

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



The Phase II rule designates some small municipal separate storm sewer systems (MS4s) for regulation under the National Pollutant Discharge Elimination System (NPDES) permit program. This fact sheet discusses the three ways an MS4 can be designated, two possible waiver options that exist, and other useful information related to coverage.

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Who Is Affected by the Phase II Small MS4 Program?

The Stormwater Phase II rule regulates small MS4s that 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 discusses implementation considerations related to determining one's status as an operator of a regulated small MS4.

What Is an MS4?

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):

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.

- (i) Designed or used for collecting or conveying stormwater;
- (ii) Which is not a combined sewer; and
- (iii) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

What constitutes an MS4 is often misinterpreted and misunderstood. The term MS4 does not solely refer to municipally owned storm sewer systems, but rather can include a broader array of entities, in addition to local jurisdictions, such as 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.

What Is a Small, Medium, or Large MS4?

- EPA's NPDES (National Pollutant Discharge Elimination System) stormwater permitting regulations distinguish between MS4s that are "small," "medium," or "large."
- The Phase II stormwater regulations establish requirements for regulated **small MS4s**, which are not already defined as "large" or "medium" under the Phase I stormwater regulations (40 CFR 122.26(b)(4) and (7)), and which are designated for regulation because of their location in an urban area with a population of 50,000 or more people (see discussion under "Automatic Nationwide Designation") section. Regulated small MS4s may also include Federally owned systems, such as military bases, large hospital or prison complexes, and highways and other thoroughfares.

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- The Phase I stormwater regulations cover *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 in 1990 or as **large MS4s** if located in an incorporated place or county with a population of 250,000 or greater in 1990.

Are All Small MS4s Covered by the Phase II Rule?

No. The universe of small MS4s is quite large since it includes every MS4 except for the approximately 855 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 rule, either through automatic nationwide designation or designation on a case-by-case basis by the NPDES permitting authority. A national map of regulated MS4s can be accessed here: <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources>.

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:

① Automatic Nationwide Designation

The Phase II rule requires nationwide coverage of all operators of small MS4s that are located within the boundaries of a Bureau of the Census-defined “urban area with a population of 50,000 or more people” based on the latest decennial Census. Once a small MS4 is designated as regulated based on the urban areas with a population of 50,000 or more people boundaries, it cannot be removed from the program on the basis that a subsequent decennial urban area calculation shows that the small MS4 is no longer within the urban area with a population of 50,000 or more people boundary. However, the designated small MS4 remains eligible for a waiver (see below) if it meets the criteria.

According to the 2020 Census, an **urban area** represents densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. Each urban area must encompass at least 2,000 housing units or at least 5,000 people. See FAQ p. 2 for more information ([2020 Urban Areas Frequently Asked Questions \(census.gov\)](https://www.census.gov/2020urbanareas-frequently-asked-questions)).

Urban Areas Maps

More information about urban areas and maps are available at:

<https://www.epa.gov/npdes/urban-area-maps-mpdes-ms4-phase-ii-stormwater-permits>

Additionally, information about urban areas is available directly from the U.S. Bureau of the Census at: <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>

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See Phase II [Fact Sheet 2.2](#), which provides further information on urban areas with a population of 50,000 or more people.

② Case-by-Case Designation by the NPDES Permitting Authority

On a case-by-case basis, the NPDES permitting authority may designate additional small MS4s for regulation, other than those subject to automatic nationwide designation, if they find that their discharges have caused, or have the potential to cause, an adverse impact on water quality. The designation may be on a system-wide or jurisdiction-wide basis. The Phase II rule requires the NPDES permitting authority to develop a set of designation criteria and apply them, *at a minimum*, to all small MS4s located outside of an urban area with a population of 50,000 or more people that is serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile and that have caused, or have the potential to cause, an adverse impact on water quality.

Designation Criteria

As part of the Phase II rule, EPA recommends 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 an urban area with a population of 50,000 or more people.
- Significant contributor of pollutants to waters of the United States.
- Ineffective protection of water quality concerns by other programs.

③ Designation by the NPDES Permitting Authority for Physically Interconnected MS4s

The Phase II rule requires the NPDES permitting authority to designate any small MS4 located outside of an urban area with a population of 50,000 or more people that contributes substantially to the pollutant loadings of a *physically interconnected* MS4 regulated by the NPDES stormwater program. The rule does not set a deadline for designation of small MS4s meeting this criterion.

Physically interconnected means that an MS4 of one entity is connected directly to the MS4 of a second entity.

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

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

Yes, two waiver options are available to operators of automatically designated small MS4s (including newly designated and already permitted 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 within the urban area with a population of 50,000 or more people.
2. The system is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4.
3. The small MS4 discharges any pollutants identified as a cause of impairment of any water body to which it discharges, and 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.

The second applies where:

1. The jurisdiction served by the system is less than 10,000 people within the urban area with a population of 50,000 or more.
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 either (a) wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern, or, (b) if a TMDL has not been developed or approved, an equivalent analysis that has determined the sources and allocations for the pollutants of concern.
3. It is determined that current and future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.

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 assigned a wasteload allocation in an EPA approved or established TMDL would likely meet the second criterion because no additional stormwater controls would be needed to address the pollutant of concern.

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.

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

Yes. Since the final rule automatically covers all small MS4s within an urban area with a population of 50,000 or more, there could be coverage of several governments and agencies with multiple, perhaps overlapping, jurisdictions. For example, a city that is located within an urban area with a population of 50,000 or more 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 obtaining permit coverage for the portion of their respective MS4s within the city limits. In such a case, the permittees are strongly encouraged to work together where possible to coordinate the development of a unified stormwater management program that describes the actions to be taken by the respective MS4s.

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 stormwater 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.

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For Additional Information

Contacts

A list of contacts for the U.S. EPA's Office of Wastewater Management (Headquarters), each EPA regional office, and state office is located at:
<https://www.epa.gov/npdes/contact-us-stormwater>

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:

- American Samoa
- District of Columbia
- Guam
- Johnston Atoll
- Massachusetts
- Midway and Wake Islands
- New Hampshire
- New Mexico
- Northern Mariana Islands
- Puerto Rico
- Most Indian country lands

Reference Documents

- [EPA's Stormwater Website](#)
- [Stormwater Phase II Final Rule \(64 FR 68722\)](#)
- [Final MS4 General Permit Remand Rule \(81 FR 89320\)](#)
- [Final Small MS4 Urbanized Area Clarification \(88 FR 37994\)](#)
- [Stormwater Phase II Rule Fact Sheet Series](#)
- [National Menu of Best Management Practices for Stormwater Phase II](#)
- [MS4 Permits – Compendium of Clear, Specific, and Measurable Permitting Examples Stormwater Case Studies](#)
- [EPA Urban Areas with a population of 50,000 or more people Information](#)
- [Census General Information](#)

Disclaimer: This information is guidance only and does not establish or affect legal rights or obligations. Agency decisions in any particular case will be made by applying the law and regulations to the specific facts of the case.