

## Supplemental Information Sheet



### WHAT YOU NEED TO KNOW ABOUT EPA'S PROPOSED NEW INDUSTRIAL STORMWATER PERMIT

Most industrial facilities use general permits to cover their stormwater discharges. The terms of EPA's new Multi-Sector General Permit (MSGP), thus, are critically important in establishing the permitting burden facing industrial stormwater dischargers. Following are some important changes that EPA is considering, which are also summarized on pages 59, 675-6 of its *Federal Register* notice (see [78 Fed. Reg. 59,672, Sept. 27, 2013](#)).

**AGC welcomes members' comments on any of the proposed changes. Please email Leah Pilconis, senior environmental advisor to AGC, at [pilconisl@agc.org](mailto:pilconisl@agc.org) in advance of the Nov. 27, 2013, comment deadline.**

#### Limitations on Pavement Washwaters

The proposed MSGP would clarify that pavement washwaters may not come into contact with hazardous cleaning products (bleach, hydrofluoric acid, sodium hydroxide, nonylphenyls) to be covered under the permit.

#### Narrowed Scope of "Allowable Non-stormwater Discharges"

In addition, EPA is proposing to clarify that discharges from the spray down of lumber and wood product areas are permitted so long as no chemical additives are used in the spray-down waters or applied to the wood. Similarly, [EPA's fact sheet](#) also discusses other non-stormwater discharges that may require a different permit (*i.e.*, prohibited non-stormwater discharges) and appears to be narrowing to scope of the MSGP 2013. You will notice on [fact sheet pages 6 and 7 \(and in the proposed permit itself\)](#) various discussions about limitations on facilities being able to rely upon the "NPDES Permit Shield" for various types of discharges not specifically enumerated in the MSGP 2013. That discussion likely is in response to recent court cases in which the court relied upon the permit shield doctrine to overturn citizen suits relating to alleged unauthorized discharges.

#### Discharges to CERCLA (Superfund) Sites

EPA's proposed MSGP would clarify that discharges to a Superfund (hazardous waste) site are not covered unless specifically authorized by the EPA regional office in which the site is located. Some aspects of this proposed mandate appear to raise some legal questions about EPA's legal authority (under the stormwater program) and a current discharger's responsibility for others' possible contamination.

#### NEPA Review

Previous versions of the MSGP required those facilities constructed after the promulgation of their industry's New Source Performance Standards (NSPS) to determine and document in their SWPPP either "No Significant Impact" under the National Environmental Policy Act (NEPA), or to complete an Environmental Impact Statement in accordance with an environmental review conducted by EPA. The MSGP proposes to get rid of the requirement for permittees to document compliance with NEPA either through a "FONSI" (finding of no significant impact) or

preparation of an Environmental Impact Statement. Instead, EPA intends to take care of NEPA compliance by itself when it finally issues the permit. Specifically, for the proposed 2013 MSGP, EPA plans to prepare an Environmental Assessment to analyze the potential environmental impacts of the permit. Therefore, under the pr

## **SWPPP Documentation and Effluent Limits**

As noted in the electronic reporting section above, EPA's proposed permit would mandate greater access to SWPPPs for inspector and public consumption/review. At the same time, EPA proposed to require more detailed descriptions throughout the SWPPP and prohibiting "generic" SWPPPs. Some SWPPP best management practice mandates (particularly related to erosion and impervious surfaces) raise questions about EPA's legal authority (like flow), whether related pollutants are "associated with industrial activity" or are directly related to such discharges. See [EPA's fact sheet](#) at pages 21, 25 and 27.

To reduce permittee burden, EPA would allow certain SWPPP mandates and related documentation requirements regarding particular effluent limits to be satisfied by merely copying EPA's requirements verbatim into the SWPPP, without providing additional information. Such instances are marked with an asterisk (\*) in the [fact sheet](#)