Seth Brown, PE, PhD
National Municipal Stormwater Alliance
Executive Director
(e) seth.brown@nationalstormwateralliance.org
(c) 202.774.8097

April 4, 2025

Ms. Alicia Denning
EPA Headquarters
Office of Water, Office of Wastewater Management
Mail Code 4203M
1200 Pennsylvania Avenue, Washington, D.C. 20004

Water Docket
U.S. Environmental Protection Agency Docket No. EPA–HQ–OW–2024–0481; FRL-11244–01– OW

RE: National Pollutant Discharge Elimination System (NPDES) 2026 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Request for Comments, Docket No. EPA–HQ–OW–2024–0481; FRL-11244–01– OW

Dear Ms. Denning,

The National Municipal Stormwater Alliance (NMSA) appreciates the opportunity to comment on the Agency's proposed NPDES Multi-Sector General Permit for Stormwater Discharges, as presented in Docket ID No. EPA–HQ–OW–2024–0481; FRL-11244–01– OW.

NMSA member organizations represent over 4,400 of the 7,550 total Municipal Separate Storm Sewer Systems (MS4) permittees across the country. Our member organizations are in 26 states representing all regions of the country. Our members include MS4 program managers who are the stewards of urban stormwater conveyance and treatment systems that address urban runoff, which is the largest growing source of water pollution in many parts of the U.S.

COMMENTS

EPA is requesting input on a variety of topics. The comments that we are focusing on are regarding the PFAS monitoring requirements. The basis for our concerns on these requirements is the nascent nature of PFAS monitoring and treatment as well as policies associated with PFAS in the context of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) program. The identified requests for comment are cited from the Permit Parts 1-7 document provided for the Proposed 2026 MSGP[1].

Request for Comment #2: EPA requests 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. Method 1621 can

[1] https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-proposed-2026-msgp

broadly screen for thousands of organofluorines at the part per billion level in aqueous samples and reports results as a combined total concentration. EPA is interested in comparing the results of the 40 PFAS analytes reported from Method 1633 to the total PFAS concentration reported from Method 1621 to better understand the scope of all PFAS compounds that may be present in stormwater discharges and if method 1633 is representative of industrial activity occurring at the facility.

NMSA comments:

Regardless of method used, NMSA is concerned about the utility of PFAS monitoring in stormwater runoff at this time. The first specific comment is for EPA to provide context on the purpose of PFAS monitoring in the MSGP. The assumed understanding of this requirement is that monitoring can be used by regulators to identify the dischargers of PFAS to target these dischargers for regulatory or legal action. The recent policy to identify PFAS as a hazardous substance changes the dynamics for MS4s in these situations.

The specific concern is that findings of PFAS at a location within an MS4 could makes these MS4s legally liable in third-party lawsuits as transporters of PFAS in the context of the CERCLA program. There is a history of dischargers of hazardous substance who are being sued in the context of CERCLA to cite other parties, including municipalities and wastewater utilities, as being liable as well as they transport the identified toxic. This tactic is used to spread the legal liability to as many parties as possible and reduce the overall costs of successful lawsuits on the hazardous waste generators/dischargers.

While EPA has publicly stated that their intention is to not hold MS4s and other public entities liable for PFAS transport, it was stated that EPA does not have the ability to indemnify these entities from third-party lawsuits. Until and unless Congressional action is taken to protect MS4s and other passive receivers of PFAS from CERCLA liability, there will be ongoing concerns regarding monitoring of PFAS in the context of stormwater runoff.

The second comment regarding Comment #2 is the ability for most industrial facilities to administer monitoring. The thousands of PFAS compounds that can be found in stormwater runoff along with the highly technical and specialized analytical techniques make this monitoring challenging for many in the sector especially for the low concentrations often generated in runoff. In addition, the costs for monitoring and analyzing these discharges are significant.

NMSA suggests that all PFAS monitoring requirements be removed from the MSGP until the technological challenges identified have been addressed more readily and until legal liabilities to public utilities and municipalities be provided through federal statutory action. In addition, NMSA suggests that EPA develop technical guidance and support for permittees on PFAS monitoring in order to reduce errors in monitoring when this action is required in the future. Federal support on costs for monitoring would be helpful for those required, in the future, to administer monitoring efforts.

Request for Comment #4: EPA requests comment on whether PFAS-related benchmark monitoring should be applied to some, or all, of the sectors identified for PFAS-indicator monitoring. EPA recently published aquatic life criteria for PFOA and PFOS, as well as Clean Water Act Aquatic Life Benchmarks for PFAS (89 FR 81077), that could be considered as benchmark monitoring threshold(s).

NMSA comments:

Benchmark monitoring suggests that baselines for pollutants are well understood and documented. At this time, the nature of PFAS in stormwater runoff is not understood at the level needed to establish benchmarks. **NMSA suggests that PFAS-related benchmark monitoring not be applied for any identified sectors at this time.**

NMSA understands the potential significance of PFAS in the water environment and is currently supporting efforts to research and promote approaches to mitigate these potential impacts through source control and treatment technologies. We are committed to continuing these efforts and hope that the current policy landscape respects the nascent understanding of PFAS in urban runoff. As the science and technology to monitor, track, and treat PFAS develops, NMSA will be at the forefront of sharing this information with MS4s to keep them informed on these developments. We are also committed to support efforts to identify alternatives to PFAS compounds in order to eventually eliminate these compounds from our water environment completely.

In closing, NMSA greatly appreciates the opportunity to provide input on this significant and growing issue. If you have questions or would like additional information, please contact Seth Brown, the executive director of the National Municipal Stormwater Alliance, at 202.774.8097 or seth.brown@nationalstormwateralliance.org.

Sincerely,

Scott Taylor, PE, D.WRE
Chair, National Municipal Stormwater Alliance

Seth P. Brown, PE, PhD
Executive Director, National Municipal Stormwater Alliance