

## NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rule-making information that does not fit into any other category of notice; and other types of information required by statute to be published in the *Register*. Because of the variety of material that is contained in a Notice of Public Information, the Office of the Secretary of State has not established a specific format for these notices.

### NOTICE OF PUBLIC INFORMATION DEPARTMENT OF ENVIRONMENTAL QUALITY AZPDES MULTI-SECTOR GENERAL PERMITS

[M11-84]

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| <b>1. Name of the agency:</b>    | Department of Environmental Quality                              |
| <b>2. Title and its heading:</b> | 18, Environmental Quality  |
| <b>Chapter and its heading:</b>  | 9, Department of Environmental Quality – Water Pollution Control |
| <b>Article and its heading:</b>  | 9, Arizona Pollutant Discharge Elimination System                |
| <b>Section number:</b>           | R18-9- A907(B)   |

**3. Notice of final permit determination:**

On December 20, 2010, the Arizona Department of Environmental Quality (ADEQ) issued two Arizona Pollutant Discharge Elimination System (AZPDES) Multi-Sector General Permits (Non-mining MSGP, No. AZG2010-002 and Mining MSGP AZG2010-003), which together, authorize stormwater discharges associated with industrial activity from 29 industrial sectors (25 non-mining and four mining) to waters of the United States. These general permits cover qualifying discharges in Arizona, except for Indian Country as defined in 18 U.S.C. 1151; and will be effective for a period of five years from February 1, 2011 to January 31, 2016. The permit replaces the previous MSGP, issued by USEPA on October 30, 2000, which expired on October 30, 2005.

EPA identifies 11 categories of stormwater discharges associated with industrial activity (40 CFR 122.26(b)(14)). One of these categories, construction activity, already has a separate general permit. The mineral industry, defined as facilities with Standard Industrial Classification Codes 10 -14, is another of these categories and is covered by the Mining MSGP 2010. Both the Mining and Non-mining MSGP 2010 permits require industrial facilities to minimize the discharge of pollutants in stormwater to assure that Surface Water Quality Standards are maintained. To this end, mining and non-mining permittees must: implement stormwater control measures and develop site-specific stormwater pollution prevention plans (SWPPP) to comply with AZPDES program requirements; inspect and evaluate the performance of existing control measures; perform “follow-up” or corrective actions to correct identified problems; and conduct monitoring at each outfall that discharges stormwater associated with industrial activity.

ADEQ published a public notice of the two permit actions in the *Arizona Administrative Register* (16 A.A.R. 1915), September 24, 2010, and accepted public comments until October 25, 2010. Two parties submitted comments; one party commented on the draft permits and the other on the draft non-mining MSGP fact sheet. ADEQ amended the draft permits, where appropriate, to address a number of the comments received. The following are the significant changes from the draft to the final MSGP:

- **New Dischargers to Impaired Waters (Part 1.1.4.5(1)(c)), both permits:** Language relating to sediment impairments from page 11 of the fact sheet, second paragraph under “New Dischargers to Water Quality Impaired Waters,” was revised and inserted as an explanatory note under Part 1.1.4.5(1)(c)(i).
- **Obtaining Coverage (Part 1.3.1), both permits:** Actual date of May 31, 2011 was inserted in Table 1-2 (Non-mining MSGP) and Table 1-3 (Mining MSGP) as the NOI Submission Deadline. This date was previously left open, pending the permits’ effective date.
- **Notices of Termination (Part 1.4), both permits:** Both permits were revised to reflect the only two scenarios in which ADEQ would require an NOT to be filed:
  1. When there is a change of ownership at a facility. The permittee shall submit an NOT within 30 calendar days after a new owner or operator assumes ownership of or has taken over responsibility for the facility.
  2. When activities at the site have changed such that there are no longer any industrial activities at the site that are covered by the permit. This scenario would only apply to non-mining facilities that are no longer eligible for coverage under the MSGP 2010 or to mining facilities that satisfy the applicable termination requirements described in Part 8.G.9 or Part 8.J.10.
- **Inactive and Unstaffed Sites (Parts 1.5 and 4.4), Mining permit:** A new Part 6.2.3.3 was added to the Mining permit describing the limited exception for monitoring at inactive/unstaffed sites that discharge to impaired waters. Language (underlined) was added to Part 4.4 to capture this same requirement: “Although stormwater monitoring is not waived for inactive and unstaffed mining sites that discharge to impaired waters, the monitoring frequency is reduced in accordance with Part 6.2.3.3.” In addition, the new Part 6.2.3.3 reads as follows:

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“6.2.3.3 Exception for Inactive and Unstaffed Mine sites. The requirement for impaired waters monitoring at a facility that is inactive and unstaffed is reduced to once per year, if the requirements of Part 1.5 are met.”

- **Control Measures (Part 2.1), first sentence, Non-Mining permit:** The phrase “to address the provisions in Part 2.1” was deleted from the Non-mining MSGP to be consistent with the same sentence in the Mining MSGP.
- **Language to Clarify Select References to “Effluent Limitations” (Parts 2.1.1.3, 3.2 and 4.0), both permits:** Language in Parts 2.1.1.3, 3.2 and 4.0 was added to help clarify the distinction between technology based effluent limitations and water quality based limitations.
- **Employee Training (Part 2.1.1.9), both permits:** Language added: “Training must cover both the specific control measures used to achieve the requirements in Part 2.2 and (for those who will be involved in these activities) the monitoring, inspection, planning, reporting, and documentation requirements in other parts of this permit.”
- **Water Quality Standards (Part 2.2.2), both permits:** Language changed from “water quality-based limitations” to “water quality-based requirements.”
- **Corrective Action (Part 3.1.1), both permits:** Language inserted “resulting in or from a failure of a control measure” in the first line of Part 3.1.1.
- **Site Description (Part 5.1.2.3), sixth bullet, both permits:** Language requiring that the locations of surface waters be noted on the site map was simplified in both permits.
- **Site Description (Part 5.1.2.3), eleventh bullet, Mining permit:** Inlets were deleted as a requirement on the site map in the Mining MSGP.
- **SWPPP Modifications (Part 5.2), Mining permit:** New permit language was added as follows: “In addition, the permittee shall modify the SWPPP to reflect new or modified control measures (see Parts 2.1 and 4.0), including measures implemented at active mining operations as mining activities expand into previously undisturbed areas. See part 8.G.5.2.”
- **SWPPP Availability (Part 5.3), both permits:** New permit language was added which pertains to who has authority to immediately review a SWPPP; also, the phrase “having stormwater program authority” was added.
- **Applicability of General Analytical Monitoring (Part 6.2.1.1), Mining permit:** An erroneous reference to Appendix D (hardness calculations and ranges) in the permit was removed. The subject of hardness in surface waters receiving stormwater discharges is discussed in the “Stormwater Monitoring Guidance Document for the Mineral Industry MSGP”. Furthermore, the two bullets in this part were deleted from the permit and are addressed in the guidance document.
- **Hardness of Receiving Water (Part 6.2.1.1) Mining permit:** ADEQ has revised the language in Parts 6.2.1.1 and 8.G.8.2.1 to indicate that stormwater discharges to ephemeral waters, and in the case of discharges to perennial or intermittent waters the receiving water, must be analyzed for hardness. For discharges to ephemeral waters, the permittee must collect a sample of the discharge leaving the facility and analyze it for hardness in addition to the other parameters in Part 8.G.8.
- **Discharges to Impaired Waters with an ADEQ Approved TMDL (Part 6.2.3.2), both permits:** New language added, “For stormwater discharges assigned a WLA in an approved TMDL, the facility shall monitor for the pollutant for which the TMDL was written.”
- **Additional Monitoring Required by ADEQ (Part 6.2.4), both permits:** Part 6.2.4 was revised to the following: “ADEQ may notify the permittee, in writing, of additional discharge monitoring required to ensure protection of receiving water quality in cases where there is evidence that a pollutant is being monitored for, by the permittee, and that the pollutant is causing or contributing to exceedances of a water quality standard.”
- **Follow-up Actions if Discharge Exceeds a Numeric Effluent Limit or a Water Quality Standard (Parts 6.3 and 6.3.2), both permits:** ADEQ added a cross reference to Part 2.2.2 in Part 6.3.
- **Reports and monitoring data (Parts 7.1 and 7.2), both permits:** The actual dates for the Annual Report reporting period of “June 1 to May 31” was inserted in the first paragraph. In the last paragraph, replaced the 45 calendar day submittal timeframe with July 15 deadline for DMRs and Annual Reports.
- **Other reporting (Part 7.4), both permits:** Deleted duplicate phrase “as applicable” from the second paragraph.
- **Other reporting (Part 7.4), both permits (reportable quantity spills):** Changed the third bullet to, “Reportable quantity spills (verbal report only; see Part 2.1.1.4).” Removed the sentence, “Where applicable, the permittee shall submit the following reports to the Department at the appropriate address in Part 7.6:”, and the bullets under the two paragraphs were combined. The text following these bullets was revised to “Where a written report is required ... .”

**Sectors G and J, Mining MSGP:**

- **Exploration and Construction Phase (Parts 8.G.3, 8.J.3, 8.G.4, 8.J.4, 8.G.5 and 8.J.5):** The following changes were made in the Mining permit:

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- 0 Part 8.G.3.3 and 8.J.3.3 – ADEQ further defined “construction phase” in the Mining MSGP by adding language in both sectors about the use of pre-existing or permanent control measures. The permit language in these two sections was revised as follows:

*Construction phase* – Includes the initial building of site access roads and initial removal of overburden and waste rock to expose mineable minerals at a mining site. In addition, any subsequent construction activity on undisturbed areas of an existing mine property is also considered part of the construction phase if stormwater discharges are not managed by pre-existing or permanent control measures.

- 0 Part 8.G.4.2 and 8.J.4.2 – ADEQ revised the first sentence to clarify that the additional SWPPP requirements are applicable to exploration and construction activities which are defined in Part 8.G.3 and 8.J.3.
- 0 Part 8.G.4.2.2 and 8.J.4.2.2 – Recognizing the temporary and transitory nature of this phase of mining, ADEQ reduced the additional requirements that had been proposed for the SWPPP such as a separate site description and site map during the construction phase.
- 0 Part 8.G.4.3.1.a and 8.J.4.3.1.a: The inspection schedule was reduced from once every 14 calendar days to once every 30 calendar days.
- 0 Parts 8.G.4.3.1.b and 8.J.4.3.1.b: The option for a reduced inspection schedule was removed.
- **Exploration and Construction Control Measures (Part 8.G.4 and 8.J.4):**
  - 0 Parts 8.G.4.1.1 and 8.J.4.1.1 – The language “and/or” was added.
  - 0 Part 8.G.4.4 and 8.J.4.4 – ADEQ replaced “this subpart” with “Part 8.G.4.3.1.b”.
- **Sediment and Erosion Control at Active Sites (Parts 8.G.5.2 and 8.J.5.2):** The permit language for both sectors was revised as follows: “8.G.5.2 (8.J.5.2) – Sediment and Erosion Control. At sites where the active phase has commenced, in addition to measures evaluated pursuant to Part 2.1.1.5, the permittee shall implement appropriate erosion and/or sediment controls, in accordance with part 8.G.4, when clearing, grading, or excavation activities occur in previously undisturbed areas where discharges are not controlled by pre-existing or permanent control measures. The purpose of . . . .”
- **Additional SWPPP Requirements for Mining Operations (Part 8.G.6):** ADEQ added language to Parts 8.G.6 and 8.J.6 to specify that the additional SWPPP requirements of the section do not apply to inactive and unstaffed sites. The fact sheet was also revised to be consistent with the revised permit.
- **Additional Inspection Requirements for the Active Mining Phase (Part 8.G.7):** Language was revised as follows: “Unless otherwise approved by ADEQ, active sites which discharge to waters designated as OAWs or waters which are impaired for sediment must be inspected monthly. The permittee may submit a request to the Department to reduce the inspection frequency to quarterly at one or more outfalls to an OAW or a water impaired for sediment. The request must be based on the frequencies of discharges and the performance of the control measure(s).”
- **Monitoring Requirements for Discharges from Waste Rock and Overburden Piles at Active Metal Mining Facilities (Part 8.G.8.2):** Changes were made to Table 8.G-8.2 and the text preceding it to reflect refinements to the process for determining hardness values in the receiving water.

**4. The final general permit and associated documents:**

A complete itemization of the public comments and ADEQ’s responses, a copy of the final permits, and the final fact sheets are available on the ADEQ web site at:

<http://www.azdeq.gov/environ/water/permits/msgp.html>

or contact ADEQ at (602) 771-4508.

NOTICE OF PUBLIC INFORMATION

LAWS 2010, CH. 287

Revisions to the Rulemaking Process in the Administrative Procedures Act  
Extension of the Rulemaking Moratorium Through Fiscal Year 2011

[M10-191]

**1. Reason for the Notice of Public Information:**

Laws 2010, Ch. 287 revised the Administrative Procedure Act and extended the moratorium on rulemaking through fiscal year 2011

**2. Effective date of Laws 2010, Ch. 287:**

July 29, 2010

**3. Summary of Laws 2010, Ch. 287:**

Revises the rulemaking process by expanding the use of summary rulemaking, authorizing a general permit and expanding the role of the governor’s Office of Strategic Planning and Budgeting.

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Requires the rule's benefits to outweigh its probable costs and the agency to demonstrate it selected the least burdensome and costly alternative. (Strikes the requirement for this to be by clear and convincing evidence).

Expands the requirements for the Economic, Small Business and Consumer Impact Statement.

For the agency's five-year review, requires a determination that the rule imposes the least burden and cost to the regulated community.

During an appeal of an agency rule, outlines an additional reason for filing an objection.

Extends the rulemaking moratorium on rulemaking through fiscal year 2011

(Excerpted from Arizona House of Representatives House Majority Research Memorandum of April 28, 2010. Available online at [www.azleg.gov](http://www.azleg.gov).)

**4. Contact for rulemaking moratorium questions:**

Communications regarding exceptions to the moratorium, or questions regarding the moratorium generally, should be addressed to Richard Bark, Deputy Chief of Staff, Policy, at [rbark@az.gov](mailto:rbark@az.gov).

**5. Location of full text of Laws 2010, Ch. 287:**

The entire text of Laws 2010, Ch. 287 is available online at [www.azsos.gov](http://www.azsos.gov) under Legislative Filings.