

This is a NO-NAnsense article ... just the basics you need to know

Do I Need A NONA? In 1937, the United States developed the standard industrial classification (SIC Code) system using 4-digit codes to categorize different kinds of businesses and business activities. The Department of Labor's Occupational Safety and Health Administration was given regulatory oversight over the SIC Code system and revised it in 1987. The NPDES permit program identifies industrial activities which have been determined to pose a threat to the Waters of the United States and uses the SIC Code system to identify targeted businesses.

Previous IGPs listed and the current IGP lists, SIC Code/Industrial Activities certain categories as facilities which require Permit coverage. Prior to July 1, 2015, if a facility's industrial activities were listed as needing Permit coverage but the facility determined that it did not discharge storm water to the Waters of the United States, it did not need to file for any kind of General Permit coverage unless required by the Water Board. That all changed as of July 1, 2015. Since then, if a facility determined that is does not discharge to Waters of the United States, it can no longer just opt to not file anything. Now it must file a NONA proving its compliance with the NONA requirements.

But what if my facility doesn't qualify to comply with the Industrial General Permit? Do I just have to be in compliance with it anyways? Not necessarily. In this month's edition of **The Rain Events**, we're going to be diving into NONAs (Notice of Non-Applicability) for those facilities who truly don't need to have Permit coverage. While this might not be an applicable topic to every facility, it's important to discuss nonetheless, because it could mean Permit exemption for some facilities.

options for facilities with an applicable SIC code:

A No Discharge Notice of Non-Applicability (NONA) coverage: With the help and certification of a California Civil Engineer you could dig a massive pond which is not hydraulically connected to the Waters of the United States that can impound/capture all accumulated rainwater from the largest historically recorded storm plus a series of storms leading up to that storm.

The IGP Fact Sheet also gives other reasons why a facility may be eligible to file for a NONA:

- 1. Facility closure
- 2. Not the legal owner
- 3. An incorrect SIC code
- Eligibility for the Conditional Exclusion (No Exposure Certification)

No Exposure Certification (NEC) coverage: You can cover all industrial activities including stored materials not designed to be outside, as well as all loading and unloading activities.

Notice of Intent (NOI) coverage: comply and operate under the full Industrial General Permit requirements.

How is a NONA filed? To

claim "no discharge", the entity is required

to file for a NONA on SMARTS and upload a technical report (attached to this newsletter is a guidance document provided by the Water Board to walk you through this process). The No Discharge Technical Report must sufficiently demonstrate how the facility meets either of the two eligibility options outlined in the Permit and it must be signed by a California licensed professional engineer.

Eligibility Requirements for



As of 2015, the IGP gives three permitting

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(REMARKS)		Historical weather data from NOA

a NONA: Section XX.C of the Permit has two main eligibility categories for obtaining a NONA certification:

The facility is engineered and constructed to have contained the maximum historic precipitation event (or series of events) using the precipitation data collected from the National Oceanic and Atmospheric Agency's website (or other nearby precipitation data available from other government agencies) so that there will be no discharge of industrial storm water to Waters of the United States; or the facility is located in basins or other physical locations that are not hydrologically connected to Waters of the United States.

In order for a NONA to be considered valid, a facility wishing to claim NONA status must file as such and provide a "No Discharge Technical Report" developed and signed by a California licensed professional engineer. The technical report will need to contain the analysis and details of the containment design supporting NONA application. And because of the complexity of hydraulic calculations, soil permeability analysis, soil stability calculations, appropriate safety factor

consideration, and other engineering principles, it is required by law that the technical report be made by a licensed professional engineer. The IGP Fact Sheet states, "The State Water Board considered allowing Entities to review United States Army Corp of Engineer maps to determine, without a California licensed professional engineer, whether their facility location is within a basin and/or other physical location that is not hydrologically connected to Waters of the United States. The State Water Board believes that this determination can be difficult in some cases, or is likely to be performed incorrectly. In addition, there may be areas of the State that are not hydrologically connected to Waters of the United States, but are not on United States Army Corps of Engineer maps. Therefore, all "No Discharge" Technical Reports must be signed (wet signature and license number) by a California licensed professional engineer."

The Industrial General Permit Fact Sheet is not considered a regulatory document, but it helps to explain the intent of what the Permit is requiring and needs to be seriously considered when developing a NONA

Waters Of The United States:

1. Waters which are:

- Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- The territorial seas; or

Interstate waters; 2. Impoundments of waters otherwise defined as waters of the United States under this lefinition, other than impoundments of waters identified under paragraph (a)(5) of this

3. Tributaries of waters that are relatively permanent, standing or continuously flowing bodies of water;

- 4. Wetlands adjacent to the following waters:
 Waters identified in paragraph (a)(1) of this section; or
 Relatively permanent, standing or continuously flowing bodies of water with a continuous

surface connection to those waters; 5. Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4) that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3).

Technical Report because it gives a bit more insight into NONAs than the Permit itself does. In Section S.2 of the Fact Sheet, it outlines NONA containment capacity requirements - "At a minimum, Dischargers must ensure that the containment design addresses maximum 1-hour, 24-hour, weekly, monthly, and annual precipitation data for the duration of the exclusion... if a design storm standard is a 100 year 24-hour event, then a facility's containment system designed to contain the maximum volume of water would be expected to fall in 24-hours once every 100 years." We have seen that not every engineering firm is comfortable signing off on a NONA due to, as the Fact Sheet states, "considerable variations in climate/ topography/soil conditions across the state" and that a "facility's containment design can site-specific incorporate unique circumstances to meet the requirement that discharges will not occur based upon past historical precipitation data." Another thing to consider about filing for a NONA is something the Fact Sheet mentions in Section S.3 that is not mentioned in the "industrial Permit; pollutants groundwater." The Fact Sheet states that, "Entities (meaning the facility) must determine whether designs that incorporate infiltration may discharge to and contaminate groundwater." If a facility thinks or suspects that their storm water which was contained with the intent of being infiltrated into the ground may have a chance of polluting the groundwater, they need to contact their "Regional Water Boards prior to construction of infiltration design elements."

Considering all the added information about NONAs found in the Fact Sheet, it may seem like a daunting task to apply for a NONA, but if a NONA can be obtained, then that will free a facility from the ongoing expenses and liabilities of being under Permit coverage.

The Rain Events

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Storm Water Contest...

Each month, we invite our readers to participate in a contest to test their knowledge of the Industrial General Permit and show their storm water compliance program. We enter all submittals to our monthly newsletter question into a drawing and one person is selected at random to receive a \$25 gift card. Last month's contest question was:

Can you use a tarp to cover a dumpster and still be compliant?

Congratulations to Sandy who replied *"Using a tarp over a dumpster is only acceptable during construction or renovation activities, and not for materials which are subject to wind dispersions."* Sandy, we hope you enjoy your next project with a trip to Home Depot on us!

... This Month's Contest

What qualifies a facility for a NONA?

We need industrial storm water sleuths to help us with this month's question. Submit your answers by Friday, June 14th. Email your answer to jteravskis@wgr-sw.com. One winner will be selected by a random drawing to receive a \$25 gift card to Starbucks.

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STORMWATER INDUSTRIAL GENERAL PERMIT

DISCHARGER'S GUIDE TO THE STORMWATER MULTIPLE APPLICATION AND REPORT TRACKING SYSTEM (SMARTS) DATABASE

Notice of Non-Applicability (NONA)





Last Revised: February 2024

Stormwater Industrial General Permit (IGP) – Notice of Non-Applicability (NONA)

Any Discharger operating a facility described in <u>Attachment A</u>

(https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/industrial/201 4indgenpermit/atta.pdf) may register for a NONA if their facility meets one of the following criteria as stated in the "Special Conditions" section (XX.C) of the <u>Industrial</u> <u>General Permit</u>

https://www.waterboards.ca.gov/water_issues/programs/stormwater/igp_20140057dwq. html):

Dischargers Claiming "No Discharge" through the NONA

Entities that claim "No Discharge" of stormwater from their facility through the Notice of Non-Applicability shall meet the following eligibility requirements:

- 1. The facility is engineered and constructed to have contained the maximum historic precipitation event (or series of events) using the precipitation data collected from the National Oceanic and Atmospheric Agency's website (or other nearby precipitation data available from other government agencies) so that there will be no discharge of industrial stormwater to waters of the United States; or,
- **2.** The facility is located in basins or other physical locations that are not hydrologically connected to waters of the United States.

When claiming the "No Discharge" option, a No Discharge Technical Report is required with the NONA submittal via SMARTS. The No Discharge Technical Report is developed, signed, and stamped by a California licensed professional engineer demonstrating the facility meets the eligibility requirements described above.

For additional questions, contact the SMARTS Help Desk at <u>stormwater@waterboards.ca.gov</u>.

The NONA must be certified and submitted by the facility's Legally Responsible Person (LRP). The following steps guide a LRP to certify and submit the NONA.

 Log into <u>SMARTS</u>: (https://smarts.waterboards.ca.gov) Browser Requirements: SMARTS best works with Google Chrome or Microsoft Edge. Use of other browsers may cause unexpected errors.



2. Select Permit and Application Type

From the Main Menu, the user must go to the "Start a New Application" drop-down list, select "Industrial Permits", and then select "Industrial Notice of Non-Applicability".



3. Select the Organization Record

The LRP may create a new organization or select an existing organization (if created and linked previously). Only LRPs may create new organizations. A DAR or DEP may only link the new application to an existing organization they are currently linked to.¹ Mark the bubble under the "select" column for the "Organization ID" and select "Next" at the bottom left corner of the screen.

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4. Create New Organization Record

If the LRP is creating a new organization, enter all organization information required below. If not creating new organization, go to step 5.

NOTE: the organization name and organization address may differ or can be the same as the facility/business name and facility/business address. Once complete, select "Create Organization".

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		@ 2022 State of California. Conditions of Use Privacy Policy

¹ If the user does not see an organization listed, contact the LRP to link user or contact the Stormwater Help Desk to update your user account to an LRP.

5. Linked Users

Verify, add, or remove users linked to the new application. Users already linked to the organization automatically populate in this section.

NOTE: A LRPs can link or delink LRPs and DARs with the same email domain, or DEPs. For assistance linking a DAR with a different email domain, contact the Stormwater Help Desk at stormwater@waterboards.ca.gov. Additionally, DARs may link or delink DEPs, and DEPs cannot link or delink any user. Click the "Confirm and Create Application" button to continue.

plication Type: Statewide Con	struction (NOI/Waiver/NONA)				
Add LRP Add DAR	Add DEP	Confirm and Create Application			
selow is a list of User(s) currently	linked to the Organization Help Desk				
Legal Responsible Person					
First Name	Last Name	Email		User Account	Delink User
Matthew	Shimizu	matthewshimizu25@gmail.com	687982		
Duly Authorized Representative	9				
First Name	Last Name	Email		User Account	Delink User
No records found					
Data Entry Person					
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6. Operator Information

Enter all required Operator Information. Once all required information is entered select "Save & Continue.

NOTE: The option to auto-populate the operator contact information is available as a drop-down box. Select the user's information to be populated from their linked account. Verify the information once it is populated for accuracy.

If at any time during the application process the user needs to stop and return to the application at a later time, select "Save & Exit". To return to the application, select "Pending Applications" from the "Main Menu", then select the application ID number under the "Application ID" column on the left-hand side.

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7. Facility Information

Enter all required facility information.

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If the facility's Latitude and Longitude coordinates are not known, click the Lookup Map for assistance.

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8. Save Facility Information

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9. Additional Facility Information

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Additional Facility Information		
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² **NOTE**: If "No discharge to Waters of the US" option is selected, upload a No Discharge Technical Report in "Attachments" tab

³ **NOTE:** If selected "Other" enter the explanation in the text field box.

10. Attachments

Upload documents such as the No Discharge Technical Report if the "No discharge to Waters of the US" option is selected. Click "Upload Attachment".

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- Attachment File Type: Select "No Discharge Technical Report", or other file types corresponding to the required documents. Additional files such as "Supporting Documentation" may be attached as applicable.
- Attachment Title: Enter the title of the document.
- Choose File: Locate the file on the computer by clicking browse and select it.
- Select "Upload Files" once files have been selected

NOTE: Any one file must not exceed 75 MB. If a file is larger than that, it must be divided into multiple files. Use the "Part No." fields in these situations. The "Document Date" should be used to record when the document was signed or approved.

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The completion check function provides a notification of any errors that must be corrected prior to submission of the NONA. If the "Perform Completion Check" function returns errors, correct them prior to submission of the NONA.

Note: The NONA cannot be certified and submitted unless the Electronic Authorization Form is on file with the State Water Resource Control Board (Water Board). Click the "Print E-Authorization Form," sign with an original wet ink signature and mail⁴ it to one of the addresses on the form.

⁴ **NOTE:** The E-Authorization Form must be mail in with original wet signature. No photocopies, scanned, emailed, or faxed forms will be accepted.

Any user may perform the completion check but only the LRP may certify and submit it. A DAR or DEP cannot certify and submit the NONA.

LRP Certification

There are two options for the LRP to submit the NONA:

- a. The LRP may access the "Documents Ready for Certification" SMARTS menu option if notified by the DEP.
 - Select the NONA to certify by checking the box next to the Application ID under the Applications table.
 - Check the box next to the certification statement, answer the security questions, and enter the user account password
 - Click "Certify Selected" to submit the NONA.

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- b. If the NONA is not listed in the "Documents Ready for Certification" SMARTS menu option, the LRP may access the NONA directly.
 - Log in and go to "Pending Applications" in the main menu.
 - Open the Application ID.
 - Click on the "Certification" tab and perform the completion check.
 - Check the certification boxes, enter the answer to the security question and password, and click the "Certify Application" button

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A DAR/DEP completing this check will see the following screen:



12. A confirmation screen confirms submission of the NONA in SMARTS. Select Download Copy of Record button to save a copy of the submission

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13. A NONA Identification number (noted as NONA ID) is assigned once the NONA is certified and submitted by the LRP:

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A receipt letter for the NONA submission is available to print.

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Final Rule: Revised Definition of "Waters of the United States" Fact Sheet December 2022



Overview

On Dec. 30, 2022, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) announced a final rule founded upon the pre-2015 definition of "waters of the United States," updated to reflect consideration of Supreme Court decisions, the science, and the agencies' technical expertise.

The agencies chose the familiar, pre-2015 definition as a foundation because it has supported decades of clean water progress and has been implemented by every administration in the last 45 years. Changing regulatory definitions due to court decisions and final rules issued by the agencies in 2015, 2019, and 2020 have caused uncertainty that harmed communities and our nation's waters. The rule restores fundamental protections so that the nation will be closer to achieving Congress' direction in the Clean Water Act that our waters be fishable and swimmable. It will also ensure that our waters support recreation and wildlife.

This action provides clear rules of the road that will help advance infrastructure projects, economic investments, and agricultural activities—all while protecting water quality. EPA and Army are prioritizing and enhancing practical, on-the-ground implementation by providing tools and resources to support timely and consistent jurisdictional determinations under this definition of "waters of the United States."

Categories of "Waters of the United States"¹

The agencies' definition of "waters of the United States" provides jurisdiction over waterbodies that Congress intended to protect under the Clean Water Act, including traditional navigable waters (e.g., certain large rivers and lakes), territorial seas, and interstate waters. For upstream waters that may significantly affect the integrity of downstream waters that Congress intended to protect, the rule provides a reasonable approach that recognizes regional and geographic differences. The rule accounts for regional differences in waters because regionally tailored implementation tools as well as local and regional conditions help determine whether waters are covered under this rule.

¹ This table is provided for informational purposes; the rule establishes the requirements defining "waters of the United States."

Types of Waters	Features	Examples of Waters Likely	Regulatory
		to Be Jurisdictional Under the Final Rule	Text Paragraph
Traditional Navigable Waters	Large rivers and lakes that could be used in interstate or foreign commerce, as well as waterbodies affected by tides.	Mississippi River, Erie Canal, Great Lakes	(a)(1)
Territorial Seas	Territorial seas that extend three miles out to sea from the coast.	Atlantic Ocean, Pacific Ocean	(a)(1)
Interstate Waters	Includes waters like streams, lakes, or wetlands that cross or form part of state boundaries.	Lake Tahoe, portions of the Columbia River, portions of Savannah River	(a)(1)
Impoundments	Impounded bodies of water created in or from "waters of the United States," like reservoirs and beaver ponds.	Bear Gulch Reservoir in California	(a)(2)
Tributaries	Branches of creeks, streams, rivers, lakes, ponds, ditches, and impoundments that ultimately flow into traditional navigable waters, the territorial seas, interstate waters, or impoundments of jurisdictional waters. Tributaries are jurisdictional if they meet either the relatively permanent standard or significant nexus standard.	Wolftrap Run in Virginia, Puppy Creek in Arkansas	(a)(3)
Adjacent Wetlands	These wetlands can be next to, abutting, or near other jurisdictional waters or behind certain natural or constructed features. They are most often within a few hundred feet of jurisdictional waters. Adjacent wetlands are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard, or where the wetland is adjacent to a traditional navigable water, the territorial seas, or an interstate water.	Parts of the Florida Everglades, Horicon Marsh in Wisconsin	(a)(4)
Additional Waters	These lakes, ponds, streams, or wetlands do not fit into the above categories. They are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard.	Certain local lakes, streams, wetlands, etc.	(a)(5)

Standards for Determining Jurisdiction

To determine jurisdiction for tributaries, adjacent wetlands, and additional waters, the final rule relies on the longstanding approach of applying two standards. Certain types of waters are jurisdictional under the final rule if they meet either the relatively permanent standard or significant nexus standard.

- **Relatively Permanent is a test that** provides important efficiencies and clarity for regulators and the public by readily identifying a subset of waters that will virtually always significantly affect paragraph (a)(1) waters. To meet the relatively permanent standard, the waterbodies must be relatively permanent, standing, or continuously flowing waters connected to paragraph (a)(1) waters or waters with a continuous surface connection to such relatively permanent waters or to paragraph (a)(1) waters.
- Significant Nexus is a test that clarifies if certain waterbodies, such as tributaries and wetlands, are subject to the Clean Water Act based on their connection to and effect on larger downstream waters that Congress fundamentally sought to protect. A significant nexus exists if the waterbody (alone or in combination) significantly affects the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters.

Exclusions from "Waters of the United States"

The agencies' definition of "waters of the United States" does not affect the longstanding activitybased permitting exemptions provided to the agricultural community by the Clean Water Act. Additionally, the final rule codifies eight exclusions from the definition of "waters of the United States" in the regulatory text to provide clarity, consistency, and certainty to a broad range of stakeholders. **The exclusions are:**

- **Prior converted cropland**, adopting USDA's definition and generally excluding wetlands that were converted to cropland prior to December 23, 1985.
- Waste treatment systems, including treatment ponds or lagoons that are designed to meet the requirements of the Clean Water Act.
- **Ditches** (including roadside ditches), excavated wholly in and draining only dry land, and that do not carry a relatively permanent flow of water.
- Artificially irrigated areas, that would revert to dry land if the irrigation ceased.
- Artificial lakes or ponds, created by excavating or diking dry land that are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- Artificial reflecting pools or swimming pools, and other small ornamental bodies of water created by excavating or diking dry land.
- Waterfilled depressions, created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction operation is abandoned and the resulting body of water meets the definition of "waters of the United States."
- **Swales and erosional features** (*e.g.*, gullies, small washes), that are characterized by low volume, infrequent, or short duration flow.

Public Input on this Action

The final rule is based on extensive outreach and engagement that began before the rule was proposed and continued through the public comment period of the proposed rule. The agencies received and considered over 114,000 written public comments in developing the final rule.

For More Information

Additional information, along with the final rule and supporting analyses, are available on EPA's website at <u>https://www.epa.gov/wotus</u>.