

## APPENDIX B: DEFINITIONS

**Action** – all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve ESA-listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air. [50 CFR §402.02]

**Action area** – all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR §402.02]

**In the MSGP**, the **action area** is defined explicitly to include, for the purposes of the permit and for application of Endangered Species Act requirements, the following:

The areas where stormwater discharges originate and flow from the industrial facility to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale, or gully that leads to receiving waters and where ESA-listed species (such as listed amphibians) are found in the ditch, swale, or gully.)

The areas where stormwater from industrial activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from industrial activities discharges into a stream segment that is known to harbor listed aquatic species.)

The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)

The areas upstream and/or downstream from the stormwater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

### **Control(s)**

**In the MSGP**, the term **Control Measures** refers to any stormwater control or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States.

In the Biological Opinion, the term **Adequacy of Controls** refers to the adequacy of mechanisms to prevent or minimize listed resources' exposure to stressors in discharges if (1) EPA finds that

these stressors occur at concentrations, durations, or frequencies that are potentially harmful to individual listed organisms, populations, or species; or (2) EPA identifies that the discharges lead directly or indirectly to ecological consequences that are potentially harmful to individual listed organisms, populations, species or PCEs of designated critical habitat. Mechanisms to prevent exposure include the ESA Eligibility Criterion process through which ESA concerns regarding the proposed discharge are addressed.

**Corrective Action** – for the purposes of the MSGP, any action taken, or required to be taken, to (1) repair, modify, or replace any stormwater control used at the site; (2) clean up and dispose of spills, releases, or other deposits found on the site; and (3) remedy a permit violation.

**Discharge** – when used without qualification, means the "discharge of a pollutant." See 40 CFR 122.2.

**Discharge of a Pollutant** – any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.

**Discharge Point** – for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the facility.

**Discharge-Related Activity** – activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting,

**Discharge to an Impaired Water** – for the purposes of this permit, a discharge to an impaired water occurs if the first water of the U.S. to which you discharge is identified by a State, Tribe, or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which you discharge is the first water of the U.S. that receives the stormwater discharge from the storm sewer system.

**Effective Operating Condition** – for the purposes of this permit, a stormwater control is kept in effective operating condition if it has been implemented and maintained in such a manner that it is working as designed to minimize pollutant discharges.

**Effluent Limitations** – for the purposes of the MSGP, any of the Part 2 or Part 3 requirements.

**Effluent Limitations Guideline (ELG)** – defined in 40 CFR § 122.2 as a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

**Electronic Notice of Intent (eNOI)** – EPA’s online system for submitting electronic Multi-Sector General Permit forms.

**Eligible** – for the purposes of the MSGP, refers to stormwater and allowable non-stormwater discharges that are authorized for coverage under this general permit.

**Existing Discharger** – an operator applying for coverage under the MSGP for discharges authorized previously under an NPDES general or individual permit.

**Facility or Activity** – any NPDES “point source” (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2.

**Federal Operator** – an entity that meets the definition of “Operator” in the MSGP and is either any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government of the United States, or another entity, such as a private contractor, operating for any such department, agency, or instrumentality.

**Hazardous Materials or Hazardous Substances or Hazardous or Toxic Waste** – for the purposes of the MSGP, any liquid, solid, or contained gas that contain properties that are dangerous or potentially harmful to human health or the environment. See also 40 CFR §261.2.

**Impaired Water** (or “Water Quality Impaired Water” or “Water Quality Limited Segment”) – for the purposes of the MSGP, waters identified as impaired on the CWA Section 303(d) list, or waters with an EPA-approved or established TMDL. Your industrial facility will be considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA pursuant to Section 303(d) of the CWA as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

**Indian Country or Indian Country Lands** – defined at 40 CFR 122.2 as:

- (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- (b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State: and

- (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe. (18 U.S.C. 1151)

**Industrial Activity** – the 10 categories of industrial activities included in the definition of “stormwater discharges associated with industrial activity” as defined in 40 CFR 122.26(b)(14)(i)–(ix) and (xi).

**Industrial Stormwater** – stormwater runoff from industrial activity.

**Minimize** – to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.

**National Pollutant Discharge Elimination System (NPDES)** – defined at 40 CFR §122.2 as the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ‘approved program.’

**New Discharger** – a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

**New Source** – any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- after promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or
- after proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. See 40 CFR 122.2.

**New Source Performance Standards (NSPS)** – technology-based standards for facilities that qualify as new sources under 40 CFR 122.2 and 40 CFR 122.29.

**No Exposure** – all industrial materials or activities protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. See 40 CFR 122.26(g).

**Non-Stormwater Discharges** – discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, pavement wash water, external building washdown, irrigation water, or uncontaminated ground water or spring water.

**Notice of Intent (NOI)** – the form (electronic or paper) required for authorization of coverage under the Multi-Sector General Permit.

**Notice of Termination (NOT)** – the form (electronic or paper) required for terminating coverage under the Multi-Sector General Permit.

**Operator** – any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria:

The entity has operational control over industrial activities, including the ability to make modifications to those activities; or

The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).

**Permitting Authority** – for the purposes of the MSGP, EPA, a Regional Administrator of EPA, or an authorized representative.

**Point Source** – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff. See 40 CFR 122.2.

**Pollutant** – defined at 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. See 40 CFR 122.2.

**Pollutant of Concern** – a pollutant which causes or contributes to a violation of a water quality standard, including a pollutant which is identified as causing an impairment in a state's 303(d) list.

**Primary Industrial Activity** – includes any activities performed on-site which are (1) identified by the facility's primary SIC code and included in the descriptions of 122.26(b)(14)(ii), (iii), (vi), and (viii); or (2) included in the narrative descriptions of 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). [For co-located activities covered by multiple SIC codes, it is recommended that the primary industrial determination be based on the value of receipts or revenues or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.] Narrative descriptions in 40 CFR 122.26(b)(14) identified above include: (i)

activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; (iv) hazardous waste treatment storage, or disposal facilities including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); (v) landfills, land application sites and open dumps that receive or have received industrial wastes; (vii) steam electric power generating facilities; and (ix) sewage treatment works with a design flow of 1.0 mgd or more.

**Programmatic consultation** – consultation addressing an agency's multiple actions on a program, regional or other basis. [Clarification of usage]

**Qualified Personnel** – qualified personnel are those who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at your facility, and who can also evaluate the effectiveness of control measures.

**Reportable Quantity Release** – a release of a hazardous substance at or above the established legal threshold that requires emergency notification. Refer to 40 CFR Parts 110, 117, and 302 for complete definitions and reportable quantities for which notification is required.

**Run-On** – sources of stormwater that drain from land located upslope or upstream from the regulated facility in question.

**Significant Materials** – includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges. See 40 CFR 122.26(b)(12).

**Stormwater Discharges Associated with Industrial Activity** – the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122. For the categories of industries identified in this section, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to

stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities include those that are federally, State, or municipally owned or operated that meet the description of the facilities listed in 40 CFR 122.26(b)(14). The term also includes those facilities designated under the provisions of 40 CFR 122.26(a)(1)(v). See 40 CFR 122.26(b)(14).

**Tier 2 Waters** – For antidegradation purposes, pursuant to 40 CFR 131.12(a)(2), Tier 2 waters are characterized as having water quality that exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

**Tier 2.5 Waters** – For antidegradation purposes, Tier 2.5 waters are those waters designated by States or Tribes as requiring a level of protection equal to and above that given to Tier 2 waters, but less than that given Tier 3 waters. States have special requirements for these waters.

**Tier 3 Waters** – For antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by states as having high quality waters constituting an Outstanding Natural Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

**Total Maximum Daily Loads (TMDLs)** – The sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

**Upset** – Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

**Water Quality Standards** – defined in 40 CFR § 131.3, and are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States, water quality criteria for such waters based upon such uses, and an antidegradation policy to protect high-quality waters. Water quality standards protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

**Waters of the United States** – defined at 40 CFR §122.2 as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (d) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (e) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (f) Which are used or could be used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

In applying this definition, EPA will consider applicable Court cases and current guidance.