



OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Extension and Modification of the Clean Water Act Industrial Stormwater Non-Filers and Industrial Stormwater Multi-Sector General Permit Violations Expedited Settlement Agreement Pilot Programs

FROM: Rosemarie A. Kelley, Director

TO: Enforcement and Compliance Assurance Division Directors
Regional Counsels

This memorandum extends the expedited settlement agreement (ESA) pilot programs addressing Clean Water Act (CWA) industrial stormwater non-filers and industrial stormwater multi-sector general permit (MSGP) violations until September 30, 2027, and makes several minor modifications to the programs.

1. Extensions of the ESA Pilot Programs until September 30, 2027

The non-filer ESA pilot program (initially approved on September 30, 2019) and the MSGP ESA pilot program (initially approved on May 25, 2023) both expired on November 25, 2025. Extending both of these pilot programs to September 30, 2027, will allow OECA and the Regions to continue to evaluate their effectiveness and make a more informed decision on how to proceed with the entire ESA program for industrial stormwater violations.

2. Modifications to the ESA Pilot Programs

As recommended by the Water Enforcement Division in consultation with the Regions, I am approving the following five minor modifications:

- a. Footnote 1 from the May 25, 2023, MSGP ESA pilot program approval memorandum is modified to state: "For the purposes of this Pilot, the term "MSGP" refers to the EPA's 2015 and 2021 MSGPs as well as equivalent state multi-sector general permits for industrial stormwater, *plus individual permits when there are permit violations that only pertain to industrial stormwater requirements consistent with EPA MSGP requirements.*" This change allows the use of the MSGP ESA for violations of stormwater general permit requirements within the body of an individual permit, provided that all of the other requirements, conditions, and limitations for use of the MSGP ESA are met. For sites with both wastewater and stormwater discharges, some states issue one individual permit covering the whole site, including both stormwater general

permit requirements and wastewater discharge requirements, rather than issuing an individual permit for the wastewater discharge and a separate general permit for stormwater. The MSGP ESA may be appropriate to address violations of stormwater general permit requirements at such individually permitted sites, regardless of the form that the overall permitting instruments for these sites happen to take. However, when the case includes non-industrial stormwater permit violations, the case team must calculate the penalty by following the 1995 Interim Clean Water Act Settlement Penalty Policy.

- b. Throughout the model inspection report template for the non-filer ESA pilot program, the term “discharge point” is now changed to “point source.” “Discharge point” is not a defined term in the CWA, whereas “point source” is a defined term. *See* CWA § 502(14). (“The term ‘point source’ means 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, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.”) Using the statutorily defined term “point source” promotes adherence to statutory requirements and consistency in inspection documentation practices across the EPA regions. An updated model inspection report template reflecting this terminology change is attached to this memorandum.
- c. The restriction in the non-filer ESA pilot program approval memorandum limiting its use to sites with five acres or less of physical area of industrial activities exposed to stormwater is removed. Several Regions have informed the Water Enforcement Division that the non-filer ESA may be appropriate for use at certain sites with greater amounts of exposed acreage, if the activities there are lower impact (for example, as with certain types of stockpiling and storage). Regions may now apply the ESA at larger sites when activities are low-impact, provided all ESA criteria are met and the Water Enforcement Division concurs based on site-specific considerations. This consultation process will help inform future decisions on how best to address acreage ranges and limits in the final ESA program for industrial stormwater violations.
- d. To align the non-filer ESA pilot program with the MSGP ESA pilot program, the requirement to transmit settlement offers within 70 days of inspection is removed from the non-filer ESA. Going forward, case teams should generally transmit settlement offers concurrently with the inspection report, consistent with applicable Agency policies related to the timing of inspection report transmittals.
- e. Per the recommendation of the Water Enforcement Division, when an industrial stormwater general permit has expired and the new permit has not yet been issued, respondents may certify that they (1) are meeting the substantive requirements of the expired permit, and (2) will submit a Notice of Intent for coverage under the next general permit once issued.

3. Reminders Regarding Recent Updates to Language in EPA Administrative Agreements

As a reminder, EPA has made updates to language for administrative agreements across its programs, including ESAs, since the non-filer and MSGP model ESA templates were originally created.

First, as advised in my September 24, 2024, email to Regional Counsels and Enforcement and Compliance Assurance Division Directors, case teams should include the following sentence in addition

to (not in lieu of) existing settlement waiver language: “By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.”

Second, case teams should include updated payment language, as parties must now submit payments electronically. Case teams may reference EPA’s “How to Make a Payment” website at <https://www.epa.gov/financial/makepayment>.

Third, case teams should refer to the April 2025 Office of Civil Enforcement memorandum entitled “Updating the Tax Law Paragraphs in Administrative Enforcement Documents.”¹ As noted therein, ESAs do not need to include the tax identification paragraph. The tax reporting paragraphs may be required if the penalty amount is equal to or greater than \$50,000.

4. Further Questions and Consultation

For questions regarding ESAs or use of the non-filer ESA at sites with more than five acres of exposed industrial activity, please contact: Thomas Santoro (Santoro.Thomas@epa.gov; 202-564-1325) or Ivy Koberlein (Koberlein.Ivy@epa.gov; 202-564-2549) in the Water Enforcement Division. For other questions regarding recent updates to language in EPA administrative agreements, please contact: Laurie Ireland (Ireland.Laurie@epa.gov; 202-564-2932), Director of Cross-Cutting Issues Staff, or Taylor Schock (Schock.Taylor@epa.gov; 202-564-0815), Attorney Advisor in Cross-Cutting Issues Staff.

Attachment:

- Updated model inspection report template for the non-filer ESA pilot program

¹ Available at <https://work.epa.gov/sites/default/files/2025-05/Updating%20the%20Tax%20Law%20Paragraphs%20in%20Administrative%20Enforcement%20Documents%204-29-25.pdf>.