

Small Business Low Risk Coalition

January 8, 2025

Ms. Jane Nishida

Acting Administrator

U.S. Environmental Protection Agency

Mail Code: 1101A

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Subject: Request for Withdrawal of the Proposed National Pollutant Discharge Elimination System (NPDES) 2026 Issuance of the Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity; EPA-HQ-OW-2024-0481

Dear Ms. Nishida:

We respectfully request that the Environmental Protection Agency (EPA) withdraw the December 13, 2024 proposed Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activity.¹ We are extremely disappointed in this proposal for several reasons, most importantly that it imposes substantial additional costs on small businesses without any evident additional benefits.² The next Administration should have the opportunity to thoroughly re-examine this proposal, using the Executive Order 12866 review process.

The Small Business Low Risk Coalition (SBLRC), consisting of small business trade associations, represents facilities nation-wide that are subject to EPA or authorized state-issued general permits that regulate stormwater discharges. Member associations include the National Stone, Sand and Gravel Association, the Pavement Coatings Treatment Council, the National Asphalt Pavement Association, the Recycled Materials Association, and the PRINTING United Alliance.

¹ 89 Fed. Reg. 101,000 (December 13, 2024).

² If these requirements were applied nationwide to 100,000 facilities (since the MSGP is the model permit for the nation), the additional engineering analyses and corrective actions alone required by this permit would easily exceed \$200 million over the permit term. This figure does not include the EPA estimate that this permit would cost \$49 million in incremental costs over the permit term spread over only 2000 facilities in EPA-regulated jurisdictions. The substantial economic impact on a substantial number of small businesses (without consideration of benefits) creates the factual basis for requiring a SBREFA panel. 5 U.S.C. § 605(b). See footnote 3 below.

Coalition members represent industries that collectively include tens of thousands of small businesses, employing hundreds of thousands of employees whose stormwater discharges pose no risk to human health and the environment using current best management practices.

Unlike all previous proposed MSGP permits, this one was not subject to review by the Office of Management and Budget's Office of Information and Regulatory Affairs. As a result, it did not receive input from interested Federal agencies or the affected public. This collaborative process has yielded significantly improved final permits on multiple occasions. We also request that the Agency convene the required Small Business Regulatory Enforcement Fairness Act panel to ensure comprehensive input from small entities across the country.³

In addition, there appears to be little factual evidence supporting the continued benchmark or indicator "report-only" reporting under the proposed MSGP. The Agency did not adequately justify the use of benchmark values in the previous MSGP. Because the benchmarks have a questionable scientific basis, it was not surprising that nearly 80% of the reporting facilities exceeded these benchmarks.⁴ Furthermore, the Agency continues to ignore the substantial evidence that these benchmark exceedances do not reflect industrial activity, but rather are caused by background concentrations and offsite run-on.⁵ Plus, the Agency wants to require another round of polycyclic aromatic hydrocarbons (PAH) indicator testing and reporting without any apparent effort to review the 2021 permit PAH reporting data.

The benchmark and indicator "report-only" provisions of this proposal are unsupported by any detailed analysis. The Agency appears to be reluctant to undertake a rigorous evaluation of the benchmark reporting requirements and continues to rely primarily on language drafted in 1995, nearly thirty years ago.⁶ This outdated approach has been refuted by multiple data analyses, two reports by the National Research Council, the U.S. Small Business Administration Office of Advocacy, and experts in the field.⁷

³ The U.S. Small Business Administration Office of Advocacy, the federal office charged with enforcing the Small Business Regulatory Enforcement Fairness Act (SBREFA), stated that EPA had failed to comply with the SBREFA panel requirement for the proposed 2020 permit. The Office cited the Agency's failure to provide a basis for certifying that this rule would not have a substantial economic effect on a substantial number of small entities. *June 1, 2020 Comment at 17-18*. The proposed 2026 rule imposes additional monitoring and corrective action costs, and is clearly more costly than the 2020 proposal. EPA has convened two other stormwater related panels, namely, the Stormwater Phase 2 Regulations and Discharges from Developed Sites panels.

⁴ Data obtained from August 2024 AIM ECHO data file. <https://echo.epa.gov/tools/data-downloads>. Since nearly 80% of facilities exceed benchmarks, it is difficult to assert that benchmark exceedances are indicators of the presence of inadequate stormwater control measures. See footnote 5 below.

⁵ See for example, Jack Waggener, URS Corporation, *Comments on the Benchmark Values of the Proposed MSGP*, October 9, 2014.

⁶ See 2026 Fact Sheet Part 4.2.2 quoting the 1995 approach.

⁷ The 2009 NRC report found that "it is not clear whether [benchmark] exceedances provide useful indicators of stormwater pollution prevention plan or inadequacies or potential water quality problems," and that if the NRC had its way, "the current benchmark monitoring conducted by MSGP facilities would be eliminated." *2009 NRC Report*

In its apparent haste to issue this proposed permit under this Administration, the Agency failed to comply with multiple promises made either in the 2021 final permit Fact Sheet or the preamble that accompanied publication of the final permit in the Federal Register.⁸

Those commitments include:

1. Evaluate the utility of continued benchmark reporting to identify how corrective actions reduce benchmark exceedances.⁹
2. Evaluate the utility of continued indicator reporting “report-only” on improving stormwater controls.¹⁰
3. Evaluate the continued utility of PAH testing and reporting.¹¹
4. Provide indicator and benchmark reporting data for public review.¹²
5. Work with external stakeholders to “thoroughly revise the sector-specific fact sheets.”¹³
6. Consider an inspection-only low-risk option to eliminate continued benchmark reporting for certain industries.¹⁴

Over the past two years, the SBLRC has requested the Agency to provide the underlying data to facilitate examination of the benchmark and indicator “report-only” data.¹⁵ EPA has adamantly resisted this request, except for providing an incomplete and confusing set of benchmark data in 2023.¹⁶ Having a complete and organized dataset is critical to fully evaluate the effectiveness of the monitoring and associated corrective action requirements in the 2021 permit.

at 30, 433; The 2019 NRC report stated that the MSGP approach to benchmark monitoring has "largely been a failure." NRC 2019 at 439; Analysis of Multi-Sector General Permit (MSGP) Stormwater Discharge Monitoring Requirements, Technical Memorandum, prepared for US SBA Office of Advocacy, E.H. Pechan & Associates, Inc., Durham, NC (March 2006).; Jack Waggener, URS Corporation, Comments on the Benchmark Values of the Proposed MSGP, October 9, 2014; Grab sample monitoring “show very limited utility” Industrial Storm Water Monitoring Program Existing Statewide Permit Utility and Proposed Modifications, Michael K. Stenstrom and Haejin Lee, University of California at Los Angeles, Final Report (January 2005) at 26 ; 2008 MSGP Benchmark Report at 2 (EPA 2013); SBLRC Comments on 2020 Proposed Permit; SBA Advocacy Comments on Proposed 2020 Permit.

⁸ 86 Fed. Reg. 10,274 (February 10, 2021).

⁹ 2021 Fact Sheet at 101.

¹⁰ Id. at 9.

¹¹ Id. at 5-6.

¹² Id. at 9.

¹³ 86 Fed. Reg. 10,274 (February 10, 2021).

¹⁴ 2021 Fact Sheet at 9-10. This option was recommended by the NRC. NRC 2019 at 54-58.

¹⁵ See discussion in SBLRC requests dated December 19, 2024.

¹⁶ The EPA ECHO website includes an incomplete benchmark reporting database that omits benchmark reporting for facilities with no benchmark exceedances, misguidedly identifies the Additional Implementation Measures (AIM) Levels, and omits all the underlying monitoring data used to determine the benchmark exceedances. <https://echo.epa.gov/tools/data-downloads>. Despite multiple requests, and two FOIAs, the Agency has declined to correct these problems since October 2023. This incomplete and incoherent database jeopardizes efforts to evaluate the utility of benchmark reporting.

Regarding the sector-specific fact sheets, the Agency failed to seriously consult with industrial sectors after comments were submitted. EPA held several webinars for various sectors in 2021, but then abandoned that approach to receiving industry-specific input. Since that time, the Agency has been mysteriously silent on its effort to update the fact sheets. Also, it appears that it has completely disregarded the detailed comments from numerous regulated groups in the prior rulemaking record. This represents a major missed opportunity for EPA to collaborate with regulated industries that have offered to assist the Agency in its monumental effort to develop updated fact sheets. We believe EPA could have substantially advanced environmental protection by updating sector-specific stormwater best management practices in the fact sheets, as it had promised, instead of doubling down on questionable benchmark and indicator reporting.

Lastly, the MSGP docket is missing critical information and analyses, as discussed in the two attached SBLRC requests.¹⁷ The inability to obtain and analyze the data seriously compromises the regulated parties' ability to provide informed comments necessary for developing a sound MSGP permit.

Based on the multiple deficiencies cited above, we believe the best course of action is to withdraw this rule at least until the Agency performs an objective evaluation of alternative approaches, and provides additional supporting data and analysis. At a minimum, the Agency should extend the comment period by an additional 90 days to allow the public to review the current docket and any supplementary information and the new Administration to take appropriate action on this important permit.

If there are questions about this request, you can contact me at 240-997-1176, or by email at kevin.bromberg@gmail.com.

Respectfully submitted,

Kevin Bromberg

SBLRC Coordinator

Kevin.bromberg@gmail.com

¹⁷ See discussion in SBLRC requests dated December 19, 2024 and January 3, 2025.

cc: Bruno Pigott, EPA

Andrew Sawyers, EPA

Chris Kloss, EPA

Alicia Denning, EPA

Paula Hoag, EPA

Jane Wallace, EPA

Nick Goldstein, SBA Advocacy

Dominic Mancini, OIRA

SBLRC Members

EPA Docket