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Fact Sheet 2.1

Stormwater Phase II Final Rule

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

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

Who Is Affected by the Phase II Small MS4 Program?

The Stormwater Phase II Final Rule applies to operators of *regulated small* municipal separate storm sewer systems (MS4s), which are designated based on the criteria discussed in this fact sheet. In this fact sheet, the definition of an MS4 and the distinction between small, medium, and large MS4s is reviewed. Conditions under which a small MS4 may be designated as a *regulated* small MS4, as well as the conditions for a waiver from the Phase II program requirements, are outlined. This fact sheet also attempts to clarify possible implementation issues related to determining one's status as an operator of a regulated small MS4.

What Is a Municipal Separate Storm Sewer System (MS4)?

What constitutes an MS4 is often misinterpreted and misunderstood. The term MS4 does not solely refer to municipally-owned storm sewer systems, but rather is a term of art with a much broader application that can include, in addition to local jurisdictions, State departments of transportation, universities, local sewer districts, hospitals, military bases, and prisons. An MS4 also is not always just a system of underground pipes – it can include roads with drainage systems, gutters, and ditches. The regulatory definition of an MS4 is provided below.

According to 40 CFR 122.26(b)(8), "***municipal separate storm sewer*** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law)...including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States.

(ii) Designed or used for collecting or conveying stormwater;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

What Is a Small, Medium, or Large MS4?

- EPA's NPDES (National Pollutant Discharge Elimination System) stormwater permitting program labels MS4s as either "small," " medium," or "large" for the purposes of regulation.

- A ***small* MS4** is any MS4 that is not already covered by the Phase I stormwater program. Small MS4s include Federally-owned systems, such as military bases.

- The Phase I stormwater program covers *medium* and *large* MS4s. Phase I MS4s were automatically designated nationwide as ***medium* MS4s** if they were located in an incorporated place or county with a population between 100,000 - 249,999 or as ***large* MS4s** if located in an incorporated place or county with a population of 250,000 or greater. Many MS4s in areas below 100,000 in population, however, have been individually brought into the Phase I program by NPDES permitting authorities. Such already regulated MS4s do not have to develop a Phase II program.

Are All Small MS4s Covered by the Phase II Final Rule?

No. The universe of small MS4s is quite large since it includes every MS4 except for the approximately 900 medium and large MS4s already regulated under the Phase I stormwater program. Only a select sub-set of small MS4s, referred to as ***regulated* small MS4s**, is covered by the Phase II Final Rule, either through automatic nationwide designation or designation on a case-by-case basis by the NPDES permitting authority.

How Is A Small MS4 Designated as a Regulated Small MS4?

A small MS4 can be designated by the permitting authority as a *regulated* small MS4 in one of three ways:

❶ Automatic Nationwide Designation

The Phase II Final Rule requires nationwide coverage of all operators of small MS4s that are located within the boundaries of a Bureau of the Census-defined "urbanized area" (UA) based on the latest decennial Census. Once a small MS4 is designated into the program based on the UA boundaries, it cannot be waived from the program if in a subsequent UA calculation the small MS4 is no longer within the UA boundaries. An automatically designated small MS4 remains regulated unless, or until, it meets the criteria for a waiver.

- ***Urbanized Areas***

> An ***urbanized area* (UA)** is a land area comprising one or more places – central place(s) – and the adjacent densely settled surrounding area – urban fringe – that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile. It is a calculation used by the Bureau of the Census to determine the geographic boundaries of the most heavily developed and dense urban areas.

EPA has developed a set of digitized maps for each urbanized area as defined by the 2000 U.S. Census. These maps are organized by state and are available at http://www.epa.gov/npdes/stormwater/urbanmaps. Additionally, information about urbanized areas is available directly from the U.S. Bureau of the Census at http://www.census.gov/geo/www/ua/uaucbndy.html.

❷ Potential Designation by the NPDES Permitting Authority – Required Evaluation

An operator of small MS4 located outside of a UA may have been designated as a regulated small MS4 if the NPDES permitting authority determined that its discharges cause, or have the potential to cause, an adverse impact on water quality. The Phase II Final Rule required the NPDES permitting authority to develop a set of designation criteria and apply them, *at a minimum*, to all small MS4s located outside of a UA serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile.

- ***Designation Criteria***

EPA recommended that the NPDES permitting authority use a balanced consideration of the following designation criteria on a watershed or other local basis:

- ✔ Discharge to sensitive waters;
- ✔ High population density;
- ✔ High growth or growth potential;
- ✔ Contiguity to a UA;
- ✔ Significant contributor of pollutants to waters of the United States; and
- ✔ Ineffective protection of water quality concerns by other programs.

❸ Potential Designation by the NPDES Permitting Authority – Physically Interconnected

Under the final rule, the NPDES permitting authority was required to designate any small MS4 located outside of a UA that contributes substantially to the pollutant loadings of a *physically interconnected* MS4 regulated by the NPDES stormwater program. The final rule did not set a deadline for designation of small MS4s meeting this criterion.

> ***Physically interconnected*** means that one MS4 is connected to a second MS4 in such a way that it allows for *direct* discharges into the second system.

State and EPA permitting authorities can be contacted to obtain a full list of regulated MS4s, including both automatically designated MS4s and those that were additionally designated.

Are Waivers from the Phase II Permit/Program Requirements Possible?

Yes, two waiver options are available to operators of automatically designated small MS4s if discharges do not cause, or have the potential to cause, water quality impairment.

The first applies where:

(1) the jurisdiction served by the system is less than 1,000 people;

(2) the system is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4; and

(3) if the small MS4 discharges any pollutants identified as a cause of impairment of any water body to which it discharges, stormwater controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

> ***TMDLs*** are water quality assessments that determine the source or sources of pollutants of concern for a particular waterbody, consider the maximum amount of pollutants the waterbody can assimilate, and then allocate to each source a set level of pollutants that it is allowed to discharge (i.e., a "wasteload allocation"). Small MS4s that are not given a wasteload allocation would meet the third criterion above.

The second applies where:

(1) the jurisdiction served by the system is less than 10,000 people;

(2) an evaluation of all waters of the U.S. that receive a discharge from the system shows that stormwater controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or an equivalent analysis; and

(3) it is determined that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.

The NPDES permitting authority is required to periodically review any waivers granted to MS4 operators to determine whether any information required for granting the waiver has changed. Minimally, such a review needs to be conducted once every five years.

Are There Allowances for Phasing-in Permit Coverage?

Yes. Small MS4s serving a jurisdiction with a population under 10,000 can be phased-in for permit coverage, following establishment of a State watershed permitting approach. NPDES permitting authorities that choose this option must establish a schedule to phase-in permit coverage annually for approximately 20 percent of all small MS4s that qualify for such phased-in coverage. Where this option is followed, all regulated small MS4s are required to have permit coverage no later than March 8, 2007.

Can More than One MS4 in the Same Political Jurisdiction Be Automatically Designated?

Yes. Since the final rule provides automatic coverage of all small MS4s within a UA, the result would likely be coverage of several governments and agencies with multiple, perhaps overlapping, jurisdictions. For example, a city that is located within a UA and operates its own small MS4 could be designated alongside the State's department of transportation (DOT) and the county's DOT if the State and county operate roads that are within the borders of the city. All three entities would be responsible for developing a stormwater management program for the portion of their respective MS4s within the city limits. In such a case, the permittees are strongly encouraged to work together to form a unified stormwater management program.

Who Is Responsible if the Small MS4 Operator Lacks the Necessary Legal Authority?

Some regulated small MS4s may lack the necessary legal authority to implement one or more of the required minimum control measures that comprise the Phase II storm water management program. For example, a local government that is a small MS4 operator may be in a State that does not have an enabling statute that allows local regulatory control of construction site runoff into the sewer system. Another example is a State DOT that may not have the legal authority to require and enforce controls on illicit discharges into its system. In these situations the small MS4 is encouraged to work with the neighboring regulated small MS4s. As co-permittees, they could form a shared stormwater management program in which each permittee is responsible for activities that are within their individual legal authorities and abilities.

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
- EPA Urbanized Area Maps: http://www.epa.gov/npdes/stormwater/urbanmaps

☞ Census 2000 Urbanized Area Information
- General Information: http://www.census.gov/geo/www/ua/uaucbndy.html
- Maps: http://www.census.gov/geo/www/maps/ua2kmaps.htm