



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Challenge to Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity: U.S. Environmental Protection Agency and Environmental Groups Enter into Settlement Agreement

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The United States Environmental Protection Agency ("EPA") and a coalition of environmental organizations (collectively "Waterkeeper Alliance") entered into an August 16th Settlement Agreement addressing a challenge to the agency's Clean Water Act National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP").

The Waterkeeper Alliance had previously filed petitions for review of the MSGP that were consolidated in the United States Court of Appeals for the Second Circuit.

By way of background, EPA published in the Federal Register on June 16, 2015 a notice that it had issued 44 general permits (i.e., MSGP). See 80 Fed. Reg. 34,403. These general permits are collectively referred to as the MSGP.

The MSGP is a general permit (as opposed to individual permit) utilized by EPA to address stormwater discharges associated with thousands of different types of facilities in the United States. It applies to any number of businesses in multiple industrial sectors with cement mixing, scrap metal, trucking, and food processing as examples.

EPA's MSGP is utilized in states that do not have primacy for this permitting program.

Key provisions in the Settlement Agreement focus on the MSGP permit that EPA will reissue in 2020 upon the expiration of the existing MSGP. The provisions include:

- EPA funding of a study to be conducted by the National Academy of Sciences, Engineering and Medicine's National Research Council addressing:
 - Which pollutants are monitored by various industries
 - Evaluate the feasibility of numeric retention standards for industrial stormwater discharges
 - Evaluate additional monitoring of a number of industrial sectors
- EPA will propose a series of escalating responses that permittees must make if they exceed benchmarks set in the MSGP

- EPA will propose a nationwide roll-out measures intended to prevent recontaminating waters that have been cleaned up from the Comprehensive Environmental Response Compensation Liability Act
- EPA will propose that industrial facilities using coal tar based pavement sealants will be ineligible for coverage under the MSGP

The Settlement Agreement does not directly apply to states such as Arkansas that have primacy (i.e., have been delegated this particular permitting program). Nevertheless, states do take into account to some extent EPA's choices (i.e., in terms of permit conditions and limitations) in revising or reissuing their general stormwater permits.

[A copy of the Settlement Agreement can be downloaded here.](#)