

**NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM (NPDES)
STORM WATER PROGRAM
QUESTIONS AND ANSWERS - VOLUME III**

January 21, 2004

(Amended December 17, 2004)

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A. THE STORM WATER PROGRAM AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AUTHORITY

A1. What is the National Pollutant Discharge Elimination System (NPDES) Storm Water Program?

Polluted storm water runoff is a leading cause of impairment to the nearly 40 percent of surveyed U.S. water bodies which do not meet water quality standards. Over land or via storm sewer systems, polluted runoff is discharged, often untreated, directly into local water bodies. When left uncontrolled, this water pollution can result in the destruction of fish, wildlife, and aquatic life habitats; a loss in aesthetic value; and threats to public health due to contaminated food, drinking water supplies, and recreational waterways.

Mandated by Congress under the Clean Water Act, the NPDES Storm Water Program addresses non-agricultural sources of storm water discharges that adversely affect the quality of our nation's waters. The Program relies upon discharging entities implementing various control measures to prevent harmful pollutants in their storm water runoff from reaching water bodies, as prescribed in storm water permits.

A2. What is required of regulated entities under the NPDES Storm Water Program?

The regulated entities must obtain coverage under an NPDES storm water permit and implement storm water pollution prevention plans (SWPPPs) or storm water management programs (both using best management practices (BMPs)) that effectively reduce or prevent the discharge of pollutants into receiving waters.

A3. What kinds of storm water discharges are required to have NPDES storm water permit coverage?

The NPDES storm water permit regulations, promulgated by EPA, cover the following classes of storm water dischargers on a nationwide basis:

- operators of Municipal Separate Storm Sewer Systems (MS4s) located in “urbanized areas” as delineated by the Bureau of the Census,
- industrial facilities in any of the 11 categories that discharge to an MS4 or to waters of the United States; all categories of industrial activity (except construction) may certify to a condition of “no exposure” if their industrial materials and operations are not exposed to storm water, thus eliminating the need to obtain storm water permit coverage,
- operators of construction activity that disturbs 1 or more acre of land; construction sites less than 1 acre are covered if part of a larger plan of development.

A4. If a discharge enters a separate storm sewer system, where does it go?

Separate storm sewer systems typically discharge directly to a stream, river, or other water body, without treatment.

A5. What is the difference between storm water permitting in States with approved NPDES State permit programs and storm water permitting in those States without NPDES State permit programs?

Federal storm water regulations establish minimum requirements nationwide. The NPDES program is administered by EPA in States without approved programs. A State permitting authority may impose more stringent requirements or decide to expand the scope of its program to meet State priorities.

A6. Which States and Territories administer the storm water program, and where does EPA administer the program?

Most States and the Virgin Islands administer the program throughout most of their jurisdictions. The storm water program is administered through EPA regional offices for the five non-delegated States (Alaska, Idaho, Massachusetts, New Hampshire, New Mexico), the District of Columbia, and all Territories except the Virgin Islands. EPA also administers the NPDES program for entities located in most Indian Country; for Federal facilities in Delaware, Colorado, Vermont, and Washington; for oil and gas activities, agricultural production activities and silvicultural activities in Oklahoma; and oil, gas and geothermal activities in Texas. Regulated entities in NPDES States should contact the appropriate State permitting authority for guidance, application forms, general permits, and other materials.

A7. What is the difference between Phase I and Phase II of the NPDES storm water program?

In the Water Quality Act of 1987, Congress mandated that EPA establish a storm water control program in two phases. Phase I application requirements were published on November 16, 1990, and Phase II regulations were published December 8, 1999.

Phase I regulates storm water discharges from medium and large MS4s, construction activities of 5 acres or larger (or less than 5 acres if part of a common plan of development or sale), and industrial activities.

Phase II extends the regulations to storm water discharges from small MS4s, and construction activities that disturb equal to or greater than 1 acre of land (or less than 1 acre if part of a common plan of development or sale). Phase II also revises the original no exposure provision to be a conditional exclusion applicable to all categories of industrial activity (except construction activity) when there is no exposure of industrial materials and activities to storm water.

A8. How did the Intermodal Surface Transportation Efficiency Act affect Phase I industrial activities?

Provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) temporarily exempted Phase I industrial activities operated by municipalities with populations less than 100,000 people (with the exception of power plants, airports, and uncontrolled sanitary landfills), from the need to obtain a storm water discharge permit. This exemption ended on March 10, 2003, and these operations must now have industrial permit coverage for storm water discharges.

A9. Does Phase II of the storm water program regulate all storm water discharges not regulated under Phase I?

No. Those discharges that are regulated under Phase II of the storm water program include small MS4s in “Urbanized Areas” and construction sites disturbing one to five acres.

A10. Is there a Phase III of the storm water program?

No. However, the storm water program as developed under Phases I and II will continue to bring additional facilities and communities into the program, and will continue to adapt to water quality needs, within the framework of the Phase I and Phase II Rules.

A11. If a permit application deadline arrives, but the permitting authority has not yet finalized an applicable general permit, what should a facility do?

Because the facility is required to apply for a permit, EPA recommends that the operator submit an individual permit application to the permitting authority requesting storm water permit coverage. EPA also recommends, where feasible, that the operator attempt to meet either conditions of the previous general permit or minimal Federal requirements for storm water discharges. These efforts would be seen as “good faith” in the event of 3rd party litigation. The permitting authority most likely will hold the individual permit application until a general permit is issued; at that time the operator may withdraw the individual permit application and submit a Notice of Intent (NOI) for general permit coverage.

A12. Are all storm water discharges to sanitary sewers exempt from storm water permitting requirements? Does this include discharges to combined sewer systems?

Any storm water discharge to a sanitary sewer is exempt from storm water permit application requirements. It may, however, be subject to pretreatment program requirements under Section 307(b) of the CWA, or local sewer use by-laws or ordinance. Storm water discharges to combined sewer systems are also exempt from NPDES storm water permitting but may be subject to pretreatment requirements as well as being subject to requirements that are part of a long term control plan for the combined sewer system. Storm water should never be discharged to a sanitary sewer system without approval of the system operator. States may have programs that are more stringent or inclusive than the Federal requirements.

A13. Can an applicant claim confidentiality on information contained in an NPDES permit application?

No. Under 40 CFR 122.7(b), the permitting authority will deny claims of confidentiality for the name and address of any permit applicant or permittee, permit applications, permits, and effluent data.

A14. What is an NOI? What does submittal of an NOI mean?

A Notice of Intent (NOI) for a General Permit is similar to a permit application, in that it is a request for NPDES coverage, and contains information about the proposed discharge. An NOI differs from a permit application in that it is submitted after the general permit is issued. NOI is EPA's term. Some States use different terms for their applications for general permit coverage.

The NOI serves as the operator's notice to the permitting authority that the operator intends the discharge to have coverage under the General Permit. By signing and submitting the NOI, the operator is certifying that a Storm Water Pollution Prevention Plan (SWPPP) or Storm Water Management Plan (SWMP) has been developed, that the discharge meets all of the conditions specified in the General Permit, and that the operator intends to continue to meet those requirements. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed. Although an NOI is generally much easier to complete, the operator assumes significant responsibility for ensuring that permit coverage for his or her discharge is valid.

Some permitting authorities do not automatically grant permit coverage upon submittal or receipt of the NOI; the operator must wait for confirmation from the permitting authority that permit coverage has been granted. Some permitting authorities grant permit coverage automatically after a stipulated waiting period. Some permitting authorities grant permit coverage immediately upon submittal or receipt of the NOI. Check with your permitting authority for additional guidance.

A15. If storm water goes into a roadside ditch, and is then conveyed to waters of the United States, is it a point source?

Yes, the storm water is a point source by nature of the discharge and because it went into a ditch which is considered a conveyance system. Point sources are pollutants added to waters of the United States through a discernible, confined, and discrete conveyance which could include sheet flow over a graded surface, and could also include runoff from urban areas.

A16. Are the storm water rules found in the Code of Federal Regulations (CFR)?

Yes, 40 CFR is where all environmental rules are located. Storm water is found at 122.26 and 122.30-37.

B. GUIDANCE SOURCES AND MATERIALS

B1. Are there any materials that provide easy to understand information on the storm water regulations?

EPA's storm water website has guidance materials on many different facets of the storm water program: http://cfpub.epa.gov/npdes/home.cfm?program_id=6.

B2. Where do I find guidance on sampling storm water?

Guidance on procedural methods for conducting storm water sampling is provided in the *NPDES Storm Water Sampling Guidance Manual* (EPA 833-B-92-001, July 1992) , which is available at the storm water website.

B3. Where can I find information on storm water compliance?

In addition to EPA's website and many State websites, try these websites:

Storm Water Resource Locator, <http://www.envcap.org/swrl/>

Construction Storm Water Advisor, <http://ecm.ncms.org/stormadvisor/intro.htm>

The Storm Water Managers Center, <http://www.stormwatercenter.net/>

Construction Industry Compliance Assistance Web Site: <http://www.cicacenter.org/>

C. WATERS OF THE U.S.

C1. What types of water bodies are considered Waters of the U.S.?

40 CFR 122.2. Waters of the United States or waters of the U.S. means:

(a) All waters which are currently used, 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;

(b) All interstate waters, including interstate “wetlands;”

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

States generally also define “Waters of the State”. Those definitions may be more extensive than “Waters of the U.S.”, and State permitting authorities may extend NPDES coverage to those additional waters.

C2. Is a storm water discharge directly to an aquifer considered to be to waters of the U.S. for purposes of needing an NPDES permit? What if the discharge reappears in a nearby stream?

If contamination from storm water that entered the aquifer shows up in a nearby stream, it could be considered a discharge to waters of the U.S. due to the hydrologic connection. States also may consider groundwater to be a water of the State, and require a permit for the discharge. Direct injection of storm water into the ground via a well (known as a Class V well) is regulated through the Underground Injection Control (UIC) program. This program mandates protections to underground sources of drinking water. See www.epa.gov/ogwdw000/uic/classv.html.

D. BEST MANAGEMENT PRACTICES (BMPs)

D1. Storm water general permits typically do not include numeric effluent limits. How do BMPs relate to water quality standards?

Under the NPDES storm water program, there is a progression of approaches used to ensure that water quality standards are achieved: 1) setting technology-based standards; 2) defining maximum extent practicable abatement measures and technology (giving the permitting authority flexibility in how to achieve it); 3) establishing performance standards to address problem parameters; and 4) establishing numeric effluent limits. The storm water program utilizes a BMP framework, which is a combination of approaches 1, 2 and 3, because EPA feels that the vast majority of storm water discharges can be adequately controlled to meet water quality standards by managing activities that have the potential to contribute pollutants. As an evaluation of effectiveness, storm water permits, at the discretion of the permitting authority, may include visual inspections, evaluation of environmental indicators or measurable goals, effluent monitoring, or in-stream monitoring.

D2. What is a storm water Best Management Practice (BMP)?

A BMP is a technique, process, activity, or structure used to reduce the pollutant content of a storm water discharge. BMPs include simple nonstructural methods, such as good housekeeping and preventive maintenance. BMPs may also include structural modifications, such as the installation of bioretention measures. BMPs are most effective when used in combination with each other, and customized to meet the specific needs (drainage, materials, activities, etc.) of a given operation. The focus of EPA's general permits is on preventive BMPs, which limit the release of pollutants into storm water discharges. BMPs can also function as treatment controls.

EPA has published guidance materials to assist in the selection of appropriate BMPs in the preparation of storm water pollution prevention plans including: *The National Menu of BMPs for Storm Water Phase II* (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>), *Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices* (www.epa.gov/npdes/pubs/owm0236a.pdf) and *Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-005) (<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm>). Some EPA manuals are also available from the Office of Water Resource Center at (202) 566-1729 (email: center.water-resource@epa.gov). There is also a *National Stormwater BMP Database* with information on BMP effectiveness (<http://www.bmpdatabase.org/>).

E. IMPAIRED WATERS AND TOTAL MAXIMUM DAILY LOADS (TMDLs)

E1. What is a 303(d) list?

Compiled according to section 303(d) of the Clean Water Act, this is a list of all known impaired waters in a State, and is based on water quality assessments conducted by the State and other parties. States update their 303(d) lists every 2 years.

E2. If a waterbody is not on a 303(d) list does that imply that it is not impaired?

Generally, if a waterbody is not on a State's 303(d) list the waterbody is deemed to not be impaired for purposes of permitting. However, the State may simply not have enough information to make a determination if a waterbody is impaired or not. States update their 303(d) lists every 2 years. A previously unlisted waterbody may be added to the list if new information indicates that it is impaired.

E3. How are Total Maximum Daily Loads (TMDLs) developed?

TMDLs are established in accordance with the listing and priority-setting process provided by section 303(d) of the CWA and 40 CFR 130.7. The TMDL is determined through the review of monitoring data and watershed modeling, and information on the assimilative capacity of the waterbody for the pollutant of concern. Allocations are based on knowledge of existing discharges, projected future discharges and growth, and other criteria depending upon the situation. The tools that are used depend upon the complexity of the situation. See <http://www.epa.gov/OWOW/tmdl/decisions/dec2.html> for more information.

E4. When seeking permit coverage is it the permit applicant's responsibility to find out if a water body is impaired, or the responsibility of the permitting authority to inform the applicant of impairment status?

It is the responsibility of a discharger during the process of seeking permit coverage to ascertain if the waterbody into which he/she will discharge is impaired.

E5. How can a prospective permittee find out if a waterbody is impaired or has an approved Total Maximum Daily Load (TMDL)?

This information must be obtained from your State TMDL authority. In States that are the permitting authority, generally the same State environmental agency also develops State 303(d) lists and TMDLs. Many of these States have websites with lists of impaired waterbodies and TMDLs, or with information on who to contact. Your permitting authority can also provide this contact information. For States where EPA is the permitting authority, EPA has developed a website with contact information for the State TMDL authority, <http://cfpub.epa.gov/npdes/stormwater/tmdl.cfm>.

Once you have determined that your receiving water is impaired and/or has an approved TMDL, you may still need clarification from the TMDL authority on how that status affects your discharge, i.e. whether there are additional requirements you must meet. If so, these additional requirements (e.g. wasteload allocation, monitoring) must be incorporated into your Storm Water Pollution Prevention Plan (SWPPP) or your Storm Water Management Plan (SWMP), and implemented accordingly.

E6. What are the permit requirements for meeting a Total Maximum Daily Load (TMDL) wasteload allocation?

Permit requirements for implementing wasteload allocations in approved TMDLs will vary across waterbodies, discharges, and pollutants of concern. A TMDL is essentially a customized water quality improvement plan for an individual waterbody. The solutions (i.e. allocations) can take many different forms - narrative, numeric, specified BMPs - and may be augmented by other special requirements such as monitoring. General permits require that all permitted discharges meet wasteload allocations, but the specifics of those requirements must be obtained from the TMDL authority, and incorporated into the Storm Water Pollution Prevention Plan (SWPPP) or Storm Water Management Plan (SWMP). It is the responsibility of the operator to find out what these requirements are, but the permitting and TMDL authorities will provide assistance upon request.

E7. How can a permittee determine and demonstrate that his/her discharge is meeting the Total Maximum Daily Load (TMDL) requirements?

There are 2 general ways in which a permittee can demonstrate that TMDL allocations are being met: 1) as with any permit requirement, it must be incorporated into the SWPPP or SWMP, be implemented and maintained, and documented by inspections, reports, and/or monitoring, and/or 2) if stipulated in the TMDL, monitoring or other evaluations must be conducted by the permittee, and documented in inspections or reports. If a permittee determines that the discharge is not in compliance with the TMDL allocation, the permittee must improve controls on the discharge and re-evaluate. TMDL authorities may also conduct evaluations of their own, and provide feed-back to dischargers.

E8. If a new discharger wants to discharge to an impaired water for which a Total Maximum Daily Load (TMDL) has not yet been developed, can the discharge be covered by a general permit?

If the discharge does not contain the pollutant for which the waterbody is impaired, the discharge can be authorized under a general permit.

However, if the discharge does contain the pollutant for which the waterbody is impaired, 40 CFR 122.4(i) expressly prohibits the issuance of a permit to a new source or a new discharger, if its discharge will cause or contribute to the violation of water quality standards, unless the operator of the proposed discharge can demonstrate that there are sufficient pollutant load

allocations to allow for the discharge, and that other discharges to the water body are under compliance schedules to bring the water body into compliance with water quality standards.

Permitting authorities have developed different policies for dealing with the situation when these conditions are not attainable. Please check with your permitting authority for additional guidance on this issue.

E9. How should an MS4 deal with a discharge to a water body for which there is a Total Maximum Daily Load (TMDL)?

The TMDL must specify discharge conditions or requirements, generally expressed as a waste load allocation, for all discharges of the pollutant of concern to the relevant water body. The allocation may be numeric or narrative (e.g. specific BMPs), and may take any reasonable form. The MS4 operator must incorporate the stipulated requirements into the storm water management plan, and implement them accordingly. If the TMDL is subsequently revised, the operator must implement the new allocation.

E10. If a Total Maximum Daily Load (TMDL) does not provide an allocation for storm water discharges from existing or new activity can the discharge be authorized under the general permit?

If the pollutant of concern will be present in the discharge, and the TMDL has provided an allocation of zero (0) to this source of storm water, or to storm water in general, then the discharge can not be authorized.

However, many TMDLs have failed to make allocations to storm water discharges for reasons other than the intention to disallow them. In many TMDLs storm water discharges were either over-looked, were not distinguished from nonpoint sources, or were considered too difficult to estimate, and therefore allocations were not articulated. These TMDLs should be revised to include allocations for storm water.

Permitting authorities generally have policies to compensate for TMDLs that fail to provide allocations to storm water. Existing discharges generally can continue to receive authorization (at the discretion of the permitting authority), although the permitting authority may have specific provisions that the operator must meet. The permitting authority can often justify this authorization because the discharge existed at the time the TMDL pollutant load estimates were made, and therefore the discharges were, by default, included in those estimates even if they were not specifically identified. The operator may need to comply with an allocation made generally to the load (nonpoint sources), and should reasonably expect assistance from the TMDL and/or permitting authority(s) in interpreting that allocation and translating it into discharge requirements. The operator is responsible for requesting that assistance prior to submitting the Notice of Intent (NOI). If the TMDL is subsequently revised, the operator must implement the new allocation.

The permitting authority may or may not authorize a new discharge. That authorization is much more difficult to justify, unless there is an allocation to new growth that is not yet used up and can be reasonably applied to a storm water discharge. The operator may apply for an individual permit, understanding that the permitting authority will still have to find an allocation for the discharge, and this may not be feasible. The operator may request that the TMDL be revised, but this process may not be initiated immediately, and could take some time regardless. Check with your permitting authority for additional guidance.

E11. May permitting authorities designate cities for regulation under the MS4 storm water program if a new Total Maximum Daily Load (TMDL) is approved?

Yes. Future TMDLs may trigger additional designations.

F. ENDANGERED SPECIES

F1. What is the definition of harm for endangered species? Where is more information available about this?

The term “harm” includes any act which actually kills or injures fish or wildlife, with emphasis on acts including significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife. Additional information is available from the U.S. Fish and Wildlife Service(USFW): <http://endangered.fws.gov/policies/index.html>.

F2. Are Federal facilities affected by the Endangered Species Act (ESA) requirements in authorized States where permits are issued by the State? How can these include the ESA requirements, which include Federal approval on Federal land?

All Federal facilities are subject to ESA requirements if the facility has a permit obligation, irrespective of who is the permitting authority. Under Section 7 of the ESA, EPA is required to consult with the National Marine Fisheries Service (NMFS) and USFW (the Services) specifically when Federal facility permitting is involved. A memorandum of agreement between EPA and the Services explains that EPA can approve or deny permits based on ESA compliance.

F3. What happens if the USFW or NMFS finds during the 7 day NOI review period for construction projects, that a project is likely to have an impact on an endangered or threatened species?

If one of the Services has reason to believe that a construction project may adversely affect a protected species or habitat, the Service will notify EPA before the end of the 7 day review period. EPA will withhold permit authorization. The hold on the project will be immediately available to the operator on EPA’s electronic NOI website. EPA will also send the operator a letter denying authorization, and explaining how the Service wants to proceed.

The Service may request that the operator initiate a consultation with the Service on an endangered or threatened species or critical habitat. The Service may request to see the project’s Storm Water Pollution Prevention Plan, and/or documentation of the operator’s eligibility certification for endangered and threatened species and critical habitat. When EPA is provided documentation of concurrence by the Service, EPA will authorize storm water permit coverage.

F4. Does the 7 day NOI review period apply to industrial and municipal storm water permitting? Will States be implementing an ESA review period?

Currently the ESA review process applies only to construction activities requesting storm water permit coverage under EPA’s Construction General Permit in locations where EPA is the permitting authority. Similar provisions may be included in future EPA permits. State permitting authorities are not subject to the same “Federal action” requirements with respect to the ESA. Therefore, although construction projects in NPDES-delegated States are still subject

to provisions of the ESA, these provisions are not generally linked to the storm water permitting process.

Some States do have NOI review periods for reasons other than ESA assessments. These review periods are sometimes 30 or 60 days, or until the permitting authority has completed it's NOI review.

F5. What if a storm water BMP, such as a infiltration pond, becomes habitat to endangered species?

There is not yet clear guidance on the issue as to when a specific treatment system becomes critical habitat. Based on the ESA, however, if the BMP is within a designated evolutionary significant unit (ESU) for the listed species, then any harm, whether it be killing or destruction of habitat or conditions that adversely impact recovery of the species, would be considered a "takings" and subject to ESA enforcement.

G. FEDERAL FACILITIES

G1. Do Federal facilities have to go to EPA for their permits in authorized States?

There are only 4 States in which the State has general NPDES authority, but EPA retains permitting authority for Federal facilities: Colorado, Delaware, Vermont and Washington.

G2. Are military bases and other Federal facilities regulated under the NPDES storm water program?

Yes. Federal facilities need to follow the requirements as they apply to their activities. The construction activity permit program, the MS4 permit program, and the industrial permit program all apply to military and other Federal installations.

G3. Army National Guard units have vehicle maintenance facilities. They conduct maintenance on jeeps, hum-vees, etc. Is this an industrial activity? If so, under what category (and SIC code), and under what circumstances would they be considered “industrial?”

This is classified as regulated industrial activity if the shop is categorized by the SIC codes listed in the transportation category of facilities engaged in industrial activity [i.e., SIC codes 40, 41, 42 (except 4221-25) 43, 44, 45 and 5171]. Only the vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning areas (such as truck washing areas) are regulated under the industrial storm water program.

G4. How should military installation construction programs be addressed?

If the military facility has construction activities that will disturb one acre or more, it will need to obtain permit coverage from the appropriate NPDES permitting authority. In addition, if the military installation qualifies as an MS4, it will need to apply and enforce its own erosion and sediment control requirements under the construction minimum measure of its storm water management program.

H. OBTAINING PERMIT COVERAGE FROM EPA

H1. What is the procedure to apply for coverage under EPA's industrial or construction general permits?

Dischargers of storm water associated with industrial activity and discharges from construction activity disturbing 1 or more acres of land, located in areas where EPA is the permitting authority, must submit a Notice of Intent (NOI) to be authorized to discharge under the appropriate EPA general permit. The NOI is a document requesting basic information about the nature of the facility and its storm water discharges, and should be submitted to EPA's NOI Center after the operator has developed a SWPPP and completed all necessary eligibility procedures and certifications. NOIs for construction activities can be submitted electronically. Electronic submittal for industrial activities will be available in early 2004. For more information on permit application procedures see http://cfpub.epa.gov/npdes/home.cfm?program_id=6.

H2. What is the procedure to apply for coverage under EPA's Municipal Separate Storm Sewer System (MS4) permits?

EPA Regions issue their own small MS4 general permits, and issue individual permits to medium and large MS4s. An operator of an MS4 in an area where EPA is the permitting authority should contact the appropriate EPA Regional Office for information on permitting procedures, <http://www.epa.gov/epahome/locate2.htm>.

H3. Will a facility automatically be covered by an EPA general permit upon submittal of a Notice of Intent (NOI)?

For construction activities requesting coverage under EPA's CGP, permit coverage begins seven days after EPA posts the NOI at <http://www.epa.gov/npdes/stormwater/cgp> unless the operator has not been notified that coverage is denied or delayed pending further endangered species determination. For industrial activities requesting coverage under the MSGP, permit coverage begins two days after the NOI is post marked, provided the form is complete and the storm water discharges from the facility are eligible for coverage as established by the permit conditions. For small MS4s requesting coverage under an EPA general permit, the permit will state when permit coverage begins, such as after notice from the permitting authority that review is complete, or after a specified waiting period, unless the MS4 hears otherwise.

H4. Does EPA have a fee for submitting a permit application or NOI?

EPA does not levy general permit fees at this time.

I. PERMITS ISSUED BY STATES

I1. To what extent do State general permit requirements differ from EPA general permit requirements?

All NPDES permits must meet minimum technical and water quality-based requirements of the Clean Water Act (CWA). Permit requirements for authorized NPDES States, however, may vary considerably because of State-specific requirements. Permittees in authorized NPDES States should consult with their permitting authorities regarding particular State conditions.

I2. Do State permitting authorities have a fee for submitting a permit application or NOI?

Many authorized NPDES States levy permitting fees, and should be contacted directly to find out the type (e.g. application; annual) and amount of the fee.

I3. Can an authorized NPDES State adopt a Federal general permit?

Yes. Permitting authorities may adopt an EPA general permit. The State would need to issue the permit following the necessary State and Federal permit issuance procedures.

I4. Can a State adopt an EPA general permit by reference or rule?

No. A permitting authority must issue the permit under its own rules.

I5. Do States have to issue general permits?

No. States may cover all NPDES discharges under individual permits. The permitting authority is obligated to develop a permitting program for all regulated discharges, and may choose how to achieve this.

I6. If my facility is located in an NPDES-authorized State, can EPA issue a permit?

No. The permit must be issued by the State if they are authorized for the applicable part of the NPDES program. In some States, EPA issues certain permits, e.g. for federal facilities and Tribes, while the State issues all other permits.

J. INDIVIDUAL VS GENERAL PERMITS

J1. Do permitting authorities have the option of providing coverage under general permits to facilities that have submitted individual permit applications?

Yes. Permitting authorities may choose to cover facilities that have submitted individual permit applications under general permits. Facilities that are covered by a general permit may petition the permitting authority to be covered under an individual permit by submitting an individual permit application with reasons supporting the request to the permitting authority, pursuant to 40 CFR 122.28(b)(3)(iii).

J2. What are the benefits/drawbacks of pursuing an individual storm water permit instead of a general permit?

An individual storm water permit may be advantageous, because it is designed to reflect a facility's site-specific conditions, whereas general permits are much broader in scope. General permits may be advantageous because regulated facilities know, in advance of submitting their NOI, the requirements of the permit. In addition, coverage under a general permit may be automatic (depending on how the permit is written), whereas the individual permitting process takes longer.

J3. Can a facility that has submitted an individual permit application obtain general permit coverage upon issuance of a general permit in its State?

Yes. An eligible facility may opt for coverage under a general permit by submitting an NOI. Authorized States may require a written request for withdrawal from the individual permit application process.