

THE USE OF REFINED COAL TAR-BASED SEALANTS (RTS) IN EPA'S 2021 INDUSTRIAL STORMWATER GENERAL PERMIT IS NOT RESTRICTED

Highlights

- As in EPA's 2015 Multi-Sector General Permit (MSGP), there are no restrictions on the use of RTS in the 2021 MSGP.
- EPA's decision to exclude restrictions was made "following consideration of the comments" received from the public on the draft MSGP.
- EPA received 61 comments from both individual and coalitions of public and private sector entities opposing the restriction and 6 in support.
- In its summary of legal, scientific, cost, and policy considerations that influenced its decision, EPA highlighted the continued lack of sound data that indicates a problem that needs to be solved.

The federal Clean Water Act authorizes EPA and the states to set requirements for stormwater discharges from industrial facilities. Since 1995 EPA has reviewed and renewed its Multi-Sector General Permit (MSGP), which covers a large number of different types of industrial facilities, every 5 years. The MSGP issued by EPA is directly applied in a small number of states, territories, and federal facilities and is often used as a model for permits issued by states that issue their own permits.

In comments submitted to EPA during the process of renewing the 2015 MSGP, a coalition of Environmental Non-Governmental Organizations (ENGOs) asked EPA to include a restriction on the use of RTS at industrial facilities. EPA declined to do so for several reasons, including that EPA had (1) no data about the use of RTS at covered facilities, (2) no data that indicate RTS use was associated with exceedances of water quality standards, (3) RTS is typically used on parking lots, and stormwater discharges from parking lots are not included in the definition of "industrial activity" that are regulated under EPA's industrial stormwater program, (4) if discharges from covered facilities that may use RTS exceed water quality standards, the facility is already required to address the exceedances, and, (5) for non-storm water discharges, EPA does not have the authority under its current industrial stormwater program to regulate such discharges from parking lots at industrial facilities.

After the 2015 MSGP was issued, several ENGOs filed challenges resulting in 2016 in a settlement agreement with EPA. One of the clauses of the settlement agreement required EPA "to propose for comment a condition of eligibility that operators who, during their coverage under the next MSGP, will use coal tar sealant to initially seal or to re-seal pavement and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater are not eligible for coverage under the MSGP and must either eliminate such discharge or apply for an individual permit."

As agreed, in 2020 EPA requested comment from the public on whether the MSGP should include an eligibility criterion related to the application of coal-tar sealcoat to paved areas where industrial activities are located.

As it had in 2015, EPA did not include the proposed eligibility restriction in its 2021 MSGP. EPA's decision was based on its consideration of comments received from the public, most of which opposed the restriction.