



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Storm Water Enforcement Strategy

FROM: Michael B. Cook, Director
Office of Wastewater Enforcement and Compliance

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TO: Water Management Division Directors
Regions I-X

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Attached is the Storm Water Enforcement Strategy for FY 1994-1995. This strategy incorporates comments received from Regions and States on two draft versions as well as input by an EPA/State Storm Water Workgroup. The Workgroup meeting in February included representatives from Headquarters, three Regions, and two States.

The strategy focuses on getting regulated entities "into the system" by identifying and taking action against Municipal Separate Storm Sewer System (MS4) entities and facilities that have not filed a permit application. While the approach to dealing with the MS4 universe is relatively straightforward, the large remaining number of regulated facilities requires that we utilize different approaches than we have in the past to deal with noncompliance. Some approaches utilize "sweeps" which concentrate activity in a watershed or geographic location. Such activities may be mailings, telephone canvassing or inspections and then publication of these activities in order to give visibility to the program. Regions will also want to review any active judicial cases to determine whether a facility is subject to the storm water regulations, coordinate with municipalities regarding facilities within its jurisdiction, and inquire as to the status of a facility's permit application during routine NPDES inspections. Citizen complaints and contact with local sediment/erosion control programs will also be an important source of information for construction sites.

Three points from the strategy are worth highlighting: 1) Section 308 letters may be used to request the submittal of a NOI/permit application from more than nine addressees nationwide; 2) a storm water discharge need not be observed in order to determine inclusion in the program (but evidence of a conveyance for a discharge must exist), and; 3) failure to apply for a permit is a violation of Section 308, as this section requires reports or other information to carry out Section 402.

Although this strategy was developed for use by EPA Regions, States may want to adopt a similar approach to enforcement. Several Regions have begun compliance/enforcement activities and we need to share information about Regional as well as State activities. The National Storm Water Coordinators' Meeting, scheduled for February 2-4, 1994 in Washington, DC, will be an excellent opportunity to exchange ideas and experiences about the compliance/enforcement issues of the program.

Finally, we want to thank Gerry Levy of Region I for his participation as leader of the Storm Water Workgroup. If you have any questions regarding the strategy, contact David Lyons at (202)-260-8310 or John Lyon at (202)-260-8177.

Attachment

cc: Compliance Branch Chiefs, Regions I-X
Permits Branch Chiefs, Region I-X
Water Branch Chiefs, ORC, Regions I-X
Storm Water Coordinators, Regions I-X

STORM WATER ENFORCEMENT STRATEGY FY 1994-1995

Summary

The goal of this enforcement strategy is: Equitable and consistent enforcement against non-complying priority storm water dischargers used in combination with incentive measures to achieve compliance. Full participation and compliance by the entire regulated community is the long term goal of this strategy, as it is for all the Agency's enforcement strategies. Although this strategy was developed for use by EPA Regions, approved NPDES States may want to adopt a similar approach when developing their enforcement strategy.

Outreach has been the primary mechanism used thus far to achieve compliance. To provide for a nationally coordinated effort, starting in FY 1994, we will increase the use of compliance monitoring and enforcement to obtain compliance. The compliance/enforcement priorities for the program in FY 1994-1995 are identification of and action against: 1) municipal separate storm sewer systems (MS4s) entities that have failed to submit a timely and complete permit application; 2) regulated facilities which failed to apply for a permit and are outside the jurisdiction of a regulated MS4; and 3) regulated facilities which failed to apply for a permit and are within jurisdiction of a regulated MS4.

The way the Agency intends to manage its storm water program is based on three principles: 1) integration of storm water compliance/enforcement activities into NPDES and other media inspection activities; 2) use of publicity to maximize the impact of any enforcement actions; and 3) expediting the Administrative Penalty Order/Administrative Order issuance process. The size of the regulated universe far exceeds that of the traditional NPDES program. Therefore, Regions and States are encouraged to make use of new approaches to enforcement and share information with each other about what works and what doesn't.

This strategy discusses the compliance/enforcement activities to identify non-filers, use of local/State sediment/erosion control programs to manage regulated construction sites, and ways to expedite the issuance of the Administrative Penalty Order and Administrative Order.

STORM WATER ENFORCEMENT STRATEGY FY 1994-1995

I. Storm Water Program Background

A. General

Pollutants in storm water discharges from many sources are largely uncontrolled. The National Water Quality Inventory: 1990 Report to Congress provides a general assessment of water quality based on biennial reports submitted by States as required by Section 305(b) of the Clean Water Act (CWA). The report indicates that approximately 30% of identified cases of water quality impairment are attributable to storm water discharges. States identified a number of major sources of storm water runoff that cause water quality impacts, including separate storm sewer systems, and construction, waste disposal, and resource extraction sites.

The Federal Water Pollution Control Act of 1972 prohibits the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Efforts to improve water quality under the NPDES program traditionally have focused on reducing pollutants in discharges of industrial process wastewater and from municipal sewage treatment plants. Efforts to address storm water discharges under the NPDES program have generally been limited to certain industrial categories with effluent limits for storm water.

In response to the need for comprehensive NPDES requirements for discharges of storm water, Congress amended the CWA in 1987 to require EPA to establish a two-phased NPDES permitting approach to address storm water discharges. To implement these requirements, on November 16, 1990 EPA published initial permit application requirements for certain categories of storm water discharges associated with industrial activity and discharges from municipal separate storm sewer systems (MS4s) located in municipalities with a population of 100,000 or more. Storm water discharge permits will provide a mechanism for monitoring the discharge of pollutant to waters of the United States and for establishing source controls where needed.

The following storm water discharges are covered under Phase I of the program:

- 1) A discharge which has been permitted prior to February 4, 1987¹;
- 2) Storm water discharges associated with industrial activity from 11 industrial categories identified narratively and by Standard Industrial Classification (SIC) codes;
- 3) Discharges from large MS4s (systems serving a population of 250,000 or more) and

¹ EPA has established effluent guideline limitations for storm water discharges for ten subcategories of industrial dischargers: cement manufacturing, mineral mining and processing, feedlots, fertilizer manufacturing, petroleum refining, phosphate manufacturing, steam electric, coal mining, ore mining and dressing, and asphalt. Most of the existing facilities in these subcategories already have a permit which addresses storm water discharges.

medium MS4s (systems serving a population of 100,000 or more but less than 250,000);

- 4) Discharges which are designated by the permitting authority because the discharge contributes to a violation of a water quality standard or is a significant polluter of waters of the United States.

All other storm water discharges fall under Phase II of the program. A September 1992 Federal Register Notice was issued requesting comments on what Phase II sources should be selected as priorities, how to control sources, and when the Phase II program should be implemented.

B. Permits for Municipal Separate Storm Sewer Systems (MS4)

A municipal separate storm sewer system (MS4) is defined as any conveyance or system of conveyances that is owned or operated by a State or local government entity designed for collecting and conveying storm water which is not part of a Publically Owned Treatment Works (POTW). As of November 1993, approximately 790 MS4 entities have been identified as having to apply for a permit. Nationwide, there will be approximately 265 permits to address the MS4 universe since some permits will cover more than one permittee. The regulations do not apply to discharges from combined sewer systems or small MS4s² (serving a population under 100,000).

Part 2 permit applications for large MS4s were to be submitted by November 16, 1992 and by May 17, 1993 for medium MS4s. Permits are to be issued one year from the Part 2 permit application date. In non-approved NPDES States, Regions process the applications. The statute stipulates that the permits must: 1) effectively prohibit non-storm water discharges into storm sewers; and 2) require controls to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP), including compliance with water quality standards.

MS4 permittees will also have responsibility for establishing and administering storm water management programs to control discharges (including discharges associated with industrial activity from regulated facilities), prohibiting illicit discharges, requiring compliance, and carrying out inspections, surveillance, and monitoring. EPA promulgated regulations on November 16, 1990 requiring MS4 permittees to submit an annual status report by the anniversary of the date of the issuance of the permit to reflect the development of their storm water management program. The reports will be used by the permitting authority to aid in evaluating compliance with permit conditions and where necessary, to modify the permit to address changed conditions. The annual report will contain at least the following information: the status of implementing the components of the program that are established as permit conditions; proposed changes to the program; revisions to the assessment of controls and fiscal analysis; summary of data, including monitoring data, accumulated throughout the year; annual expenditures and budget for the upcoming year; a summary describing the number and nature of enforcement actions, inspections, and public education programs; and identification of water quality improvements or degradation.

² Some small MS4 entities have been designated as storm water permittees either individually or as co-permittees.

C. Facility Permits for Storm Water Discharges Associated with Industrial Activity

The term 'storm water discharge associated with industrial activity' is defined as the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Eleven categories of facilities that have a point source storm water discharge associated with industrial activity discharging to waters of the US must apply for coverage. (Attachment A) The application deadline for most-permit applications was October 1, 1992. Facilities that discharge into a small, medium, or large MS4 are considered direct dischargers and are also required to submit signed copies of the permit application to the operator of the MS4. Discharges of storm water to a combined sewer system or POTW are excluded.

The NPDES regulatory scheme provided three potential routes for facilities to apply for permit coverage for storm water discharges associated with industrial activity:

- 1) Individual Permit- applications for these permits are processed in the Regions for non-approved NPDES States;
- 2) Group Application- provided an alternative mechanism for groups with a sufficiently similar discharge to apply for permit coverage; to date, 750 group applications have been submitted to Headquarters representing 40,000 facilities in 31 industrial sectors; a separate general permit to cover facilities in the non-approved NPDES States will be issued by EPA.
- 3) General Permit- intended to initially cover the majority of storm water discharges associated with industrial activity in non-approved NPDES States; approximately 60,000 facilities have submitted a Notice Of Intent (NOI) to be covered under general permits issued by NPDES States and approximately 25,000 facilities have submitted NOIs to be covered in the non-approved NPDES States; facilities submit an NOI to an EPA contractor for processing to obtain coverage under the federal general permit.

General permits, at a minimum, require development of a storm water pollution prevention plan (SWPPP) to reduce pollutant loadings at a facility's site and an annual compliance evaluation of the SWPPP. Facilities were required to prepare their SWPPP by April 1, 1993 and implement it by October 1, 1993. Certain facilities are required to monitor storm water discharges semi-annually and report annually while others are required to monitor annually but not submit a discharge monitoring report (DMR). It is estimated that 3,800 facilities in the 12 non-approved NPDES States and 12,000 facilities in approved NPDES States are required to monitor.

D. Facility Permits for Storm Water Discharges From Construction Sites

A subset of regulated facilities is construction sites for which a separate general permit has been issued. The NOI requires certification that a SWPPP has been prepared for the site, and such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits.

Owner/Operators of regulated construction sites (disturbances over 5 acres) were required to obtain coverage under an individual or general permit by October 1, 1992 where disturbances

commenced before October 1, 1992. For disturbances commencing after October 1, 1992, an owner/operator is required to apply for general permit coverage at least 48 hours prior to the start of construction activities or 90 days prior to the start of construction activities for coverage under an individual permit.

II. Compliance Activities and Program Priorities

A. General

Fundamental to the storm water program is the filing of a permit application, as failure to do so allows a facility or MS4 entity to escape regulatory scrutiny. Therefore, the compliance/enforcement priorities in the early stages of the storm water program--through FY 1994-1995--are the identification of:

- 1) MS4s that have failed to submit a timely or complete Part 2 permit application (or Part 1 application for MS4s that are designated at a future date);
- 2) regulated facilities that have failed to apply for a permit and are outside of the jurisdiction of a regulated MS4, and;
- 3) regulated facilities that have failed to apply for a permit and are within the jurisdiction of a regulated MS4.

Review of DMRs, SWPPP's, and other permit requirements for every facility is not a high priority activity for FY 1994 and 1995. However, there may be circumstances under which Regions and States will want to closely monitor a facility's compliance with the storm water permit and to take action for failure to comply with that permit. Usually, this would be a case where non-compliance is contributing to an environmental problem.

Given the level of funding available for storm water enforcement, we will need to be efficient and innovative in our monitoring and enforcement approaches. To that end, every effort should be made to integrate storm water compliance activities into existing programs within and outside of the NPDES program.

The goal for FY 1994 and again in 1995 is that each Region undertake at least one "sweep" in each year to identify and enforce against regulated facilities that have failed to apply for a permit. The goal of this effort is to persuade other non-filers to voluntarily submit permit applications as well as to solve environmental problems. The Regional approach should be described in a Storm Water Work Plan. This Storm Water Work Plan can be incorporated in the Strategic Plan to be submitted by each Region for FY 1994.

The Regional sweep might target high priority watersheds, geographic locations, or a category of facilities to identify non-filers. The decision of which specific areas to target and the type and scope of activity is left to the Regions, although some preference should be given to addressing storm water problems in high priority watersheds. Where all the States in a Region have approved NPDES programs, the Region should work with at least one State to conduct a storm water effort in that Region.

As with other new programs, it is important to look for and widely publicize signature enforcement cases in the early stages of the program. The use of a "sweep"—whether one particular activity or combination of suggested activities—offers an excellent opportunity for publicizing the Agency's and States' enforcement efforts in the area of storm water.

This strategy does not address the issue of data collection and maintenance. However, a long term goal of the enforcement program will be development of an inventory of entities regulated by the program. The Compliance Information and Evaluation Branch has completed a Draft Feasibility Study which will be sent to the Regions for review. The proposed system solution is continued use of PCS to track the storm water inventory.

One final component of the strategy is to provide positive incentives for compliance to compliment the enforcement program. There already exists a National Storm Water Awards Program to recognize MS4 entities and facilities with industrial activity that are responsibly addressing their storm water obligations. The Regions and States might consider adopting such programs at their levels as well. In addition, Regions and States should continue to take every opportunity to explain the requirements of the storm water program to the regulated community.

B. Municipal Storm Sewer Systems

Part 2 applications for large MS4s were required to be submitted by November 16, 1992 and for medium MS4s by May 17, 1993. Regions should be monitoring the MS4s for compliance with the appropriate deadline. Where the entity responsible for submission of an MS4 application has not complied with a deadline, the Region should address this noncompliance as a top enforcement priority in the storm water program. Regions may begin with an informal action but should escalate to formal action if compliance is not achieved within 90 days.

To date, no MS4 permits in non-approved NPDES States have been issued. It is anticipated that compliance monitoring of these permits will be more difficult than traditional NPDES permits due to the newness of the storm water program in general, uniqueness of each MS4 permittee's approach to storm water management and lack of easily evaluated quantitative requirements of the permit. Because of these difficult implementation issues, Regional compliance/enforcement staff are encouraged to work with the permit staff to ensure the enforceability of the MS4 permits.

Annual reports submitted by MS4s should provide the permitting authority information on successes, failures and extent of enforcement activities. It is recognized that some MS4s are in the process—and may be for some time—of developing the legal authority to implement a local enforcement program for storm water discharges from facilities. Assessing compliance with MS4 permits will be left for FY 1995 and beyond. However, it is suggested that where deficiencies are identified in the annual report that will take over one year to correct, a timetable for correction be embodied in an enforceable schedule. Discretion is left to the Regions as to whether to address these problems in FY 1994-1995.

C. Facilities with Storm Water Discharges Associated with Industrial Activity

Outreach activities by the Headquarters Permits Division and Regions have been the primary method of encouraging facilities to comply with the permit application process and permit requirements in the non-approved NPDES States. Examples of ongoing outreach activities in Regions and States include: Storm Water Workshops conducted in coordination with or conducted

via trade organizations; Mailings of Fact Sheets, General Permit, and/or Guidance Documents followed up with phone calls or visits to the site; and the EPA National Storm Water HOTLINE.

After the first quarter of FY 1994, compliance and enforcement staff should increase their focus on locating regulated facilities that have failed to file a permit application/NOI and that are outside of the jurisdiction of a regulated MS4. To the extent possible, the Regions should integrate these efforts with other NPDES compliance activities and multi-media program operations.

There are several information sources that can be used to develop a list of facilities that are potentially subject to the regulations. Some sources are:

- Toxics Release Inventory to identify SARA Title III facilities;
- State Department of Labor databases;
- State industrial records;
- Lists of NPDES or other environmental regulatory program permittees;
- Telephone books;
- Municipal pretreatment records;
- Trade Association membership lists;
- Job Service/Employment Service listings; and
- Local authorities which issue buildings permits.

EPA Headquarters provides a list of NOI submittals for non-approved NPDES States on a monthly basis to the Regions and has an inclusive list of facilities that participated in the group application process. The group application list identifies both current participants (40,000 facilities), as well as facilities that are no longer using the group application mechanism (25,000 facilities). The group application list will be available when the general permit becomes final. Data from the NOI list and group application list can be compared to that of a compiled list of facilities that potentially are subject to the regulations from the above mentioned information sources.

The Regions should consider for FY 1994 and 1995, the activities below to identify facilities that have failed to comply with the permit application process and should publicize compliance and enforcement actions after they have been concluded to give visibility to the storm water enforcement program.

Mailings: If EPA has reason to believe that a regulated facility has failed to apply for a permit (for example, a regulated industry's name does not appear on any permit application list) a Section 308 letter can be sent to the facility along with a Fact Sheet and NOI/permit application. The letter should state that the permit application be filled out by a date certain if the regulations apply.³ If a facility responds indicating that there is no point source discharge and therefore not

³ A Section 308 letter requesting that more than nine addressees nationwide fill out anything other than a NOI/permit application form may require approval from OMB per requirements of the Paperwork Reduction Act (PRA). For example, EPA cannot request a certification of non-applicability' from more than nine addressees nationwide. These

subject to the regulations, that information should be confirmed at a later date in a site inspection.

Judicial Case Review: Municipal⁴ and non-municipal judicial cases that are active or are being developed for non-storm water NPDES violations should be reviewed to determine whether or not the facility needs a NPDES permit for storm water discharges and if so, whether or not a permit application has been submitted. If it is determined that the facility failed to file an application the the complaint can be amended to include 'failure to apply for a permit' or 'discharge without a permit'. The decision to amend the existing complaint or issue a separate AO requiring compliance or APO should be made on a case-by-case basis. However, considering these facilities are familiar with EPA regulatory programs, amending an existing complaint may be appropriate action.

Telephone Canvassing: Phone calls to facilities potentially subject to the regulations explaining the storm water program with questions to determine inclusion in the program or as a follow-up to a mailing strategy can be made⁵. Information request letters can then be sent based on the facility's response.

Field Inspections: For purposes of identifying facilities that have failed to apply for a storm water permit, Regions may choose to focus their inspection activity within watersheds, or in areas with water quality-related problems due in part to storm water sources. If a facility has applied for a permit, the inspector should request to see the SWPPP to verify its existence and implementation.

NPDES compliance inspections/Multi-media inspections: To the extent possible, NPDES inspectors or inspectors from other media should complete a storm water screening checklist while in the field to verify whether the facility is covered by storm water requirements. The storm water

restrictions do not apply if the PRA enforcement exception applies. Also, the OMB control number for NPDES permit applications is 2040-0086 (expiration date August 31, 1995) and should be displayed on Section 308 letters requesting submittal of a storm water permit application.

⁴ Category (ix) of facilities which must submit applications for storm water permits: Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA.

⁵ Telephone surveys are subject to the same OMB/PRA approval as Section 308 letters. Questions requiring more than nine surveyees nationwide provide more information than what is necessary to fill out an NOI/permit application may require approval.

checklist in the multi-media screening inspections can be used for this purpose. NPDES program staff may conduct an in-depth storm water evaluation while they are at the facility for other purposes.

Routine Enforcement Contact: When meeting with a facility for other enforcement issues, Compliance Officers can inquire as to the status of the facility's compliance with the storm water regulations. A field inspector can make inquiries without going through a detailed checklist of the need for a permit or compliance with the permit. If it is determined that a facility should obtain storm water coverage or is not complying with a permit (for example, the facility has not developed a SWPPP) enforcement should proceed on a case-by-case basis.

Municipal Coordination: The Part 1 permit application required an MS4 entity to provide the location and NPDES permit number of any known discharges to the storm sewer system (40 CFR 122.26.d.1.iii.B.(4)). Also, the Part 2 permit application required an MS4 entity to provide an inventory, organized by watershed, of the name, address and description (such as SIC code) of the principal products or services provided by each facility which may discharge storm water associated with industrial activity to the system (40 CFR 122.26.d.2.ii).

All facilities with discharges of storm water associated with industrial activity through an MS4 will be subject to local ordinances implementing management programs, as well as to the terms of a federal permit. The list of facilities discharging into an MS4 can be matched with a list of NOIs/permit applications received to verify compliance with the application process. Although the MS4 entity does not have authority to enforce the federal permit application requirements or federal permit, compliance and enforcement activities of the local program will be done by the MS4 entity. However, it should be noted that the MS4 entity may not be able to enforce its own program for some time because it presently lacks necessary local legal authority or—in the case of medium size municipalities—the permit will not be effective until May 17, 1994.

An MS4 entity can refer a case of a facility that has failed to apply for a federal permit or suspected non-compliance with a federal permit to EPA. Although compliance and enforcement efforts for this group of facilities is not top priority, the Region may want to include them for targeted activities but, should coordinate activities with the municipality to avoid duplication of efforts.

D. Construction Sites

The construction industry in general is regulated at the State and local level. A May 1990 Survey by the Maryland Department of Environmental Resources (Attachment B) indicates that thirteen States have mandatory sediment/erosion control programs or storm water management programs, two States have programs for portions of the State, and an additional nine States have developed guidance for local government use. Most large municipalities, which will eventually include all medium and large MS4s, have some type of sediment/erosion and storm water control program. The general approach, then, for construction sites will be to defer to local or State agencies where there are effective and equivalent programs in place.

Generally, construction sites are highly visible, capital intensive operations that have a high potential for environmental degradation. Because of their high visibility, citizen complaints can be expected more than with other types of industrial activities and are useful as a source for

identifying potential violators. Regions should either refer complaints to local programs or follow up directly. Where State or effective local programs do not exist, Regions should prioritize unpermitted construction sites the same way as other regulated facilities. Again, failure to comply with permit requirements should be addressed at the Regions' discretion during FY 1994-1995.

III. Enforcement Approach

A. Establishment of a Violation

Two criteria must be met for a facility to be subject to the storm water regulations: 1) the industrial activity at a facility must be described (usually by SIC code) in 40 CFR 122.26 of the regulations; and 2) the facility must have a point source discharge to waters of the United States either directly or through a separate storm sewer system. The question of whether a storm water discharge must be observed by an inspector to determine inclusion in the program has been raised. The Office of Enforcement has advised that a facility's inclusion in the program is not dependant on whether a discharge from a point source has been observed. Section 502 of the CWA defines any point source to be 'any discernable, confined, and discrete conveyance . . . from which pollutants are or may be discharged'. Therefore, an actual discharge need not be observed but there must be evidence of some conveyance for pollutants when a storm event occurs.

A second question frequently raised is: How to cite 'failure to apply for a permit' as a violation? Section 308 of the CWA requires an owner/operator of a point source to 'make such reports or provide such information' the administrator requires to carry out Section 402 or any requirement established under Section 402. The permit application regulations were promulgated pursuant to both Sections 308 and 402 and thus the permit application is considered information required to implement Section 402 of the Clean Water Act. Since the permit application regulations have been published in the November 16, 1990 Federal Register, any regulated facility that failed to submit a permit application is automatically in violation of Section 308. Wording of any notice of violation, AO, or APO should therefore cite 'failure to apply for a permit' as a violation of Section 308.

As an alternative to a violation of Section 308, a facility can be in violation of Section 301 for 'discharge without a permit' providing there is evidence of a conveyance for pollutants from the industrial activity areas of the facility and an actual discharge (i.e., a precipitation event causing a discharge) has occurred.

B. Overall Strategy

As indicated earlier in this strategy, the enforcement priorities for the storm water program for FY 1994 and 1995 are to address MS4s that have not applied for a storm water permit on a timely basis, and to identify and enforce, as necessary, where facilities with industrial activity have failed to apply for a permit—with priority given to facilities outside the jurisdiction of a regulated MS4. The level of activity with regard to the assessment of compliance with existing permits will be left to the discretion of the Region.

As a strategy for addressing industrial facilities which have failed to apply for a permit as required, each Region is asked to undertake some activity annually in 1994 and again in 1995.

The purpose of any activity is twofold--to address environmental problems and to serve as a vehicle for publicizing EPA's commitment to enforcing storm water requirements, thus creating a deterrent to noncompliance. The design and scope of activities is left to the discretion of the Region. It could be organized on a watershed basis or it might address a category of facilities which is of concern. Whatever the design, it should be significant enough to serve as a vehicle for publicizing Regional activity in the storm water area through such means as a press release, press briefing, trade press publications or other means the Region may choose.

As a general rule, the Enforcement Management System establishes the principle of escalation of enforcement response for continuing, uncorrected noncompliance. This storm water strategy, in fact, recommends beginning with informal enforcement and escalating the severity of the response when an MS4 entity fails to submit complete permit applications on a timely basis. However, because of the limited resources available to address regulated facilities, one of the principles on which this strategy is built is that the maximum possible deterrent effect be achieved with any single enforcement action. For that reason, this strategy recommends, but does not require, the use of penalties as a sanction when a facility has failed to apply for a permit. Of course, any enforcement action that is initiated should take into account the circumstances surrounding the violation, for equitable treatment of violators. During this initial phase of the storm water enforcement program, when any facility submits a permit application voluntarily, without having EPA invest resources to find the facility, the Regions may choose to forego or reduce penalties on a case-by-case basis, thereby providing an incentive to other facilities to comply with permit application requirements.

C. Expedited APOs

Field citations⁶ are currently being utilized by other environmental programs on the Federal, State, and local levels and are useful in addressing many prevalent, clear-cut violations that are relatively easy to correct. While the Water Program does not currently have field citation authority, the basic administrative compliance and penalty order authorities can be used in more efficient ways.

There are several ways to make the APO more efficient--to expedite the APO:

1) issue APOs for facilities with the same violation at approximately the same time so that a single 30-day public notice can be used⁷; 2) issue a complaint and a proposed consent order at the same time; and 3) standardize penalty amounts to be assessed, based on the economic benefit for 'failure to submit a permit application', to avoid recalculation for each facility⁸. Existing

⁶ 'Field citation' as used in this strategy is an APO issued in the field unencumbered by a 30-day public notice period. For this strategy, the term 'Expedited APO' will be used. Reauthorization of the CWA may include Field Citation authority.

⁷ When the administrative penalty complaint is first issued, an administrative record should be simultaneously opened at the Regional Office pursuant to proposed 40 CFR Section 28.16.

⁸ Headquarters may develop a matrix which could be used to determine the economic benefit and gravity component of the penalty using a small, medium, and large facility. In the interim, no

delegations of authority limit the issuance of APOs to the Branch Chief level. As a result, inspectors cannot be authorized to issue APOs until that delegation is changed. There are, however, other ways to speed up the APO and AO issuance process. These might include: faxing of violation paperwork to the office by the inspector for required signatures or phoning-in of violations by inspectors for immediate penalty issuance from the office. A combination of one or more of the above approaches should result in a less resource intensive, more efficient penalty issuance process.

Attached for your information is a copy of a public notice used by one Region to cover multiple violating facilities, as well as the simultaneous issuance of a complaint and a proposed consent decree. (Attachment C) A letter to the complainant would specify that the consent order will become final after signature by both parties without further agency action, if no public comments are received. The letter would explain the administrative process, the requirement to publish the proposed order for public comment, and the respondent's right within 30 days to either return the signed consent order with payment or request a hearing.

If the respondent agrees to pay the penalty and submits a check before the consent order can be signed by EPA, EPA can hold the respondent's penalty payment check. Where not prohibited by state law, the check should be postdated to 45 days after the date of issuance of the complaint to allow time for publication of the public notice requesting comments within 30 days. If no public comments are received, the proposed order would become final after agency signature and EPA would process the penalty payment. If comments are received, the Regional Administrator or designee would follow established Agency procedures for resolving public comments. If the respondent chooses to contest the initial complaint, EPA would adjudicate the matter under the hearing procedures.

IV. Allocation of Responsibilities

The list below provides a summary of ongoing and future activities to implement this strategy.

Headquarters Permits Division

Continue Storm Water HOTLINE

Continue monthly updates of NOI submissions to the Regions (ongoing)

Provide Regions a list of group applicants, current as well as original participants (upon final approval of the general permit)

Headquarters Enforcement Support Branch

Update the storm water component of NPDES inspector guidance and training (ongoing)

Develop guidance on storm water data elements and reporting requirements for Regions and States (mid FY 1994)

settlement should normally be less than \$500 for failure to submit an application and the proposed assessment should routinely be \$1000 or more, taking into account economic benefit and gravity

Act as a clearinghouse for success/failure of approaches to enforcement/compliance issues of the storm water program (ongoing)
Pursue streamlining efforts of the APO process such as delegation of authority below DD level

Headquarters Compliance Information Branch

Finalize the Storm Water Feasibility Study Mission Needs Analysis to develop a storm water tracking system (mid FY 1994)

Regions

Continue outreach efforts

Review MS4 Permits for enforceability

Follow-up on late or incomplete MS4 permit applications

Investigate local programs that manage storm water discharges from construction sites

Undertake one sweep in FY 1994 and again in FY 1995 to identify regulated facilities that have failed to apply for a permit

**Industrial Facilities That Must Submit Applications
for Storm Water Permits (Phase D)**

40 CFR 122.26(b)(14) Subpart	Description
(i)	Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutants effluent standards under 40 CFR, Subchapter N (except facilities which are exempt under category (ii)).
(ii)	<p>Facilities classified as:</p> <p>SIC 24 (except 2434) Lumber and Wood Products SIC 26 (except 266 and 267) . . . Paper and Allied Products SIC 28 (except 280 and 285) . . . Chemicals and Allied Products SIC 29 Petroleum and Coal Products SIC 311 Leather Tanning and Finishing SIC 32 (except 323) Stone, Clay and Glass Products SIC 33 Primary Metal Industries SIC 3441 Fabricated Structural Metal SIC 373 Ship and Boat Building and Repairing</p>
(iii)	<p>Facilities classified as SIC 10 through 14, including active or inactive mining operations and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations.</p> <p>SIC 10 Metal Mining SIC 11 Anthracite Mining SIC 12 Coal Mining SIC 13 Oil and Gas Extraction SIC 14 Nonmetallic Minerals, except Fuels</p>
(iv)	Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA).
(v)	Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under subtitle D or RCRA.
(vi)	<p>Facilities involved in the recycling of material, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as:</p> <p>SIC 5815 Motor Vehicle Parts, Used SIC 5899 Scrap and Waste Materials</p>
(vii)	Steam electric power generating facilities, including coal handling sites.
(viii)	<p>Transportation facilities which have vehicle maintenance shops, equipment cleaning operations, or airport de-icing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport de-icing operations, or which are otherwise listed in another category, are included.</p> <p>SIC 40 Railroad Transportation SIC 41 Local and Suburban Transit SIC 42 (except 4231-25) Motor Freight and Warehousing SIC 43 U.S. Postal Service SIC 44 Water Transportation SIC 45 Transportation by Air SIC 5171 Petroleum Bulk Stations and Terminals</p>

ATTACHMENT B

1990 Survey of State Stormwater (SW) Management and Sediment Control (SC) Programs¹

State	State Program?	Comments
Alabama	No	Issues handled by local governments.
Alaska	No	2 cities awaiting EPA regulations revisions.
Arizona	No	Issues handled by local governments.
Arkansas	No	May consider after EPA regulations revision.
California	No	Issues handled by local governments.
Colorado	No	Has an optional SW model for local governments.
Connecticut	Yes, SC No, SW	Has statewide SC program, through Soil Water Conservation Council. Has no SW program.
Delaware	Yes, SC No, SW	Has statewide SC program, through SC districts. Also has proposed legislation to adopt state SW program.
District of Columbia	Yes, SC Yes, SW	Has district wide SW/SC programs, implemented by the Department of Consumer and Regulatory Affairs.
Florida	No, SC Yes, SW	Has statewide SW program, implemented by the Department of Environmental Regulation.
Georgia	Yes, SC No, SW	Has statewide SC program implemented by the Department of Natural Resources.
Hawaii	No	No state SW/SC programs.
Idaho	No	No state SW/SC programs, but has statutes on protecting outstanding resource waters.
Illinois	No	Issues handled by local governments.
Indiana	No	Issues handled by local governments.
Iowa	No	No state SW/SC programs.
Kansas	No	State advises local governments when requested.
Kentucky	No	Some counties have SC programs under Soil Conservation Districts. Awaiting EPA regulations revision to strengthen SW program.
Louisiana	No	Some local governments have SW programs. Large scale projects can be funded via Flood Control Program.
Maine	No	Legislation for SC efforts is expected in January 1991. A State SW municipal policy is also being drafted.

¹ Adapted from a May 1990 survey conducted by the Comprehensive Unit of the University of Wisconsin.

State	State Program?	Comments
Maryland	Yes, SC Yes, SM	Has statewide SM/SC programs, implemented by the Department of Environment.
Massachusetts	No	Some local governments have SM programs.
Michigan	Yes, SC No, SM	Has state SC program, implemented by Department of Natural Resources. Awaiting EPA regulations revision to strengthen SM regulations.
Minnesota	No	Has strong SM program for Minneapolis-St. Paul area and some counties. Has optional SC program.
Mississippi	No	No state SM/SC program.
Missouri	No	State encourages local governments to adopt SC ordinances. State is waiting new EPA regulations revision for SM regulations.
Montana	No	Some local governments have SM programs. SC activities are under the State Nonpoint Source Pollution Abatement program.
Nebraska	Yes, SC No, SM	Has statewide SC program implemented by several state agencies. Program essentially applies to agriculture activities but local government adopted program must be in conformance with state.
Nevada	No	No state SM/SC program.
New Hampshire	Yes, SC Yes, SM	Single state program combines both SM/SC. However, law only subject to developments over 100,000 sq. ft.
New Jersey	Yes, SC Yes, SM	Statewide SM program is connected to funding availability. State sets standards for SC programs.
New Mexico	No	No state SM/SC programs.
New York	No	Has a SM/SC Policy Statement. Intervention is triggered only when certain permits (sewerage, industrial plants, etc) are required.
North Carolina	Yes, SC Yes, SM	Has statewide SC program. Has a phased-in SM program which is mandatory for coastal regions and watersheds with water quality standards for water supply. Bill pending for statewide program.
North Dakota	No	No state SM/SC program.
Ohio	No	Has optional state SC program. A state SM program is anticipated after EPA regulations revision.
Oklahoma	No	No state SM/SC program.
Oregon	No	Has a combined state SM/SC program but it only covers a portion of the state.
Pennsylvania	Yes, SM Yes, SC	Has statewide SM/SC programs implemented by the Department of Environmental Resources.

ATTACHMENT 6

State	State Program?	Comments
Rhode Island	No	Has optional state SC program. Has no state SM program, but has issued SM manual for guidance.
South Carolina	No	Has optional state SC program. Has no state SM program.
South Dakota	No	No state SM/SC programs.
Tennessee	No	Some local governments have SC programs. State awaiting EPA regulation revision to strengthen SM program.
Texas	No	State provides legislation to form Conservation Districts to handle SC concerns.
Utah	No	No state SM/SC programs.
Vermont	No	Has optional state SM/SC programs.
Virginia	No, SM Yes, SC	Has statewide SC program, implemented by Department of Conservation and Recreation. The state SM program is optional for local governments but mandatory for state projects.
Washington	No	Has state SM/SC program for the Puget Sound area. Aiming for statewide SM/SC legislation after 1991.
West Virginia	No	Has optional state SC program. Some local governments have own SM program. State is seeking mandatory SC legislation.
Wisconsin	No	Has optional state SM/SC programs.
Wyoming	No	No state SM/SC programs.

DATE OF NOTICE: [_____]

PUBLIC NOTICE NUMBER: [_____]

COMMENT PERIOD OPEN UNTIL: [_____]

ACTION: NOTICE OF PROPOSED ASSESSMENT OF CLEAN WATER ACT SECTION 309(G) CLASS I ADMINISTRATIVE PENALTY AND OPPORTUNITY TO COMMENT

EPA IS AUTHORIZED UNDER SECTION 309(G) OF THE CLEAN WATER ACT, 33 U.S.C. §1319(G), TO ASSESS A CIVIL PENALTY AFTER PROVIDING THE PERSON SUBJECT TO THE PENALTY NOTICE OF THE PROPOSED PENALTY AND THE OPPORTUNITY FOR A HEARING, AND AFTER PROVIDING INTERESTED PERSONS PUBLIC NOTICE OF THE PROPOSED PENALTY AND A REASONABLE OPPORTUNITY TO COMMENT ON ITS ISSUANCE. UNDER SECTION 309(G), ANY PERSON WHO WITHOUT AUTHORIZATION DISCHARGES A POLLUTANT TO A NAVIGABLE WATER, > THOSE TERMS ARE DEFINED IN SECTION 302 OF THE ACT, 33 U.S.C. §1362, MAY BE ADMINISTRATIVELY ASSESSED A CIVIL PENALTY OF UP TO \$25,000 BY EPA. CLASS I PROCEEDINGS FOR SECTION 309(G) OF THE CLEAN WATER ACT ARE CONDUCTED IN ACCORDANCE WITH THE "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CLASS I CIVIL PENALTIES UNDER THE CLEAN WATER ACT" ("WRAP 30"), WHICH HAS BEEN PUBLISHED IN THE FEDERAL REGISTER, AT 36 FED. REG. 29,996 (JULY 1, 1991). THE FEDERAL REGISTER IS AVAILABLE AT MOST LIBRARIES

UNLESS OTHERWISE NOTED, THE PUBLIC RECORD FOR THE PROCEEDING IS LOCATED IN THE EPA REGIONAL OFFICE SPECIFIED ABOVE, AND FILE WILL BE OPEN FOR PUBLIC INSPECTION DURING BUSINESS HOURS.

EPA HAS PROVIDED EACH RESPONDENT WITH A SETTLEMENT OFFER OF \$1,000 IN AN EFFORT TO PROMPTLY SETTLE THIS MATTER. IN ORDER TO PROVIDE OPPORTUNITY FOR PUBLIC COMMENT, EPA WILL NOT TAKE FINAL ACTION IN THIS PROCEEDING PRIOR TO THIRTY (30) DAYS AFTER ISSUANCE OF THIS NOTICE.

DATE: