



Storm Water Phase II Final Rule

An Overview

Storm Water Phase II Final Rule Fact Sheet Series

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Why Is the Phase II Storm Water Program Necessary?

Since the passage of the Clean Water Act (CWA), the quality of our Nation's waters has improved dramatically. Despite this progress, however, degraded waterbodies still exist. According to the 1996 National Water Quality Inventory (Inventory), a biennial summary of State surveys of water quality, approximately 40 percent of surveyed U.S. waterbodies are still impaired by pollution and do not meet water quality standards. A leading source of this impairment is polluted runoff. In fact, according to the Inventory, 13 percent of impaired rivers, 21 percent of impaired lake acres and 45 percent of impaired estuaries are affected by urban/suburban storm water runoff and 6 percent of impaired rivers, 11 percent of impaired lake acres and 11 percent of impaired estuaries are affected by construction site discharges.

Phase I of the U.S. Environmental Protection Agency's (EPA) storm water program was promulgated in 1990 under the CWA. Phase I relies on National Pollutant Discharge Elimination System (NPDES) permit coverage to address storm water runoff from: (1) “medium” and “large” municipal separate storm sewer systems (MS4s) generally serving populations of 100,000 or greater, (2) construction activity disturbing 5 acres of land or greater, and (3) ten categories of industrial activity.

The Storm Water Phase II Final Rule is the next step in EPA's effort to preserve, protect, and improve the Nation's water resources from polluted storm water runoff. The Phase II program expands the Phase I program by requiring additional operators of MS4s in urbanized areas and operators of small construction sites, through the use of NPDES permits, to implement programs and practices to control polluted storm water runoff. See Fact Sheets 2.0 and 3.0 for overviews of the Phase II programs for MS4s and construction activity.

Phase II is intended to further reduce adverse impacts to water quality and aquatic habitat by instituting the use of controls on the unregulated sources of storm water discharges that have the greatest likelihood of causing continued environmental degradation. The environmental problems associated with discharges from MS4s in urbanized areas and discharges resulting from construction activity are outlined below.

MS4s in Urbanized Areas

Storm water discharges from MS4s in urbanized areas are a concern because of the high concentration of pollutants found in these discharges. Concentrated development in urbanized areas substantially increases impervious surfaces, such as city streets, driveways, parking lots, and sidewalks, on which pollutants from concentrated human activities settle and remain until a storm event washes them into nearby storm drains. Common pollutants include pesticides, fertilizers, oils, salt, litter and other debris, and sediment. Another concern is the possible illicit connections of sanitary sewers, which can result in fecal coliform bacteria entering the storm sewer system. Storm water runoff picks up and transports these and other harmful pollutants then discharges them – untreated – to waterways via storm sewer systems. When left uncontrolled, these discharges can result in fish kills, the destruction of spawning and wildlife habitats, a loss in aesthetic value, and contamination of drinking water supplies and recreational waterways that can threaten public health.

Construction Activity

Uncontrolled runoff from construction sites is a water quality concern because of the devastating effects that sedimentation can have on local waterbodies, particularly small streams. Numerous studies have shown that the amount of sediment transported by storm water runoff from construction sites with no controls is significantly greater than from sites with controls. In addition to sediment, construction activities yield pollutants such as pesticides, petroleum products, construction chemicals, solvents, asphalts, and acids that can contaminate storm water runoff. During storms, construction sites may be the source of sediment-laden runoff, which can overwhelm a small stream channel's capacity, resulting in streambed scour, streambank erosion, and destruction of near-stream vegetative cover. Where left uncontrolled, sediment-laden runoff has been shown to result in the loss of in-stream habitats for fish and other aquatic species, an increased difficulty in filtering drinking water, the loss of drinking water reservoir storage capacity, and negative impacts on the navigational capacity of waterways.

Are Municipally Operated Sources Exempted by the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 Affected by the Final Rule?

Provisions within ISTEA temporarily delayed the deadline for Phase I industrial activities (with the exception of power plants, airports, and uncontrolled sanitary landfills) operated by municipalities with populations of less than 100,000 people to obtain an NPDES storm water discharge permit. Congress delayed the permitting deadline for these facilities to allow small municipalities additional time to comply with NPDES requirements. The Phase II Final Rule ended this temporary exemption from permitting and set a deadline of no later than March 10, 2003 for all ISTEA-exempted municipally operated industrial activities to obtain permit coverage.

How Was the Phase II Final Rule Developed?

EPA developed the Phase II Final Rule during extensive consultations with a cross-section of interested stakeholders brought together on a subcommittee chartered under the Federal Advisory Committee Act, and with representatives of small entities participating in an advisory process mandated under the Small Business Regulatory Enforcement Fairness Act. In addition, EPA considered comments submitted by over 500 individuals and organizations during a 90-day public comment period on the proposed rule.

Why Does Part of the Phase II Final Rule Use a Question and Answer Format?

The provisions pertaining to operators of small MS4s are written in a “readable regulation” form that uses the “plain language” method. Questions and answers are used to create more reader-friendly and understandable regulations. The plain language method uses “must” instead of “shall” to indicate a requirement and words like “should,” “could,” or “encourage” to indicate a recommendation or guidance.

Who Is Covered by the Phase II Final Rule?

The final rule “automatically” covers two classes of storm water dischargers on a nationwide basis:

- (1) Operators of small MS4s located in “urbanized areas” as delineated by the Bureau of the Census. A “small” MS4 is any MS4 not already covered by Phase I of the NPDES storm water program. See Fact Sheets 2.1 and 2.2 for more information on small MS4 coverage.
- (2) Operators of small construction activities that disturb equal to or greater than 1 (one) and less than 5 (five) acres of land. See Fact Sheet 3.0 for more information on small construction activity coverage.

Waivers

Permitting authorities may waive “automatically designated” Phase II dischargers if the dischargers meet the necessary criteria. See Fact Sheets 2.1 (small MS4 waivers overview), 3.0 (construction waivers overview) and 3.1 (construction rainfall erosivity waiver) for details.

Phased-in Permit Coverage

Permitting authorities may phase-in permit coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a State watershed permitting approach.

Additional Designations by the Permitting Authority

Small MS4s located outside of urbanized areas, construction activity disturbing less than 1 acre, and any other storm water discharges can be designated for coverage if the NPDES permitting authority or EPA determines that storm water controls are necessary. See Fact Sheet 2.1 for more information on the designation of small MS4s located outside of urbanized areas.

What Does the Phase II Final Rule Require?

Operators of Phase II-designated small MS4s and small construction activity are required to apply for NPDES permit coverage, most likely under a general rather than individual permit, and to implement storm water discharge management controls (known as “best management practices” (BMPs)). Specific requirements for each type of discharge are listed below.

Small MS4s

- A regulated small MS4 operator must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from their MS4 to the “maximum extent practicable,” to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. The rule assumes the use of narrative, rather than numeric, effluent limitations requiring implementation of BMPs.
- The small MS4 storm water management program must include the following six minimum control measures: public education and outreach; public participation/involvement; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping. See Fact Sheets 2.3 through 2.8 for more information on each measure, including BMPs and measurable goals.
- A regulated small MS4 operator must identify its selection of BMPs and measurable goals for each minimum measure in the permit application. The evaluation and assessment of those chosen BMPs and measurable goals must be included in periodic reports to the NPDES permitting authority. See Fact Sheet 2.9 for more information on permitting and reporting.

Small Construction Activity

- The specific requirements for storm water controls on small construction activity will be defined by the NPDES permitting authority on a State-by-State basis.
- EPA expects that the NPDES permitting authorities will use their existing Phase I general permits for large construction activity as a guide for their Phase II permits for small construction activity. If

this occurs, a storm water pollution prevention plan will likely be required for small construction activity. See Fact Sheet 3.0 for more information on potential program requirements and appropriate BMPs for small construction activity.

What Is the Phase II Program Approach?

The Phase II program, based on the use of federally enforceable NPDES permits:

- Encourages the use of general permits;
- Provides flexibility for regulated operators to determine the most appropriate storm water controls;
- Allows for the recognition and inclusion of existing NPDES and non-NPDES storm water programs in Phase II permits;
- Includes public education and participation efforts as primary elements of the small MS4 program;
- Attempts to facilitate and promote watershed planning and to implement the storm water program on a watershed basis; and
- Works toward a unified and comprehensive NPDES storm water program with Phase I of the program.

How Does the Phase II Final Rule Address the Phase I Industrial “No Exposure” Provision?

In addition to establishing a deadline for ISTEAs and designating two new classes of dischargers, the Phase II Final Rule revises the “no exposure” provision originally included in the 1990 regulations for Phase I of the NPDES storm water program. The provision was remanded to EPA for further rulemaking and, subsequently, included in its revised form in the Phase II rule.

Under the Phase II Final Rule, a conditional no exposure exclusion is available to operators of *all* categories of Phase I regulated industrial activity (except category (x) construction activity) who can certify that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. To obtain the no exposure exclusion, written certification must be submitted to the NPDES permitting authority. The final rule includes a *No Exposure Certification* form for use only by operators of industrial activity in areas where EPA is the NPDES permitting authority. See Fact Sheet 4.0 for more information on the conditional no exposure exclusion for industrial activity.

What Is the Phase II Program Implementation “Tool Box?”

EPA is committed to providing tools to facilitate implementation of the final Phase II storm water program in an effective and cost-efficient manner. The “tool box” will include the following components:

- ⇒ Fact Sheets;
- ⇒ Guidance Documents;
- ⇒ Menu of BMPs;
- ⇒ Information Clearinghouse/Web Site;
- ⇒ Training and Outreach Efforts;
- ⇒ Technical Research;
- ⇒ Support for Demonstration Projects; and
- ⇒ Compliance Monitoring/Assistance Tools.

A preliminary working toolbox is available on EPA’s web site at www.epa.gov/owm/sw/toolbox. Three years after publication of the final rule, when the general permits are issued, a fully operational tool box is scheduled to be available.

What Is the Schedule for the Phase II Rule?

- The Phase II Final Rule was published in the *Federal Register* on December 8, 1999 (64 *FR* 68722).
- The Conditional No Exposure Exclusion option is available February 7, 2000, in States where EPA is the permitting authority.
- The NPDES permitting authority will issue general permits for Phase II-designated small MS4s and small construction activity by December 9, 2002.
- Operators of Phase II “automatically” designated regulated small MS4s and small construction activity must obtain permit coverage within 90 days of permit issuance.
- The NPDES permitting authority may phase-in coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a State watershed permitting approach.
- Operators of regulated small MS4s must fully implement their storm water management programs by the end of the first permit term, typically a 5-year period.

For Additional Information

Contacts

- ☞ U.S. EPA Office of Wastewater Management
 - Internet: www.epa.gov/npdes/stormwater
 - Phone: 202-564-9545
- ☞ Your NPDES Permitting Authority. A list of names and telephone numbers for each EPA Region and State is located at: www.epa.gov/npdes/stormwater, then click on "Contacts."

Reference Documents

- ☞ Storm Water Phase II Final Rule Fact Sheet Series
 - Internet: cfpub.epa.gov/npdes/stormwater/swfinal.cfm
- ☞ Storm Water Phase II Final Rule (64 *FR* 68722)
 - Internet: www.epa.gov/npdes/regulations/phase2.pdf