to the expiration of the 1995 MSGP, but prior to submission of the NOI requesting coverage under the reissued MSGP. In response to a question from some permittees, EPA wishes to clarify that there is no need to submit an NOT to rescind coverage under the 1995 MSGP.

Facilities currently covered by the 1995 MSGP who cannot immediately determine if they are eligible for coverage under today's reissued MSGP may nevertheless be covered for up to 270 days provided an application for an alternative permit is submitted within 90 days. This interim coverage allows permit coverage while the permittee assesses his eligibility for the reissued MSGP and, if necessary, still meet the 180 day lead time required for applications for individual permits.

For facilities commencing operations after reissuance of the MSGP, the NOI must be submitted at least two days prior to the commencement of the new industrial activity. New operators of existing facilities must also submit the NOI at least two days prior to assuming operational control at existing facilities.

Dischargers who submit a complete NOI in accordance with the MSGP requirements are authorized to discharge storm water associated with industrial activity two days after the date the NOI is postmarked, unless otherwise notified by EPA. EPA may deny coverage under the MSGP and require submission of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., Endangered Species Act compliance, National Historic Preservation Act Compliance, water quality information, compliance history, history of spills, etc.). Where EPA requires a discharger authorized under the MSGP to apply for an individual NPDES permit (or an alternative general permit), EPA will notify the discharger in writing that a permit application (or different NOI) is required by an established deadline. Coverage under the MSGP will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under the MSGP will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

A discharger is not precluded from submitting an NOI at a later date than described above. However, in such instances, EPA may bring appropriate enforcement actions.

3. Municipal Separate Storm Sewer System Operator Notification

Operators of storm water discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system (MS4) or a municipal system designated by the Director,[1] must (upon request of the MS4 operator) submit a copy of the NOI to the municipal operator of the system receiving the discharge. This requirement of today's MSGP differs from the 1995 MSGP which had required that a copy of the NOI be sent to the MS4 operator. Today's MSGP has been modified in this regard to reduce paperwork requirements, and in consideration of the fact that most large and medium MS4 operators already have good information concerning the industrial facilities discharging into their MS4s.

EPA wishes to ensure a coordinated program between EPA and operators of MS4s for controlling pollutants in storm water discharges associated with industrial activity which enter an MS4. Such a coordinated program was intended by EPA's original storm water permit application regulations of November 16, 1990 (55 FR 48063). Additional discussion of this matter can be found in the original proposed MSGP (58 FR 61146).

4. Notice of Termination

Where a discharger is able to eliminate the storm water discharges associated with industrial activity from a facility, the discharger may submit a Notice of Termination (NOT) form (or photocopy thereof) provided by the Director. Today's final MSGP also differs from the 1995 MSGP by requiring that an NOT be submitted within 30 days after one or both of the following two conditions having been met:

a. a new owner/operator has assumed responsibility for the facility; or

b. the permittee has ceased operations at the facility and there no longer are discharges of storm water associated with industrial activity from the facility;

A copy of the NOT and instructions for completing the NOT are included in Addendum E. The NOT form requires the following information:

a. Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter;

b. The name, address and telephone number of the operator addressed by the Notice of Termination;

c. The NPDES permit number for the storm water discharge associated with industrial activity identified by the NOT;

d. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

e. The following certification:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are

[1] The terms large and medium municipal separate storm sewer systems (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b)(4) and (7). Some of the cities and counties in which these systems are found are listed in Appendices F, G, H, and I to 40 CFR Part 122. Other municipal systems have been designated by EPA on a case-by-case basis or have brought into the program based upon the 1990 Census.

authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

NOTs are to be sent to the Storm Water Notice of Termination (4203), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOT.

5. Conditional Exclusion for No Exposure

Today's final MSGP includes a special provision (Part 1.5 of the permit) which provides that a facility may discontinue permit coverage if the facility determines that it is eligible for the ''no exposure'' permit exemption which was created by EPA as part of the promulgation of the Phase II storm water regulations (64 FR 68722). A notice of termination is not required to discontinue permit coverage under these circumstances. However, in accordance with the Phase II regulations, a no exposure certification must be filed with the permitting authority.

It should also be noted that facilities operating under the existing MSGP are eligible, as of the effective date of the Phase II regulations, to submit no exposure certifications immediately if they meet the criteria for no exposure. No exposure certification renewals must be submitted five years from the time they are first submitted (assuming the facility still qualifies for the exemption). If conditions change at a facility such that renewed MSGP coverage is needed, the facility may submit an NOI requesting renewed coverage.

In response to comments on this matter, EPA has included a copy of the ''No Exposure'' form and instructions as Addendum F to today's permit.

EPA has also prepared a new guidance document entitled ''Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on ''No Exposure'' of Industrial Activities to Storm Water'' to assist permittees in determining eligibility for the exemption. This guidance document is available on EPA's storm water website. In addition, EPA recently conducted a mass mailing to permittees (as well as other stakeholder groups) alerting them to the no exposure exemption.

B. Special Conditions

The conditions of today's final MSGP have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements, and a consideration of the factors and options for controlling pollutants in storm water discharges associated with industrial activity, the final MSGP lists a set of tailored requirements for developing and implementing storm water pollution prevention plans (SWPPPs) and, for selected discharges, numeric effluent limitations.[2] This is the same approach as in the 1995 MSGP.

Section VIII of the fact sheet for the 1995 MSGP summarized the industry-specific BMP options for controlling pollutants in storm water discharges associated with industrial activity for the various industrial sectors covered by the MSGP. Section VIII of today's fact sheet does not repeat the information from the 1995 fact sheet; however, updates are provided as appropriate.

Section VI.B.4 of today's fact sheet discusses the storm water discharges which are subject to numeric effluent limitations. For other discharges covered by the final MSGP, the permit conditions reflect EPA's decision to identify a number of BMP and traditional storm water management practices which prevent pollution in storm water discharges as the BAT/BCT level of control for the majority of storm water discharges covered by this permit. The permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in storm water discharges associated with industrial activity.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be infeasible. EPA may also impose BMPs which are ''reasonably necessary * * * to carry out the purposes of the Act'' under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs were recognized in *NRDC* v. *Costle,* 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in today's final MSGP are issued under the authority of both of these regulatory provisions. The pollution prevention or BMP requirements in today's final MSGP operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source control technologies which, in the context of the MSGP, are the best available of the technologies economically achievable (or the equivalent BCT finding). See *NRDC* v. *EPA,* 822 F.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose nonquantitative permit requirements pursuant to Section 402(a)(1)). See also EPA's memorandum of August 1, 1996 entitled ''Interim Permitting Approach for Water Quality-Based Effluent Limitations for Storm Water Discharges.''

1. Prohibition of Non-storm Water Discharges

Today's final MSGP includes basically the same provisions pertaining to non-storm water discharges as the 1995 MSGP. Like the 1995 MSGP, today's MSGP does not authorize non-storm water discharges that are mixed with storm water except as provided below. Today's MSGP does authorize one additional non-storm water discharge: mist discharges which originate from cooling towers and which are deposited at an industrial facility and may be discharged. During the term of the 1995 MSGP, these discharges were brought to the attention of EPA with a request that the discharges be authorized under the reissued MSGP. The mist discharges are authorized under today's MSGP provided:

a. The permittee has evaluated the potential for the discharges to be contaminated by chemicals used in the cooling tower and determined that the levels of such chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard; and

b. The permittee has addressed this source of pollutants with appropriate BMPs in the SWPPP.

The other non-storm water discharges that are authorized under today's final MSGP are the same as those in the 1995 MSGP and include discharges from fire

[2] Section 9.12.2 of the final MSGP provides that facility operators with storm water discharges associated with industrial activity who, based on an evaluation of site specific conditions, believe that the appropriate conditions of this permit do not adequately represent BAT and BCT requirements for the facility may submit to the Director an individual application (Form 1 and Form 2F). A detailed explanation of the reasons why the conditions of the available general permits do not adequately represent BAT and BCT requirements for the facility as well as any supporting documentation must be included.

fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; compressor condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity. In response to a comment, the final MSGP includes ''potable water sources, including waterline flushings'' on the list of authorized non-storm water discharges, but deletes the reference to ''drinking fountain water,'' which a commenter felt could conflict with local ordinances.

To be authorized under today's MSGP, these other sources of non-storm water (except flows from fire fighting activities) must be identified in the SWPPP prepared for the facility. (SWPPP requirements are discussed in more detail below). Where such discharges occur, the SWPPP must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Today's final MSGP does not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition of unpermitted non-storm water discharges in today's MSGP ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized in Part 1.2.2.2 of the MSGP) are not inadvertently authorized by the permit. Where a storm water discharge is mixed with non-storm water that is not authorized by today's MSGP or another NPDES permit, the discharger should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain permit coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

As discussed below, today's final MSGP includes the same provisions pertaining to releases of reportable quantities of hazardous substances and oil as the 1995 MSGP.

a. Today's final MSGP provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the SWPPP developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR Part 117, or 40 CFR Part 302 during a 24-hour period, the following actions must be taken:

(1) Any person in charge of the facility that discharges hazardous substances or oil is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426–2675) in accordance with the requirements of 40 CFR Part 117, and 40 CFR Part 302 as soon as they have knowledge of the discharge.

(2) The SWPPP for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.

(3) The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the SWPPP for the facility.

b. Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than one anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

(1) Submit notifications of the first release that occurs during a calendar year (or for the first year of this permit, after submission of an NOI); and

(2) Provide a written description in the SWPPP of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the releases. In addition, the SWPPP must address measures to minimize such releases.

c. Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), that discharge is not authorized by the MSGP and the discharger must report the discharge as required under 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302. In the event of a spill, the requirements of Section 311 of the CWA and other applicable provisions of Sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

3. Co-located Industrial Facilities

Like the 1995 MSGP, today's MSGP includes requirements pertaining to co-located industrial facilities. However, these requirements have been modified from the requirements of the 1995 MSGP to clarify their applicability. Co-located industrial activities occur when activities being conducted onsite fall into more than one of the categories of the industrial facilities listed in Part 1.2.1 of today's MSGP (e.g., a landfill at a wood treatment facility). Facilities operating under the 1995 MSGP have sometimes been unclear whether certain limited activities (e.g., minor vehicle maintenance activities at an industrial plant) would trigger the MSGP's requirements regarding co-located activities.

If you have co-located industrial activities on-site that are described in a sector(s) other than your primary sector, you must comply with all other applicable sector-specific conditions found in Part 6 for the co-located industrial activities. The extra sector-specific requirements are applied only to those areas of your facility where the extra-sector activities occur. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the storm water regulations, and identified by today's MSGP SIC code list. For example, unless you are actually hauling substantial amounts of freight or materials with your own truck fleet or are providing a trucking service to outsiders, simple maintenance of vehicles used at your facility is unlikely to meet the SIC code group 42 description of a motor freight transportation facility. Even though Sector P may not apply, the runoff from your vehicle maintenance facility would likely still be considered storm water

associated with industrial activity. As such, your SWPPP must still address the runoff from the vehicle maintenance facility—although not necessarily with the same degree of detail as required by Sector P—but you would not be required to monitor as per Sector P.

In the event there truly are co-located activities at your facility, today's MSGP authorizes, as does the 1995 MSGP, all storm water discharges provided that your facility complies with all SWPPP and monitoring requirements for each co-located activity. By monitoring the discharges from the different industrial activities, you can better determine the effectiveness of your SWPPP for controlling all major pollutants of concern in your storm water discharges. However, if monitoring for the same parameter is required for more than one sector (and the different industrial activities drain to the same outfall), then only one sample analysis is required for that parameter.

4. Numeric Effluent Limitations

Today's MSGP retains the numeric effluent limitations which were included in the 1995 MSGP, and also includes the effluent limitations guidelines which EPA recently finalized for certain storm water discharges from new and existing hazardous and non-hazardous landfills (65 FR 3007, January 19, 2000). The new effluent limitations guidelines for these landfills are discussed in more detail in the Sections VIII.K and L of this fact sheet (Special Requirements for Discharges Associated with Industry Activities).

Today's MSGP retains the numeric effluent limitations from the 1995 MSGP for the following discharges: coal pile runoff (including runoff from steam electric power plants subject to 40 CFR Part 423 requirements), discharges from phosphate fertilizer manufacturing (40 CFR Part 418), asphalt paving and roofing emulsions (40 CFR Part 443), cement manufacturing materials storage pile runoff (40 CFR Part 411), and discharges resulting from the spray down of lumber and wood products storage yards (wet decking) (40 CFR Part 429). In addition, the final MSGP authorizes mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone facilities (40 CFR Part 436) in EPA Regions 1, 2, 3, 6, 8, 9, 10. The actual numeric effluent limitations can be found in Part 6 of the final MSGP.

5. Compliance with Water Quality Standards

The 1995 MSGP does not specifically address compliance with water quality standards (WQS), other than to exclude from coverage discharges which may contribute to an exceedance of WQS. Today's final MSGP includes the same restriction on eligibility, and in Part 3.3 also includes certain requirements if exceedances occur for discharges covered by the MSGP. If a discharge authorized under the final MSGP is later discovered to cause, or have the reasonable potential to cause or contribute to, a violation of a WQS, the permitting authority will inform the permittee of the violation. The permittee must then take all necessary actions to ensure future discharges do not cause or contribute to the violation of WQS, and document these actions in the SWPPP. If violations remain or recur, coverage under the MSGP may be terminated by the permitting authority and an alternate permit issued. Today's final MSGP also clarifies that compliance with this requirement does not preclude enforcement actions as provided by the CWA for the underlying violation.

C. Common Storm Water Pollution Prevention Plan (SWPPP) Requirements

Like the 1995 MSGP, today's reissued MSGP requires that all facilities which intend to be covered by the MSGP for storm water discharges associated with industrial activity prepare and implement a SWPPP. The MSGP addresses pollution prevention plan requirements for a number of categories of industries. Following below is a discussion of the common permit requirements for all industries; special requirements for facilities subject to EPCRA Section 313 reporting requirements; and special requirements for facilities with outdoor salt storage piles. These are the permit requirements which apply to discharges associated with any of the industrial activities covered by today's final MSGP. These common requirements may be amended or further clarified in the industry-specific SWPPP requirements which are found in Part 6 of the final MSGP. These industry-specific requirements are additive for facilities where co-located industrial activities occur.

The Storm Water Pollution Prevention Plan (SWPPP) approach in today's final MSGP focuses on two major objectives: (1) to identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and (2) ensure implementation of measures to minimize and control pollutants in storm water discharges associated with industrial activity from the facility.

The SWPPP requirements in today's final MSGP are intended to facilitate a process whereby the operator of the industrial facility thoroughly evaluates potential pollution sources at the site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) formation of a team of qualified plant personnel who will be responsible for preparing the plan and assisting the plant manager in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination.

EPA believes the pollution prevention approach is the most environmentally sound and cost-effective way to control the discharge of pollutants in storm water runoff from industrial facilities. This position is supported by the results of a comprehensive technical survey EPA completed in 1979.[3] The survey found that two classes of management practices are generally employed at industries to control the nonroutine discharge of pollutants from sources such as storm water runoff, drainage from raw material storage and waste disposal areas, and discharges from places where spills or leaks have occurred. The first class of management practices includes those that are low in cost, applicable to a broad class of industries and substances, and widely considered essential to a good pollution control program. Some examples of practices in this class are good housekeeping, employee training, and spill response and prevention procedures. The second class includes management practices that provide a second line of defense against the release of pollutants. This class addresses containment, mitigation, and cleanup. Since publication of the 1979 survey, EPA has imposed management practices and controls in NPDES permits on a case-by-case basis. The Agency also has continued to review the appropriateness and effectiveness of such practices,[4] as well as the

[3] See ''Storm Water Management for Industrial Activities,'' EPA, September 1992, EPA–832–R–92–006.

[4] For example, see ''Best Management Practices: Useful Tools for Cleaning Up,'' Thron, H. Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; ''The Chemical Industries'' Approach to Spill Prevention,'' Thompson, C., Goodier, J. 1980, Proceedings of the 1980 National Conference of Control of Hazardous Materials Spills; a series of EPA memoranda entitled ''Best Management Practices in NPDES Permits—Information Memorandum,'' 1983, 1985, 1986, 1987, 1988; Review of Emergency Systems: Report to Congress,'' EPA, 1988; and ''Analysis of Implementing

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techniques used to prevent and contain oil spills.[5] Experience with these practices and controls has shown that they can be used in permits to reduce pollutants in storm water discharges in a cost-effective manner. In keeping with both the present and previous administration's objective to attain environmental goals through pollution prevention, pollution prevention has been and continues to be the cornerstone of the NPDES permitting program for storm water. EPA has developed guidance entitled ''Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices,'' September 1992, to assist permittees in developing and implementing pollution prevention measures.

Note: The discussions of the SWPPP requirements are grouped in subject areas and do not follow the exact order of the permit conditions.

1. Pollution Prevention Team (Part 4.2.1)

As a first step in the process of developing and implementing a SWPPP, permittees are required to identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (*e.g.,* in certain small businesses with limited storm water pollution potential).

2. Description of the Facility and Potential Pollution Sources (Part 4.2.2)

Each SWPPP must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to storm water runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or storm water drainage systems that drain the facility. This assessment of storm water pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Some operators may find that significant amounts of pollutants are running onto the facility property. Such operators should identify and address the contaminated runon in the SWPPP. If the runon cannot be addressed or diverted by the permittee, the permitting authority should be notified. If necessary, the permitting authority may require the operator of the adjacent facility to obtain a permit.

Part 6 of the final MSGP includes industry-specific requirements for the various industry sectors covered by today's permit. All SWPPPs generally must describe the following elements:

a. *Description of the Facility Site and Receiving Waters/Wetlands (Parts 4.2.2 and 4.2.3):* The plan must contain a map of the site that shows the location of outfalls covered by the permit (or by other NPDES permits), the pattern of storm water drainage, an indication of the types of discharges contained in the drainage areas of the outfalls, structural features that control pollutants in runoff,[6] surface water bodies (including wetlands), places where significant materials[7] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the date of the submission of an NOI to be covered under this permit. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. For areas of the facility that generate storm water discharges with a reasonable potential to contain significant amounts of pollutants, the map must indicate the probable direction of storm water flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified. In order to increase the readability of the map, the inventory of the types of discharges contained in each outfall may be kept as an attachment to the site map.

b. *Summary of Potential Pollutant Sources (Part 4.2.4):* The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (*i.e.,* biochemical oxygen demand, suspended solids, etc.) associated with each source.

c. *Significant Spills and Leaks (Part 4.2.5):* The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the three years prior to the date of the submission of an NOI to be covered under this permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 40 CFR 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar such spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional

Permitting Activities for Storm Water Discharges Associated with Industrial Activity,'' EPA, 1991.

[5] See for example, ''The Oil Spill Prevention, Control and Countermeasures Program Task Force Report,'' EPA, 1988; and ''Guidance Manual for the Development of an Accidental Spill Prevention Program,'' prepared by SAIC for EPA, 1986.

[6] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[7] Significant materials include, but are not limited to the following: raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge that have the potential to be released with storm water discharges. (See 40 CFR 122.26(b)(8)).

procedures necessary to fulfill the requirements set forth in Parts 4 and 6 of the final permit.

d. *Allowable and Prohibited Non-storm Water Discharges (Part 4.4):* Each SWPPP must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Acceptable test or evaluation techniques include dye tests, television surveillance, observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics.[8]

Except for flows that originate from fire fighting activities, sources of non-storm water that are specifically identified in the permit as being eligible for authorization under the general permit must be identified in the plan. SWPPPs must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

EPA recognizes that certification may not be feasible where facility personnel do not have access to an outfall, manhole, or other point of access to the conduit that ultimately receives the discharge. In such cases, the plan must describe why certification was not feasible. Permittees who are not able to certify that discharges have been tested or evaluated must notify the Director in accordance with Part 4.4 of the final MSGP.

e. *Sampling Data (Part 4.2.6):* Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan, including data collected for Part 2 of the group application process. These data may be useful for locating areas that have contributed pollutants to storm water. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

[8] In general, smoke tests should not be used for evaluating the discharge of non-storm water to a separate storm sewer as many sources of non-storm water typically pass through a trap that would limit the effectiveness of the smoke test.

3. Selection and Implementation of Storm Water Controls (Part 4.2.7, et al.)

Following completion of the source identification and assessment phase, the permit requires the permittee to evaluate, select, and describe the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where such practices are not appropriate to a particular source or do not effectively reduce pollutant discharges, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. Like source reduction measures, source control measures and BMPs are intended to keep pollutants out of storm water. The remaining classes of BMPs, which involve recycling or treatment of storm water, allow the reuse of storm water or attempt to lower pollutant concentrations prior to discharge.

The SWPPP must discuss the reasons each selected control or practice is appropriate for the facility and how each will address one or more of the potential pollution sources identified in the plan. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems. The permit requirements included for the various industry sectors in Part 6 of today's final MSGP generally require that the portion of the plan that describes the measures and controls address the following minimum components.

When ''minimize/reduce'' is used relative to SWPPP measures, EPA means to consider and implement BMPs that will result in an improvement over the baseline conditions as it relates to the levels of pollutants identified in storm water discharges with due consideration to economic feasibility and effectiveness.

a. *Nonstructural Controls:*

- Good Housekeeping. Good housekeeping involves using practical, cost-effective methods to identify ways to maintain a clean and orderly facility and keep contaminants out of separate storm sewers. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. These protocols must be described in the plan and communicated to appropriate plant personnel.
- Minimizing Exposure. Where practicable, protecting potential pollutant sources from exposure to storm water is an important control option. Pollutants that are never allowed to contaminate storm water do not require development of ''treatment'' type BMPs. Elimination of all exposure to storm water may also make the facility eligible for the ''No Exposure Certification'' exclusion from permitting at 40 CFR 122.26(g)
- Preventive Maintenance. Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of storm water management devices and other equipment and systems. The program description should identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For storm water management devices such as catch basins and oil/water separators, the preventive maintenance program should provide for periodic removal of debris to ensure that the devices are operating efficiently. For other equipment and systems, the program should reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.
- Spill Prevention and Response Procedures. Based on an assessment of possible spill scenarios, permittees must specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and, in the event of a spill, enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill

prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

• Routine Inspections. In addition to the comprehensive site evaluation, facilities are required to conduct periodic inspections of designated equipment and areas of the facility. Industry-specific requirements for such inspections, if any, are set forth in Part 6 of the final MSGP. When required, qualified personnel must be identified to conduct inspections at appropriate intervals specified in the plan. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained. These periodic inspections are different from the comprehensive site evaluation, even though the former may be incorporated into the latter. Equipment, area, or other inspections are typically visual and are normally conducted on a regular basis, *e.g.*, daily inspections of loading areas. Requirements for such periodic inspections are specific to each industrial sector in today's permit, whereas the comprehensive site compliance evaluation is required of all industrial sectors. Area inspections help ensure that storm water pollution prevention measures (*e.g.*, BMPs) are operating and properly maintained on a regular basis. The comprehensive site evaluation is intended to provide an overview of the entire facility's pollution prevention activities. Refer to Part VI.C.3.h. below for more information on the comprehensive site evaluation.

• Employee Training. The SWPPP must describe a program for informing personnel at all levels of responsibility of the components and goals of the SWPPP. The training program should address topics such as good housekeeping, materials management, and spill response procedures. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention. A schedule for conducting training must be provided in the plan. Several sections in Part 6 of today's final MSGP specify a minimum frequency for training of once per year. Others indicate that training is to be conducted at an appropriate interval. EPA recommends that facilities conduct training annually at a minimum. However, more frequent training may be necessary at facilities with high turnover of employees or where employee participation is essential to the storm water pollution prevention plan.

b. *Structural Controls:*

• Sediment and Erosion Control. The SWPPP must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.

• Management of Runoff. The plan must contain a narrative evaluation of the appropriateness of traditional storm water management practices (*i.e.*, practices other than those that control pollutant sources) that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Appropriate measures may include, among others, vegetative swales, collection and reuse of storm water, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

c. *Example BMPs:* Part 4.2.7.2.2 includes a list of example BMPs that could be considered for use in a SWPPP, for example: detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). These examples are not intended to limit the creativity of facility operators in developing alternative BMPs or applications for BMPs that increase cost effectiveness.

d. *Selection of Controls:* Based on the results of the evaluation, the plan must identify practices that the permittee determines are reasonable and appropriate for the facility. The plan also should describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained according to the provisions prescribed in the plan.

In selecting storm water management measures, it is important to consider the potential effects of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, facilities must also consider potential ground water pollution problems and take appropriate steps to avoid adversely affecting ground water quality. For example, if the water table is unusually high in an area, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

e. *Other Controls:* Today's final MSGP includes a new requirement that no solid materials, including floating debris may be discharged to waters of the United States, except as authorized by a permit under Section 404 of the Clean Water Act. In addition, off-site tracking of raw, final, or waste materials or sediment, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. These requirements are similar to requirements included in EPA's construction general storm water permit (63 FR 7858, February 17, 1998) which EPA believes would be appropriate for industrial facilities as well.

f. *Maintenance (Part 4.3):* All BMPs identified in the SWPPP must be maintained in effective operating condition.

g. *Controls for Allowable Non-Storm Water (Part 4.4.2):* Where an allowable non-storm water has been identified, appropriate controls for that discharge must be included in the permit. In many cases, the same types of controls for contaminated storm water would suffice, but the nature and volume of potential pollutants in the non-storm water discharges must be taken into consideration in selection of controls.

h. *Comprehensive Site Compliance Evaluation (Part 4.9):* Today's final MSGP requires that the SWPPP describe the scope and content of the comprehensive site evaluations that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. Note that the comprehensive site evaluations are not the same as periodic or other inspections described for certain industries in Section VI.C.3.d of this fact sheet. However, in the instances when frequencies of inspections and the comprehensive site compliance evaluation overlap, they may be combined allowing for efficiency as long as the requirements for both types of inspections are met. The plan must indicate the frequency of comprehensive evaluations which must be at least once a year, except where comprehensive site evaluations are shown in the plan to be impractical for inactive mining sites, due to remote

location and inaccessibility.[9] The individual or individuals who will conduct the comprehensive site evaluation must be identified in the plan and should be members of the pollution prevention team. Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors also must observe erosion controls and structural storm water management devices to ensure that each is operating correctly. Equipment needed to implement the SWPPP, such as that used during spill response activities, must be inspected to confirm that it is in proper working order.

The results of each comprehensive site evaluation must be documented in a report signed by an authorized company official. The report must describe the scope of the comprehensive site evaluation, the personnel making the comprehensive site evaluation, the date(s) of the comprehensive site evaluation, and any major observations relating to implementation of the SWPPP. Comprehensive site evaluation reports must be retained for at least three years after the date of the evaluation. Based on the results of each comprehensive site evaluation, the description in the plan of potential pollution sources and measures and controls must be revised as appropriate within two weeks after each comprehensive site evaluation, unless indicated otherwise in Part 6 of the permit. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm, or not more than 12 weeks after completion of the comprehensive site evaluation.

i. *Applicable State, Tribal, or Local Plans (Part 4.8):* The SWPPP must be consistent with any applicable requirements of State, Tribal, or Local storm water, waste disposal, sanitary sewer or septic system regulations to the extent these apply to a facility and are more stringent than the requirements of this permit.

j. *Documentation of Permit Eligibility with Regards to ESA and NHPA Requirements (Parts 4.5 and 4.6):* To better ensure compliance with the requirements of the ESA and NHPA, Parts 4.5 and 4.6 of today's final MSGP require that documentation be included with the SWPPP demonstrating permit eligibility with regards to the requirements of the ESA and NHPA. The following information is required for the ESA:

- Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the facility;
- Whether such species may be jeopardized by the storm water discharges or storm water discharge-related activities;
- Results of the Addendum A endangered species screening determinations; and
- A description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.6. The final MSGP notes that discharges from facilities which fail to describe and implement such measures are ineligible for coverage under the permit.

The following information is required for the NHPA determination:

- Information on whether the storm water discharges or storm water discharge-related activities would have an effect on a property that is listed or eligible for listing on the National Register of Historic Places;
- Where effects may occur, any written agreements which have been made with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects;
- Results of the Addendum B historic places screening determinations; and
- A description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the National Register of Historic Places, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.7 of this permit. The final MSGP notes that discharges from facilities which fail to describe and implement such measures are ineligible for coverage under the permit.

k. *Keeping a Copy of the Permit with the SWPPP (Part 4.7):* A new requirement to have a copy of the permit language in the SWPPP has been added to today's permit. The ''confirmation'' letter received from the NOI Processing Center is not the permit; it is essentially only the equivalent of a ''receipt'' for a facility's ''registration'' (NOI) to use the general permit. Since determining permit eligibility and preparing a SWPPP is required prior to obtaining permit coverage, a copy of the permit would be needed anyway. Requiring a copy of the permit in the SWPPP ensures that facility operators, and not just whoever prepared the SWPPP, will have ready access to all permit requirements.

l. *Recordkeeping and Keeping the SWPPP Current (Parts 4.9.4, 4.10, et al.):* Records must be kept with the SWPPP documenting the status and effectiveness of plan implementation. At a minimum, records must address results of the annual Comprehensive Site Compliance Evaluations, routine facility inspections, spills, monitoring, and maintenance activities. The plan also must describe a system that enables timely reporting of storm water management-related information to appropriate plant personnel. Inspectors or other enforcement officers will ask for records documenting permit compliance during inspections or facility compliance reviews.

The SWPPP must be updated whenever there is a change at the facility that would significantly affect the discharges authorized under the MSGP. The SWPPP must also be updated whenever monitoring results and/or an inspection by the permittee or by local, state, tribal, or federal officials indicate a portion of the SWPPP is proving to be ineffective in controlling storm water discharge quality.

m. *Signature, Plan Review, and Access to the SWPPP (Part 4.11):* The SWPPP must be signed and certified in accordance with Part 7 of the permit. A copy of the SWPPP must be kept on site at the facility or be locally available for the use of the Director, a State, Tribe, or local agency (*e.g.*, MS4 operator) at the time of an onsite inspection. The SWPPP must also be made available to the U.S. Fish and Wildlife Service or National Marine Fisheries Service upon request. Since SWPPPs are living documents that change over time, access to the current version of the SWPPP is critical in assessing permit compliance. Facilities are also required to provide a copy of the SWPPP to the public when requested in writing to do so.

The Director may notify you at any time that your SWPPP does not meet one or more of the minimum requirements of this permit. The notification will identify provisions of the permit which are not being met, as well as the required modifications. Required changes must be made within thirty (30) calendar days and a written certification submitted to the Director confirming that the changes were made.

EPA does not intend to require public comment on SWPPPs or hold public hearings. As noted above, EPA may require changes to a SWPPP when necessary and may consider concerns from the public in making such judgments. The MSGP also provides

[9] Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to remote location and inaccessibility, site inspections must be conducted at least once every three years.

that individual permits may be required when the MSGP is inappropriate for a given facility. During the issuance of the individual permits, the public would have an opportunity to comment on the requirements of the permits.

4. Deadlines

Today's MSGP requires that permittees previously covered by the 1995 MSGP must update their SWPPPs to comply with any new requirements of today's MSGP by the date they submit their new NOIs. As noted earlier, the new NOIs are due January 29, 2001. However, a permittee may request an extension for the SWPPP update not to exceed 270 days from the expiration date of the 1995 MSGP.

D. Special Requirements

1. Special Requirements for Storm Water Discharges Associated With Industrial Activity From Facilities Subject to EPCRA Section 313 Requirements (Part 4.12)

Today's final MSGP replaces the special requirements of the 1995 MSGP for certain permittees subject to reporting requirements under Section 313 of the EPCRA (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA)) with a requirement to identify areas with these pollutants. EPCRA Section 313 requires operators of certain facilities that manufacture (including import), process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any environmental media. Listed toxic chemicals include more than 500 chemicals and chemical classes listed at 40 CFR Part 372 (including the recently added chemicals published November 30, 1994).

By requiring identification of EPCRA 313 chemicals in the summary of potential pollutant sources under the Storm Water Pollution Prevention Plan (Part 4.2.4), the facility operator is then required to develop appropriate storm water controls for such areas (Part 4.2.7). EPA expects that many controls for EPCRA chemicals will continue to be driven by other state and federal environmental regulations such as Spill Prevention Control and Countermeasure (SPCC) plans required under Section 311 of the CWA, etc. as long as such a requirement is incorporated into the SWPPP.

This reduction in permit complexity by eliminating redundant requirements was requested by members of the regulated community.

2. Special Requirements for Storm Water Discharges Associated With Industrial Activity From Salt Storage Facilities

Today's MSGP retains the same special requirements as the 1995 MSGP for storm water discharges associated with industrial activity from salt storage facilities. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. This requirement only applies to runoff from storage piles discharged to waters of the United States. Facilities that collect all the runoff from their salt piles and reuse it in their processes or discharge it subject to a separate NPDES permit do not need to enclose or cover their piles.

These special requirements have been included in today's permit based on human health and aquatic effects resulting from storm water runoff from salt storage piles compounded with the prevalence of salt storage piles across the United States.

3. Consistency With Other Plans

SWPPPs may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) developed for the facility under Section 311 of the CWA or BMP programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the SWPPP.

E. Monitoring and Reporting Requirements

Today's final MSGP retains the same monitoring requirements as the existing MSGP. Numerous comments were submitted on these monitoring requirements. A summary of EPA's responses to these comments and justification for retaining these requirements is contained in this section. A more detailed discussion is found in Section IX of this fact sheet (Summary of Responses to Comments). Responses to individual comments are contained in the Water Docket.

Like the 1995 MSGP, today's final MSGP includes three general types of monitoring: analytical monitoring or chemical monitoring; compliance monitoring for effluent guidelines compliance, and visual examinations of storm water discharges. A general description of each of these types of monitoring which was provided with the 1995 MSGP is repeated below.

1. Analytical Monitoring Requirements

Analytical monitoring requirements involve laboratory chemical analyses of samples collected by the permittee. The results of the analytical monitoring are quantitative concentration values for different pollutants, which can be easily compared to the results from other sampling events, other facilities, or to national benchmarks.

The categories of facilities subject to analytical monitoring in today's final MSGP are noted in Table 1 of this fact sheet. The MSGP requires analytical monitoring for the industry sectors or subsectors that demonstrated in the group application data a potential to discharge pollutants at concentrations of concern or, in certain State-specific cases, to satisfy those States' requirements. The data submitted with the group permit applications were reviewed by EPA to determine the industry sectors and subsectors listed in Table 1 of this fact sheet that are to be subject to analytical monitoring requirements. First, EPA divided the Part 1 and Part 2 application data by the industry sectors listed in Table 1. Where a sector was found to contain a wide range of industrial activities or potential pollutant sources, it was further subdivided into the industry subsectors listed in Table 1. Next, EPA reviewed the information submitted in Part 1 of the group applications regarding the industrial activities, significant materials exposed to storm water, and the material management measures employed. This information helped identify potential pollutants that may be present in the storm water discharges. Then EPA entered into a database the sampling data submitted in Part 2 of the group applications. Those data were arrayed according to industrial sector and subsector for the purposes of determining when analytical monitoring would be appropriate.

To conduct a comparison of the results of the statistical analyses to determine when analytical monitoring would be required, EPA established ''benchmark'' concentrations for the pollutant parameters on which monitoring results had been received. The ''benchmarks'' are the pollutant concentrations above which EPA determined represent a level of concern. The level of concern is a concentration at which a storm water discharge could potentially impair, or contribute to impairing, water quality or affect human health from ingestion of water or fish. The benchmarks are also viewed by EPA as a level that, if below, a facility presents little potential for water quality concern. As such, the benchmarks also

provide an appropriate level to determine whether a facility's storm water pollution prevention measures are successfully implemented. The benchmark concentrations are not effluent limitations and should not be interpreted or adopted as such. These values are merely levels which EPA has used to determine if a storm water discharge from any given facility merits further monitoring to ensure that the facility has been successful in implementing a SWPPP. As such, these levels represent a target concentration for a facility to achieve through implementation of pollution prevention measures at the facility. Table 3 lists the parameter benchmark values and the sources used for the benchmarks. Two changes from the 1995 MSGP are the addition of benchmark values for total Cyanide and Total Magnesium. Benchmark values for the two parameters were included in the Fact Sheet of the 1995 MSGP at Table K–3, but were inadvertently not included in the general listing of parameter benchmark values (Table 5 of the Fact Sheet for the 1995 MSGP). Additional information explaining the derivation of the benchmarks can be found in the fact sheet for the 1995 MSGP (60 FR 50825).

TABLE 3.—PARAMETER BENCHMARK VALUES

Parameter name	Benchmark level	Source
Biochemical Oxygen Demand (5 day)	30 mg/L	4
Chemical Oxygen Demand	120 mg/L	5
Total Suspended Solids	100 mg/L	7
Oil and Grease	15 mg/L	8
Nitrate + Nitrite Nitrogen	0.68 mg/L	7
Total Phosphorus	2.0 mg/L	6
pH	6.0–9.0 s.u.	4
Acrylonitrile (c)	7.55 mg/L	2
Aluminum, Total (pH 6.5–9)	0.75 mg/L	1
Ammonia	19 mg/L	1
Antimony, Total	0.636 mg/L	9
Arsenic, Total (c)	0.16854 mg/L	9
Benzene	0.01 mg/L	10
Beryllium, Total (c)	0.13 mg/L	2
Butylbenzyl Phthalate	3 mg/L	3
Cadmium, Total (H)	0.0159 mg/L	9
Chloride	860 mg/L	1
Copper, Total (H)	0.0636 mg/L	9
Cyanide, Total	0.0636 mg/l	9
Dimethyl Phthalate	1.0 mg/L	11
Ethylbenzene	3.1 mg/L	3
Fluoranthene	0.042 mg/L	3
Fluoride	1.8 mg/L	6
Iron, Total	1.0 mg/L	12
Lead, Total (H)	0.0816 mg/L	1
Magnesium, Total	0.0636 mg/l	9
Manganese	1.0 mg/L	13
Mercury, Total	0.0024 mg/L	1
Nickel, Total (H)	1.417 mg/L	1
PCB–1016 (c)	0.000127 mg/L	9
PCB–1221 (c)	0.10 mg/L	10
PCB–1232 (c)	0.000318 mg/L	9
PCB–1242 (c)	0.00020 mg/L	10
PCB–1248 (c)	0.002544 mg/L	9
PCB–1254 (c)	0.10 mg/L	10
PCB–1260 (c)	0.000477 mg/L	9
Phenols, Total	1.0 mg/L	11
Pyrene (PAH,c)	0.01 mg/L	10
Selenium, Total (*)	0.2385 mg/L	9
Silver, Total (H)	0.0318 mg/L	9
Toluene	10.0 mg/L	3
Trichloroethylene (c)	0.0027 mg/L	3
Zinc, Total (H)	0.117 mg/L	1

Sources:
1. ''EPA Recommended Ambient Water Quality Criteria.'' Acute Aquatic Life Freshwater.
2. ''EPA Recommended Ambient Water Quality Criteria.'' LOEL Acute Freshwater.
3. ''EPA Recommended Ambient Water Quality Criteria.'' Human Health Criteria for Consumption of Water and Organisms.
4. Secondary Treatment Regulations (40 CFR 133).
5. Factor of 4 times BOD5 concentration—North Carolina benchmark.
6. North Carolina storm water benchmark derived from NC Water Quality Standards.
7. National Urban Runoff Program (NURP) median concentration.
8. Median concentration of Storm Water Effluent Limitation Guideline (40 CFR Part 419).
9. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18.
10. Laboratory derived Minimum Level (ML).
11. Discharge limitations and compliance data.
12. ''EPA Recommended Ambient Water Quality Criteria.'' Chronic Aquatic Life Freshwater.
13. Colorado—Chronic Aquatic Life Freshwater—Water Quality Criteria.

Notes:
(*) Limit established for oil and gas exploration and production facilities only.
(c) carcinogen.

(H) hardness dependent.
(PAH) Polynuclear Aromatic Hydrocarbon.
Assumptions:
Receiving water temperature − 20 C.
Receiving water pH − 7.8.
Receiving water hardness CaCO3 100 mg/L.
Receiving water salinity 20 g/kg
Acute to Chronic Ratio (ACR) − 10.

EPA prepared a statistical analysis of the sampling data for each pollutant parameter reported within each sector or subsector. (Only where EPA did not subdivide an industry sector into subsectors was an analysis of the entire sector's data performed.) The statistical analysis was performed assuming a delta log normal distribution of the sampling data within each sector/subsector. The analyses calculated median, mean, maximum, minimum, 95th, and 99th percentile concentrations for each parameter. The results of the analyses can be found in the appropriate section of Section VIII of the fact sheet accompanying the 1995 MSGP. From this analysis, EPA was able to identify pollutants for further evaluation within each sector or subsector.

EPA next compared the median concentration of each pollutant for each sector or subsector to the benchmark concentrations listed in Table 3. EPA also compared the other statistical results to the benchmarks to better ascertain the magnitude and range of the discharge concentrations to help identify the pollutants of concern. EPA did not conduct this analysis if a sector had data for a pollutant from less than three individual facilities. Under these circumstances, the sector or subsector would not have this pollutant identified as a pollutant of concern. This was done to ensure that a reasonable number of facilities represented the industry sector or subsector as a whole and that the analysis did not rely on data from only one facility.

For each industry sector or subsector, parameters with a median concentration higher than the benchmark level were considered pollutants of concern for the industry and identified as potential pollutants for analytical monitoring under today's permit. EPA then analyzed the list of potential pollutants to be monitored against the lists of significant materials exposed and industrial activities which occur within each industry sector or subsector as described in the Part I application information. Where EPA could identify a source of a potential pollutant which is directly related to industrial activities of the industry sector or subsector, the permit identifies that parameter for analytical monitoring. If EPA could not identify a source of a potential pollutant which was associated with the sector/subsector's industrial activity, the permit does not require monitoring for the pollutant in that sector/subsector. Industries with no pollutants for which the median concentrations are higher than the benchmark levels are not required to perform analytical monitoring under this permit, with the exceptions explained below.

In addition to the sectors and subsectors identified for analytical monitoring using the methods described above, EPA determined, based upon a review of the degree of exposure, types of materials exposed, special studies and in some cases inadequate sampling data in the group applications, that the following industries also warrant analytical monitoring notwithstanding the absence of data on the presence or absence of certain pollutants in the group applications: Sector K (hazardous waste treatment storage and disposal facilities), and Sector S (airports which use more than 100,000 gallons per year of glycol-based fluids or 100 tons of urea for deicing). Today's final MSGP retains the monitoring requirements of the 1995 MSGP due to the high potential for contamination of storm water discharge which EPA believes was not adequately characterized by group applicants in the information they provided in the group application process. Like the 1995 MSGP, exemptions for today's MSGP would be on a pollutant-by-pollutant and outfall-by-outfall basis.

As part of the reissuance process for today's MSGP, EPA evaluated Discharge Monitoring Reports (DMRs) submitted by facilities for analytical monitoring conducted during the second and fourth year of the 1995 MSGP. The purpose of the evaluation was to evaluate any trends in the monitoring results. One factor common to almost all industrial sectors, however, was that the number of DMRs submitted for the year-four monitoring period far exceeded the number of DMRs submitted for the year-two monitoring period. For the second-year monitoring period, EPA received 380 DMRs, whereas 1377 DMRs were received for the fourth-year monitoring period. For example, the number of Sector M (Auto Salvage Yards) facilities that submitted monitoring results for total suspended solids from the second year monitoring period was roughly 26; the number of DMRs submitted for the fourth year monitoring for the same industrial sector and parameter was 240. As a result, EPA could not conduct the trends analysis it intended to perform.

While the exact reason for the significant increase in the number of DMRs received in year 4 of the permit (as compared to year 2) is unknown, EPA suspects it is related to the administrative extension of EPA's 1992 baseline general permit. Although the 1992 general permit expired in September 1997, the permit was administratively extended. It was not until December 28, 1998 that facilities previously covered under EPA's baseline industrial permit were required to obtain coverage under the MSGP. As a result, facilities previously covered under the baseline industrial permit were not required to conduct analytical monitoring (as required in the second year of the 1995 MSGP). 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.

Based on the information received during the public comment period and the DMRs received, EPA believes 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. EPA is retaining quarterly analytic monitoring requirements for storm water discharges as per the 1995 MSGP for all sectors previously identified. Comparison of pollutant levels against benchmark levels is still regarded as one of the important tools operators must use to evaluate their facilities' storm water pollution prevention plans (SWPPPs) and best management practices (BMPs). Facilities' discharge monitoring reports (DMRs) are also vital to the Agency for use in characterizing an industrial sector's discharges. EPA has not, and does not, intend for pollutant levels above the benchmark values to mean a facility is out of compliance with the MSGP–2000.

While today's permit retains the analytical monitoring requirements of the 1995 MSGP, the Agency continues to support the position that any analytical monitoring program required

under the MSGP needs to be structured so that it provides useful information to facility operators, EPA and the general public on the effectiveness of Storm Water Pollution Prevention Plans. 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. The Agency will work with program stakeholders in conducting the evaluation and may seek to implement certain changes possibly on a pilot basis.

Like the 1995 MSGP, today's MSGP requires that all facilities, save for Sector G, within an industry sector or subsector identified for analytical monitoring must, at a minimum, monitor their storm water discharges quarterly during the second year of permit coverage, unless the facility exercises the Alternative Certification described in Section VI.E.3 of this fact sheet. At the end of the second year of coverage under the current permit, a facility is required to calculate the average concentration for each parameter for which the facility is required to monitor. If the average concentration for a pollutant parameter is less than or equal to the benchmark value, then the permittee is not required to conduct analytical monitoring for that pollutant during the fourth year of the permit. If, however, the average concentration for a pollutant is greater than the benchmark value, then the permittee is required to conduct quarterly monitoring for that pollutant during the fourth year of permit coverage. Analytical monitoring is not required during the first, third, and fifth year of the permit. When average concentrations exceed benchmark levels, facilities are encouraged to conduct more monitoring if appropriate to identify additional management practices which may be necessary to include in their SWPPP. The exclusion from analytical monitoring in the fourth year of the permit was conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit. For purposes of the above monitoring, year 2 runs from October 1, 2001 to September 30, 2002; year 4 runs from October 1, 2003 to September 30, 2004.

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.

Commenters also had concerns that only four samples and variability in conditions severely reduce the utility of monitoring results for judging BMP effectiveness. 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 judgement in interpreting the results. As stated above, 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.

Commenters had additional concerns regarding impacts of storm water on water quality standards and that monitoring has marginal value in assessing and protecting water quality. In the absence of establishing discharge pollutant levels that correlate directly to water quality standards, 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 and possibly the operation of the facility—not as a trigger to begin mandatory SWPPP or operational revisions (unless, after employing BPJ, the operator deems such revisions are necessary).

Monitoring results also serve as an oversight tool for EPA to prioritize sites which may benefit from a site inspection. A requirement to submit test results serves as an incentive for the facility operator to perform the monitoring and take any necessary action based on the results.

Some commenters felt the validity of benchmark values need to be reevaluated. Universal WQ-based discharge levels for storm water cannot be established; the next best thing would be to determine water segment-specific total maximum daily loads (TMDLs) for these discharges. But when benchmarks are employed merely as indicators, without requiring specific corrective actions beyond using best professional judgement to reassess present conditions and make any changes deemed necessary, the present benchmarks are adequate. In many cases operators can, upon receipt of analytic monitoring results above benchmarks, still conclude their present SWPPPs/BMPs are adequately protective of water quality, or that other situations such as discharging to low-quality, ephemeral streams may obviate the need for SWPPP/BMP revisions.

The fact that storm water discharge pollutant levels could be affected by atmospheric/dry deposition, run on and fate in transport, as well as structural sources, was a concern of a few commenters. EPA acknowledges the potential for adding pollutants to a facility's discharges from external or structural sources. Permittees are, nonetheless, still legally responsible for the quality of all discharges from their sites (or any runoff that comes into contact with their structures, industrial activities or materials, regardless of where these are located)—but not from pollutants that may be introduced into their discharges outside the boundaries of their properties. Pollutant levels, whether elevated from air deposition, run-on from nearby sites, or leachate from on-site structures, remain the responsibility of permittees. This was affirmed in the ruling by the Environmental Appeals Board against the General Motors Corporation CPC-Pontiac Fiero Plant in December 1997.

a. *Other Monitoring Options:* There were various comments for and against various alternatives to quarterly analytic monitoring submitted. The other non-analytic monitoring options are summarized in the following paragraphs, along with EPA responses.

b. *Visual Monitoring:* 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.

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.

c. *Annual Reporting:* 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. This information is already required to be documented in a facility's SWPPP, which, if deemed necessary, must be provided to EPA on demand. 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.

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 a 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.

d. *Group Monitoring:* 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. 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.

e. *Watershed Monitoring:* This option involves replacing the monitoring of discrete storm water discharges with ambient receiving water monitoring on a watershed basis. 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). 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.

f. *Monitoring Only in Impaired Waters:* Several commenters supported requiring monitoring only in impaired water bodies and for pollutants that cause the impairment. 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.

2. Compliance Monitoring

Today's final MSGP retains the same compliance monitoring requirements as the 1995 MSGP, and also includes compliance monitoring requirements for certain storm water discharges from new and existing hazardous and non-hazardous landfills. As noted earlier, EPA has recently finalized effluent limitations guidelines for these landfills (65 FR 3007, January 19, 2000) and the compliance monitoring is required to ensure compliance with the guidelines. These discharges must generally be sampled annually (in some cases quarterly) and tested for the parameters which are limited by the permit. Discharges subject to compliance monitoring include (in addition to the landfills discharges): coal pile runoff, contaminated runoff from phosphate fertilizer manufacturing facilities, runoff from asphalt paving and roofing emulsion production areas, material storage pile runoff from cement manufacturing facilities, and mine dewatering discharges from crushed stone, construction sand and gravel, and industrial sand mines located in EPA Regions 1, 2, 3, 6, 8, 9, 10. All samples are to be grabs taken within the first 30 minutes of discharge where practicable, but in no case later than the first hour of discharge. Where practicable, the samples shall be taken from the discharges subject to the numeric effluent limitations prior to mixing with other discharges.

Monitoring for these discharges is required to determine compliance with numeric effluent limitations. Discharges covered under today's final MSGP which are subject to numeric effluent limitations are not eligible for the alternative certification described in Section VI.E.3 of this fact sheet.

Where a State or Tribe has imposed a numeric effluent limitation as a condition for certification under CWA § 401, a default minimum monitoring frequency of once per year has been included in the final permit. This default monitoring frequency would only apply if a State failed to provided a monitoring frequency along with their conditional § 401 certification.

3. Alternate Certification

Today's final MSGP retains the provision in the 1995 MSGP for an alternative certification in lieu of analytical monitoring. The MSGP includes monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative certification described below is included in the permit to ensure that monitoring requirements are only imposed on those facilities which do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if there are no sources of a pollutant

exposed to storm water at the site then the potential for that pollutant to contaminate storm water discharges does not warrant monitoring.

A discharger is not subject to the analytical monitoring requirements provided the discharger makes a certification for a given outfall, on a pollutant-by-pollutant basis, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the SWPPP, and submitted to EPA in lieu of monitoring reports required under Part 7 of the permit. The permittee is required to complete any and all sampling until the exposure is eliminated. If the facility is reporting for a partial year, the permittee must specify the date exposure was eliminated. If the permittee is certifying that a pollutant was present for part of the reporting period, nothing relieves the permittee from the responsibility to sample that parameter up until the exposure was eliminated and it was determined that no significant materials remained. This certification is not to be confused with the low concentration sampling waiver. The test for the application of this certification is whether the pollutant is exposed, or can be expected to be present in the storm water discharge. If the facility does not and has not used a parameter, or if exposure is eliminated and no significant materials remain, then the facility can exercise this certification.

As noted above, the MSGP does not allow facilities with discharges subject to numeric effluent limitations guidelines to submit alternative certification in lieu of compliance monitoring requirements. The permit also does not allow air transportation facilities or hard rock mines subject to the analytical monitoring requirements in Part 6 of the final MSGP to exercise an alternative certification.

A facility is not precluded from exercising the alternative certification in lieu of analytical monitoring requirements in the second or fourth year of the reissued MSGP, even if that facility has failed to qualify for a low concentration waiver thus far. EPA encourages facilities to eliminate exposure of industrial activities and significant materials where practicable.

4. Reporting and Retention Requirements

Like the 1995 MSGP, today's final MSGP requires that permittees submit all analytical monitoring results obtained during the second and fourth year of permit coverage. As noted earlier, year 2 runs from October 1, 2001 to September 30, 2002; year 4 runs from October 1, 2003 to September 30, 2004. Monitoring results must be submitted by January 28, 2003 for year 2 monitoring and January 28, 2005 for year 4 monitoring.

For each outfall, one Discharge Monitoring Report (DMR) form must be submitted per storm event sampled. For facilities conducting monitoring beyond the minimum requirements, an additional DMR form must be filed for each analysis. The permittee must include a measurement or estimate of the total precipitation, volume of runoff, and peak flow rate of runoff for each storm event sampled. Permittees subject to compliance monitoring requirements are required to submit all compliance monitoring results annually by October 28 following each annual sampling period (which run from October 1 of each year to September 30 of the following year). Compliance monitoring results must be submitted on signed DMR forms. For each outfall, one DMR form must be submitted for each storm event sampled.

Permittees are not required to submit records of the visual examinations of storm water discharges unless specifically asked to do so by the Director. Records of the visual examinations must be maintained at the facility. Records of visual examination of storm water discharge need not be lengthy. Permittees may prepare typed or hand written reports using forms or tables which they may develop for their facility. The report need only document: the date and time of the examination; the name of the individual making the examination; and any observations of color, odor, clarity, floating solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution.

The address for submission of DMR forms for today's final MSGP is as follows: MSGP DMR (4203), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Under the 1995 MSGP, DMRs had been sent to the EPA Regional Offices. However, to facilitate review of all DMRs from facilities operating under the MSGP, the final MSGP requires that they be sent to the one location specified above.

Today's final MSGP also retains the requirement in the 1995 MSGP that permittees submit signed copies of DMRs to the operator of a large or medium MS4 (those which serve a population of 100,000 or more), if there are discharges of storm water associated with industrial activity through the MS4.

The location for submission of all reports (other than DMRs) for today's final MSGP remains the EPA Regional Offices as found in Part 8.3 of the final permit. Consistent with Office of Management and Budget Circular A–105, facilities located on the following Federal Indian Reservations, which cross EPA Regional boundaries, should note that permitting authority for such lands is consolidated in one single EPA Region.

a. Duck Valley Reservations lands, located in Regions 9 and 10, are handled by Region 9.

b. Fort McDermitt Reservation lands, located in Regions 9 and 10, are handled by Region 9.

c. Goshute Reservation lands, located in Regions 8 and 9, are handled by Region 9.

d. Navajo Reservation lands, located in Regions 6, 8, and 9, are handled by Region 9.

e. Ute Mountain Reservation lands, located in Regions 6 and 8, are handled Region 8.

Pursuant to the requirements of 40 CFR 122.41(j), today's MSGP (like the 1995 MSGP) requires permittees to retain all records for a minimum of three years from the date of the sampling, examination, or other activity that generated the data.

5. Sample Type

Today's final MSGP retains the same requirements regarding the type of sampling as the 1995 MSGP. A general description is provided below. Certain industries have different requirements. Permittees should check the industry-specific requirements in Part 6 of the final permit to confirm these requirements. Grab samples may be used for all monitoring unless otherwise stated. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval may be waived by the permittee where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour requirement may also be waived by the permittee where the permittee

documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. The grab sample must be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger must submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. A minimum of one grab is required. Where the discharge to be sampled contains both storm water and non-storm water, the facility shall sample the storm water component of the discharge at a point upstream of the location where the non-storm water mixes with the storm water, if practicable.

6. Representative Discharge

Today's MSGP retains the same provision as the 1995 MSGP regarding substantially identical outfalls which allows a facility to reduce its overall monitoring burden. This representative discharge provision provides facilities with multiple storm water outfalls, a means for reducing the number of outfalls that must be sampled and analyzed. This may result in a substantial reduction of the resources required for a facility to comply with analytical monitoring requirements. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one such outfall and report that the quantitative data also apply to the substantially identical outfalls provided that the permittee includes in the SWPPP a description of the location of the outfalls and detailed explanation why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (*e.g.*, low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Facilities that select and sample a representative discharge are prohibited from changing the selected discharge in future monitoring periods unless the selected discharge ceases to be representative or is eliminated. Permittees do not need EPA approval to claim discharges are representative, provided they have documented their rationale within the SWPPP. However, the Director may determine the discharges are not representative and require sampling of all non-identical outfalls.

The representative discharge provision in the permit is available to almost all facilities subject to the analytical monitoring requirements (not including compliance monitoring for effluent guideline limit compliance purposes) and to facilities subject to visual examination requirements.

The representative discharge provisions described above are consistent with Section 5.2 of NPDES Storm Water Sampling Guidance Document (EPA 833–B–92–001, July 1992).

7. Sampling Waiver

Today's final MSGP retains the same provisions for sampling waivers (as discussed below) which are found in the 1995 MSGP:

a. Adverse Weather Conditions. Today's final MSGP allows for temporary waivers from sampling based on adverse climatic conditions. This temporary sampling waiver is only intended to apply to insurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations which are difficult to access. When a discharger is unable to collect samples within a specified sampling period due to adverse climatic conditions, the discharger shall collect a substitute sample from a separate qualifying event in the next sampling period as well as a sample for the routine monitoring required in that period. Both samples should be analyzed separately and the results of that analysis submitted to EPA. Permittees are not required to obtain advance approval for sampling waivers.

b. *Unstaffed and Inactive Sites—Chemical Sampling Waiver.* Today's final MSGP allows for a waiver from sampling for facilities that are both inactive and unstaffed. This waiver is only intended to apply to these facilities where lack of personnel and locational impediments hinder the ability to conduct sampling (i.e., the ability to meet the time and representative rainfall sampling specifications). This waiver is not intended to apply to remote facilities that are active and staffed, or to facilities with just difficult logistical conditions. When a discharger is unable to collect samples as specified in this permit, the discharger shall certify to the Director in the DMR that the facility is unstaffed and inactive and the ability to conduct samples within the specifications is not possible. Permittees are not required to obtain advance approval for this waiver.

c. *Unstaffed and Inactive Sites—Visual Monitoring Waiver.* Today's final MSGP allows for a waiver from sampling for facilities that are both inactive and unstaffed. This waiver is only intended to apply to these facilities where lack of personnel and locational impediments hinder the ability to conduct visual examinations (i.e., the ability to meet the time and representative rainfall sampling specifications). This monitoring waiver is not intended to apply to remote facilities that are active and staffed, or to facilities with just difficult logistical conditions. When a discharger is unable to perform visual examinations as specified in this permit, the discharger shall maintain on site with the pollution prevention plan a certification stating that the facility is unstaffed and inactive and the ability to perform visual examinations within the specifications is not possible. Permittees are not required to obtain advance approval for visual examination waivers.

8. Quarterly Visual Examination of Storm Water Quality

Today's final MSGP retains the requirements of the 1995 MSGP for quarterly visual examinations of storm water discharges which EPA continues to believe provide a useful and inexpensive means for permittees to evaluate the effectiveness of their SWPPPs (with immediate feedback) and make any necessary modifications to address the results of the visual examinations. All sectors of today's final MSGP are required to conduct these examinations. In the 1995 MSGP all sectors except Sector S (which covers air transportation) were required to conduct the examinations.

Basically, the MSGP requires that grab samples of storm water discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen or other obvious indicators of storm water pollution. The grab samples must be taken within the first 30 minutes after storm water discharges begin, or as soon as practicable, but not longer than 1 hour after discharges begin. The sampling must be conducted quarterly during the

following time periods: January–March, April–June, July–September and October–December of each year. The reports summarizing these quarterly visual storm water examinations must be maintained on-site with the SWPPP.

The examination of the sample must be made in well lit areas. The visual examination is not required if there is insufficient rainfall or snow-melt to run off or if hazardous conditions prevent sampling. Whenever practicable the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible in recording observations.

When conducting a storm water visual examination, the pollution prevention team, or team member, should attempt to relate the results of the examination to potential sources of storm water contamination on the site. For example, if the visual examination reveals an oil sheen, the facility personnel (preferably members of the pollution prevention team) should conduct an inspection of the area of the site draining to the examined discharge to look for obvious sources of spilled oil, leaks, etc. If a source can be located, then this information allows the facility operator to immediately conduct a clean-up of the pollutant source, and/or to design a change to the SWPPP to eliminate or minimize the contaminant source from occurring in the future.

Other examples include: if the visual examination results in an observation of floating solids, the personnel should carefully examine the solids to see if they are raw materials, waste materials or other known products stored or used at the site. If an unusual color or odor is sensed, the personnel should attempt to compare the color or odor to the colors or odors of known chemicals and other materials used at the facility. If the examination reveals a large amount of settled solids, the personnel may check for unpaved, unstabilized areas or areas of erosion. If the examination results in a cloudy sample that is very slow to settle out, the personnel should evaluate the site draining to the discharge point for fine particulate material, such as dust, ash, or other pulverized, ground, or powdered chemicals.

To be most effective, the personnel conducting the visual examination should be fully knowledgeable about the SWPPP, the sources of contaminants on the site, the industrial activities conducted exposed to storm water and the day to day operations that may cause unexpected pollutant releases.

If the visual examination results in a clean and clear sample of the storm water discharge, this may indicate that no pollutants are present. This would be an indication of a high quality result. However, the visual examination will not provide information about dissolved contamination. If the facility is in a sector or subsector required to conduct analytical (chemical) monitoring, the results of the chemical monitoring, if conducted on the same sample, would help to identify the presence of any dissolved pollutants and the ultimate effectiveness of the Storm Water Pollution Prevention Plan. If the facility is not required to conduct analytical monitoring, it may do so if it chooses to confirm the cleanliness of the sample.

While conducting the visual examinations, personnel should constantly be attempting to relate any contamination that is observed in the samples to the sources of pollutants on site. When contamination is observed, the personnel should be evaluating whether or not additional BMPs should be implemented in the SWPPP to address the observed contaminant and, if BMPs have already been implemented, evaluating whether or not these are working correctly or need maintenance. Permittees may also conduct more frequent visual examinations than the minimum quarterly requirement, if they so choose. By doing so, they may improve their ability to ascertain the effectiveness of their plan. Using this guidance, and employing a strong knowledge of the facility operations, EPA believes that permittees should be able to maximize the effectiveness of their storm water pollution prevention efforts through conducting visual examinations which give direct, frequent feedback to the facility operator or pollution prevention team on the quality of the storm water discharge.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. EPA recommends that the visual examination be conducted at different times than the chemical monitoring, but is not requiring this. In addition, more frequent visual examinations can be conducted if the permittee so chooses. In this way, better assessments of the effectiveness of the Storm Water Pollution Prevention Plan can be achieved. The frequency of this visual examination will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or followup procedures must be used to ensure that appropriate actions are taken in response to the examinations. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on examination will enhance the staff's understanding of the site's storm water problems and the effects of the management practices that are included in the plan.

F. Regional Offices

1. Notice of Intent Address

Notices of Intent to be authorized to discharge under the MSGP should be sent to: Storm Water Notice of Intent (4203), USEPA, 401 M Street, SW., Washington, DC 20460.

2. EPA Regional Office Addresses and Contacts

For further information, please call the appropriate EPA Regional storm water contacts listed below:

- ME, MA, NH, Indian country in CT, MA, ME, RI, and Federal Facilities in VT

EPA Region 1, Office of Ecosystem Protection, JFK Federal Building (CMU), Boston, MA 02203, Contact: Thelma Murphy (617) 918–1615.

- PR

U.S. EPA, Region 2, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de Leon Avenue, Suite 417, San Juan, Puerto Rico 00907–4127, Contact: Sergio Bosques (787) 729–6951.

- DC and Federal Facilities in DE

EPA Region 3, Water Protection Division, (3WP13), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107, Contact: Cheryl Atkinson (215) 814–3392.

- Indian country in FL

EPA Region 4, Water Management Division, Surface Water Permits Section (SWPFB), 61 Forsyth Street, SW, Atlanta, GA 30303–3104, Contact: Floyd Wellborn (404) 562–9296.

• NM; Indian country in LA, OK, TX and NM (Except Navajo and Ute Mountain Reservation Lands); oil and gas exploration and production related industries, and pipeline operations in OK (which under State law are regulated by the Oklahoma Corporation Commission and not the Oklahoma Department of Environmental Quality); and oil and gas sites in TX.

EPA Region 6, NPDES Permits Section (6WQ-PP), 1445 Ross Avenue, Dallas, TX 75202–2733, Contact: Brent Larsen (214) 665–7523.

• Federal facilities in the State of Colorado; Indian country in CO, ND, SD, WY and UT (except Goshute and Navajo Reservation lands); Ute Mountain Reservation lands in CO and NM ; and Pine Ridge Reservation lands in SD and NE.

EPA Region 8, Ecosystems Pr.otection Program (8EPR–EP), 999 18th Street, Suite 300, Denver, CO 80202–2466 Contact: Vern Berry (303) 312–6234.

• AZ, American Samoa, Commonwealth of Northern Mariana Islands, Johnston Atoll, Guam, Midway Island and Wake Island; all Indian country in AZ, CA, and NV; those portions of the Duck Valley, Fort McDermitt and Goshute Reservations that are outside NV; those portions of the Navajo Reservation that are outside AZ.

EPA Region 9, Water Management Division, (WTR–5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley (415) 744–1906.

• ID; Indian country in AK, ID (except the Duck Valley Reservation), OR (except the Fort McDermitt Reservation), and WA; and Federal facilities in WA

EPA Region 10, Office of Water (OW–130), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101, Contact: Misha Vakoc (206) 553–6650 (toll-free in Region 10 states: 800–424–4372, extension 6650).

VII. Cost Estimates for Common Permit Requirements

Cost estimates for the MSGP were included with the final fact sheet accompanying the issuance of the MSGP on September 29, 1995 and are not being repeated here. However, additional costs for facilities seeking coverage under the reissued MSGP should be minor since the new MSGP includes few changes from the 1995 MSGP.

VIII. Special Requirements for Discharges Associated With Specific Industrial Activities

Section VIII of the fact sheet accompanying the 1995 MSGP included a detailed description of the industrial sectors covered by the permit, sources of pollutants from the different types of industries, available industry-specific BMPs, and a description of the industrial-specific permit requirements. As noted previously, EPA is not repeating all this information due to its considerable length. Table 1 in Section IV of this fact sheet listed the industrial sectors and subsectors covered by today's final MSGP. For today's MSGP, EPA reviewed the various sectors and subsectors to determine whether additional BMP opportunities have been identified subsequent to the issuance of the 1995 MSGP which would be appropriate to include in the reissued MSGP.

To update the various sectors and subsectors, EPA reviewed a variety of sources of information. As noted in Section VI.C of this fact sheet, pollution prevention is the cornerstone of the NPDES storm water permit program and, as such, EPA focused on new pollution prevention opportunities in updating the sectors. EPA has several ongoing programs directed toward identifying additional pollution prevention opportunities for different industrial sectors. One example is the ''sector notebooks'' which EPA's Office of Compliance has published covering 28 different industries, including many of those covered by the MSGP. EPA's Design for the Environment Program and Common Sense Initiative are additional examples. States, municipalities, industry trade associations and individual companies have also been active in recent years in trying to identify additional pollution prevention opportunities for different types of industries.

In reviewing the new information, however, EPA has identified only a few sectors where there appear to be additional storm water BMPs which would be appropriate for the reissued MSGP. For many industries, while considerable work has been conducted to reduce the environmental effects of these industries, little of the work has focused specifically on storm water. Rather, the efforts have focused more in areas such as manufacturing process changes to reduce hazardous waste generation or to reduce pollutant discharges in process wastewater. Where additional storm water BMPs have been identified and incorporated into the reissued MSGP, these new requirements are discussed below by sector. In some sectors, additional language clarifying the permit requirements has been added and these changes are also discussed below.

A. Sectors C—Chemical and Allied Products Facilities

Industry-specific requirements for the manufacture of fertilizer from leather scraps (SIC 2873) was moved from Sector Z (Leather Tanning and Finishing) to Sector C. This change places the requirements for SIC 2873 in the same sector as other manufacturers of fertilizers.

B. Sector G—Metal Mining (Ore Dressing and Mining)

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) if the area disturbed is one acre or more. All mining exploration/construction operations of less than one acre must be covered under the MSGP–2000.

Today's MSGP also incorporates the MSGP modifications of August 7, 1998 (63 FR 42534) regarding storm water discharges from waste rock and overburden piles. On October 10, 1995, the National Mining Association challenged the interpretation set forth in Table G–4 of the 1995 MSGP that runoff from waste rock and overburden piles would categorically be considered mine drainage subject to effluent limitations guidelines (ELGs) at 40 CFR Part 440. The litigation was settled on August 7, 1998 with a revised interpretation by EPA of the applicability of the ELGs which is incorporated into today's MSGP. Under the revised interpretation, runoff from waste rock and overburden piles is not subject to ELGs unless it naturally drains (or is intentionally diverted) to a point source and combines with ''mine drainage'' that is otherwise subject to the ELGs.

The August 7, 1998 modification of the MSGP provided permit coverage for storm water discharges from waste rock and overburden piles which are not subject to ELGs. However, due to concerns regarding potential pollutants in the discharges, additional monitoring requirements were included in the permit to determine the pollutant concentrations in the discharges. These monitoring requirements are also

included in today's MSGP. The monitoring results which have been submitted to EPA pursuant to these requirements were also considered in determining the monitoring requirements for today's permit for this sector.

Concerns were expressed by some commenters over the use of the term ''Numeric limitation'' in the headings in the tables in Sector G in the proposed MSGP. However, since there are no actual numeric limitations in the tables, EPA believes this concern is not justified and the final MSGP has not been modified in response to these comments. In response to other comments, the revised Table G–4 from the August 7, 1998 MSGP modification has been added to the permit in Part 6.G.

In response to comments received on the proposed MSGP, the language in Part 6.G.1.6.6 of the final MSGP was modified to indicate that a permittee may test ''or evaluate'' mining-related discharges for non-storm water discharges to make today's MSGP consistent with the 1995 MSGP.

Also in response to comments, the permit language in the final MSGP which defines the reclamation phase was modified to reflect post-mining land uses other than ''pre-mining state'' which had been in the proposed MSGP. In addition, the final MSGP has been clarified to indicate that sampling waivers in Part 5.3.1 of the MSGP do apply to Sector G.

C. Sector I—Oil and Gas Extraction and Refining

In response to a comment, the title for Sector I was changed to include ''Refining'' to clarify that runoff from refineries (except runoff subject to effluent limitations guidelines) is eligible for coverage under today's MSGP.

D. Sector J—Mineral Mining and Processing

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector J to determine whether these provisions need to be updated for the reissued MSGP. To clarify the applicability of the MSGP regarding construction activity at mineral mining sites and to make mineral mining requirements consistent with metal mining provisions (Sector G), Sector J 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) if the area disturbed is one acre or more. All mining exploration/construction operations of less than one acre must be covered under the MSGP–2000.

E. Sector K—Hazardous Waste Treatment, Storage or Disposal Facilities

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector K to determine whether these provisions need to be updated for the reissued MSGP. On January 19, 2000 (65 FR 3008), EPA promulgated final effluent limitations guidelines (ELGs) for ''contaminated storm water discharges'' from new and existing hazardous landfill facilities regulated under RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N), except for the following ''captive'' landfills:

(a) Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For Sector K of the new MSGP, EPA has included the new ELGs (40 CFR Part 445 Subpart A) for hazardous landfill facilities.

The term ''contaminated storm water'' is defined in the ELGs as ''storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater.'' [40 CFR 445.2]. Contaminated storm water may originate from areas at a landfill including (but not limited to): ''the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.'' [40 CFR 445.2].

The term ''non-contaminated storm water'' is defined in the ELGs as ''storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater.'' [40 CFR 445.2]. Non-contaminated storm water includes storm water which ''flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.'' [40 CFR 445.2].

The term ''landfill wastewater'' is defined in the ELGs as ''all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.''

The 1995 MSGP authorized discharges of storm water associated with industrial activity which includes contaminated storm water discharges (as defined above) as well as other non-contaminated storm water discharges (also defined above). Today's final MSGP continues to authorize storm water associated with industrial activity; however, for contaminated storm water discharges as defined above, the reissued MSGP requires compliance with the promulgated ELGs for such discharges (with monitoring once/year during each year of the term of the final MSGP). The ELGs for the new and existing hazardous landfills are found in Table K–1 below:

TABLE K–1—EFFLUENT LIMITATIONS GUIDELINES FOR CONTAMINATED STORM WATER DISCHARGES (MG/L)

Pollutant	Maximum for 1 day	Monthly average maximum
BOD5	220	56

TABLE K–1—EFFLUENT LIMITATIONS GUIDELINES FOR CONTAMINATED STORM WATER DISCHARGES (MG/L)—Continued

Pollutant	Maximum for 1 day	Monthly average maximum
TSS	88	27
Ammonia	10	4.9
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzoic Acid	0.119	0.073
Naphthalene	0.059	0.022
p-Cresol	0.024	0.015
Phenol	0.048	0.029
Pyridine	0.072	0.025
Arsenic (Total)	1.1	0.54
Chromium (Total)	1.1	0.46
Zinc (Total)	0.535	0.296
pH	Within the range of 6–9 pH units.	

Today's final MSGP (like the 1995 MSGP) does not authorize non-storm water discharges such as leachate and vehicle and equipment washwater. These and other landfill-generated wastewaters are subject to the ELGs. Today's final MSGP does, however, continue to authorize certain minor non-storm water discharges (listed in Part 1.2.2.2) which are very similar to the 1995 MSGP.

F. Sector L—Landfills, Land Application Sites and Open Dumps

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector L to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the 1995 MSGP already include several special BMPs for this industry in addition to the MSGP's basic BMP requirements.

On January 19, 2000 (65 FR 3008), EPA promulgated final effluent limitations guidelines (ELGs) for ''contaminated storm water discharges'' from new and existing non-hazardous landfill facilities regulated under RCRA Subtitle D (40 CFR Part 445 Subpart B). For Sector L of today's MSGP, EPA has included the ELGs as they apply to facilities covered by this sector. For Sector L facilities, the ELGs apply to:

Municipal solid waste landfills regulated under RCRA Subtitle D at 40 CFR Part 258 and those landfills which are subject to the provisions of 40 CFR Part 257, except for any of the following ''captive'' landfills:

(a) Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

EPA has not modified Sector L for the discharges which are not subject to the ELGs. In addition, EPA would like to call attention to a new EPA publication entitled ''Guide for Industrial Waste Management'' (EPA 530–R–99–001, June, 1999) which provides a useful information resource for permittees in complying with the MSGP, and in minimizing the impact of landfills to the environment overall.

The term ''contaminated storm water'' is defined in the ELGs as ''storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater.'' [40 CFR 445.2]. Contaminated storm water may originate from areas at a landfill including (but not limited to): ''the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.'' [40 CFR 445.2].

The term ''non-contaminated storm water'' is defined in the ELGs as ''storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater.'' [40 CFR 445.2]. Non-contaminated storm water includes storm water which ''flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.'' [40 CFR 445.2].

The term ''landfill wastewater'' is defined in the ELGs as ''all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.'' [40 CFR 445.2].

The 1995 MSGP authorized discharges of storm water associated with industrial activity from landfills including contaminated storm water discharges as defined in the ELGs as well as non-contaminated storm water. Today's final MSGP continues to authorize storm water associated with industrial activity; however, for contaminated storm water discharges as defined above, today's MSGP requires compliance with the promulgated ELGs for such discharges (with monitoring once/year during each year of the term of the final MSGP). The ELGs are found in Table L–1 below:

TABLE L–1—EFFLUENT LIMITATIONS GUIDELINES FOR CONTAMINATED STORM WATER DISCHARGES (MG/L)

Pollutant	Maximum for 1 Day	Monthly average maximum
BOD5	140	37
TSS	88	27
Ammonia	10	4.9
Alpha Terpineol	0.033	0.016
Benzoic Acid	0.12	0.071
p-Cresol	0.025	0.014
Phenol	0.026	0.015
Zinc (Total)	0.20	0.11
pH	within the range of 6–9 pH units.	

Today's final MSGP (like the 1995 MSGP) does not authorize non-storm water discharges such as leachate and vehicle and equipment washwater. These and other landfill-generated wastewaters are subject to the ELGs. Today's MSGP does, however, continue to authorize the same minor non-storm water discharges (listed in Part 1.2.2.2) as the 1995 MSGP.

G. Sector S—Air Transportation Facilities

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector S to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the 1995 MSGP included several special BMP requirements for airports in addition to the MSGP's basic BMP requirements. Additional technologies have been developed since the original MSGP issuance for deicing operations which have been included in today's MSGP. A lengthy (but not comprehensive) list of new deicing chemical and BMP options is provided in Parts 6.S.5.3.6.2 and 6.S.5.3.7. More information on these options is found in the EPA publication ''Preliminary Data Summary, Airport Deicing Operations'' *(http://www.epa.gov/ost/guide/airport/index.html).*

The MSGP–2000 has been clarified such that compliance evaluations (Part 6.S.5.5) 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.

In addition, EPA has revised Part 6.S.5.4 to reflect that monthly inspections of deicing areas during the deicing season (e.g., October through April) are now allowed at airports with highly effective, rigorously implemented SWPPPs. This requirement is a reduction from the previous MSGP's weekly requirement. 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.

H. Sector T—Treatment Works

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector T to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the 1995 MSGP already include a few special BMP requirements for this industry in addition to the MSGP's basic BMP requirements. In reviewing the information which EPA has available on this industry, EPA has identified several additional areas at treatment works facilities which we believe should be considered more closely for potential storm water controls. As a result, EPA has included additional or modified permit requirements which we believe are appropriate to include in Sector T.

Today's MSGP requires that operators of Sector T treatment works include the following additional areas or activities, where they are exposed to precipitation, in their SWPPP site map, summary of potential pollutant sources, and inspections: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage and/or hauled waste receiving stations. An additional BMP that permittees must consider is routing storm water into the treatment works, or covering exposed materials from these additional areas or activities.

I. Sector Y—Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries

EPA has re-evaluated the provisions of the 1995 MSGP for industrial facilities in Sector Y. The 1995 MSGP included several special BMP requirements for rubber manufacturers to control zinc in storm water discharges. However, no special BMPs beyond the MSGP's basic SWPPP requirements were included in the 1995 MSGP for manufacturers of miscellaneous plastic products or miscellaneous manufacturing industries.

EPA has several ongoing programs directed toward identifying additional pollution prevention opportunities for different industrial sectors. For example, EPA's Office of Compliance has published ''sector notebooks'' for a number of industries, including the rubber and miscellaneous plastics industry (EPA 310-R–95–016). The sector notebooks are intended to facilitate a multi-media analysis of environmental issues associated with different industries and include a review of pollution prevention opportunities for the industries. As discussed below, EPA's sector notebook for the rubber and plastic products industry identifies a number of additional BMPs (beyond those in the 1995 MSGP) which could further reduce pollutants in storm water discharges from these facilities, and which have been included in the reissued MSGP.

1. Rubber Manufacturing Facilities

Today's MSGP requires that rubber manufacturing facility permittees consider the following additional BMPs (which were selected from those in the sector notebook) for the rubber product compounding and mixing area:

(1) consider the use of chemicals which are purchased in pre-weighed, sealed polyethylene bags. The sector notebook points out that some facilities place such bags directly into the banbury mixer, thereby eliminating a formerly dusty operation which could result in pollutants in storm water discharges.

(2) consider the use of containers which can be sealed for materials which are in use; also consider ensuring an airspace between the container and the cover to minimize ''puffing'' losses when the container is opened.

(3) consider the use of automatic dispensing and weighing equipment. The sector notebook observes that such equipment minimizes the chances for chemical losses due to spills.

2. Plastic Products Manufacturing Facilities

For plastic products manufacturing facilities, today's final MSGP requires that permittees consider and include (as appropriate) specific measures in the SWPPP to minimize loss of plastic resin pellets to the environment. These measures include (at a minimum) spill minimization, prompt and thorough cleanup of spills, employee education, thorough sweeping, pellet capture and disposal precautions. Additional specific guidance on minimizing loss can be found in the EPA publication entitled ''Plastic Pellets in the Aquatic Environment: Sources and Recommendations'' (EPA 842–B–92–010, December, 1992) and at the website of the Society of the Plastics Industry (www.socplas.org).

3. Industry-Sponsored Efforts

Both the rubber manufacturing and plastic products industries are also active in sponsoring studies designed to reduce the environmental impacts associated with the production, use and ultimate disposal of their products. However, in reviewing recent work in this regard, EPA has not identified any additional BMPs for storm water discharges which would be appropriate for the reissued MSGP. Therefore, only the additional BMPs noted above are included in the reissued MSGP for these industries.

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 were 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 NOT 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 superceded 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 clanfication.

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