



# STEEL MANUFACTURERS ASSOCIATION

May 19, 2025

**Via Regulations.gov**

U.S. Environmental Protection Agency  
EPA Docket Center, Office of Water Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Re: Steel Manufacturers Association Comments on EPA's Proposed 2026 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (EPA-HQ-OW-2024-0481); 89 Fed. Reg. 101,000**

To the U.S. Environmental Protection Agency:

The Steel Manufacturers Association (“SMA”) provides these comments in response to the U.S. Environmental Protection Agency’s (“EPA’s” or “the Agency’s”) request for comments on the Agency’s proposed 2026 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”).<sup>1</sup> We are concerned that the proposed 2026 MSGP would needlessly impose complex and burdensome new or expanded monitoring, control, and response requirements and considerations that will make MSGP implementation costlier and more complex, but not more protective of receiving waters. In fact, if finalized, the Agency’s proposed 2026 MSGP would exacerbate the unnecessary cost and complexity associated with many of the provisions EPA first included in the 2021 MSGP. As such, in addition to reconsidering the unnecessary, needlessly burdensome, or complex aspects EPA proposed to add to the 2026 MSGP, SMA respectfully urges the Agency to also rescind those aspects of the 2021 MSGP that have already introduced compliance burdens and complexity without any meaningful environmental benefits.

Indeed, EPA has consistently increased the stringency and complexity of the MSGP since the Agency first developed the permit decades ago. Each successive version of the MSGP has included new regulatory requirements that resulted in significant additional compliance costs often without adequate justification or clear environmental benefits.

In light of our request that EPA promulgate changes to both the proposed 2026 MSGP and the current 2021 MSGP, this letter provides comments on both the current and proposed MSGP. In addition to these comments, SMA has joined and expressly supports comments submitted by the Recycled Materials Association (“ReMA”) and Nucor Corporation. As noted in these letters, we believe that EPA has the

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<sup>1</sup> 89 Fed. Reg. 101,000 (Dec. 13, 2024); EPA-HQ-OW-2024-0481.

opportunity and obligation to promulgate a 2026 MSGP that eliminates unduly burdensome permit requirements without compromising the integrity or effectiveness of environmental safeguards.

EPA is also obligated to ensure that any changes to the MSGP are transparently evaluated and promulgated consistent with administrative procedures. To date, however, it does not appear that EPA has followed relevant procedural requirements. For instance, in apparent haste to publish the proposed 2026 MSGP before the end of 2024, EPA declined to submit its draft proposal to the Office of Management and Budget's Office of Information and Regulatory Affairs ("OIRA") as the Agency has done for multiple previous MSGP proposals. In addition to being inconsistent with the requirements of Executive Order 12866, this omission meant that OIRA was unable to solicit and consider feedback from other interested federal agencies, regulated entities, or the public.

In this apparent rush to publish the proposed 2026 MSGP in the *Federal Register* on December 13, 2024, EPA also failed to provide interested stakeholders a variety of important data and records necessary to understand and comment on the proposed MSGP. In particular, EPA did not upload to the regulations.gov docket key monitoring analyses, cost assessments, and discharge reporting data until more than a month after publishing the proposed 2026 MSGP in the *Federal Register*. And EPA did not provide a redline copy of the Agency's proposed changes to the MSGP until March 5, 2025—nearly three months following publication of the proposed 2026 MSGP and less than a month before the revised April 4, 2025, comment deadline. As EPA has previously recognized in proposing previous versions of the MSGP, the voluminousness of the MSGP and its appendices (450+ pages) necessitates the use of redlines so stakeholders can identify precisely what EPA is proposing to change.

In light of these procedural and substantive concerns, the Agency should withdraw the current MSGP proposal and, through a transparent regulatory process and reasoned consideration of available data, publish a new proposed 2026 MSGP for public comment. We believe that EPA has sufficient time to withdraw and repropose the draft MSGP before it expires in February 2026. And even if EPA is not able to propose and finalize a new version of the 2026 MSGP before the 2021 MSGP expires, there is precedent for EPA's use of enforcement discretion to ensure that permittees are not liable for any gaps in permit coverage.<sup>2</sup>

We appreciate the opportunity to provide these comments and welcome the opportunity to work with EPA to develop a 2026 MSGP that allows permit holders to effectively addresses stormwater discharges without imposing unnecessary requirements.

## **I. THE STEEL MANUFACTURERS ASSOCIATION**

SMA is the primary trade association for scrap-based electric arc furnace ("EAF") carbon steelmakers, often referred to as "minimills," that comprise the nation's largest recyclers and account for 70% of the steel producing capacity of the United States today. Members make various steel products, including carbon, alloy, and stainless steels, from a feedstock of nearly 100 percent steel scrap.

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<sup>2</sup> U.S. EPA, Memorandum from Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance to David P. Ross, Administrator, Office of Water, *No Action Assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities* (June 3, 2020).

SMA consists of 25 American companies that operate over 125 facilities, directly employ approximately 76,000 people, and indirectly generate over 300,000 additional jobs. SMA also has a wide range of associate member companies worldwide that provide goods and services to the steel industry.

SMA members' reliance on scrap metal to produce new steel products is environmentally beneficial as well. For one, steel that is sustainably produced from scrap metal reduces the mining of virgin ores and avoids the need to utilize higher-emitting and more energy intensive processes required to make steel from ores. Moreover, absent SMA members' capacity to beneficially reuse millions of tons of scrap metal every year, much of that material would be discarded and/or diverted to landfills. End-of-life products and other materials that are presently collected and diverted into the recycling system based on the value of their metal content would increasingly be abandoned thereby saddling communities with another source of blight. Indeed, steel is the most recycled material in the world, and steel produced in domestic EAFs is the cleanest, greenest, most sustainable steel in the world.

SMA represents an industry that is not only environmentally beneficial, but highly regulated as well. EAF steel manufacturers in the United States are subject to some of the most stringent environmental standards in the world, employ the most advanced pollution control technology, and protect their workforces and neighboring communities better than any their overseas competitors.

While some SMA members operate as zero-discharge facilities, those with known or potential stormwater discharges obtain authorization for those discharges through individual permits or through a MSGP. Generally, the industrial operations at SMA members' facilities fall under Sector F (Primary Metal Manufacturing), and those facilities with co-located scrap metal processing operations also fall under Sector N (Scrap Recycling and Waste Recycling Facilities). Stormwater discharges from other SMA members' facilities may also be permitted under other MSGP industry sectors as well.

With few exceptions, states are the entities that issue and oversee the MSGPs utilized by SMA members. While the various state MSGPs frequently differ from the federal MSGP, they are required to be as stringent as the federal MSGP, and are frequently more stringent. As such, even though few, if any, SMA members are directly permitted through the federal MSGP, all SMA member facilities that utilize a MSGP for stormwater are directly impacted by the form, substance, and stringency of the federal MSGP.

As additionally relevant here given EPA's proposal to broadly require new sampling and monitoring requirements for per- or polyfluoroalkyl substances ("PFAS"), SMA notes that its members neither manufacture nor use PFAS. Some SMA members may be "passive receivers" of PFAS as an undesired contaminant in their scrap metal feedstock but at no point in the steelmaking process do SMA members use these chemicals or benefit from their presence. To the extent that any SMA member receives PFAS-containing materials as part of their scrap metal feedstock supply, those substances are undesired contaminants that SMA members have little or no ability to prevent from receiving.

## **II. SEVERAL PROPOSED CHANGES IN THE 2026 MSGP ARE UNSUBSTANTIATED, UNNECESSARY, INCONSISTENT WITH EXISTING LAW, AND WILL NOT RESULT IN ENVIRONMENTAL BENEFITS**

As noted above, SMA's members have significant experience managing stormwater from their industrial operations and maintaining compliance with conditions in various states' MSGPs, as well as under site-specific permits. Our members understand the key elements of an effective stormwater management

program, and they are keenly aware of the types of permit conditions and requirements that can often divert resources from environmental management programs without providing concordant environmental benefits. This collective experience informs the following comments and recommendations from SMA.

**a. EPA Should not Amend the MSGP to Require Indicator Monitoring or Benchmark Monitoring for PFAS**

EPA proposes to include in the 2026 MSGP a new provision that requires certain operators to conduct quarterly indicator analytical monitoring for 40 different PFAS compounds beginning the first full quarter of permit coverage.<sup>3</sup> This new requirement would apply to 23 different industry sectors, including Sectors F and N.<sup>4</sup> EPA has also requests “comment on whether PFAS-related benchmark monitoring should be applied to some, or all, of” these same industry sectors.<sup>5</sup> For the reasons set forth below, SMA strongly opposes amending the current MSGP to add PFAS indicator monitoring or benchmark monitoring requirements.

As a threshold matter, EPA does not reasonably explain, much less support, why it identified these 23 industry sectors for potential PFAS indicator monitoring. For instance, the Agency’s proposal to require PFAS indicator monitoring for all facilities that fall within Sector F (Primary Metal Manufacturing) is based only on EPA’s PFAS Strategic Roadmap,<sup>6</sup> which identified the “metal finishing” industry as among multiple industries known to have PFAS in their process water discharges.<sup>7</sup> The “metal finishing” industry discharges in EPA’s PFAS Strategic Roadmap largely refer to the chrome plating industry, which has used PFAS-containing fume suppressants to reduce emissions of hexavalent chromium. This is not a reasonable basis for proposing to impose costly PFAS indicator or benchmark monitoring requirements across the entire Subsector F “Primary Metals Manufacturing” sector.

The chrome plating industry is in no way representative of operations in the primary metals manufacturing sector, which includes carbon steel producers like SMA’s members, as well as foundries, and a variety of other ferrous and nonferrous metals producers and foundries. In fact, the chrome plating industry represents a very distinct subset of the primary metals manufacturing sector, and the historic use of PFAS-containing fume suppressants is unique to the chrome plating industry because of that industry’s specific need to suppress emissions of hexavalent chromium, which is a carcinogen.

Moreover, it is highly unlikely that the PFAS EPA associates with the chrome plating industry is being discharged through stormwater. As previously noted, the chrome plating industry has historically only used PFAS in fume suppressants to protect employees working within the facilities. To the extent PFAS is discharged from these facilities at all, it is likely in process waters that are either directly discharged pursuant to site-specific National Pollutant Discharge Elimination System (“NPDES”) permits or indirectly discharged to publicly owned treatment works (“POTWs”) and subject to pretreatment requirements.

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<sup>3</sup> 89 Fed. Reg. at 101,002.

<sup>4</sup> 89 Fed. Reg. at 101,002.

<sup>5</sup> 89 Fed. Reg. at 101,003.

<sup>6</sup> U.S. Environmental Protection Agency, *PFAS Strategic Roadmap: EPA’s Commitments to Action 2021–2024* (2021). Available at [https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap\\_final-508.pdf](https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf).

<sup>7</sup> PFAS Research Memorandum (Dec. 9, 2024); EPA-HQ-OW-2024-0481-0153 (“PFAS Research Memo”).

EPA's proposal to require PFAS indicator monitoring for all facilities that fall within Sector N (Scrap Recycling and Waste Recycling Facilities) is similarly unsupported. Unlike Subsector F, EPA's PFAS Strategic Roadmap does not reference any subsector or operation within Sector N. As such, in lieu of using the Agency's PFAS Strategic Roadmap to justify the proposed new PFAS monitoring requirement, EPA proposes to require PFAS monitoring across all Sector N facilities based entirely on discharges monitored under NPDES permit WV0003204 that was issued to Intercontinental Export Import, Inc. ("IEI") in Parkersburg, West Virginia.<sup>8</sup> According to permit WV0003204, IEI's operations falls within Standard Industrial Code 3423 Hand and Edge Tools, which encompasses "[e]stablishments primarily engaged in manufacturing files and other hand and edge tools."<sup>9</sup> According to a 2015 Consent Order with the West Virginia Department of Environmental Protection:

IEI operates a warehouse for off grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and chlorinated polyethylene in the form of lumps, pellets, fiber, and resins (powder) in Parkersburg, Wood County, West Virginia. IEI uses extruders to produce underwater or rod cut pellets focusing on unfilled and glass or mineral filled engineering resins.<sup>10</sup>

According to a 2017 Corrective Action Plan IEI prepared after a large industrial fire occurred at the facility, while IEI conducted polymer recycling at another IEI facility, "Plant No. 1," for which permit WV0003204 was issued:

. . . stores numerous polymer materials in the form of pellets, flake, strand, beads, plop, dust, granules, and resins. These polymer materials are sold to American and International manufacturers for polymer recycling. No recycling, extruding or other manufacturing processes are conducted at Plant No. 1.<sup>11</sup>

While a single facility's discharge permit is hardly sufficient to impose an incredibly costly PFAS monitoring requirement on the entire Sector N "Scrap Recycling and Waste Recycling" industry, it is flatly irrational to propose these requirements based on a single permit issued to a facility that conducts no recycling.

The wholly unsupported manner in which EPA seemingly selected the industry sectors on which it would impose this new PFAS indicator monitoring requirement is not mitigated by the fact that indicator monitoring is a "report only" obligation. Although EPA repeatedly characterized its proposed PFAS indicator monitoring requirement as a "report only" obligation that is not akin to benchmark monitoring or an effluent limit, if adopted in the 2026 MSGP, it would be a binding permit requirement, the failure to comply with which would constitute a violation. SMA therefore requests that EPA rescind this proposed

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<sup>8</sup> PFAS Research Memo at 4.

<sup>9</sup> Industry: 3423—Hand and Edge Tools, Except Machine Tools and Handsaws, NAICS Association. Available at <https://www.naics.com/sic-industry-description/?code=3423>.

<sup>10</sup> Consent Order No. 7802, West Virginia Department of Environmental Correction (Mar. 10, 2015). Available at <https://dep.wv.gov/pio/Documents/INTERCONTINENTAL%20EXPORT%20IMPORT,%20INC%20SIGNED%20ORDER%207802.pdf>.

<sup>11</sup> Plan of Corrective Action – Order No. 8779, IEI (Nov. 29, 2017). Available at [https://woodcountywv.com/files/docs/county-offices/e911/IEI\\_POCA.pdf](https://woodcountywv.com/files/docs/county-offices/e911/IEI_POCA.pdf).

PFAS indicator monitoring requirement and refrain from imposing an additional, and even more egregious, PFAS benchmark monitoring requirement.

In addition to being wholly unsupported, proposing to require PFAS monitoring (indicator, benchmark, or otherwise) presents significant practical problems as well. EPA proposed monitoring requirements for 40 specific PFAS compounds because these are the compounds that are listed in, and would be required to be analyzed using EPA Method 1633, “Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids and Tissue Samples by Liquid Chromatography — Mass Spectrometry/Mass Spectrometry.”<sup>12</sup> EPA also requested “comment on requiring PFAS indicator monitoring using Method 1621, Determination of Adsorbable Organic Fluorine (AOF) in Aqueous Matrices by Combustion Ion Chromatography (CIC), in addition to Method 1633.”<sup>13</sup>

Neither of these proposed test methods have been approved by the EPA. Shortly after proposing the revised 2026 MSGP, the Agency, on January 21, 2025, hastily issued a proposed Clean Water Act Methods Update Rule 22 for the Analysis of Contaminants in Effluent (“Proposed Methods Update Rule”)<sup>14</sup> that, if finalized, would provide EPA the Method 1633 and Method 1621 necessary to support the new PFAS monitoring requirements EPA proposed in the 2026 MSGP. Notwithstanding that EPA provided stakeholders only 30 days to comment on the Proposed Methods Update Rule, numerous stakeholders raised significant technical concerns with Methods 1633 and 1621. These technical concerns included issues with interference with co-extracted chemicals, imprecise screening tools, poor accuracy/reproducibility, and a large number of false positives.<sup>15</sup>

Moreover, irrespective of the method used for analysis, PFAS compounds have a propensity to stratify and adsorb to surfaces of collection equipment, which suggests that uncertainty in reported results may be increased due to sample collection, storage, and handling procedures. These propensities are directly tied to the unique properties of PFAS, and their capacity for impacting results needs to be more thoroughly studied before EPA proposes to require thousands of MSGP permit holders to sample for PFAS on a quarterly basis and at significant expense.

This proposed requirement to analyze samples using EPA Method 1633 will also make compliance with the 2026 MSGP difficult, if not impossible, for many permittees because many state-certified laboratories are not certified for the latest update to Method 1633. As the Louisiana Department of Environmental Quality (“LDEQ”) explained in their March 17, 2025 comments on EPA’s proposed 2026 MSGP:

The Louisiana Environmental Laboratory Accreditation Program (LELAP) is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of the department-approved methodologies in the generation of that data. Permitted entities within Louisiana must utilize Louisiana Environmental Laboratory Accreditation Program (LELAP) certified laboratories, not just the National Environmental Laboratory Accreditation Program (NELAP) certified laboratories (see LAC 33:1.4701 for the Accreditation Process). Currently, no laboratories in the country are certified by LELAP for

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<sup>12</sup> EPA 820-R-24-007.

<sup>13</sup> 89 Fed. Reg. at 101,003.

<sup>14</sup> 90 Fed. Reg. 6,967 (Jan. 21, 2025)/EPA-HQ-OW-2024-0328.

<sup>15</sup> See Comment ID No. EPA-HQ-OW-2024-0328-0052.

the latest update to Method 1633. This would prevent a facility within Louisiana from being able to comply with PFAS monitoring requirements.<sup>16</sup>

Even if certified laboratories were sufficiently available to broadly allow permittees to comply with this proposed new requirement, it is an unduly burdensome and costly requirement, particularly given that EPA proposes, without explanation, to require this monitoring and sampling on a quarterly basis. Once again, LDEQ's comments show precisely how costly and burdensome this proposed new requirement would be:

Louisiana objects to the quarterly monitoring frequency for the term of the permit, as EPA purports this monitoring requirement as a data gathering mechanism. EPA's data gathering objectives are placing an undue financial burden on permitted entities, many of which are small businesses, without any regulatory basis. For example, one such laboratory (ALS Environmental in Kelso, Washington) charges \$513 for a PFAS Screen by LC/MS/MS and a second lab (Enthalpy in Wilmington, North Carolina) charges \$800 for the standard list of 40 PFAS parameters utilizing Method 1633. Note that EPA is not limiting monitoring to PFOA/PFOS, for which EPA has issued recommended water quality criteria. LDEQ currently has ~1,300 facilities authorized under its MSGP permit, many of which are small businesses. When calculating the cost of sampling quarterly at every outfall for entire term of the permit, the financial impact could severely harm businesses in Louisiana.<sup>17</sup>

In addition to being excessively costly, PFAS sampling is far more time-consuming than sampling for other pollutants. Even assuming that a permittee is able to find an appropriately certified laboratory with capacity to screen samples for PFAS (which, as discussed above, is far from certain), laboratory turnaround time is estimated to be twice as long as is typically required for other indicators or benchmarks. For instance, one commenter noted that the turnaround time for Massachusetts laboratories is approximately ten days for most indicators and benchmarks but up to 20 days for PFAS analytical work.<sup>18</sup>

In light of the foregoing, SMA strongly opposes amending the current MSGP to add PFAS indicator monitoring or benchmark monitoring requirements. These proposed PFAS monitoring requirements are unsupported, unnecessary, excessively costly, and infeasible in practice.

#### **b. Proposed Changes to Benchmark Monitoring Requirements**

SMA opposes any and all revisions that would expand or otherwise increase the burden associated benchmark monitoring requirements in the MSGP. In fact, SMA respectfully recommends that EPA, as part of a reconsideration and reissuance of this proposed 2026 MSGP, consider eliminating benchmark monitoring from the MSGP.

When benchmarks were first added to the MSGP in 1995, the Agency's intent was that this new monitoring requirement would help permittees correlate their technology-based controls to improvements in water quality standards ("WQS") in receiving waters. EPA never explained why monitoring and control strategies specific to variable, episodic, and high-flow stormwater discharges provided a meaningful measure of a facility's potential impact on typically low-flow ambient WQS. And even if EPA's hope of

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<sup>16</sup> Comment ID No. EPA-HQ-OW-2024-0481-0201 at 3.

<sup>17</sup> Comment ID No. EPA-HQ-OW-2024-0481-0201 at 3.

<sup>18</sup> See Comment ID No. EPA-HQ-OW-2024-0481-0208 at 3.

correlating benchmarks with WQS was initially reasonable, that modest utility was largely supplanted by the Agency’s subsequent promulgation of water quality-based effluent limitations (“WQBELs”).

According to a 2006 National Research Council (“NRC”) study, benchmark monitoring simply does not provide useful information on the relationship between facilities’ stormwater discharges and receiving water quality or the adequacy of facilities’ pollution prevention planning efforts.<sup>19</sup> The NRC explained that “[t]he broad goals of the study [were] to better understand the links between stormwater pollutant discharges and ambient water quality, to assess the state of the science of stormwater management and to make associated policy recommendations.”<sup>20</sup>

The NRC evaluated the MSGP’s benchmark monitoring requirements and concluded that EPA’s addition of these requirements in the permit “has largely been a failure.”<sup>21</sup> The benchmark monitoring data that the NRC analyzed “showed no relationship between facility type and stormwater discharge quality.”<sup>22</sup> According to the NRC, “it is not clear whether [benchmark] exceedances provide useful indicators of stormwater pollution prevention plan inadequacies or potential water quality problems.”<sup>23</sup> Thus, the NRC recommended that a “national numeric benchmark should be avoided”<sup>24</sup> and, if the NRC had its way, “the current benchmark monitoring conducted by MSGP facilities would be eliminated.”<sup>25</sup>

Undeterred by the NRC report, the objections of multiple experts, and countless comments from stakeholders keenly aware of the ineffectiveness of benchmark monitoring, EPA promised for twenty years that the Agency’s next version of the MSGP would include an assessment of the efficacy of benchmarks in reducing benchmark exceedances and improving stormwater control measures (“SCMs”). EPA never provided the analysis, and despite proposing to increase the frequency of benchmark monitoring, did not provide this analysis as part of the proposed 2026 MSGP either. But, regardless of whether EPA provides its promised analysis, available evidence sufficiently demonstrates that benchmarks are substantially increasing compliance burdens without serving their intended purpose.

An analysis of EPA data conducted by the Small Business Low Risk Coalition (“SBLRC”) found that nearly 80 percent of facilities exceed their MSGP benchmarks.<sup>26</sup> Plainly, if 80 percent of facilities are exceeding their MSGP benchmarks, those benchmarks are not reasonable indicators of the inadequacy of SCMs. Benchmarks are not even adequately representative of the industrial activity conducted at reporting facilities because they are far more reflective of, or at least heavily influenced by, background concentrations and stormwater run-on. Indeed, benchmark monitoring paints a decidedly incomplete and misleading picture of what is actually happening during a storm event at an industrial facility. Often, the water received by a facility is also changed by the same storm event that gave rise to the subsequent stormwater discharge from the facility.

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<sup>19</sup> NRC, *Reducing Stormwater Discharge Contributions to Water Pollution* (2006) (“2006 NRC Report”). Available at <https://www8.nationalacademies.org/pa/projectview.aspx?key=48711>.

<sup>20</sup> 2006 NRC Report at 439.

<sup>21</sup> 2006 NRC Report at 439.

<sup>22</sup> 2006 NRC Report at 439.

<sup>23</sup> 2006 NRC Report at 30.

<sup>24</sup> 2006 NRC Report at 30.

<sup>25</sup> 2006 NRC Report at 30.

<sup>26</sup> See SBLRC’s Comment at 2, Comment ID No. EPA-HQ-OW-2024-0481-0197 (citing data obtained from August 2024 AIM ECHO data file) (Feb. 28, 2025). Available at <https://echo.epa.gov/tools/data-downloads>.



Therefore, in light of the fact that benchmark monitoring substantially increases permittees' compliance burdens without providing useful data, improving water quality, or otherwise serving their intended purpose, SMA respectfully urges EPA to remove all benchmark monitoring requirements from the 2026 MSGP. If, however, EPA opts to retain benchmark monitoring in the 2026 MSGP, SMA provides comments in the subsections below in response to the Agency's proposed changes to those requirements.

#### 1. Proposed Changes to Benchmark Monitoring Schedule

EPA proposes to revise the MSGP to require permittees to conduct benchmark monitoring quarterly in their first three years of permit coverage or until twelve quarters of monitoring data is collected if conditions prevent an operator from obtaining twelve consecutive quarterly samples.<sup>27</sup> Under the current MSGP, permittees are only required to conduct quarterly benchmark monitoring in the first and fourth year of their permit coverage.<sup>28</sup> As such, EPA's proposed revisions to MSGP's benchmark monitoring schedule would substantially increase the monitoring reporting burden for all sectors (including Sectors F and N) subject to benchmark monitoring requirements.

EPA's proposed revisions to the MSGP benchmark monitoring provisions also significantly increase the threshold permittees must reach in order to discontinue benchmark monitoring. Specifically, under the 2021 MSGP, a permittee could discontinue benchmark monitoring for two years if the annual average of the four quarters monitored in the first and third year of permit coverage does not exceed the benchmark threshold for a given parameter.<sup>29</sup> Under EPA's proposed 2026 MSGP, however, a permittee cannot discontinue benchmark monitoring for a parameter unless and until three years of quarterly monitoring data (*i.e.*, twelve quarters) show that the annual average for a monitored parameter is below the applicable benchmark standard.<sup>30</sup>

SMA strongly opposes these proposed changes to the MSGP's benchmark monitoring schedule because they would needlessly increase costs and compliance burdens without any identifiable benefit. EPA's only apparent justification for this proposed change is that the substantially more burdensome benchmark reporting requirements may "provide the operator and EPA with adequate data to characterize stormwater discharges and analyze SCM performance."<sup>31</sup> But as SMA already explained in the preceding section, benchmark monitoring results have never been viewed as reasonable indicators of the inadequacy of SCMs, and are not even adequately representative of the industrial activity conducted at reporting facilities because they are far more reflective of, or at least heavily influenced by, background concentrations and stormwater run-on.

Moreover, EPA cannot credibly justify these proposed changes to the benchmark monitoring schedule based on the Agency's need for additional data from which to analyze and characterize SCM performance. As previously noted, MSGP permits have been generating benchmark monitoring data at great cost for over two decades, and despite repeated promises to use that data to evaluate the value of benchmark monitoring, EPA has never reasonably or transparently done so.

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<sup>27</sup> Proposed 2026 MSGP Fact Sheet at 4.

<sup>28</sup> Draft MSGP Redline at 4.2.2.3.

<sup>29</sup> Draft MSGP Redline at 4.2.2.3.

<sup>30</sup> Proposed 2026 MSGP Fact Sheet at 4.

<sup>31</sup> Proposed 2026 MSGP Fact Sheet at 4.

EPA's proposal to increase the frequency, cost, and compliance burden associated with benchmark monitoring is therefore wholly unsupported and must be rescinded. Consistent with the discussion in the previous section, rather than increasing the cost and stringency of benchmark monitoring, SMA strongly urges EPA to consider removing these unjustified reporting requirements entirely.

## 2. Benchmark Monitoring Parameters

### i. *Iron and Magnesium*

There is no basis for EPA to reinstate benchmark monitoring for iron and magnesium. The Agency appropriately removed these unnecessary benchmarks in the 2021 MSGP based in large part on a 2019 recommendation from the NRC.<sup>32</sup> This 2019 NRC study found that there is no credible evidence of acute effects of iron or manganese on aquatic organisms and recommended that EPA delete these benchmarks. As the NRC study noted, iron and magnesium are natural components of surface and groundwater and do not appear to be toxic to a majority of aquatic organisms at concentrations likely to be encountered in most waters.

Neither SMA nor its members are aware of any data or analysis suggesting that EPA should revisit this determination. Nor has the Agency provided any such evidence in the docket for this action. Therefore, given the absence of any meaningful evidence of adverse impacts to aquatic life from the concentration of manganese or iron that are likely to be present in stormwater, EPA has no basis to reconsider its 2021 deletion of benchmark monitoring requirements for these parameters.

### ii. *PFAS*

In Section II.a above, SMA provided a detailed explanation of why we oppose amending the current MSGP to add PFAS indicator monitoring or benchmark monitoring requirements. For the sake of brevity, we therefore need not restate those explanations here. Instead, SMA reiterates that there is no support for adding PFAS monitoring requirements to the 2026 MSGP. Doing so would be unnecessary, excessively costly, and infeasible. And requiring PFAS benchmark monitoring would be particularly problematic because benchmarks are not useful for characterizing facilities' stormwater discharges or the efficacy of their SCMs, and yet they now trigger increasingly costly additional implementation measures ("AIMs") and enhanced monitoring and reporting requirements. As noted above and in Section III below, these deficiencies in the benchmark monitoring program not only counsel against adding a benchmark monitoring requirement for PFAS, they more broadly counsel against perpetuating a benchmark monitoring program that has long since outlived whatever utility EPA hoped benchmarks would serve when they were first added to the MSGP in 1995.

## c. Proposed Changes to Impaired Waters Monitoring

Similar to the Agency's proposal for benchmark monitoring, EPA has proposed to increase the frequency of monitoring requirements applicable to facilities that discharge to impaired waters with or without an

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<sup>32</sup> National Academies of Sciences, Engineering, and Medicine's National Research Council, *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges* (Feb. 2019). Available at <https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges>.

EPA-approved or EPA-established total maximum daily load (“TMDL”).<sup>33</sup> And like EPA’s proposal to increase benchmark monitoring frequency, SMA strongly opposes the Agency’s proposed changes to the MSGP’s impaired waters monitoring schedule because they would needlessly increase costs and compliance burdens without any identifiable benefit.

Presently, under the 2021 MSGP, permittees that discharge to impaired waters must conduct annual monitoring in the first and fourth year (unless a pollutant causing an impairment is detected, in which case annual monitoring must continue).<sup>34</sup> Under EPA’s proposed 2026 MSGP, however, these same permittees would need to conduct *quarterly* monitoring for the *entire duration* of the permit term.<sup>35</sup>

According to EPA, this onerous proposed new requirement to continuously conduct monitoring every quarter of the permit term “will ensure that operators continuously monitor for pollutants for which the water is impaired.”<sup>36</sup> Stated differently, EPA proposed this requirement because continuous monitoring ensures monitoring is continuous. This circular reasoning does not come close to satisfying the Agency’s obligation to reasonably explain its proposed revisions.

EPA also suggested that its proposal to expand impaired waters monitoring requirements is necessary to ensure that permittees “take action to prevent those pollutants entering the waterbody throughout the course of the permit and ensuring the facility is not causing or contributing to an exceedance of water quality standard.”<sup>37</sup> This conclusory statement—the sole rationale the Agency provided for this proposed change—is also unsupported. The EPA offers no discussion, evidence, or data to suggest that the 2021 MSGP’s monitoring frequency is insufficiently protective or has allowed MSGP-permitted facilities to contribute to the impairment of receiving waters. At base, EPA’s rationale amounts to nothing more than an uncritical assumption that more monitoring is better than less monitoring. This is not reasoned decision-making, and it reflects that this proposed change cannot be lawfully finalized.

Moreover, in many cases, it is unnecessary to require the permittee to sample for the pollutant causing impairment. Many impairments are caused by pollutants which may not be associated with the industrial facility. For example, for a waterbody impaired by polychlorinated biphenyls (“PCBs”), the facility may not have PCBs on-site. In these cases, monitoring for the pollutants causing the impairment should not be required (especially not for the entire permit term).

As such, SMA recommends that EPA reconsider the MSGP’s impaired water monitoring requirements more broadly. In lieu of requiring permittees to monitor for pollutants they are unlikely to discharge through stormwater, EPA could require permittees to document in their Stormwater Pollution Prevention Plan (“SWPPP”) that they do not use or store pollutants for which the receiving waters are designated impaired.

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<sup>33</sup> Proposed 2026 MSGP Fact Sheet at 5.

<sup>34</sup> Draft MSGP Redline at 4.2.5.1.

<sup>35</sup> Draft MSGP Redline at 4.2.5.1.

<sup>36</sup> Proposed 2026 MSGP Fact Sheet at 5.

<sup>37</sup> Proposed 2026 MSGP Fact Sheet at 5.

**d. Proposed Changes to Requirements for Additional Implementation Measures (“AIMs”)**

In the 2026 MSGP, EPA proposed multiple changes to the AIM corrective action requirements that are triggered by exceeding benchmark parameters and, as the Agency has now also proposed, by the discharge of a monitored pollutant that is outside of the acceptable range for discharge to an impaired waterbody.<sup>38</sup> As a threshold matter, SMA does not believe that the MSGP should require facilities with benchmark exceedances to adopt costly and potentially unnecessary AIMs. Benchmarks are not effluent limits. They are simply one of many means of evaluating the effectiveness of stormwater management systems and controls. As such, a benchmark exceedance is not a permit violation, nor is an exceedance necessarily evidence that a stormwater management system is ineffective. A benchmark exceedance is merely a trigger for further inquiry and examination into the effectiveness of stormwater controls.

As explained in SMA’s comments on EPA’s proposed 2021 MSGP, in each iteration of the MSGP, EPA has continually made AIM requirements more onerous and costly. EPA’s proposed changes to the 2026 MSGP, like those in previous versions of the MSGP, fail to reflect any Agency recognition that benchmark exceedances are merely one of many measures of the efficacy of stormwater controls and instead appear intended to be increasingly punitive.

For instance, in the 2021 MSGP, responses to AIM Level 1 include a review of the facility’s SWPPP and control measures as well as any implementation of additional measures identified as needed by the review.<sup>39</sup> Without determining or providing any evidence showing that the 2021 MSGP’s AIM Level 1 response requirements were insufficient, in the 2026 MSGP, EPA now proposes to add a requirement that facilities must undergo an inspection, with documentation, to investigate the cause of the benchmark exceedance(s) within seven days of triggering AIM Level 1.<sup>40</sup>

As with many other aspects of the Agency’s proposed revisions to the MSGP, EPA attempts to support the addition of this unnecessary and burdensome new inspection requirement with a single conclusory declaration that “[t]he addition of the inspection in the 2026 MSGP will enhance the existing requirements and ensure operators are conducting a thorough and effective review of their SWPPP and stormwater control measures to prevent any future exceedances.”<sup>41</sup> Once again, in the absence of any data or explanation, EPA expects that commenters should simply trust the Agency’s supposition that “more is better.”

EPA is also proposing that permittees submit an AIM Triggering Event Report to the EPA in response to triggering AIM at any level.<sup>42</sup> The proposed AIM Triggering Event Report would require the permittee to provide “information about the planned corrective action and the planned date of the corrective action as well as follow-up steps after the corrective action is completed to ensure a timely response and to document any alterations to the planned action that were necessary.”<sup>43</sup> EPA proposes to require that the report be submitted each time a monitored parameter’s four-quarter average exceeds, or is mathematically

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<sup>38</sup> Draft MSGP Redline at 5.2.2.

<sup>39</sup> Proposed MSGP Fact Sheet at 5.

<sup>40</sup> 2021 MSGP, Part 5.2.3; Proposed 2026 MSGP, Part 5.2.3.1.a. Note that this language appears to contradict language in Part 5.3.2, which proposes to require the permittee to document the corrective actions and/or AIM responses within 14 days.

<sup>41</sup> Proposed MSGP Fact Sheet at 5.

<sup>42</sup> Draft MSGP Redline, Part 5.2.

<sup>43</sup> Proposed MSGP Fact Sheet at 5.

certain to exceed, the applicable benchmark.<sup>44</sup> EPA does not explain or discuss, much less provide data to support, this new reporting requirement in the Proposed MSGP Fact Sheet or anywhere else in the docket for the proposed 2026 MSGP.

Nor does EPA explain, discuss, or provide data to support a related proposed new requirement for submission and approval of “documentation and rationale for the natural background exception before the operator can discontinue compliance with AIM.”<sup>45</sup> This is a change from the 2021 MSGP in which, once claimed, the natural background exception was automatically in place and the permittee was not required to wait for verification from EPA to be exempted from the AIM requirements.<sup>46</sup>

These onerous and wholly unexplained proposed new reporting requirements reflect the Agency’s illogical prioritization of documentation over actual corrective action. As paperwork exercises such as those proposed here become more frequent, voluminous, and detailed, so too does the risk that a minor documentation error or omission can become the source of an enforcement action. EPA is creating a situation where facilities’ reasonable concern over committing petty paperwork violations compel them to redirect resources away from actual engineering and corrective action work. Yet, it has not ever explained, much less provided data showing why these changes are necessary and/or how they will help reduce the discharge of pollutants through stormwater.

More fundamentally, once a facility has been assigned an AIM tier based on a benchmark exceedance, the MSGP’s tiered AIM structure makes it very difficult for the facility to lose their AIM status or return to a lower AIM tier even after implementing corrective actions and decreasing pollutants in stormwater to below applicable benchmarks in four consecutive quarterly samples. To illustrate this, SMA used EPA’s AIM Calculator to provide the example below, which shows a concentration of copper below the benchmark beginning in Q2 of Level 1. It remains below the benchmark through Q3 and Q4, however, the AIM status increases to Level 2 even though the control measures implemented during or prior to Q1 appear to be effectively removing copper from the facility’s stormwater discharges. This example shows just one parameter at only one outfall, but it is indicative of the difficulty permittees experience in changing AIM status even after successfully implementing AIM. And, when one considers that facilities can often have a large number of outfalls, and that each outfall and each parameter can be in a different level at any given time, it is easy to understand how much more complicated and administratively cumbersome this process can be for permittees.

Pollutant	Freshwater / Saltwater	Benchmark Threshold (Table 4-2 2021 MSGP Benchmark Thresholds)	Units	Baseline: 1st Quarter	Baseline: 2nd Quarter	Baseline: 3rd Quarter	Baseline: 4th Quarter	AIM Status	AIM Level 1: 1st Quarter	AIM Level 1: 2nd Quarter	AIM Level 1: 3rd Quarter	AIM Level 1: 4th Quarter	AIM Status
Total Recoverable Copper	Freshwater	0.00519	mg/L	0.0163	0.009			AIM Level 1	0.0073	0.0044	0.005	0.0041	AIM Level 2

SMA therefore respectfully requests that EPA withdraw all of the AIM revisions it proposed to include in the 2026 MSGP. Additionally, given that the new requirements EPA proposed here are simply the most recent iteration of the Agency’s multi-year effort to make AIM requirements more costly and punitive without ever documenting why more stringent requirements were necessary, SMA urges EPA to broadly review and reconsider its approach to AIMs. Unless and until EPA can explain and provide evidence that

<sup>44</sup> Draft MSGP Redline, Part 5.2.2.1.

<sup>45</sup> Draft MSGP Redline, Part 5.2.6.1.

<sup>46</sup> 2021 MSGP, Part 5.2.6.1.

AIM requirements have helped reduce the discharge of pollutants through stormwater, these costly and onerous requirements should be removed from the MSGP or at least significantly revised.

For instance, AIM requirements are triggered based on pollutants' *concentration* exceeding specified benchmarks, and therefore improperly disadvantage facilities that have beneficially reduced their stormwater discharge *volume*, which necessarily increases pollutant loadings associated with the remaining (lower volume) stormwater discharges. The current MSGP's benchmark monitoring and AIM requirements also do not reasonably account for facilities in locations with arid climates that have minimal discharges.<sup>47</sup> As such, if EPA decides to retain the overall AIM approach in the 2026 MSGP, the Agency should include provisions that beneficially account for facilities' reductions in stormwater discharge volume as well as facilities that naturally have low-volume stormwater discharges.

One option would be for EPA to develop a calculation that would give credit for overall discharge pollutant loading reductions. An alternative way to beneficially account for facilities that reduce the volumes of their stormwater discharges is to offer an exemption to corrective actions otherwise triggered by benchmark exceedances or impaired waterway monitoring. In order to claim such an exemption, the permittee would be required to document the exemption claim in their SWPPP and maintain supporting information on-site that is available for EPA review upon request.

As an example of how this would apply in practice, consider, for example, an outfall from which discharge is infrequent due to a large retention pond and/or re-use of stormwater for other purposes (*e.g.*, make-up to facility operations) and that only marginally exceeded a benchmark concentration. In this case, corrective action should not be required because effective controls have already been provided (reduced/substantially eliminated discharge). Infrequent, low magnitude exceedances of a benchmark concentration when the discharge volume has been substantially reduced do not pose risks to the environment. And therefore, it is appropriate that the facility's overall pollutant loading reduction preempt and eliminate any otherwise applicable corrective action requirement.

Additionally, if EPA opts against entirely removing the AIM requirements from the MSGP and decides instead to retain the overall AIM approach in the 2026 MSGP, SMA recommends that the Agency consider the following additional revisions:

- **Part 5.1.3.2. Requirement to Implement Corrective Actions within 45 Days:** SMA recommends that EPA remove this requirement altogether because 45 days is an unrealistic timeframe to determine and install proper controls. However, if this or a similar requirement remains in the MSGP, we believe that EPA should refrain from finalizing its proposed new requirement that permittees draft and obtain EPA approval of an implementation schedule for any corrective action that will take longer than 45 days. Any substantial physical change to the facility will almost certainly require a time period longer than 45 days to implement, due to factors such as obtaining local and state permits, contractor availability, and other unforeseen circumstances.

As such, a more practical and less resource-intensive approach would be to require the permittee to include in its SWPPP the relevant schedule and supporting justification that EPA can review

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<sup>47</sup> SMA recognizes that the draft MSGP at Part 3.2.4.2 discusses seasonal sampling for arid or semi-arid climates.

upon request. Doing so would reduce the burden on EPA and would allow the facility to move more quickly to implement its corrective action.<sup>48</sup>

- **Part 5.2.5.2. AIM Level 3 Deadlines:** The deadlines for developing a schedule and implementing structural controls under AIM Level 3 of 14 days (schedule development) and 60 and 90 days for implementation are not realistic and demonstrate a lack of understanding of how improvements must actually be accomplished. Any well-reasoned schedule for physical changes to a facility will take substantially longer than 14 days to develop and any substantive change will take longer than 60 to 90 days to implement considering development of the concept, engineering, procurement, bid specifications and award, obtaining other necessary permits, and construction. Compliance schedules under NPDES permits routinely allow necessary improvements to be made over multiple years. We recognize that the MSGP contains a procedure for obtaining authorization to take longer than 60 days to implement AIM Level 3 controls, but that process creates an unnecessary additional step that would consume more permittee and Agency resources. As such, SMA requests that this authorization requirement be removed and that permittees be allowed to document and maintain all necessary information in their SWPPP.
- **Part 5.2.6. Exemptions:** As reflected by EPA's proposed change to the natural background exception discussed above, the MSGP's AIM provisions include a number of exemptions including (in addition to the natural background exemption), exemptions for run-on, abnormal events, aluminum and copper site-specific values, and instances in which a water quality standard is not exceeded. Conceptually, these exemptions provide reasonable approaches allowing permittees to avoid needlessly adopting AIMS based on benchmark exceedances that should not be attributed to the facility. However, SMA herein provides multiple comments and recommendations to improve this approach.
  - Revise/Clarify the Terminology: In describing these exemptions, SMA believes it would be simpler and more consistent with terminology elsewhere in the MSGP to refer to sample results as not "representative."
  - Remove Requirement to Obtain EPA Approval/Concurrence: If EPA finalizes the 2026 MSGP as currently proposed, all<sup>49</sup> of the AIM exemptions would require approval or concurrence from EPA based on information submitted by the permittee. A more practical and less resource-intensive approach is to require the permittee to notify EPA when an exemption is claimed and that the supporting analysis and documentation be retained with the SWPPP and available to EPA upon request. This will eliminate possible backlogs of Agency approvals, while still informing EPA which permittee claimed an exemption and when, thereby providing the Agency the opportunity for review. Under this approach, the exemption would be presumed valid, unless notified otherwise by EPA following Agency review.
  - Redress for Denied Exemptions: SMA also recommends that EPA amend the MSGP to explicitly allow a permittee to "appeal" or seek additional review and redress for any

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<sup>48</sup> This comment extends to any other related requirements of the draft MSGP requiring EPA approval of an extension of time to implement a corrective action.

<sup>49</sup> As noted above, the background exemption does not currently require EPA approval/concurrence, but would under EPA's proposed 2026 MSGP.

Agency disagreement regarding a permittees' exemption determination. The current MSGP is unclear in this regard. The permit's discussion regarding a "notice of dispute" is included in the "water quality standards" exemption, but that section does not indicate appeal rights following EPA's determination on the "notice of dispute." Clarification on the process to "appeal" decisions made by EPA is therefore necessary.

- Run-on Exemption: The exemption due to run-on at Part 5.2.6.2.a. and b. states that the permittee should contact the entity contributing the run-on and request that the discharge be abated, and that if not abated, the permittee should contact the EPA Regional Office. Placing any burden on the permittee in such circumstance is not appropriate under the NPDES permitting program, nor is such a requirement universally feasible to comply with, as the entity responsible for the discharge may not be apparent to permittees. Accordingly, SMA recommends that EPA retain the "run-on" exemption but remove the conditions in 5.2.6.a. and b.
- Aluminum/Copper Exemption and "Water Quality Standard" Interface: SMA presumes that the site-specific aluminum or copper exemption in Part 5.2.6.4 and the "water quality standard" exemption in Part 5.2.6.5. can be used in tandem. That is, site-specific water quality criteria for aluminum or copper can be calculated, and then the "water quality standard" determination can be made. SMA requests that this interpretation be made explicit in the MSGP.
- Proposed Exemption for Discharges that are not Directly to "Waters of the United States" ("WOTUS"): Many facilities discharge to conveyances that are not WOTUS, such as ditches or municipal storm systems that eventually lead WOTUS. It is possible that a benchmark concentration may be exceeded at the facility's monitoring location (*e.g.*, property line), but be below benchmark thresholds when the discharge eventually reaches a WOTUS. In these instances, SMA recommends that permittees be allowed to demonstrate such circumstances and claim an exemption to a benchmark exceedance.

**e. Stormwater Control Measures ("SCMs")**

1. EPA Does Not Provide Sufficient Information to Meaningfully Apprise Operators of Regulatory Requirements

EPA's proposed 2026 MSGP would require operators that may be located in areas that are determined to be susceptible to or have experienced major storm or flood events to consider implementing enhanced measures, such as structural improvements, additional pollution prevention measures, and other mitigation measures that are complementary to regular stormwater pollution prevention planning.<sup>50</sup> More specifically, Part 2.1.1.8. of EPA's proposed 2026 MSGP requires permittees to "consider if your facility has previously experienced such major storm events under current conditions or may be exposed in the future to major storm and flood events based on best available data..." "Major storm and flood events" are further defined to include hurricanes (*i.e.*, a natural disaster), and "best available data" is further defined to include predictions, including regarding the likelihood and extent of potential of increases in

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<sup>50</sup> Draft MSGP Redline, Part 2.1.1.8.



water levels.<sup>51</sup> As drafted, the proposed MSGP appears suggest that permittees are expected to predict the outcome of a natural disaster, and plan accordingly where feasible.

This proposed requirement is unreasonable and would only serve to expose permittees to compliance risk and endless second-guessing regarding unknowable future events. And while EPA's proposed 2026 MSGP identifies potential resources permittees can use when attempting to predict future natural disasters and climatological phenomena, none of these tools make this proposed requirement any less speculative and, on the contrary, they invite further confusion. For instance, EPA directs entities to reference flood map products provided by the Federal Emergency Management Agency ("FEMA"), National Oceanic and Atmospheric Administration ("NOAA"), and U.S. Geological Survey ("USGS").<sup>52</sup>

These three different maps were developed for radically different purposes utilizing dramatically different data points, and therefore unsurprisingly, these three maps would not provide permittees any consistent or non-speculative basis from which to make the predictions EPA proposes to require. On the contrary, it is quite likely that permittees and regulators would often make very different predictions despite diligently relying on the same resources that EPA identified in the proposed 2026 MSGP.

Given the undue burden, regulatory uncertainty, and compliance risk this proposed provision places on permittees, SMA recommends EPA consider the following more reasonable and practical language for this aspect of the 2026 MSGP:

*"Part 2.1.1 You may consider the following when selecting and designing control measures:*

*Part 2.1.1.8. Areas of the facility that may be prone to flooding. If your facility may be exposed to or has previously experienced flooding, additional stormwater control measures that may be considered, as practical, include, but are not limited to.*

- a. When a delivery of exposed materials is expected, and a storm is anticipated within 48 hours, delay delivery until after the storm or store materials as appropriate.*
- b. Temporarily store materials and waste above the base flood elevation level;*
- c. Temporarily reduce or eliminate outdoor storage;*
- d. Temporarily relocate any mobile vehicles and equipment to higher ground;*
- e. Develop scenario-based emergency procedures for major storms that are complementary to regular stormwater pollution prevention planning and identify emergency contacts for staff and contractors; and*
- f. Conduct staff training for implementing your emergency procedures at regular intervals."*<sup>53</sup>

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<sup>51</sup> Draft MSGP Redline, Part 2.1.1.8, FN 10 and FN 12.

<sup>52</sup> Draft MSGP Redline, Part 2.1.1.8, FN 13.

<sup>53</sup> Under this proposed revision, the MSGP's existing note would remain, as follows:

*Note: Part 2.1.1 requires that you must consider Parts 2.1.1.1 through 2.1.1.8 when selecting and designing control measures to minimize pollutant discharges via stormwater. Part 2.1.1 does not require nor prescribe specific control measures to be implemented; however, you must document in your SWPPP per Part 6.2.4 the considerations made to select and design control measures at your facility to minimize pollutants discharged via stormwater.*

## 2. Existing and Proposed New SCM Requirements are Infeasible and Unnecessary

As reflected in our proposed text above, SMA strongly opposes EPA's proposal to remove the word "temporarily" from several SCM design and implementation considerations. According to the Agency's Proposed 2026 Permit Fact Sheet, this proposed change is based on nothing more than EPA's belief that it is generally best practice to implement SCMs on a more regular or permanent basis, rather than on a temporary basis.<sup>54</sup> But as discussed further below, many of these SCMs are duplicative of requirements already present in NPDES, SWPPPs, and Spill Prevention, Control and Countermeasure ("SPCCs"); and are precluded based on safety considerations and pre-existing law.

Furthermore, requiring SCM implementation measures to be implemented on a regular or permanent basis can convert non-industrial areas of activity into areas of industrial activity, resulting in compliance issues. Indeed, EAF facilities are constructed with particular sensitivity to broader regional or city land use planning requirements and are heavily regulated via a variety of permits issued under federal and state air and water laws. Many facilities are also subject to federal and state hazardous waste laws. Converting non-industrial areas to permanent industrial areas may be legally precluded or, at minimum, excessively complicated under these authorities.

Moreover, costs incurred to implement infrastructure modifications would be immense and totally disproportionate to the speculative environmental benefits generated from such modifications. SCMs like storing materials and waste above the flood level<sup>55</sup> or reducing or eliminating outdoor storage,<sup>56</sup> are predicated on preventing and mitigating runoff, but as applied to EAF steelmaking, the environmental benefits are minimal insofar as they are even present—EPA has acknowledged in its effluent limitation guidelines ("ELGs") for the steel sector that these materials present little risk of stormwater contamination.<sup>57</sup>

When viewed in light of the minimal risks associated with stormwater runoff from SMA member facilities, the excessive cost and impracticality of EPA's proposal to make SCM's permanent becomes plainly apparent. EAF steel mills operate on a large scale. They produce hundreds of thousands of tons of steel from a feedstock of hundreds of thousands of tons of scrap metal and other inputs. Thus, SMA members typically have expansive outdoor storage areas (often several dozen acres or more) to accommodate these large volumes of scrap metal feedstock and finished products.

Additionally, many of the SCMs outlined in MSGP Section 2.1.1.8 are duplicative of, and go well beyond, existing programs that are already implemented by facilities nationwide. These include requirements issued in facility-specific permits issued under the NPDES, SWPPPs, SPCCs, and contingency plans implemented under the Resource Conservation and Recovery Act ("RCRA"). For example, the requirement to "conduct staff training for implementing... emergency procedures at regular intervals"<sup>58</sup> is a routine provision included in SWPPPs.

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<sup>54</sup> See Proposed 2026 MSGP Fact Sheet at 3.

<sup>55</sup> Draft MSGP Redline, 2.1.1.8.d.

<sup>56</sup> Draft MSGP Redline, 2.1.1.8.e.

<sup>57</sup> See 40 C.F.R. § 450.21(d)(2).

<sup>58</sup> Draft MSGP Redline, 2.1.1.8.i.

Similarly, requirements surrounding materials storage—like the requirement to store materials above flood level;<sup>59</sup> or the requirement to reduce or eliminate outdoor storage<sup>60</sup>—are commonplace in SWPPPs and are legally enforceable via SWPPP incorporation into NPDES permits. Nevertheless, the inclusion of storage requirements in SWPPPs as it relates to EAF steel mills is sensitive to unique industry considerations. As previously noted, scrap metal and finished products are stored over large, outdoor areas, and it is impracticable to move these products indoors or upgradient.

In fact, moving scrap indoors and storing certain materials indoors is precluded under existing law, and for good reason. Some types of scrap metals common to Sector F, like aluminum, can pose a fire hazard if stored near heat sources common in steel mills. The accumulation of scrap metal indoors can also pose a fire hazard as it may compromise evacuation efforts in case of emergency. Accordingly, fire safety codes often require these materials be stored outdoors.

Requiring these materials to be permanently stored indoors, permanently protected with storm-resistant coverings, or permanently moved upgradient is not only cost-prohibitive, it is plainly infeasible. In fact, it is not realistic to require, as the current 2021 MSGP does, these SCMs be implemented “temporarily.” As such, while SMA strongly objects to the Agency’s proposal to make these SCM requirements permanent, we also urge EPA to revise the 2026 MSGP to eliminate the requirement that permittees implement these SCMs on even a temporary basis.

SMA also opposes the following proposed new requirement regarding dumpsters and roll-off boxes:

Keep all dumpster lids closed when not in use. For dumpsters and roll off boxes that do not have lids and could leak, ensure that discharges have a control (*e.g.*, secondary containment, treatment). Consistent with Part 1.2.2 above, this permit does not authorize dry weather discharges from dumpsters or roll off boxes.<sup>61</sup>

At steel manufacturing facilities roll-off boxes or dumpsters are often located in areas that have other best management practices (*e.g.*, areas that draft to wastewater treatment systems or retention basins) or contain material that is not readily transferred to storm water. We believe this is best addressed with the potential pollutant sources which are currently documented in the SWPPP.

Finally, with respect to SCMs, SMA also objects to the following requirement regarding catch basins:

*Clean(ing) catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth, or in line with manufacturer specifications, whichever is lower, and keeping the debris surface at least six inches below the lowest outlet pipe.*<sup>62</sup>

This requirement is overly prescriptive and burdensome, especially at a large facility where catch basins may easily number in the hundreds. Because this requirement represents a non-numeric “effluent limit,” there is a risk that an overzealous inspector may claim a permittee is in violation with the MSGP facility based on debris in even a single catch basin that may have no material impact on the facility’s stormwater

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<sup>59</sup> MSGP at 2.1.1.8.d.

<sup>60</sup> MSGP at 2.1.1.8.e.

<sup>61</sup> Draft MSGP Redline, 2.1.2.2.

<sup>62</sup> Draft MSGP Redline, 2.1.2.3.

discharge. Moreover, this provision ignores the redundancy design that is built into many stormwater capture and controls systems - catch basins are often installed upstream of other sediment control devices, which serve as the primary means of stormwater control. Therefore, SMA respectfully recommend that this proscriptive and ill-considered requirement for catch basins be removed from the MSGP.

**f. Water Quality-Based Effluent Limitations (“WQBELs”)**

EPA’s proposed changes to the 2026 MSGP would require operators to undertake “additional control measures (to meet the [WQBEL])” if data indicates that the facility’s discharges “are not controlled as necessary such that the receiving water of the United States will not meet applicable water quality standards.”<sup>63</sup> It also includes proposed new WQBELs and other limitations specifying that discharges must not contain or result in observed deposits of floating solids, scum, sheen, or substances; an observable film or sheen upon or discoloration from oil and grease; or foam or substances that produce an observable change in color.<sup>64</sup> EPA expects operators to conduct visual assessments to determine if any of these conditions are present.<sup>65</sup> If the operator or EPA determines that these proposed visual WQBELs have been exceeded, EPA expects that the operator will be required to undertake corrective actions, including adopting AIMS.<sup>66</sup>

While SMA supports EPA’s proposed removal of the current MSGP’s excessively vague and impermissible requirement that each permittee’s “discharge much be controlled as necessary to meet applicable water quality standards of all affected states,”<sup>67</sup> we disagree with EPA’s vague new prohibition on discharges containing floating, settled, or suspended solids, scum, sheen, or substances.

**1. Proposed Elimination of Vague Requirement that Permittees’ Control Discharges as Necessary for Receiving Waters to Meet Applicable WQS**

EPA’s proposed removal of the current MSGP’s excessively vague and impermissible requirement that each permittee’s “discharge must be controlled as necessary to meet applicable water quality standards of all affected states”<sup>68</sup> appears to comply with the U.S. Supreme Court’s recent decision in *San Francisco v. EPA* (“*San Francisco*”),<sup>69</sup> which prohibits the Agency from imposing vague requirements on operators to ensure that receiving waters comply with WQS.

Indeed, in *San Francisco*, the Supreme Court held that: (1) regulators are prohibited from setting quantitative and qualitative permit limits based on the condition of the “receiving water” that a permit authorizes discharge into, rather than specific limits on the permittee’s discharge itself; and (2) that qualitative, non-numerical (*i.e.*, “narrative”) permit limits must explicitly “spell out what a permittee must do or refrain from doing.”<sup>70</sup> These narrative permit limits must be prescribed “concrete measures” by the Agency to achieve WQS.<sup>71</sup>

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<sup>63</sup> Draft MSGP Redline, 2.2.1.

<sup>64</sup> Draft MSGP Redline, 2.2 and 2.2.1.

<sup>65</sup> Draft MSGP Redline, 2.2 and 2.2.1.

<sup>66</sup> Draft MSGP Redline, 2.2.1.

<sup>67</sup> 2021 MSGP at 2.2.1.

<sup>68</sup> 2021 MSGP at 2.2.1.

<sup>69</sup> 604 U. S. \_\_\_\_ (2025).

<sup>70</sup> *San Francisco*, 604 U.S. at 2.

<sup>71</sup> *San Francisco*, 604 U.S. at 11.

The current MSGP’s broad requirement that each permittee’s “discharge must be controlled as necessary to meet applicable water quality standards of all affected states,”<sup>72</sup> is plainly inconsistent with *San Francisco*. Therefore, SMA supports EPA’s proposal to remove this vague requirement.

2. MSGP 2.2.1’s Mandate to Take “Additional Control Measures” to Meet WQS is Impermissible Under *San Francisco*

While the text EPA proposed to replace the excessively vague requirement in Section 2.2.1 of the current MSGP does not appear to contravene the Supreme Court’s holding in *San Francisco* because it “spell[s] out what a permittee must do or refrain from doing,”<sup>73</sup> as discussed further below, the proposed new requirements remain excessively and potentially impermissibly vague. As such, given that EPA’s proposed 2026 MSGP was published before the Supreme Court’s decision in holding in *San Francisco*, we believe EPA should reevaluate this proposed change and the MSGP more generally to best ensure that the permit complies with binding Supreme Court precedent and, by extension, the CWA.

3. EPA’s Proposed New MSGP 2.2 and 2.2.1 “Visual Inspection” Requirements are Improperly Vague

*San Francisco*’s second holding is that qualitative, non-numerical (*i.e.*, “narrative”) permit limits, like the proposed requirement to conduct visual inspections here, must explicitly “spell out what a permittee must do or refrain from doing.”<sup>74</sup> These narrative permit limits must be prescribed “concrete measures” by the Agency to achieve WQS.<sup>75</sup>

While SMA commends the Agency for proposing to eliminate the current MSGP’s requirement that each permittee’s “discharge must be controlled as necessary to meet applicable water quality standards of all affected states,”<sup>76</sup> we cannot support the Agency’s proposal to replace this provision with another excessively vague requirement. More specifically, Part 2.2 of EPA’s proposed 2026 MSGP contains the following narrative WQBEL:

*Your discharge must not contain or result in:*

- *observed deposits of floating, settled, or suspended solids, scum, sheen, or substances;*

This proposed limitation is excessively broad and extremely prone to misinterpretations that would create significant compliance issues without any attendant environmental benefits. For instance, this proposed new provision may be interpreted (or misinterpreted) to mean that stormwater discharges must be free of all floating material, including leaves, pollen, or other natural substances that are not relevant to receiving waters’ attainment with WQS.

As additionally relevant to the confusion and compliance uncertainty this proposed revision would create, many of these naturally-occurring substances can be deposited on or in outfall structures. Accordingly,

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<sup>72</sup> 2021 MSGP at 2.2.1.

<sup>73</sup> *San Francisco*, 604 U.S. at 2.

<sup>74</sup> *San Francisco*, 604 U.S. at 2.

<sup>75</sup> *San Francisco*, 604 U.S. at 11.

<sup>76</sup> 2021 MSGP at 2.2.1.

under these entirely realistic scenarios, permittees could be subject to inappropriate determinations of non-compliance over leaves and other natural elements that do not adversely impact water quality and are beyond the permittees' ability to fully control.

These proposed new requirements are also unnecessary and duplicative because visual inspection requirements are already required by other legal and regulatory authorities. For instance, visual inspections are a regular "best management practice" ("BMP") included in SWPPPs, and reports generated under SWPPPs are often required to be reported to federal and state regulators pursuant to NPDES authority.

In light of the foregoing, SMA respectfully requests that EPA reconsider the Agency's proposed new requirement that discharges must not contain or result in observed deposits of floating solids, scum, sheen, or substances; an observable film or sheen upon or discoloration from oil and grease; or foam or substances that produce an observable change in color.<sup>77</sup> We further recommend that EPA reevaluate this proposed change and the MSGP more generally to best ensure that the permit complies with the Supreme Court's decision in *San Francisco*.

### **III. EPA SHOULD RECONSIDER AND REVISE THE UNNECESSARY AND BURDENSOME PROVISIONS EPA ADDED TO THE 2021 MSGP**

As noted throughout these comments, SMA believes that EPA has the obligation to not only withdraw and repropose the impermissible and unsupported aspects of the Agency's proposed 2026 MSGP, but to also reconsider those aspects of the existing MSGP—particularly those added in 2021—that have already been demonstrated to be infeasible or unnecessary. As such, in addition to the revisions recommended in Section II above, SMA respectfully requests that EPA reconsider the following aspects of the current MSGP.

#### **a. Notice Requirements**

SMA requests that EPA reconsider and revise the following notification requirements in the current MSGP.

##### **1. Requirement to Post Sign of Permit Coverage**

The 2021 MSGP required for the first time that permittees must post a sign or other notice of permit coverage at or in close proximity to their facilities.<sup>78</sup> SMA respectfully requests that this unnecessary and potentially dangerous requirement be removed from the MSGP.

The requirement to post notice of permit coverage is an unnecessary documentation exercise that does little more than increase the risk that facilities will be subject to enforcement over petty paperwork violations. In practice, it has not meaningfully aided public awareness, and may in fact be creating public safety hazards.

Steel manufacturing facilities contain heavy industrial operations that tend to be fenced and gated with

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<sup>77</sup> Draft MSGP Redline, 2.2 and 2.2.1.

<sup>78</sup> 2021 MSGP at 1.3.5.

frequent heavy truck traffic through a limited number of ingress/egress points. To post notices of any kind near these areas would unnecessarily attract people into the path of this heavy truck traffic and is particularly unnecessary because the information proposed to be posted is already available online and/or upon request.

Additionally, discharge points at many facilities may not be accessible without trespassing on the facility property or neighboring properties. At other facilities, discharge points may be located in more remote locations away from industrial operations or areas that may not be safely accessed by an untrained or unfamiliar member of the public.

While SMA fully supports the dissemination of important environmental compliance information—including stormwater outfall locations—to the public, we believe that access to information must be balanced against legitimate concerns about public safety. Where, as here, the information can be safely and effectively disseminated through the internet and other means, EPA should refrain from imposing signage requirements that may be creating safety risks at some facilities.

## **2. SWPPP Preparation and Public Availability**

Part 1.3.1. of the MSGP requires permittees to make their SWPPPs publicly available. SMA believes this requirement should be removed from the MSGP because it is unnecessary and may lead to misinterpretation and the potential release of confidential or sensitive information.

Requiring a permittee to submit a copy of their SWPPP with the NOI or posting it to a website makes it too easily available to be misinterpreted by those that do not fully understand NPDES permitting requirements. The SWPPP is intended to be a living document that should be updated and modified in response to pollutants of concern. Making the SWPPP available in this manner causes delays in the ability to make these updates and could result in outside interpretations that response steps were not taken when they had been and could be the basis of a misinformed citizen's lawsuit. The SWPPP should instead be made available for review on site (physically or electronically) to the agency responsible for permitting, so that the facility can help the person understand the SWPPP itself, the changes previously made at the facility, and to be able to address any of their concerns at the time.

Requiring the SWPPP to be made publicly available also creates significant confidential business information concerns as it is incredibly difficult to include all of the required information (*e.g.*, potential pollutant sources) without inadvertently revealing trade secrets. Furthermore, properly developing a SWPPP takes great time and money, from internal resources to outside counsel and consultant reviews, and requiring it to be available allows other competitors to utilize one facility's SWPPP for their own purposes without incurring the same business costs.

Making a SWPPP publicly available may inadvertently expose the contact information of employees to outside parties, jeopardizing their privacy. The Pollution Prevention Team should be comprised of practical, on-site employees, and should include 24-hour phone numbers. Making that information public with the SWPPP would likely incentivize SWPPP developers to use contacts and numbers deemed safe for public knowledge, which detracts from the SWPPP's intended function.

### **b. Sector F Good Housekeeping Provisions**

SMA urges EPA to reconsider the following provision in Part 8.F.2.1 (Good Housekeeping Measures) of

the draft MSGP:

*Stabilize unpaved areas using vegetation or paving where there is vehicle traffic or where material loading and unloading, storage, handling and processing occurs, unless feasible.*<sup>79</sup>

Many SMA members' mills have extensive gravel roads and large storage areas that are not paved or covered in vegetation. Given the size and extent of these areas it is often infeasible and/or cost-prohibitive to pave or seed them. And in many cases, doing so would be unnecessary because these areas may be located in areas of a facility that have other controls for sediment in stormwater run-off (e.g., sedimentation ponds), or otherwise drain to a process water treatment and recycling system. To account for these circumstances, SMA proposes that this provision be revised as follow:

*Unless infeasible or another sediment discharge control measure(s) is provided, stabilize unpaved areas using vegetation or paving where there is vehicle traffic or where material loading and unloading, storage, handling and processing occurs.*

**c. Benchmark for Aluminum**

SMA believes that EPA should reconsider the value of requiring benchmark monitoring for aluminum in Subparts F and N. Aluminum is not a useful metal for benchmarking the effectiveness of stormwater pollution prevention measures in either of these sectors. For instance, EPA did not find aluminum to be a pollutant of concern in steel industry process wastewaters when 40 C.F.R. Part 420 was promulgated in 1982,<sup>80</sup> when it was later amended in 2002,<sup>81</sup> or when EPA conducted a more detailed review of the Iron and Steel Manufacturing ELGs between 2016 and 2018.<sup>82</sup> Thus, aluminum is not a regulated pollutant in 40 C.F.R. Part 420 for any iron and steel ELGs process subcategory.

Furthermore, aluminum is not a useful benchmark pollutant because it is abundant as a natural element in surface soils.<sup>83</sup> In fact, aluminum the most commonly occurring metallic element, comprising eight percent of the earth's crust.<sup>84</sup> EPA itself has recognized that aluminum is a "major component of almost all common inorganic soil particles, with the exceptions of quartz sand, chert fragments, and ferromanganiferous concretions."<sup>85</sup> "The typical range of aluminum in soils is from 1 percent to 30 percent (10,000 to 300,000 mg Al kg-1), with naturally occurring concentrations varying over several orders of

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<sup>79</sup> SMA presumes the last word in this section was intended to be "infeasible."

<sup>80</sup> EPA 440/1-82/024 [Volume 1, Appendix C], *Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category*, United States Environmental Protection Agency, Effluent Guidelines Division (May 1982).

<sup>81</sup> EPA-821-R-02-04, *Development Document for Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category*, United States Environmental Protection Agency, Office of Water, (Apr. 2002).

<sup>82</sup> EPA-821-R-18-001, *Final 2016 Effluent Guidelines Program Plan*, United States Environmental Protection Agency, Office of Water (Apr. 2018).

<sup>83</sup> OSWER Directive 9285.7-60, *Ecological Soil Screening Level for Aluminum Interim Final*, United States Environmental Protection Agency, Office of Solid Waste and Emergency Response (Nov. 2003).

<sup>84</sup> Press, F. and R. Siever. 1974. *Earth*. W. H. Freeman and Co., San Francisco. ISBN-13: 978-0716710295.

<sup>85</sup> OSWER Directive 9285.7-60, *Ecological Soil Screening Level for Aluminum Interim Final*, United States Environmental Protection Agency, Office of Solid Waste and Emergency Response (Nov. 2003).



magnitude.”<sup>86</sup>

Consequently, benchmark monitoring for aluminum is not useful for evaluating the efficacy of SCMs. As such, SMA recommends that EPA remove the aluminum benchmark monitoring requirement for Sectors F and N.

**d. Copper**

SMA believes that EPA should reconsider the value of requiring benchmark monitoring for copper in Subpart N. EPA’s proposed copper benchmark concentration is exceedingly low and not useful for evaluating the efficacy of SCMs.

The copper benchmark is among the lowest benchmark parameters required to be monitored at Sector N1 facilities, and therefore unsurprisingly, it has been the most-difficult benchmark for the recycling industry to meet.

Originally, copper benchmark in Sector N1 was 63.6 µg/L (1995 MSGP). In the Proposed 2006 MSGP, EPA proposed to reduce the value to a minimum of 14 µg/L, the value based on a receiving-water hardness of 100 mg/L (calcium carbonate equivalent). However, in the final 2008 MSGP, EPA finalized the value as hardness-dependent, which made the benchmark more stringent because lower receiving-water hardness values give lower benchmark values (*e.g.*, 7.3 µg/L at 50 mg/L hardness). In the 2015 MSGP, a copper saltwater benchmark of 4.8 µg/L was introduced.

Both the freshwater and saltwater benchmark values for copper are minuscule. Because most recycling facilities handle copper or copper-containing scrap metal and can be tens of acres in size, achieving this benchmark value during storm events is extremely difficult even with excellent SCMs. In fact, SMA believes that the concentration may routinely be exceeded in municipal and residential areas not associated with industrial activity.

Moreover, copper is naturally present in many soils and surface water at concentrations similar to those in the benchmarks for Sector N. Copper is also a common laboratory contaminant that requires use of ultra-clean laboratories that specialize in extreme low-level metals analysis.

In light of the foregoing, NRC recognized “the critical need for more data to assess the achievability of many benchmarks,” including the copper benchmark.<sup>87</sup> Nonetheless, insofar as SMA is aware, EPA has not conducted any demonstrations showing that the copper benchmark concentration is achievable for industrial activities at a reasonable cost.

SMA therefore recommends that the proposed copper benchmark be removed from Subpart N. In lieu of requiring benchmark monitoring for copper, we respectfully recommend that EPA should require only “report only” indicator monitoring for copper at this time.

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<sup>86</sup> OSWER Directive 9285.7-60, *Ecological Soil Screening Level for Aluminum Interim Final*, United States Environmental Protection Agency, Office of Solid Waste and Emergency Response (Nov. 2003) (citing Lindsay, W.L. 1979. *Chemical Equilibria in Soils*. John Wiley & Sons, New York).

<sup>87</sup> NRC Report at 40.

e. **Polyaromatic Hydrocarbons (“PAHs”)**

Some SMA member companies may have facilities that would ostensibly be subject to Sector AA: Fabricated Metal Products of the MSGP. SMA believes that the monitoring requirements for PAHs and PFAS for Sector AA should be removed. PAHs are not a component of the operations at these facilities and any possible low-level detections would likely not be feasibly controlled.

**IV. CONCLUSION**

SMA appreciates the opportunity to provide EPA these comments and recommendations on the Agency’s proposed 2026 MSGP. We hope that EPA will carefully consider these comments to not only address not only those problematic aspects of the Agency’s proposed revisions to the 2026 MSGP, but to more broadly make permitting through the MSGP more effective and efficient. If you have any questions about these comments or anything else, please feel free to contact me at (202) 296-1515 or via email at [Stuart@steelnet.org](mailto:Stuart@steelnet.org).

Sincerely,

A handwritten signature in cursive script that reads "Eric J. Stuart".

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