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Clean Water Act Permitting for Industrial Activities: After a Three-Year Wait, EPA Publishes a Final General Permit for Stormwater Discharges

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The Environmental Protection Agency ("EPA") is publishing today a final Clean Water Act general permit for stormwater discharges from industrial activities in 29 sectors, including mining and oil and gas. The new permit, which replaces the Multi-Sector General Permit ("MSGP") that expired in 2005, will apply in Idaho, New Mexico, Alaska, Massachusetts, New Hampshire, parts of Texas, Oklahoma and certain Indian Country lands. Federal facilities in Colorado and Indian Country in Colorado, Montana, Utah, Wyoming, and North and South Dakota will be covered by a separate general permit that will be issued by EPA Region 8.

The final MSGP distinguishes between effluent limits on discharges and the requirements for a Stormwater Pollution Prevention Plan ("SPPP"), broadens monitoring provisions, and tightens corrective actions when permit conditions are violated. In addition, EPA incorporated all discharge requirements for the mining and oil and gas sectors into one stormwater permit, which allows operators to address discharges for exploration and construction activities in the MSGP, rather than filing for a separate Construction General Permit.

The permit includes both technology and water-quality based effluent limitations and a requirement that the discharger prepare a SPPP. The SPPP for a particular facility must be filed with the Notice of Intent for permit coverage and is designed to document the design, installation, and implementation of technologies that will be used to comply with the effluent limitations. The SPPP must include identification of a stormwater pollution prevention team, as well as a site description, a summary of potential pollutant sources, and a description of control measures and implementation procedures.

Effluent Limitations: The effluent limitations are designed to minimize the exposure of industrial and waste materials to rain, snow, and runoff. Specifically, permittees are required, to the extent technologically feasible and economically practicable, to locate industrial materials inside or shield them from precipitation and runoff. Where water quality

standards are applicable, a new permittee must demonstrate that the pollutant for which the water body is deemed impaired is either not present at the facility or exposure to the pollutant does not exist, or establish that the discharge is not expected to contribute to an exceedance. Existing permittees must control their discharges as necessary to meet applicable water quality standards.

Monitoring Provisions: The monitoring provisions are now separate from recordkeeping requirements and provide for five separate types of monitoring: benchmark monitoring, effluent limitations monitoring, monitoring of discharges to impaired waters, state or tribal provisions monitoring, and additional monitoring required by EPA. The requirements for monitoring discharges to impaired water bodies and follow-up monitoring for exceedances of effluent limitations are both new provisions.

Corrective Action: Along with increasing the frequency of and broadening the requirements for facility inspections, the MSGP includes a new provision clarifying that correction of the original violation does not remove the underlying violation. Under the MSGP, EPA will review the corrective action taken by the permittee in determining appropriate enforcement responses. In addition, failure to conduct (or to document) a corrective action review and revise necessary control measures constitutes a separate permit violation.

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