

under this storm water multi-sector industrial general permit. Permittees are also not authorized permit coverage if the BMPs they plan to construct and operate as a part of the required storm water pollution prevention plan are likely to adversely affect a species identified in Addendum H.

To be eligible for coverage under the multi-sector storm water permit, applicants are required to review the list of species and their locations which are contained in Addendum H of this permit and which are described in the instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the addendum are found in the county in which the facility is located, then there is no likelihood of an adverse effect and they are eligible for permit coverage. Applicants must then certify that their discharges, and the construction of storm water BMPs, are not likely to adversely affect species and will be granted multi-sector storm water permit coverage 48 hours after the date of the postmark on the envelope used to mail in the NOI form.

If species identified in Addendum H are found to be located in the same county as the facility seeking storm water permit coverage, then the applicant next must determine whether the species are in proximity to the storm water discharges at the facility, or any BMPs to be constructed to control storm water runoff. A species is in proximity to a storm water discharge when the species is located in the path or down gradient area through which or over which point source storm water flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if a species is located in the area of a site where storm water BMPs are planned to be constructed. If an applicant determines there are no species in proximity to the storm water discharge, or the BMPs to be constructed, then there is no likelihood of adversely affecting the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water discharges or areas of BMP construction, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. For example, an applicant's activity may have been authorized as part of a section 7

consultation under ESA, covered under a section 10 permit, or have received a clearance letter. The environmental baseline generally includes the past and present impacts of all federal, state and private actions that were contemporaneous to an ESA authorization. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in Addendum H are in proximity to the discharges, or the construction areas for the BMPs, then the applicant must determine whether there is any likely adverse effect upon the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, described in the instructions in Addendum H of the permit. If the applicant determines there is no likely adverse effect upon the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be an adverse effect, then the applicant is not eligible for multi-sector storm water permit coverage.

All dischargers applying for coverage under this permit must provide in the application information on the Notice of Intent form: (1) a determination as to whether there are any species identified in Addendum H in proximity to the storm water discharges and BMPs construction areas, and (2) a certification that their storm water discharges and the construction of BMPs to control storm water are not likely to adversely affect species identified in Addendum H, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers who are not able to determine that there will be no likely adverse effect to species or habitats and cannot sign the certification to gain coverage under this multi-sector storm water general permit, must apply to EPA for an individual NPDES storm water permit. As appropriate, EPA will conduct ESA § 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the basis of possible adverse effects on species or critical habitats. Where there are concerns that coverage for a

particular discharger is not sufficiently protective of listed species, the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fisheries and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the storm water pollution prevention plan, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fisheries and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. It significantly reduces the number of dischargers that must be considered individually and therefore allows the Agency and the Services to focus their resources on those discharges that are indeed likely to adversely affect water-dependent listed species. Straightforward mechanisms such as these allow applicants with expedient permit coverage, and eliminates "permit limbo" for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

*(4) Storm Water Discharges Associated with Inactive Mines, Landfills, Oil and Gas Operations that Are Located on Federal Lands.*

The permit does not cover storm water discharges associated with industrial activity from inactive mines, inactive landfills, and inactive oil and gas operations that are located on Federal lands, unless an operator of the industrial activity can be identified. These discharges are not eligible for coverage under this permit because they would more appropriately be covered by the permit currently under development by EPA intended specifically to cover these types of discharges.