

Tuesday, April 28, 2009

Environmental Update: ADEQ Releases Draft General Permit for Storm Water Discharges from Industrial Activities

By Scott H. Thomas and Robert J. Kramer

On April 20, 2009, ADEQ released a draft of the first State-issued multi-sector general permit for storm water discharges associated with industrial activity ("Arizona MSGP"). Storm water discharges from a wide range of industrial sources on non-tribal lands throughout Arizona will be required to obtain coverage under this permit once it is adopted. Examples of covered industries are mining, paper mills, various types of manufacturing facilities, landfills, and transportation facilities (including airports). Most of these sources are operating today under an EPA general permit issued in 2000 (the "2000 EPA permit"). The draft Arizona MSGP contains significant differences from the 2000 EPA permit and could result in increased compliance costs for regulated facilities.

Background

The Clean Water Act requires that discharges of storm water from industrial activity to be regulated by a National Pollutant Discharge Elimination System ("NPDES") permit. 33 U.S.C. § 1342(p). Given the large number of potentially regulated facilities, EPA elected to develop a general permit rather than requiring every facility to secure an individual NPDES permit. A series of general permits have been issued since the early 1990s. These permits required covered facilities to submit a Notice of Intent and to develop and implement a site-specific Storm Water Pollution Prevention Plan ("SWPPP") to control storm water discharges from the site. The precise requirements applicable to a specific facility depend on which industrial sector the facility belongs to (EPA currently identifies 30 specific industrial sectors, each with its own set of requirements).

ADEQ assumed primary responsibility for implementing the NPDES program in Arizona in December 2002, after the adoption of legislation creating the Arizona Pollutant Discharge Elimination System ("AZPDES"). The State did not adopt a general permit for industrial storm water discharges, but instead allowed such dischargers to remain covered under the 2000 EPA permit. Once finalized, the Arizona MSGP will replace the 2000 EPA permit for facilities on non-tribal lands in Arizona.

Highlights of Draft ADEQ Permit

The draft Arizona MSGP differs from the 2000 EPA in numerous fashions. For example:

- The permit contains more mandatory control measures and allows less flexibility to focus on a subset of control measures most appropriate for a particular site.

quick links

- [Environmental Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Nogales
420 W. Mariposa Rd.
Suite 200
Nogales, AZ 85621
(520) 281-3480

Las Vegas
300 S. Fourth St.
Suite 1400
Las Vegas, NV 89101
(702) 692-8000

Denver
1700 Lincoln
Suite 2900
Denver, CO 80203
(303) 291-3200

- The permit proposes more detailed and prescriptive actions to be taken in the event a problem is noted.
- Significant limits are placed on the availability of the general permit for discharges near waters identified by ADEQ as impaired or unique. (If the general permit is not available, an individual permit would need to be obtained for such discharges).
- A detailed annual report must be filed with ADEQ every year.
- Each site must develop its own site-specific sampling and analysis plan for storm water monitoring
- ADEQ has proposed to eliminate monitoring for total suspended solids and turbidity for discharges to ephemeral waters.

Process and Next Steps

The draft Arizona MSGP and accompanying materials can be viewed at:
<http://www.azdeq.gov/enviro/water/permits/msgp.html>

The draft Arizona MSGP is being circulated for informal comment until June 1. ADEQ has scheduled two public meetings to discuss the draft permit: May 19 in Phoenix and May 21 in Tucson. Before issuing the final permit, ADEQ plans to allow another round of public comment.

If you have any questions regarding the draft Arizona MSGP, please contact Scott Thomas or Robert Kramer.

Scott H. Thomas practices environmental law with an emphasis on surface water and ground water quality issues (including NPDES permits, Section 404 dredge and fill permits, surface water quality standards, Arizona aquifer protection permits, and Safe Drinking Water Act issues). He also has experience in Superfund (and its Arizona equivalent, WQARF), solid and hazardous waste, underground storage tank, environmental due diligence, Endangered Species Act, and community right-to-know (EPCRA) matters. His practice focuses primarily on regulatory, compliance, administrative and legislative issues. He earned his B.A. (1984) and his J.D. (1988) from the University of Virginia.

Robert J. Kramer practices primarily in the areas of environmental and water law and chairs the firm's natural resources and environmental practice. He has worked extensively on legal issues relating to environmental due diligence and audits, hazardous waste regulation, materials recycling, underground storage tanks, pretreatment requirements, Superfund sites and remedial actions involving pesticides and other hazardous substances, and water issues. He was formerly corporate environmental counsel for a Fortune 500 company. He earned his B.A. (1985) from the University of California, San Diego and his J.D. (1988) from Arizona State University.



Scott H. Thomas
Of Counsel
602.916.5427
sthomas@fclaw.com



Robert J. Kramer
Director
602.916.5464
rkramer@fclaw.com