



Reducing Industrial Stormwater Pollution: Four Tools for Bay Advocates

Tool #1: Ensuring industrial facilities obtain a pollution permit for stormwater discharges

Certain industrial facilities must obtain pollution permits for discharges of polluted stormwater directly or indirectly to surface waters. In some states, eligible facilities must obtain coverage under a general permit, while others include provisions for stormwater discharges under individual wastewater pollution permits. In either case, states must ensure that dischargers of industrial stormwater - the ubiquitous industrial facility - have obtained coverage under a pollution permit in order to both account for and limit this source of water-quality pollution. Advocates can hold regulators accountable to this core responsibility by reviewing publicly available information about facilities and pollution permits.

Recommended Steps:

- Select a target for compliance assessment, *E.g.* geographic area or particular facilities
- Find and obtain relevant data and records for industrial stormwater permitting
- Determine whether a facility has obtained coverage or an exemption based upon available data (i.e. No Exposure Certification, Notice of Intent, some individual NPDES permits)
- Verify the permit status through public information requests to regulators
- Make formal request to regulators for investigation and enforcement action

Notes:

Tool #2: Watchdogging discharge monitoring reports to identify compliance issues

In most cases, general permits for industrial stormwater require certain facilities (by industrial sector) to sample and report their stormwater discharges on a quarterly basis. This type of general permit discharge monitoring is referred to as “benchmark monitoring.” Unlike discharge monitoring reporting for individual NPDES permits, benchmark monitoring is not measured against numeric pollution limits but against “benchmark” values. Discharges that exceed benchmark values are not considered permit violations but rather serve as an indicator for problems of compliance with requirements for pollution control measures. Certain exceedances of benchmark values will trigger requirements for the permittee to examine and correct control measures, among other outcomes.

Recommended Steps:

- Select a target for compliance assessment, *E.g.* geographic area or particular facilities
- Determine monitoring and benchmark requirements in permit
- Obtain relevant discharge monitoring reporting data from EPA ECHO
- Assess data against corresponding benchmark values
- Correctly interpret the outcome of benchmark exceedances
- Notify regulators of benchmark exceedances and request investigation and response

Notes:

Tool #3: *Conducting visual inspections to identify and report compliance issues*

Perhaps the best way to determine whether an industrial facility is a significant source of stormwater pollution is to survey the site during dry- and wet-weather conditions. General permits for industrial stormwater require a variety of control measures, sometimes referred to “technology-based effluent limitations,” and other mandates for management and prevention of industrial stormwater discharges. Some of these control measures are actually very simple requirements for good housekeeping practices, like reducing the likelihood of chemical spills or cleaning up spills when they occur. In best cases, photo and video-documentation can provide incontrovertible proof of permit violations or other compliance issues, triggering decisive action by regulators and permittees to address pollution discharges.

Recommended Steps:

- Identify target facility and its corresponding permit sector
- Become familiar with required control measures
- Formulate a plan for field inspection
- Produce dated notes and video/photo-documentation
- Notify regulators of suspected violations and request formal investigation and response

Notes:

Tool #4: Participating in permit development to improve protections and accountability

At a fundamental level, opportunities to limit industrial stormwater pollution are constrained by the strength and transparency of the permit itself. Citizen advocates can engage in the process of designing the regulatory program through both formal and informal opportunities. Bay advocates have also encouraged regulators to improve industrial stormwater protections far less than municipal or agricultural stormwater, for example, even though industrial facilities are point sources for nutrient, sediment, *and* toxic pollution. Five-year industrial stormwater permits begin to expire in Bay jurisdictions later this year:

- Maryland – December 31, 2018
- West Virginia – February 28, 2019
- Virginia – June 30, 2019
- Pennsylvania – September 23, 2021
- D.C. (EPA) – June 4, 2020
- Delaware – ongoing, EPA suggests reissuance in 2016-2017 Milestones Evaluation

Recommended Steps:

- Identify key dates and steps in the permitting process
- Prepare supporting information and proposals for advocacy, E.g. compliance advocacy
- Recruit allies and legal assistance
- Meet with key regulators in the months before public notice and comment for draft permit
- Request opportunity to review pre-draft permit language and revisions
- Develop and submit public comment submission
- Produce public communications on priority issues during public comment period
- Evaluate legal options for challenging deficiencies in final permit

Notes:

Toxic Runoff from Maryland Industry: Inadequate Stormwater Discharge Protections Threaten Marylanders' Health and the Environment, Center for Progressive Reform and Environmental Integrity Project (Nov. 2017), <http://www.progressivereform.org/MDStormwater.cfm>

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