



# Stormwater Phase II Final Rule

## Permitting and Reporting: The Process and Requirements

### Stormwater Phase II Final Rule Fact Sheet Series

#### Overview

1.0 – Stormwater Phase II Final Rule: An Overview

#### Small MS4 Program

2.0 – Small MS4 Stormwater Program Overview

2.1 – Who's Covered? Designation and Waivers of Regulated Small MS4s

2.2 – Urbanized Areas: Definition and Description

#### Minimum Control Measures

2.3 – Public Education and Outreach

2.4 – Public Participation/Involvement

2.5 – Illicit Discharge Detection and Elimination

2.6 – Construction Site Runoff Control

2.7 – Post-Construction Runoff Control

2.8 – Pollution Prevention/Good Housekeeping

2.9 – Permitting and Reporting: The Process and Requirements

2.10 – Federal and State-Operated MS4s: Program Implementation

#### Construction Program

3.0 – Construction Program Overview

3.1 – Construction Rainfall Erosivity Waiver

#### Industrial "No Exposure"

4.0 – Conditional No Exposure Exclusion for Industrial Activity

The Stormwater Phase II Final Rule requires operators of certain small municipal separate storm sewer systems (MS4s) to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage because their stormwater discharges are considered "point sources" of pollution. All point source discharges, unlike nonpoint sources such as agricultural runoff, are required under the Clean Water Act (CWA) to be covered by federally enforceable NPDES permits. Those systems already permitted under the NPDES Phase I stormwater program, even systems serving less than 100,000 people, are not required to be permitted under the Phase II stormwater program.

NPDES stormwater permits are issued by an NPDES permitting authority, which may be an NPDES-authorized State or a U.S. EPA Region in non-authorized States. Issued MS4 permit conditions must be satisfied (i.e., development and implementation of a stormwater management program) and periodic reports must be submitted on the status and effectiveness of the program.

This fact sheet explains the various permit options that are available to operators of regulated small MS4s and details the permit application and reporting requirements. Program requirements for regulated small MS4s are explained in Fact Sheets 2.0 through 2.8.

### What Permitting Options Are Available to Operators of Regulated Small MS4s?

Unlike the Phase I program that primarily utilizes individual permits for medium and large MS4s, the Phase II approach allows operators of regulated small MS4s to choose from as many as three permitting options as listed below. At this time the NPDES permitting authorities have issued general permits for regulated small MS4s. Operators of regulated small MS4s in urbanized areas, whether automatically designated or designated by the permitting authority, should have submitted their permit applications within 90 days of permit issuance. Regulated small MS4 stormwater management programs should be fully developed and implemented by the end of the first permit term, which is typically a 5-year period. The NPDES permitting authority reserves the authority to determine which permitting options are available to the regulated small MS4s. Refer to specific NPDES permitting authority for more details about permitting options in particular states.

#### □ General Permits

- General permits are strongly encouraged by EPA. The Phase II program has been designed specifically to accommodate a general permit approach.
- General permits prescribe one set of requirements for all applicable permittees. General permits are drafted by the NPDES permitting authority, then published for public comment before being finalized and issued.
- A Notice of Intent (NOI) serves as the application for the general permit. The permittee complies with the permit requirements by submitting an NOI to the NPDES permitting authority that describes the stormwater management plan, including best management practices (BMPs) and measurable goals. A Phase II permittee has the flexibility to develop

an individualized stormwater program that addresses the particular characteristics and needs of its system, provided the basic requirements of the general permit are satisfied.

- Permittees also can choose to share responsibilities for meeting the Phase II program requirements. Those entities choosing to do so may submit jointly with the other municipalities or governmental entities an NOI that identifies who will implement which minimum measures within the area served by the MS4.
- The permittee then follows the Phase II permit application requirements (see discussion in next question below).

### **Minimize Duplication of Effort**

Two permitting options tailored to minimize duplication of effort can be incorporated into the general permit by the NPDES permitting authority. First, the permitting authority can recognize in the permit that another governmental entity is responsible under an NPDES permit for implementing any or all minimum measures. Responsibility for implementation of the measure(s) would rest with the other governmental entity, thereby relieving the permittee of its responsibility to implement that particular measure(s). For example, the NPDES permitting authority could recognize a county erosion and sediment control program for construction sites that was developed to comply with a Phase I permit. As long as the Phase II MS4s in the county comply with the county's construction program, they would not need to develop and implement their own construction programs because such activity would already be addressed by the county.

Second, the NPDES permitting authority can include conditions in a general permit that direct a permittee to follow the requirements of an existing qualifying local program rather than the requirements of a minimum measure. A qualifying local program is defined as a local, State or Tribal municipal stormwater program that imposes requirements that are equivalent to those of the Phase II MS4 minimum measures. The permittee remains responsible for the implementation of the minimum measure through compliance with the qualifying local program.

### **Individual Permits**

- Individual permits are required for Phase I “medium” and “large” MS4s, but not recommended by EPA for Phase II program implementation.
- The permittee can either submit an individual application for coverage by the Phase II MS4 program (see 40 CFR §122.34) or the Phase I MS4 program (see 40 CFR §122.26(d)).

- For individual coverage under Phase II, the permittee must follow Phase II permit application requirements and provide an estimate of square mileage served by the system and any additional information requested by the NPDES permitting authority. A permittee electing to apply for coverage under the Phase I program must follow the permit application requirements detailed at 40 CFR §122.26(d).
- The NPDES permitting authority may allow more than one regulated entity to jointly apply for an individual permit.
- The NPDES permitting authority could incorporate in the individual permit either of the two permitting options explained above in the *Minimize Duplication of Effort* section.

### **Modification of a Phase I Individual Permit – A Co-Permittee Option**

- The operator of a regulated small MS4 could participate as a limited co-permittee in a neighboring Phase I MS4's stormwater management program by seeking a modification of the existing Phase I individual permit. A list of Phase I medium and large MS4s can be obtained from the EPA Office of Wastewater Management (OWM) or downloaded from the OWM web site.
- The permittee must follow Phase I permit application requirements (with some exclusions).
- The permittee must comply with the applicable terms of the Phase I individual permit rather than the minimum control measures in the Phase II Final Rule.

### **What Does the Permit Application Require?**

Operators of regulated small MS4s are required to submit in their NOI or individual permit application the following information:

- Best management practices (BMPs) are required for each of the six minimum control measures:
  - ① Public education and outreach on stormwater impacts
  - ② Public participation/involvement
  - ③ Illicit discharge detection and elimination
  - ④ Construction site stormwater runoff control
  - ⑤ Post-construction stormwater management in new development/redevelopment
  - ⑥ Pollution prevention/good housekeeping for municipal operations

(See Fact Sheets 2.3 through 2.8 for full descriptions of each measure, including examples of BMPs and measurable goals)

- Measurable goals for each minimum control measure (i.e., narrative or numeric standards used to gauge program effectiveness);
- Estimated months and years in which actions to implement each measure will be undertaken, including interim milestones and frequency; and
- The person or persons responsible for implementing or coordinating the stormwater program.

### **Relying on Another Entity**

The Phase II permittee has the option of relying on other entities already performing one or more of the minimum control measures, provided that the existing control measure, or component thereof, is at least as stringent as the Phase II rule requirements. For example, a county already may have an illicit discharge detection and elimination program in place and may allow an operator of a regulated small MS4 within the county's jurisdiction to rely on the county program instead of formulating and implementing a new program. In such a case, the permittee would not need to implement the particular measure, but would still be ultimately responsible for its effective implementation. For this reason, EPA recommends that the permittee enter into a legally binding agreement with the other entity. If the permittee chooses to rely on another entity, they must note this in their permit application and subsequent reports. A Phase II permittee may even rely on another governmental entity regulated under the NPDES storm water program to satisfy all of the permittee's permit obligations. Should this option be chosen, the permittee must note this in its NOI, but does not need to file periodic reports.

### **What Does the Permit Require?**

The operator of a regulated small MS4 has the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for the system. The chosen BMPs and measurable goals, submitted in the permit application, become the required stormwater management program; however, the NPDES permitting authority can require changes in the mix of chosen BMPs and measurable goals if all or some of them are found to be inconsistent with the provisions of the Phase II Final Rule. Likewise, the permittee can change its mix of BMPs if it determines that the program is not as effective as it could be. Fact Sheets 2.3 through 2.8 further describe each of the minimum control measures, while the permit requirements for evaluation/assessment and recordkeeping activities are described in separate sections below.

### **Menu of BMPs**

The BMPs for minimum measures 3 through 6 (as listed in the permit application requirements section, above) are not

enforceable until the NPDES permitting authority provides a list, or "menu," of BMPs to assist permittees in the design and implementation of their stormwater management programs. The NPDES permitting authority was required to provide this menu as an aid for those operators that are unsure of the most appropriate and effective BMPs to use. Since the menu was intended to serve as guidance only, the operators can either select from the menu or identify other BMPs to meet the permit requirements. EPA has developed a menu of BMPs that can be accessed at EPA's Stormwater Web Site (<http://www.epa.gov/npdes/stormwater>).

### **What Standards Apply?**

A Phase II small MS4 operator is required to design a program that:

- Reduces the discharge of pollutants to the "maximum extent practicable" (MEP);
- Protects water quality; and
- Satisfies the appropriate water quality requirements of the Clean Water Act.

Compliance with the technical standard of MEP requires the successful implementation of approved BMPs. The Phase II Final Rule considers narrative effluent limitations that require the implementation of BMPs and the achievement of measurable goals as the most appropriate form of effluent limitations to achieve the protection of water quality, rather than requiring that stormwater discharges meet numeric effluent limitations.

EPA issued Phase II NPDES permits consistent with its August 1, 1996, Interim Permitting Approach policy, which calls for BMPs in first-round stormwater permits and expanded or better tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations should be incorporated into the stormwater permit. Monitoring is not required under the Phase II Rule, but the NPDES permitting authority has the discretion to require monitoring if deemed necessary.

### **What Evaluation/Reporting Efforts Are Required?**

#### **Frequency of Reports**

Reports must be submitted annually during the first permit term. For subsequent permit terms, reports must be submitted in years 2 and 4 only, unless the NPDES permitting authority requests more frequent reports.

**Required Report Content**

The reports must include the following:

- The status of compliance with permit conditions, including an assessment of the appropriateness of the selected BMPs and progress toward achieving the selected measurable goals for each minimum measure;
- Results of any information collected and analyzed, including monitoring data, if any;
- A summary of the stormwater activities planned for the next reporting cycle;
- A change in any identified best management practices or measurable goals for any minimum measure; and
- Notice of relying on another governmental entity to satisfy some of the permit obligations (if applicable).

**A Change in Selected BMPs**

If, upon evaluation of the program, improved controls are identified as necessary, permittees should revise their mix of BMPs to provide for a more effective program. Such a change, and an explanation of the change, must be noted in a report to the NPDES permitting authority.

**What are the Recordkeeping Requirements?**

Records required by the NPDES permitting authority must be kept for at least 3 years and made accessible to the public at reasonable times during regular business hours. Records need not be submitted to the NPDES permitting authority unless the permittee is requested to do so.

**What Are the Deadlines for Compliance?**

As stated previously, the NPDES permitting authorities have issued permits for regulated small MS4s. Operators of regulated small MS4s in urbanized areas, whether automatically designated or designated by the permitting authority, should have submitted their permit applications within 90 days of permit issuance. Regulated small MS4 stormwater management programs should be fully developed and implemented by the end of the first permit term, typically a 5-year period.

**What are the Penalties for Noncompliance?**

The operator of a regulated small MS4 is required to obtain an NPDES permit that is federally enforceable, thus subjecting the permittee to potential enforcement actions and penalties by the NPDES permitting authority if the MS4 operator does not fully comply with application or permit requirements. This federal enforceability also includes the right for interested parties to sue under the citizen suit provision of the CWA (section 505; 33 USC § 1365).

**For Additional Information*****Contacts***

☞ U.S. EPA Office of Wastewater Management  
<http://www.epa.gov/npdes/stormwater>  
 Phone: 202-564-9545

☞ Your NPDES Permitting Authority. Most States and Territories are authorized to administer the NPDES Program, except the following, for which EPA is the permitting authority:

Alaska	Guam
District of Columbia	Johnston Atoll
Idaho	Midway and Wake Islands
Massachusetts	Northern Mariana Islands
New Hampshire	Puerto Rico
New Mexico	Trust Territories
American Samoa	

☞ A list of names and telephone numbers for each EPA Region and State is located at <http://www.epa.gov/npdes/stormwater> (click on “Contacts”).

***Reference Documents***

☞ EPA’s Stormwater Web Site

<http://www.epa.gov/npdes/stormwater>

- Stormwater Phase II Final Rule Fact Sheet Series
- Stormwater Phase II Final Rule (64 FR 68722)
- National Menu of Best Management Practices for Stormwater Phase II
- Measurable Goals Guidance for Phase II Small MS4s
- Stormwater Case Studies
- And many others