



Voice of the Recycling Industry™

ISRI is the voice of the recycling industry, promoting safe, economically sustainable and environmentally responsible recycling through networking, advocacy and education.

Via electronic delivery

June 1, 2020

EPA Headquarters
Office of Water
Office of Wastewater Management (4203M)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, EPA-HQ-OW-2019-0372

To Whom It May Concern in U.S. EPA's Office of Water:

The Institute of Scrap Recycling Industries, Inc. (ISRI) would like to submit the following comments for consideration by U.S. EPA's Office of Water in response to its request for comment on its proposed 2020 Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activity (henceforth, "Proposed 2020 MSGP"; Docket ID No. EPA-HQ-OW-2019-0372; 85 Fed. Reg. 12288-12295).

ISRI would like to note its appreciation of EPA's extension of the deadline to submit comments on the Proposed 2020 MSGP. To the extent that the extension reflected to some degree the impact of the current COVID-19 pandemic on the entire economy, ISRI hopes that EPA will carefully consider the timing of the effective date for any significant new activities, measures, or requirements in the 2020 MSGP. It does not stretch the imagination to believe that necessary equipment and services might not be available within the timeframes specified in the 2020 MSGP (even with EPA-approved extensions), or at all, for a period of time during the term of the 2020 MSGP. On a general basis, EPA should consider including a time delay in the 2020 MSGP for implementing any new significant equipment- or service-intensive activities, measures, or requirements to account for the possibility, if not likelihood, of significant practical impediments arising from the COVID-19 pandemic to compliance with the 2020 MSGP.

ISRI is the "Voice of the Recycling Industry®." ISRI represents 1,300 companies in 20 chapters in the U.S. and more than 40 countries that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. With headquarters in Washington, DC, the Institute provides education, advocacy, safety and compliance training, and promotes public awareness of the vital role recycling plays in the U.S. economy, global trade, the environment and



sustainable development. Generating nearly \$110 billion annually in U.S. economic activity, the scrap recycling industry provides more than 500,000 Americans with good jobs.

Based on its review the Proposed 2020 MSGP, ISRI opposes major aspects of the Proposed 2020 MSGP, including the Additional Implementation Measures (AIM) and Universal Benchmark Monitoring, while supporting some aspects of the Proposed 2020 MSGP and related topics, including elimination of the iron benchmark, increasing the aluminum benchmark to reflect its final updated aquatic life criteria, and optional use of a facility-specific, risk-based benchmark for copper. These are discussed in detail in the Comments section, which is preceded by the Background section. ISRI is also a member of the Federal StormWater Association (FSWA) and supports the comments as applicable that FSWA is submitting separately on behalf of its diverse membership.

A. Background

Following the 1987 amendments to the Clean Water Act (CWA), the scrap recycling industry (henceforth, “the Industry”) was among the industries identified as potential sources of “stormwater discharges associated with industrial activity” subject to permitting in the initial 1990 National Pollutant Discharge Elimination System (NPDES) Permit Application Regulations for Stormwater Discharges (55 Fed. Reg. 46990–48091). The Industry’s status reflected, and still largely reflects, the typical outdoor nature of recycling facility operations that receive and process hundreds of tons of scrap materials daily. These facilities produce similar quantities of specification-grade scrap commodities that are bought by manufacturers for use as feedstock in their production of new basic raw materials. The Industry’s activity enables the return of more than 130 million of tons of scrap materials annually to productive use and avoids the consumption of energy and natural resources and the environmental impacts associated with the production of primary commodities displaced by the Industry’s production of specification-grade scrap commodities.

To comply with the above 1990 NPDES regulations, ISRI organized and developed a group permit for its members and subsequently worked with EPA, using information from its group permit, in the development of what became the Industry-specific Sector N requirements in the first Federal MSGP in 1995¹. As first articulated in the 1995 MSGP and then in subsequent (i.e., 2000, 2008, and 2015) MSGPs, the Sector N requirements include Industry-specific non-numeric, technology-based effluent limitations and benchmark monitoring that are additional to the generally applicable non-numeric, technology-based effluent limitations. The National Academies of Sciences, Engineering, and Medicine (NASEM) noted in its study report² (henceforth, the “Report”), which heavily informed the Proposed 2020 MSGP, that the Industry (Subsector N1) has “the highest number of pollutants” in its benchmark monitoring

¹ 60 Fed. Reg. 50804–51319.

² National Academies of Sciences, Engineering, and Medicine. 2019. Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges. The National Academies Press: Washington, DC.

program. This reflects and demonstrates the Industry's long-time serious approach to stormwater management.

Since the 1990 NPDES regulations were promulgated, stormwater management has become one of the most important operational and regulatory issues for the Industry, as stormwater permits typically affect every aspect of facility operations. ISRI has developed and provided information to its members on stormwater management and compliance and has been an advocate for the industry during the development and renewal of state general permits and the Federal MSGP. The Industry's preferred approach to stormwater management is the design, implementation, operation, and maintenance of appropriate, effective nonstructural and structural control measures and BMPs to reduce the impact of recycling activities on the quality of stormwater discharges. However, the use of benchmark monitoring with its associated benchmarks as indicators of the effectiveness of stormwater pollution prevention plans (SWPPPs) and the control measures and BMPs described in SWPPPs has been problematic. Benchmarks have been problematic not simply because they are unrelated to the intrinsic capabilities of control measures and BMPs to limit or reduce benchmark parameter concentrations in stormwater runoff that is discharged (i.e., they do not reflect control measure or BMP effectiveness). Exceedances of these benchmarks have been used as "evidence" of permit violations in threats of Section 505 CWA citizen lawsuits by third parties against ISRI members, despite EPA's correct view that a benchmark exceedance is not per se a permit violation.

Because of the national importance of the Proposed 2020 MSGP, its likely influence on state permits, both general and individual, and the problematic aspects of benchmark monitoring and other provisions contained in the stormwater permits in most states, ISRI provides the comments below on the Proposed 2020 MSGP.

B. Comments

ISRI has reviewed the Proposed 2020 MSGP and considered the topics on which EPA specifically requested comment. ISRI also considered related topics that EPA did not specifically identify or propose in the Proposed 2020 MSGP. ISRI's comments below mainly follow the structure of EPA's requests for comment in the Proposed 2020 MSGP and also address related topics. Because of this structure, ISRI notes that some comments may be overlapping or rendered moot by other comments. These comments refer to NASEM's Committee on Improving the Next-Generation EPA Multi-Sector General Permit for Industrial Stormwater Discharges (henceforth, "the Committee") and its Report.

1. Coverage Eligibility for Discharges to a Federal CERCLA Site (Request for Comment 1)

ISRI does not support the proposed expansion of the eligibility criterion for 2020 MSGP coverage to industrial stormwater discharges to any Federal CERCLA site. More basically, ISRI does not support this eligibility criterion at all. With respect to a permittee's or permit applicant's receiving

water for stormwater discharges, a Federal CERCLA site that comprises one or more water bodies shares much in common with an impaired receiving water. Both tend to have applicable limitations on the quality of industrial discharges into them. That a permittee's or applicant's receiving water happens to be such a Federal CERCLA site should not be an eligibility criterion for coverage under the 2020 MSGP. Instead, a facility's discharge to a Federal CERCLA site should be addressed in the same manner as a discharge to an impaired receiving water. In both cases, stormwater discharges have the potential to negatively impact the receiving water that requires protection from constituents of the discharge.

This is exactly how Washington State's new Industrial Stormwater General Permit (ISGP) works. The ISGP's Special Condition S6, Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Sediment Cleanup Sites, contains certain monitoring requirements applicable to discharges to the Puget Sound Sediment Cleanup Sites.

Discharges to a Federal CERCLA site should likewise have the same or similar requirements as discharges to impaired receiving waters. The existence of an industrial stormwater discharge to a Federal CERCLA site should not be a 2020 MSGP eligibility criterion per se.

2. Coverage Eligibility for Facilities that Use Coal-Tar Sealants (Request for Comment 2)

ISRI does not support the proposed 2020 MSGP eligibility criterion for stormwater discharges from areas of industrial activity at a facility where coal-tar sealants will be used during the permit term. Coal-tar sealant is a useful product that achieves both operational and stormwater management objectives. Coal-tar sealant helps to maintain the integrity of pavement in areas of industrial activity that supports year-round heavy use of large equipment and the massive weight of operational materials, especially scrap metal. This allows equipment and materials to move or be moved safely and efficiently across a facility. Once cured after application, coal-tar sealant is able to withstand to a high degree the effects of thermal and mechanical cycling. Coal-tar sealant fills in or plugs cracks or fissures in pavement and helps to impede their growth. This helps to extend the operational life of pavement and also prevents raw stormwater from infiltrating directly into the surficial soils beneath and possibly into the underlying groundwater, depending on its depth below surface. Its prevention of infiltration supports the goals of stormwater management and stormwater permitting. In some locations, especially with temperature extremes, there is no good alternative to coal-tar sealant with the same operational and sealant effectiveness and longevity. For these reasons, a facility's future use of coal-tar sealant in areas of industrial activity should not be a 2020 MSGP eligibility criterion for a discharge(s) of stormwater that had contacted coal-tar sealant in an area of industrial activity.

To have this proposed coal-tar sealant eligibility criterion in the 2020 MSGP would be extremely problematic both practically and legally. Practically, given normal sealant use, a facility would

more likely become ineligible for 2020 MSGP coverage than be required to get an additional individual permit for only one or two discharge points, or much less feasibly to retain all stormwater without discharge. Legally, to have this criterion would create the problematic precedent of banning the use of materials as a condition of coverage under a stormwater permit.

The CWA (33 U.S.C. 1251 et seq.) does not authorize the banning of products or materials that might contribute to a “discharge of pollutants”. The CWA applies to the “discharge of pollutants” and authorizes permits for them (33 U.S.C. 1342; CWA Sec. 402). The CWA defines “discharge of pollutants” to mean “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft” (33 U.S.C. 1362; CWA Sec. 502). “Point source” is defined to mean “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” (33 U.S.C. 1362; CWA Sec. 502). This proposed coal-tar sealant eligibility criterion is not permissible under the CWA. It also would remove a useful product for upholding the goals of and maintaining compliance with stormwater permits.

The proposed coal-tar sealant eligibility criterion should not and cannot be included in the 2020 MSGP.

3. Coverage Eligibility for Use Of Cationic Treatment Chemicals (Request for Comment 3)

ISRI does not support EPA’s suggestion to include in the 2020 MSGP an eligibility criterion for use of cationic treatment chemicals (CTCs). This 2020 MSGP eligibility criterion would require a permittee or applicant to provide prior notification to and to receive approval from the applicable EPA Regional Office for use of CTCs for stormwater management purposes. As with other provisions in the Proposed 2020 MSGP, this provision is predicated on an assumed equivalency between the Construction General Permit³ (CGP) and the MSGP.

Equivalency between the CGP and MSGP does not exist. One reason is that the CGP is temporary while the MSGP effectively applies indefinitely. In the case of stormwater management under the CGP, CTCs are used to control the level of total suspended solids (TSS) and/or turbidity in stormwater discharges. These are the main, if not only, parameters that require analytical monitoring under the CGP. The CGP’s definition of CTC includes chitosan and cationic polyacrylamide (PAM) as examples of “polymers, flocculants, or other chemicals that contain an overall positive charge”.

³ National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities (as modified). Available at <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>. Viewed April 24, 2020.

Certain chitosan formulations have been approved for treatment of turbidity at permitted construction sites. Chitosan has also been reportedly used at some industrial facilities in enhanced sand-filtration systems. To the extent that use of chitosan and other CTCs under the 2020 MSGP would only become necessary for facilities that reach AIM Tier 2 or Tier 3, there is no reason to require prior notification and approval of CTC use as a condition of 2020 MSGP eligibility. Any oversight or approval of use of CTCs could be engaged as part of the AIM process.

The proposed CTC eligibility criterion should not be adopted as part of the 2020 MSGP.

4. Posting and Maintaining MSGP Information Publicly (Request for Comment 6)

ISRI does not support including in the 2020 MSGP EPA's suggested requirement for permittees to post and maintain certain information about the facility's permit, SWPPP, facility contacts, and filing complaints in a highly publicly visible manner outside the facility. As with other provisions in the Proposed 2020 MSGP, this suggested requirement is predicated on an assumed equivalency between the CGP and MSGP.

Such equivalency does not exist. One reason is that the CGP is temporary while the MSGP effectively applies indefinitely. This is particularly relevant for this suggested requirement. A construction site is a temporary operation whereas an industrial facility is a permanent operation. Posting of stormwater permit information for a construction site may serve the public interest **precisely because of the site's lack of permanency**. This is not the case for an industrial site.

This provision should not be included in the 2020 MSGP because it is not necessary. The permittee's facility is permanent, and the facility's owner or operator can be found via its permanent street address. Anyone who wants more information about the facility and its stormwater management program (e.g., SWPPP) should be able to obtain it without too much effort, especially considering that certain stormwater information is submitted and posted electronically (e.g., the SWPPP) under the 2020 MSGP.

5. NOE to NEC (No Exposure) (Request for Comment 7)

ISRI finds that the proposal to change the abbreviation for "No Exposure Certification" from "NOE" to "NEC" is sensible.

However, "NEC" in Appendix N of the Proposed 2020 MSGP is used already to mean "Not Elsewhere Classified" respecting SIC and NAICS Codes. Also, "NOE" continues to appear in the Proposed 2020 MSGP in Part 7.1 and Appendices A (Definitions, Abbreviations, and Acronyms), B (Standard Permit Conditions), and K (NEC Form).

6. Enhanced Control Measures for Extreme Flooding Conditions (Request for Comment 8)

ISRI opposes Part 2.1.1.8 in the Proposed 2020 MSGP for enhanced control measures for extreme flooding. Proposed Part 2.1.1.8 would require facilities when selecting and designing control measures to consider “structural improvements, enhanced pollution prevention measures, and other mitigation measures, to minimize impacts from stormwater discharges from major storm events that cause extreme flooding conditions”.

From a physical perspective, many of the contemplated activities and measures in proposed Part 2.1.1.8 are especially challenging and perhaps infeasible for industrial sectors that have large outdoor operations with heavy equipment and materials, such as the Industry. These include, with reference to the subparts of proposed Part 2.1.1.8:

- (a) reinforcing structures that are already designed to withstand high forces from heavy material (e.g., scrap steel);
- (c) delaying delivery of thousands of tons of material for at least 2 days, which will back up supply chains (this could also imply moving partially finished or completed orders to downstream consumers prematurely, also potentially upsetting the supply chain);
- (d) temporarily moving thousands of tons of outdoor materials to higher ground that might not exist or be available (e.g., due to administrative building);
- (e) temporarily moving thousands of tons of outdoor materials to indoor storage areas that do not and cannot exist because of space or engineering constraints; and
- (f) temporarily moving tons of mobile vehicles and equipment to upland areas that might not exist or be available (e.g., due to administrative building);

Some of these proposed activities and measures raise the question of whether temporary relocation of industrial vehicles, equipment, and/or materials into non-industrial areas of activity (e.g., employee parking lot) converts these non-industrial areas into areas of industrial activity. This could result in MSGP compliance issues.

Much as implied by EPA’s discussion of this proposed provision in its request for comment, the definitions of “major storm” and “extreme flooding event” were not proposed and are not clear. Conceptually, some extreme flooding events might be so large that any of the contemplated activities and measures would be futile. Also, how would a permittee document that they considered each of the activities and measures under Parts 2.1.1.8 and decided not to implement them? The existence of this proposed provision raises all sorts of potential liability issues in the aftermath of a flooding event, whether “extreme” or not and whether from a “major storm” or not.

ISRI opposes proposed Part 2.1.1.8 being included in the 2020 MSGP.

7. Viable Alternatives to Benchmark Monitoring for Site Characterization (Request for Comment 9)

ISRI believes that this request for comment misses an important situational aspect of “benchmark monitoring for characterizing industrial sites’ stormwater discharges, quantifying pollutant concentrations, and assessing stormwater control measure effectiveness”. Benchmark monitoring reflects only half of what is actually happening during a storm event at an industrial facility. It is likely that the facility’s receiving water is also changed by the same storm event that gave rise to the stormwater discharge from the facility. In the absence of the storm event (and also melting snow), the facility is not discharging stormwater, and the receiving water is likely experiencing dry-weather flow conditions.

At the same time, benchmark values are much closer to water quality standards (WQSs) for receiving waters (if not identical to WQSs) than to the effluent concentrations achieved or achievable by stormwater control measures (SCMs) for reducing concentrations in influent stormwater to those SCMs. NASEM notes in its Report (at 60) that “[m]any MSGP benchmarks are based on water quality criteria”. WQSs are based on dry-weather flow conditions, but apply to receiving waters under both dry- and wet-weather flow conditions.

Benchmark monitoring effectively assumes that a facility’s stormwater discharges enter the receiving water under dry-weather flow conditions because “all MSGP benchmarks are applied at the point of discharge without dilution” (Report at 60). It is possible and even likely that during wet-weather conditions at the facility, the receiving water may receive a chemical constituent via the facility’s stormwater discharge without exceeding that constituent’s WQS after mixing with the receiving water’s storm-enhanced volumetric flow. This mismatch between the dry-weather basis for benchmark monitoring and the likely wet-weather conditions for the receiving water does not make technical sense. NASEM noted that “industrial stormwater discharges occur during wet weather conditions when the receiving stream is expected to be flowing at some reasonable capacity above base flow, which could provide dilution of stormwater discharges” (Report at 60). NASEM supported use of mixing-zone allowances by permittees under certain conditions (Report at 61).

One alternative to dry-weather benchmark monitoring is wet-weather benchmark monitoring. A facility would qualify for wet-weather benchmark monitoring if it can reasonably demonstrate that its receiving water experiences additional volumetric flow substantially greater than the flow contributed to the receiving water by the facility itself during the same storm event. If the additional volumetric flow of the receiving water is much greater than the facility’s volumetric contribution, the applicable wet-weather benchmark for the facility would be greater than the dry-

weather benchmark, depending in part on the quality of the additional volumetric flow not contributed by the facility.

Another alternative, which could be adopted alone or in addition to wet-weather benchmark monitoring, is to make the benchmark for metal parameters applicable to only the metal's dissolved concentration. NASEM noted that "[d]issolved metals are more biologically available than particulate-bound metals and are more important in assessing pollutant risk" and that "dissolved metal concentrations provide a more accurate measure of potential toxicity" (Report at 61). NASEM supported "sampl[ing] for dissolved metals and compar[ing] this quantity against the existing benchmark" in certain circumstances (Report at 61). Because "sampling for dissolved metals requires more complex sampling methodology" and "rapid filtering for dissolved metals puts an additional burden on industry" (Report at 61), this alternative should be an option for permittees.

EPA should adopt this or similar wet-weather benchmark monitoring and also the option of using dissolved-metals benchmarks in the 2020 MSGP.

8. Universal Benchmark Monitoring (Request for Comment 10)

ISRI opposes the universal component of proposed Part 4.2.1.1.a, Universal and Sector-specific Benchmark Monitoring, in the Proposed 2020 MSGP. EPA needs to reconsider "universal benchmarks" and to substantially revise its approach for the 2020 MSGP (please also see comments in Section B.9).

The concept of universal benchmarks emerged from the recommendations by NASEM for "Industry-wide monitoring only" for pH, TSS, and COD (Report at 6; emphasis added):

All facilities in sectors that do not merit additional pollutant monitoring would conduct industry-wide monitoring for pH, TSS, and COD. These data would provide broad, low-cost indicators of the effectiveness of stormwater control measures on site.

EPA's proposal simply did not follow this NASEM recommendation. Rather than applying monitoring of pH, TSS, and COD to only facilities without applicable sector-specific benchmark monitoring, as recommended, EPA instead proposed to require all facilities to monitor pH, TSS, and COD, regardless of whether they also have and have had sector-specific benchmark monitoring. Sector-specific benchmark monitoring may also include any of these three parameters independently. Sector N1 benchmark parameters have included COD and TSS since the 1995 MSGP.

Universal benchmark monitoring does not make sense and is not necessary for the recycling industry (Sector N1). The recycling industry has conducted sector-specific benchmark monitoring, including COD and TSS, for more than 25 years, which includes the period of ISRI's Industry

Group Permit before the 1995 MSGP. Even pH was a monitored parameter during ISRI's Industry Group Permit, but pH was not included as a benchmark parameter in the 1995 MSGP. After 25 years, there is no need to add pH now via universal benchmarks or otherwise.

Implementing this recommendation is somewhat complicated by EPA's proposed simultaneous imposition of both new universal benchmarking **and** new sector-specific benchmarking on some industrial sectors. EPA needs to reconsider whether and how to implement this NASEM recommendation in the 2020 MSGP, including for which industrial sectors, if any.

9. Quarterly Universal Benchmark Monitoring for Entire Permit Term (Request for Comment 13)

In addition to opposing the universal component of proposed Part 4.2.1.1.a, Universal and Sector-specific Benchmark Monitoring, ISRI also opposes the associated Part 4.2.1.2.a, Schedule for Universal Benchmarks Applicable to All Sectors (pH, TSS, and COD), in the Proposed 2020 MSGP. EPA also needs to reconsider the schedule for any monitoring of universal benchmarks for the 2020 MSGP.

The concept of universal benchmarks emerged from the recommendations by NASEM for "Industry-wide monitoring only" for pH, TSS, and COD (Report at 6; emphasis added):

All facilities in sectors that do not merit additional pollutant monitoring would conduct industry-wide monitoring for pH, TSS, and COD. These data would provide broad, low-cost indicators of the effectiveness of stormwater control measures on site.

EPA proposed to require monitoring of these three parameters every quarter during the MSGP term, regardless of whether the results exceed benchmark values or not. To the extent that universal benchmarks are intended to be indicators of whether a facility's SWPPP and SCMs are adequate and being properly implemented, this requirement does not make sense generally. Meeting benchmarks should end annual quarterly monitoring for any benchmark parameter. Quarterly universal benchmark monitoring might make sense specifically if a facility's industrial sector has no history of benchmarking monitoring; in this case, this quarterly monitoring would serve to provide baseline data for evaluation of potential changes to requirements for that sector. It does not make sense for the recycling industry (Sector N1) as it has conducted sector-specific benchmark monitoring for more than 25 years, including the period of ISRI's Industry Group Permit before the 1995 MSGP.

EPA needs to reconsider scheduling of any universal benchmark monitoring for the 2020 MSGP.

10. Updating of Cadmium (Proposed) and Aluminum (Not Proposed) Benchmarks (Request for Comment 16)

ISRI supports NASEM's general recommendation to update benchmarks to match aquatic life criteria. NASEM noted that "acute aquatic life criteria for cadmium have been developed (EPA, 2016a) and will need to be incorporated into the next MSGP revisions" (Report at 32).

ISRI is disappointed that EPA did not follow NASEM's recommendation concerning aluminum in the Proposed 2020 MSGP as EPA did for cadmium. ISRI supports NASEM's recommendation to raise the benchmark for aluminum from 750 µg/L to provisionally 1,400 µg/L (Report at 33). This recommendation was based on the draft aquatic life criteria⁴ for aluminum that were available when the Committee conducted its work under contract with EPA. NASEM stated that "the next version of the MSGP should reflect this change, if the new aluminum criteria are finalized" (Report at 33).

EPA could have included in the Proposed 2020 MSGP NASEM's recommendation to update the aluminum benchmark based on "new aluminum criteria". EPA could have requested comment on this recommendation, as a suggestion, without including it in the Proposed 2020 MSGP. However, EPA simply chose to do neither. In the accompanying Fact Sheet⁵, EPA stated that "[g]iven the criteria is still in draft form, EPA proposes to use the same benchmark value for aluminum as listed in the 2015 MSGP, but may update it if the criteria is issued before EPA finalizes the 2020 MSGP" (Fact Sheet at 64). The criteria may have been in draft form when the sentence was typed out in an early draft of the Fact Sheet, but this was not true later, before release of the Proposed 2020 MSGP. In December 2018, EPA issued the updated aquatic life criteria for aluminum as a range of values that depend on "a site's pH, total hardness, and [Dissolved Organic Carbon (DOC)]"⁶. The final updated aquatic life criteria were issued more than one year before the Proposed 2020 MSGP was released. However, the final criteria's release occurred when the Report was nearing completion (a prepublication Report was released on February 20, 2019⁷). While the timing of the final criteria may have prevented NASEM from making a recommendation based on them, NASEM did make a recommendation based on availability of final criteria. The final criteria were available well enough in advance for EPA to have included an updated aluminum benchmark in the Proposed 2020 MSGP.

⁴ 82 Fed. Reg. 35198-35200.

⁵ Docket ID No. EPA-HQ-OW-2019-0372-0064.

⁶ 83 Fed. Reg. 65663-65665.

⁷ ISRI received an e-mail announcement from NASEM staff on February 20, 2019 with subject "New Report on Industrial Stormwater Discharges Now Available".

ISRI requests that EPA update the aluminum benchmark in the 2020 MSGP as recommended by NASEM. According to the final updated aquatic life criteria⁸, a new aluminum benchmark based on pH = 7.5 (midpoint of proposed benchmark range for pH), DOC = 1.0 mg/L, and total hardness = 100 mg/L would be 1,500 µg/L.

11. Elimination of Iron Benchmark (Request for Comment 18)

ISRI supports NASEM's recommendation to suspend the iron benchmark (Report at 32) and EPA's proposed elimination of iron as a benchmark parameter in the Proposed 2020 MSGP. As a general matter, ISRI supports setting the benchmark value of a constituent based on its potential impact to receiving waters in-situ due to acute aquatic toxicity. In the case of iron, it does not have an acute aquatic life criterion, and existing studies on the impact of iron to aquatic organisms would suggest a significantly higher benchmark value than the current value of 1,000 µg/L (Report at 32). Other factors could also influence the setting of benchmark values, including wet-weather flow conditions in a receiving water and the greater biological availability of dissolved over particulate-bound metals.

12. Alternative Site-Specific Copper Benchmark (Request for Comment 19)

Although not a part of the Proposed 2020 MSGP, ISRI supports an option for facilities that exceed the copper benchmark repeatedly to use the updated aquatic life criteria for copper to develop an alternative facility-specific copper benchmark based on risk to the facility's receiving water. This option may share some informational and computational aspects with ISRI's suggestion of wet-weather benchmark monitoring (please also see comments in Section B.7).

ISRI's support for this option stems from two factors. First, the copper benchmark has been the most-difficult benchmark to meet on a regular basis for the recycling industry. It is the lowest among the benchmark parameters for Sector N1. The original copper benchmark was 63.6 µg/L (1995 MSGP). In the Proposed 2006 MSGP, it was reduced to a minimum of 14 µg/L, the value based on a receiving-water hardness of 100 mg/L (CaCO₃ equivalent). However, it was finalized in the 2008 MSGP as hardness dependent. Lower receiving-water hardness values give lower benchmark values (e.g., 7.3 µg/L at 50 mg/L hardness). A copper saltwater benchmark of 4.8 µg/L was introduced in the 2015 MSGP. From a practical perspective, 14 µg/L translates into 1.44 g or 0.16 cm³ of metallic copper per acre-in (27,154 gal) of stormwater discharge. This is a miniscule amount of copper at the benchmark. Even 8 times the benchmark is a very small amount (1.28 cm³ of copper per acre-in). Because most recycling facilities handle copper or copper-containing scrap metal and can be tens of acres in size, achieving this benchmark value during storm events is

⁸ EPA. Final aquatic life ambient water quality criteria for aluminum – 2018. EPA-822-R-18-001: Appendix K (EPA-HQ-OW-0260-0077).

extremely difficult even with excellent SCMs. NASEM recognized “the critical need for more data to assess the achievability of many benchmarks”, including the copper benchmark (Report at 40).

Second, NASEM offered that “[b]enchmarks should be based on the latest toxicity criteria designed to protect aquatic ecosystems from adverse impacts from short-term or intermittent exposures” (Report at 3). Specifically, NASEM recommended that “permittees with repeated benchmark exceedances to use the latest aquatic life criteria for ... copper to evaluate water quality risk on a site-specific basis and discontinue comparisons to national benchmarks, as appropriate” (Report at 4).

ISRI requests that for the 2020 MSGP, any facility may use “the latest [aquatic life] criteria for ... copper [that] include equations for calculating toxicity criteria based on short-term exposure, using additional water chemistry and/or flow data” (Report at 4).

13. Facility Changes as Trigger for AIM Tier 1 (Request for Comment 21)

ISRI does not support EPA’s suggestion to make facility changes a trigger for AIM Tier 1. The purposes of AIM are to address benchmark exceedances and to prevent future exceedances as appropriate and applicable to “the nature and magnitude of the benchmark exceedance[s]”. Facility changes are not benchmark exceedances and do not belong in AIM Tier 1 (or any AIM Tier). They also do not constitute a “corrective action” because changing a facility is not a permit violation. This means that facility changes per se should not be addressed in Part 5, Corrective Actions and Additional Implementation Measures (AIM). Labeling “facility changes” as a “corrective action” could put permittees at unreasonable regulatory risk because such status would be so reflected in publicly available information and could be inappropriately used against the permittee.

In the Proposed 2020 MSGP, review and updating of the SWPPP is already required under Part 6, Stormwater Pollution Prevention Plan (SWPPP) (**emphasis added**):

Facilities must keep their SWPPP up-to-date throughout their permit coverage, such as making revisions and improvements to their stormwater management program based on

Facility changes, if substantial enough, require changes to the stormwater management program. As “[t]he SWPPP is a living document” (Part 6), any facility changes that affect the management and/or quality of stormwater discharges must be captured in the SWPPP through timely revision of the SWPPP. This could be emphasized more in Part 6, and a parenthetical note could be added to Part 5.1.1 (Conditions Requiring SWPPP Review and Revision to Ensure Effluent Limits are Met), about the Part 6 requirement to keep SWPPPs up-to-date in connection with substantial changes to the facility.

Facility changes should not be a trigger for AIM Tier 1 in the 2020 MSGP.

14. Aberrant Event Exception (Request for Comment 22)

ISRI supports Part 5.2.2.1.c.i of the Proposed 2020 MSGP that exempts permittees from triggering AIM Tier 2 if they can show that “the single event [of >8 times the benchmark] was an aberration”. ISRI further supports exceptions for proven aberrant events related to any other trigger of an AIM tier based on an exceedance that is greater than a specific multiple of the benchmark.

ISRI notes that the proposed Discharge Monitoring Report (DMR) Form (Appendix M) includes Check-Off Box 3.1 for “Exceedance was a single aberration per Part 5.2.2.1.c.i. AIM Tier 2”. DMR data are made publicly available. It seems very likely that reported values of proven aberrant events will be taken out of context for Section 505 CWA citizen suit purposes by certain people who access the information. Part 5.2.2.1.c.i. should specify that permittees report the value of the required follow-up “sample [taken] during the next qualifying rain event” rather than the initial aberrant value. If necessary, reporting of the follow-up value instead could include checking off a new substitute box to note “Follow-up sample result per Part 5.2.2.1.c.i. AIM Tier 2”. This approach could be used for each type of aberrant exception.

15. Exception for No Actual WQS Exceedance (Request for Comment 23)

ISRI supports making Part 5.2.3.3.b of the Proposed 2020 MSGP generally available to permittees at any time or in any AIM tier. As proposed, Part 5.2.3.3.b would allow permittees to be exempted or excused from AIM Tier 3 corrective actions if they can show that their “discharge does not result in any exceedance of water quality standards”.

The proposed minimum informational elements of Part 5.2.3.3.b for demonstrating no WQS exceedance in the receiving water would support necessary flow- and mass-balance calculations. Some clarity is needed concerning dilution factors (mentioned) and mixing zones (not mentioned), which NASEM covered in its Report (at 60).

Obtaining the minimum information in Part 5.2.3.3.b.1-7 should not be so onerous or time-consuming (i.e., longer than 30 days to obtain) so as to make qualifying for the exception practically impossible. This provision does not allow the permittee to request additional time to obtain the information, even though EPA may take up to an additional 90 days beyond the initial 90-day period to respond to a permittee’s exception demonstration.

Also, during the time that the permittee is trying to obtain the Part 5.2.3.3.b exception, the permittee’s compliance status is unclear, especially while waiting for EPA’s response. EPA should address this in the 2020 MSGP.

ISRI notes that the proposed Discharge Monitoring Report (DMR) Form (Appendix M) includes Check-Off Box 3.m for “Exceedance but discharge does not result in any exceedance of water quality standards per Part 5.2.3.3.b AIM Tier 3”. DMR data are made publicly available. It seems very likely that these reported values will be taken out of context for Section 505 CWA citizen suit purposes by certain people who access the information. EPA should reconsider reporting of results that exceed benchmarks but do not cause exceedances of applicable WQs.

16. Natural Background Exception (Request for Comment 24)

On general principle, ISRI supports Part 5.2.4.1, Natural Background Pollutant Levels, in the Proposed 2020 MSGP and its application to all AIM tiers. This part allows a permittee to be exempt or excused from “perform[ing] AIM or additional benchmark monitoring for any parameters for which [the permittee] can demonstrate that the benchmark exceedance is solely attributable to the presence of that pollutant in natural background sources”. ISRI understands this proposed exception to apply when a parameter result (e.g., an annual average) above the benchmark would be at or below that benchmark if the contribution of that parameter from natural background sources were subtracted from the result (e.g., a Pb result of 100 µg/L with 25 µg/L from natural background sources, resulting in 75 µg/L against an applicable benchmark of 82 µg/L). This provision is fair and would represent a vast improvement over the exception in the 2015 MSGP that requires natural background sources to account for the entire result above the benchmark (i.e., no net facility contribution).

While this exception might be intended to cover the impact of pre-development sources (e.g., native soils) on a permittee’s results, it is also known that medium- and long-range transport of air, in addition to transport of local air, can contribute to air quality at a facility. To the extent that deposition of constituents from transport of off-site air affects a permittee’s results, this situation is not obviously covered by the exceptions for either natural background or run-on. This situation is closer to “natural background” in the sense that the facility has no, or may have no, practical ability to protect itself against such air impacts. EPA should clarify the availability of any exceptions for this situation, and if necessary provide another exception for such situations in the 2020 MSGP.

ISRI notes that the proposed Discharge Monitoring Report (DMR) Form (Appendix M) includes Check-Off Box 3.j for “Exceedance due to natural background pollutant levels”. This box label should include a reference to Part 5.2.4.1. DMR data are made publicly available. It seems very likely that reported exceedances caused by natural background will be taken out of context for Section 505 CWA citizen suit purposes by certain people who access the information. Part 5.2.4.1 should specify that permittees report the net value of the result (i.e., the actual result less the contribution from natural background). If necessary, reporting of the net value instead could include checking off a new substitute box to note “Result is net of natural background contributions per Part 5.2.4.1”.

This same approach to reporting should be applied to results above the benchmark that include contributions from run-on. The proposed Discharge Monitoring Report (DMR) Form (Appendix M) includes Check-Off Box 3.k for “Exceedance due to run-on”. This box label should include a reference to Part 5.2.4.2. This part should specify that permittees report the net value of the result (i.e., the actual result less the contribution from run-on). If necessary, reporting of the net value instead could include checking off a new substitute box to note “Result is net of run-on contributions per Part 5.2.4.2”.

As a “bookkeeping” matter, ISRI noticed that the references in Part 6.5.8.4 to “natural background pollutant levels per Part 5.2.5.2” and in Part 6.5.8.5 to “run-on, per Part 5.2.4.3” are incorrect. Neither of these referenced parts exists in the Proposed 2020 MSGP. As proposed, “Natural Background Pollutant Levels” is addressed by Part 5.2.4.1, and “Run-On” is addressed by Part 5.2.4.2. Parts 6.5.8.4 and 6.5.8.5 (or their successors) should be revised to correct these references.

17. Tracking of Triggered AIM Tiers (Request for Comment 26) and Issues with Proposed AIM Framework and Appendix Q

In the Proposed 2020 MSGP, ISRI is much less concerned about methods of tracking triggered AIM tiers than the proposed AIM Framework in Part 5.2, Additional Implementation Measures (AIM). As discussed below, ISRI opposes including in the 2020 MSGP a specific reporting requirement for changes in a permittee’s AIM tier status, the proposed AIM Framework, and proposed Appendix Q.

a. AIM Tier Tracking

Regarding methods of tracking, ISRI notes that proposed Part 5.3.1 states the following:

[The Permittee] must document the existence of any of the conditions listed in Parts 5.1.1, 5.2.1.1 [AIM Tier 1], 5.2.2.1 [AIM Tier 2], and/or 5.2.3.1 [AIM Tier 3] within 24 hours of becoming aware of such condition. [The Permittee is] not required to submit this documentation to EPA, unless specifically required or requested to do so. However, [the Permittee] must summarize your findings in the annual report per Part 7.5.

Summarizing events or conditions related to AIM Tiers 1, 2, and/or 3 in the annual report would seem to amount to annual tracking. EPA should indicate whether and why more frequent tracking than annual tracking is necessary.

The only other regular reporting that exists in the Proposed 2020 MSGP is quarterly submission of discharge monitoring reports (DMRs), as EPA noted in its request for comment. If EPA demonstrates the need for more-frequent reporting of AIM tier status than annual (via the

annual report), such more-frequent reporting should be done with quarterly submission of DMRs.

In addition, any tracking of AIM tiers by EPA will have to account for tracking of AIM tiers by benchmark parameter and monitored outfall. The permittee will have to assess each monitored outfall for each benchmark parameter to determine whether an AIM tier has been triggered for a given benchmark parameter. A permittee might not exist in just one AIM tier at any moment; a permittee could exist in all three AIM tiers at one time across different parameters and monitored outfalls. The permutations of AIM tier status for a permittee are potentially quite large. Besides the compliance implications (please see Section B.17.b), specific reporting of changes in multiple AIM tier tracks (by parameter and monitored outfall) would be difficult for both the permittee and EPA to manage.

Specific (i.e., stand-alone) reporting of changes in a permittee's AIM tier status should not be included in the 2020 MSGP.

b. AIM Framework

More importantly, the proposed AIM Framework in the Proposed 2020 MSGP is inherently problematic and not consistent with the monitoring framework envisioned by NASEM (Report at 53). While AIM Tier 1 is similar to the current corrective action mechanism in the 2015 MSGP, the proposed AIM Framework is too aggressive in its movement of permittees up the AIM tiers based on exceedances of existing WQS-based benchmark values (if not updated benchmarks as recommended by NASEM (Report at 31)). The AIM Framework also entails compliance complexities that promise to burden permittees, especially those with large outdoor facilities.

According to the Fact Sheet (at 77), AIM was intended to address past inadequate "compl[iance] with the permit by making only minimal SCM changes, or no changes, and often th[o]se changes did not lower pollutant levels below the benchmark thresholds, indicating poor stormwater control effectiveness". This rationale contains two important issues. First, it identifies a problem related to lack of corrective action in follow-up to benchmark exceedances, independent of what the follow-up corrective actions would be. Second, it assumes that benchmarks reflect the intrinsic capabilities of SCMs to produce effluent with concentrations of benchmark parameters at or below benchmarks. NASEM notes in its Report (at 60) that "[m]any MSGP benchmarks are based on water quality criteria". The proposed AIM Framework, notwithstanding conditions of the settlement agreement, does not address either of these two issues. The existence of AIM does not correct the identified lack of or inadequate compliance; it just increases requirements on those permittees that have been complying. AIM cannot and does not address the existing disconnect between the intrinsic capabilities of SCMs and benchmark values based on WQs.

The proposed AIM Framework suffers from the following issues, some of which are overlapping or rendered moot by others:

- The proposed AIM Framework is not clear about resetting of the annual sampling period after an AIM tier is triggered and the required corrective actions are completed. Statements such as “to bring your exceedances below the parameter’s benchmark threshold for the next 12-month period” (e.g., in Part 5.2.1.2.b) and “you must continue quarterly benchmark monitoring into the next year” (e.g., in Part 5.2.1.2.b) do not explicitly reset, or state a resetting of, the sampling period for computing annual averages. It seems possible that a permittee could end up having multiple annual sampling periods for different combinations of benchmark parameter and monitored outfall. A permittee would likely have difficulty tracking multiple annual sampling periods and reporting results to EPA.
- The proposed AIM Framework leaves open the possibility that a permittee will reach AIM Tier 3 within the first year, perhaps even bypassing AIM Tier 2. This is a significant step-change from corrective action due to benchmark exceedances in the 2015 MSGP. It would rush permittees through substantial corrective action processes and activities that should not be rushed. Such an outcome is a disproportionate response to the underlying problem of some permittees not conducting corrective action completely or at all. This is true even with a resetting of the annual sampling period to compute annual averages.
- In the proposed AIM Framework, Part 5.2.3, AIM Tier 3, effectively imposes enforceable numeric effluent limitations (NELs) in contradiction to Part 4.2.1, Benchmark Monitoring. Proposed Part 5.2.3.2.a, Install Permanent Controls, includes the following requirement: “[The Permittee] must select controls with pollutant removal efficiencies that are sufficient to bring [the Permittee’s] exceedances below the benchmark threshold”. To the extent that applicable benchmark thresholds remain based on WQs, this requirement effectively converts such benchmarks to NELs. The consequence of “failed” permanent controls is detailed in proposed Part 5.2.3.3.c: “If [the Permittee] continue[s] to exceed the benchmark threshold for the same parameter even after installation of structural source controls or treatment controls, EPA may require [the Permittee] to apply for an individual permit.” This outcome contradicts Part 4.2.1: “The benchmark thresholds are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. However, if a benchmark exceedances triggers Additional Implementation Measures (AIM) in Part 5.2, failure to conduct any required measures would be a permit violation.” This internal contradiction calls into question then entire proposed AIM Framework.
- The proposed AIM Framework is based on the questionable assumption that one attempt at conducting an AIM tier corrective action will be absolutely indicative of whether that AIM

tier corrective action can improve the quality of stormwater discharges at or below applicable benchmarks. Such an assumption may be based on the presumption that stormwater discharge quality is as easy to control as industrial wastewater discharge quality. This presumption is exemplified in the Proposed 2020 MSGP by the AIM Tier 3 requirement that a permittee “must select controls with pollutant removal efficiencies that are sufficient to bring [the permittee’s] exceedances below the benchmark threshold” (Part 5.2.3.2.a). This is a curious requirement in AIM Tier 3. If such controls were known and cost-effective, would not the permittee likely have used them in the first place? While “hav[ing] a professional engineer or geologist to assist with the installation of such [AIM Tier 3] controls” makes sense for ensuring maximum performance, it does not guarantee performance or meeting benchmarks. This is especially true given the existing disconnect between SCM performance and benchmarks that are based on WQSs.

This questionable assumption is false because the presumption is false. Stormwater discharge quality is much more difficult to control than industrial wastewater discharge quality due to the vast differences between highly variable, occasional storm events on a dynamic outdoor environment (i.e., the operating facility) and regular controlled industrial wastewater flows from a highly designed, usually sheltered manufacturing environment (i.e., indoor manufacturing operations). Due to facility complexities and the variability of storm events, some amount of experimentation with SCMs is necessary to ascertain whether the implemented SCMs produce the expected results at the expected magnitudes. If the SCMs do not, the approach taken needs to be modified within that same AIM tier. The permittee should have the ability to conduct AIM tier corrective actions for a certain period of time before being moved into the next AIM tier. This could be facilitated in part through a generally available “aberrant event” exception (as discussed above).

- The proposed AIM Framework seems to reflect a significant lack of awareness of its inherent potential compliance complexities. It is very unclear how a permittee could be expected to manage and maintain compliance in more than one AIM tier across the applicable benchmark parameters and monitored outfalls at the same time on potentially different annual sampling periods. Each AIM tier trigger applies to every applicable benchmark parameter at each monitored outfall. In the Proposed 2020 MSGP, the Industry is poised to have seven benchmark parameters (COD, TSS, pH (new), Al, Cu, Pb, and Zn). It is not inevitable or necessarily true that benchmark exceedances across parameters are correlated. It is possible that a permittee could reach different AIM tiers for different parameters in different monitored outfalls at different times. Is an AIM tier response only specific to the drainage area of the monitored outfall where the exceedance occurred or facility-wide? If the permittee reached AIM Tier 2 for one parameter in one monitored outfall and later AIM Tier 2 for another parameter in a different monitored outfall, would the permittee have two AIM Tier 2 processes in the different parts of the facility or facility-wide? How would EPA characterize that permittee’s AIM tier status? As proposed, the AIM

Tier 2 process requires review and evaluation of the sector-specific SCMs listed in Appendix Q and “implement[ation of] all feasible SCMs within 14 days” (Part 5.2.2.3). The listed SCMs for the Industry (Sector N) in Appendix Q are so broad and generic that they do not generally apply to specific benchmark parameters (except perhaps for SCMs for spent lead-acid batteries and fluids) (please also see comments in Section B.17.c). Going through exactly the same process again would not make sense and would be operationally inefficient.

While this question also applies to AIM Tier 3, in all likelihood being in AIM Tier 3 for one parameter (mostly likely Cu) is equivalent to being in AIM Tier 3 for all other parameters as well. To improve the target parameter (e.g., Cu), it may be necessary to remove the other parameters well below their benchmarks because their presence interferes with the removal of the target parameter (e.g., reduce 100,000 µg/L TSS to reduce Cu from 30 to 14 µg/L). The interference could be physical (e.g., particles that clog sand filters) or chemical (e.g., Zn competes with Cu for removal). It is difficult to imagine that EPA could justify ousting a permittee from the 2020 MSGP and into an individual permit because Cu concentrations in the discharge could not be reduced below 20 µg/L. It is difficult to see how an individual permit would improve the environmental outcome; it would only allow EPA to declare NEL and permit violations.

- The proposed AIM Framework does not recognize or acknowledge the permittee’s prerogative under Part 4.2.1 to “take more than four samples during separate discharge events to determine the average benchmark parameter value for facility discharges”. For instance, proposed AIM Tier 1 states:

An annual average exceedance can occur from the average of four quarterly samples for a parameter, or from less than four samples with results such that an exceedance is mathematically certain (i.e., the sum of quarterly sample results to date is already more than four times the benchmark threshold).

This statement completely ignores the ability, even right, of the permittee to take additional samples during the remainder of an annual sampling period to attempt to make the annual average at or below the benchmark. As shown in proposed AIM Tier 1 Example B, the permittee is denied the opportunity to take additional samples during the remainder of the period following the first two TSS results of 300 and 110 mg/L. Mathematically, three more sample results at 30 mg/L each or four more samples at 40 mg/L each would result in an annual average at or below the TSS benchmark of 100 mg/L. Similarly, in proposed AIM Tier 1 Example C, the permittee is denied the opportunity to take additional samples during the remainder of the period following the first TSS of 405 mg/L. Mathematically, four more sample results at 20 mg/L each would result in an annual average below the TSS benchmark of 100 mg/L. To be sure, the permittee would likely have to conduct activities

similar to those required under AIM Tier 1, but at least the permittee could first conduct those activities without the requirements of AIM Tier 1. If the additional sampling did not achieve an annual average at or below the benchmark by the end of the annual period, the permittee would then be firmly in AIM Tier 1.

The permittee must have the choice of either (i) continuing to sample during the remainder of the current annual sampling period even if a result is at or above 4-times the benchmark in the case of AIM Tier 1 or (ii) accepting that the annual average for the current annual period will exceed the benchmark (e.g., after three samples) regardless of additional sampling results during the remainder of the period, triggering AIM Tier 1 requirements before the end of the period. It is mathematically possible to have an annual average at or below the benchmark with more than four sample results and with one result at or above 4-times the benchmark. In this circumstance, meeting the benchmark with an annual average should negate and supersede the AIM Tier 1 trigger for one result at or above 4-times the benchmark within that average. Meeting the benchmark would be per se evidence that the result at or above 4-times the benchmark was an aberration, whatever its cause.

- Besides the general issues above, there are specific AIM Framework issues for the recycling industry. Under the Proposed 2020 MSGP, the industry has aluminum (Al), copper (Cu), lead (Pb), and zinc (Zn) among the sector-specific benchmark parameters. These parameters have very different benchmarks (100 mg/L hardness): Al, 750 µg/L; Cu, 14 µg/L; Pb, 82 µg/L; and Zn, 120 µg/L. On an acre-inch of stormwater basis (27,154 gal), these benchmarks equate to the following quantities per acre-inch: Al, 77 g (30 cm³); Cu, 1.4 g (0.16 cm³); Pb, 8.4 g (0.75 cm³); and Zn, 12.3 g (1.7 cm³). From a practical perspective, the benchmarks for Cu, Pb, and Zn, especially Cu, represent miniscule amounts of material in stormwater discharges. Even multiples of these benchmarks, especially Cu, represent very small quantities of material, usually spread out over large areas that are difficult to control from an engineering perspective, especially given the high variability of storm events. The proposed AIM framework seems poised to result in huge investments in SCMs at AIM Tier 3, even if to control only a small amount of Cu, in the absence of cost-effective SCMs designed to and capable of meeting benchmarks, especially if receiving waters have low hardness (i.e., <100 mg/L). Larger facilities will be burdened with larger investments to control larger annual stormwater flows with relatively small quantities of materials. The use of design storms as recommended by NASEM (Report at 77) in developing SCMs could be helpful to moderate the financial impact of investment in SCMs.

Given these many issues, especially the internal contradiction between AIM Tier 3 and the concept of benchmark monitoring, ISRI opposes the proposed AIM Framework.

c. Appendix Q

In the proposed AIM Framework, Part 5.2.2.2, AIM Tier 2 Responses, requires the permittee to “[i]mplement all feasible SCMs from the relevant sector-specific Stormwater Control Measure Checklist(s) that applies to your facility in Appendix Q of the permit”. Proposed Part 5.2.2.3 requires the permittee to “implement all feasible SCMs within 14 days and document per Part 5.3 how the measures will achieve benchmark thresholds”.

Based on an analysis of proposed Appendix Q and the existing Sector N fact sheet⁹, the SCMs in proposed Appendix Q appear to be composed of the BMPs listed in Table 2 of the existing Sector N fact sheet with some changes and some additional measures. The changes between the BMPs of the existing Sector N fact sheet and the SCMs of proposed Appendix Q tend to provide specific and greater frequencies for activities and direct actions in place of planned actions, among other things. For instance, in most but not all occurrences, existing regular inspections become weekly inspections. Employee training becomes training during the first week of employment and annually. Scheduling of frequent cleanings become regular cleanings. New SCMs include baghouse maintenance, placing absorbent material between contaminated runoff and discharge point, collecting liquid waste in a labeled container, keeping manifests of wastes removed from the facility, cleaning oil and grease from pavement daily, and providing dust control. Despite these changes and new SCMs, which may be common sense and/or required under other regulations, proposed Appendix Q does not appear to be a significantly updated version of the BMPs listed in the existing industrial stormwater fact sheet series¹⁰, if the differences for Sector N are representative. It is difficult to see how proposed Appendix Q will help permittees to meet proposed Part 5.2.2.3. This appears to be a lost opportunity to provide better stormwater management guidance to permittees.

While the BMPs in the existing Sector N fact sheet generally follow the outline of the Sector N requirements in Part 8, Subpart N of the 2015 MSGP, the SCMs of proposed Appendix Q less obviously follow Part 8, Subpart N of the Proposed 2020 MSGP. For instance, cohorts of SCMs are identified in proposed Appendix Q by “Pollutant Source” number, but the Proposed 2020 MSGP does not contain such terminology. Also, as an example, SCMs related to scrap lead-acid batteries (SLABs) are mentioned under Pollutant Sources 1, 2, 3, 6, 8, and 11. Does the permittee have to check off or implement all of them even if doing some SCMs covers other SCMs? Are all or only some of the SLAB-related SCMs applicable? These and other issues raise questions about how a permittee would properly use proposed Appendix Q as part of its AIM Tier 2 response. In any case, a permittee would likely need much more than 14 days to implement all feasible SCMs in Appendix Q.

⁹ U.S. EPA Office of Water. 2006. Industrial Stormwater Fact Sheet Series: Sector N: Scrap Recycling and Waste Recycling Facilities. EPA-833-F-06-029. December.

¹⁰ These industrial stormwater fact sheets are listed at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities#factsheets>. Viewed May 26, 2020.

ISRI recommends that EPA withdraw proposed Appendix Q and engage in a process to develop updated stormwater guidance for the various covered industrial sectors consistent with other recommended changes to the Proposed 2020 MSGP.

The proposed AIM Framework and proposed Appendix Q need to be replaced or withdrawn. EPA should consider implementing a tiered monitoring framework that is based on the framework envisioned by NASEM (Report at 53), accounts for wet-weather conditions, mixing zones, and the greater bioavailability of dissolved metals, and includes an inspection-only option for “low risk” facilities.

C. Conclusion

ISRI has reviewed the Proposed 2020 MSGP and considered the topics on which EPA specifically requested comment. ISRI also considered related topics that EPA did not specifically identify or propose in the Proposed 2020 MSGP. While supporting or accepting some aspects of the Proposed 2020 MSGP and some related topics, ISRI has significant concerns about major aspects of the Proposed 2020 MSGP.

ISRI supports or accepts the following proposed provisions of, changes to, or additions for the 2020 MSGP – notwithstanding areas of opposition or disagreement by ISRI that might render them moot:

- Elimination of the iron benchmark;
- Increasing the benchmark for aluminum to 1,500 µg/L based on its 2018 final updated aquatic life criteria;
- Optional use at any time of updated aquatic life criteria for copper to develop an alternative facility-specific copper benchmark based on risk to the facility’s receiving water;
- Adoption of wet-weather benchmark monitoring and also the option of using dissolved-metals benchmarks;
- Exceptions for aberrant events for any AIM trigger based on an exceedance greater than a specific multiple of the benchmark;
- An exception available in any AIM tier for demonstration of no actual exceedance of a WQS in the receiving water, with appropriate revision of the DMR Form;
- An exception that may be used at any time or in any AIM tier for natural background, as well as the impact of uncontrollable air emissions from off-site, that cause a benchmark exceedance and without which there would be no benchmark exceedance, with appropriate revisions of the DMR Form; and
- Changing “No Exposure Certification” from “NOE” to “NEC”.

Notwithstanding the above areas of support or acceptance, ISRI opposes for inclusion or adoption in the 2020 MSGP the following provisions of and suggestions in the Proposed 2020 MSGP – some of which may be overlapping:

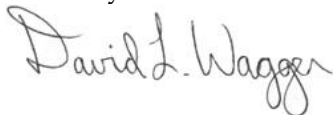
- The AIM Framework and Appendix Q;
- Specific reporting of a permittee's change in AIM tier status;
- Universal Benchmark Monitoring and its associated schedule;
- The MSGP eligibility criterion for stormwater discharges to a Federal CERCLA site;
- The MSGP eligibility criterion for stormwater discharges from areas of industrial activity at a facility where coal-tar sealants will be used during the permit term;
- An MSGP eligibility criterion for use of cationic treatment chemicals;
- The requirement to post and maintain certain permit information in a highly publicly visible manner outside the facility;
- Required consideration of enhanced control measures for extreme flooding; and
- Making facility changes a trigger for AIM Tier 1;

EPA should adopt a 2020 MSGP that incorporates the proposed provisions, changes, and additions supported by ISRI and that excludes the proposed provisions and suggestions opposed by ISRI in an internally consistent manner and consistent with NASEM's recommendations in its Report.

In closing, ISRI thanks EPA for this opportunity to provide comment on its Proposed 2020 MSGP and for its consideration of these comments.

If there are any questions or comments, I can be reached at DWagge@isri.org.

Sincerely,



David L. Wagge, Ph.D.
Chief Scientist
Director of Environmental Management
Institute of Scrap Recycling Industries, Inc.