

# Environmental Groups Win National Victory for Clean Water



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*Agreement reached with EPA to adopt stronger standards in management of industrial stormwater pollution*

**NEW YORK, NY – August 17, 2016** – A coalition of environmental organizations reached an agreement

([http://waterkeeper.org/app/uploads/2016/08/Waterkeeper\\_Alliance\\_Settlement\\_Agreement\\_08162016-EPA-MSGP.pdf](http://waterkeeper.org/app/uploads/2016/08/Waterkeeper_Alliance_Settlement_Agreement_08162016-EPA-MSGP.pdf)) with the U.S. Environmental Protection Agency (EPA) and two industry trade associations to settle a lawsuit challenging EPA's industrial stormwater multi-sector general permit (MSGP). Under the settlement, EPA will begin adding both improved monitoring tools and a number of clear, numeric targets and standards to the permit in 2020 that simplify the job of controlling water pollution for regulators, businesses and citizens. The permit applies to thousands of businesses across the country in multiple industrial sectors, from cement mixing and scrap metal salvage to trucking and food processing, and sets limits and best practices that companies must follow before they discharge stormwater that has been polluted by their industrial operations.

The coalition, led by Waterkeeper Alliance, included Apalachicola Riverkeeper, Galveston Baykeeper, NY/NJ Baykeeper, Snake River Waterkeeper, Puget Soundkeeper Alliance, Lake Pend Oreille Waterkeeper, Ecological Rights Foundation, Our Children's Earth Foundation, and Conservation Law Foundation. The environmental coalition was represented by Super Law Group, Lawyers for Clean Water, and Conservation Law Foundation.

The landmark agreement will affect the terms of the MSGP permit when it is reissued in 2020. Overall, the measures that EPA will consider in 2020 should make it easier to determine whether industrial operations adequately protect nearby waters. They will also clarify the expectations for businesses operating under the MSGP.

Under the agreement, from 2016 until 2019, EPA will fund new scientific research leading to improved monitoring and improved targets in the next industrial stormwater permit, which is due in 2020. The research will be conducted by an independent panel of scientists assembled by the National Research Council, part of the National Academy of Sciences. In the past, the National Research Council found that polluted stormwater from urban areas is the primary source of impairment for 13 percent of rivers, 18 percent of lakes, and 32 percent of marine estuaries that have been assessed. It also found that industrial facilities are highly

concentrated sources of stormwater pollution, especially toxic metals and chemicals, but that EPA's current practices do not adequately monitor or respond to these sources of pollution. In 2009, the National Research Council (NRC) concluded that, "radical changes to the U.S. Environmental Protection Agency's stormwater program are necessary." This agreement gives NRC an opportunity to help define some of those changes.

The agreement marks the first time that EPA will evaluate setting numeric standards and practices for responsible stormwater retention at industrial sites. Stormwater retention is a green infrastructure practice that involves holding water and sediment on site through features like bioswales and rain gardens. Keeping and treating stormwater on site instead of discharging it into the nearest river improves water quality and slows erosion in smaller creeks and rivers.

Another first time outcome of the settlement is EPA's agreement to propose restrictions on the use of coal tar sealants in the United States, a product that is poisoning ecosystems nationwide and exposing infants and children to a high risk of developing cancer later in life.

"Our goal from the beginning of this lawsuit was to make the industrial stormwater permit more protective of our waters, to make its terms clearer and more measurable for businesses and citizens, and to cause a positive ripple effect on state-issued industrial stormwater permits," said Edan Rotenberg of Super Law Group, who represented the coalition in the case. "In this settlement, EPA has agreed to start a process that will move the whole industrial stormwater program very quickly in a better direction and will provide scientifically grounded data to sustain many more years of improvements."

"Polluted stormwater runoff is a significant threat to most of the waterways in our nation," said Marc Yaggi, Executive Director of Waterkeeper Alliance. "This settlement agreement will give the MSGP permit the teeth it needs to help clean water advocates across the country fight the scourge of stormwater pollution in their communities and work toward a future where all waterways are safe for drinking, fishing, and swimming."

The final settlement agreement includes:

- **An EPA-Funded NRC Study** – A \$250,000 study to be conducted by the National Academy of Sciences, Engineering and Medicine's National Research Council (NRC) over the next 2.5 years that will take a hard look at which pollutants are monitored by various industries, evaluate the feasibility of numeric retention standards for industrial stormwater dischargers, and suggest more intensive monitoring of a number of industrial sectors.
- **Tiered Responses to Benchmark Exceedances** – EPA will propose a series of escalating responses that permittees must make if they exceed pollution benchmarks set in the permit.
- **Preventing Recontamination of Superfund Sites** – EPA will propose a nationwide rollout of measures already used on the West Coast to stop industrial operators from recontaminating waters that have been cleaned up under Superfund.
- **No Coal Tar Sealants** – EPA will propose that industrial facilities that use coal tar based pavement sealants, which discharge very high quantities of PAHs (a persistent bioaccumulative toxin), will be ineligible for coverage under the MSGP.

Dan Tonsmeire, Apalachicola Riverkeeper: “The State of Florida has lowered water quality permitting requirements increasing risks to water sources across the state. This settlement will provide better guidance in states like Florida and will help to prevent contamination of surface and groundwater.”

Christopher M. Kilian, Esq., Vice President, Vermont Director and Director of Clean Water and Healthy Forests Program at Conservation Law Foundation: “Thousands of New England rivers, beaches and lakes are too polluted for our communities to enjoy, but the current stormwater discharge permit falls far short of what is necessary and acceptable. Today’s settlement offers long-overdue improvements to the national industrial stormwater permitting program — improvements that will create a cleaner and healthier region for generations to come.”

Jen Powis, Board Member for Galveston Baykeeper: “EPA’s promise to improve stormwater protections matters to Texas because nearly 200 oil and gas sites across the state are covered by this permit, including the federal government’s Strategic Petroleum Reserve, which is just outside of Galveston and close to sensitive wildlife areas.”

Shannon Williamson, Ph.D., Executive Director, Lake Pend Oreille Waterkeeper: “This settlement is so important and timely for Idaho since the state is currently seeking primacy. As part of this process, the Idaho Department of Environmental Quality must prepare and develop IPDES rules for the state, which must not be more or less stringent than EPA’s. By improving EPA’s MGSP now, Idaho will subsequently adopt rules that will be much more protective of our waterways in the future.”

Andrea Leshak, Staff Attorney, NY/NJ Baykeeper: “Stormwater pollution poses a significant threat to the waters of New York and New Jersey, and continues to cause water quality impairments year after year. This settlement agreement will lead to substantial science-based improvements in the industrial stormwater permit that will help improve water quality in New York, New Jersey, and across the country.”

Tiffany Schauer, Executive Director of Our Children’s Earth Foundation: “This agreement enables long-term and far-reaching actions by EPA to implement effective pollution reduction measures. Well-managed infrastructure for stormwater retention is absolutely key to cleaner water and healthier ecosystems. Heavy metals and other bioaccumulative toxins from industrial sites are a blight to our waterways, aquatic species, and to human health. We look forward to continued engagement with EPA and citizen groups to monitor progress toward our shared goals of improving management of industrial water pollution and enforcement of the Clean Water Act throughout the United States.”

Katelyn Kinn, Staff Attorney, Puget Soundkeeper: “Stormwater control technology is profoundly better today than ever before, and it continues to improve every day. EPA’s agreement recognizes that better treatment is well within reach, and puts us on a path towards a permit with the clear, numeric standards that are necessary to protect our waterways.”

Buck Ryan, Executive Director, Snake River Waterkeeper: “Improved tiered response mechanisms that mandate real enforcement gains signify a major gain in accountability for repeat permit violators while better representing the intent and purpose of the Clean Water Act.”

## A photograph showing a dead whale carcass floating in the water. In the background, a bridge with tall pylons is visible across the water. The water is calm, and the sky is overcast.

## Civil Rights Report Calls Out EPA's Chronic Failure to Protect Most Vulnerable Communities

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