

Permitting and Reporting: The Process and Requirements



The Stormwater Phase II rule requires operators of certain small municipal separate storm sewer systems (MS4s) to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage because their stormwater discharges are considered “point sources” of pollution. Those systems already permitted under the NPDES Phase I stormwater program are not required to be permitted a second time under the Phase II stormwater program. This fact sheet explains the various permit options that are available to operators of regulated small MS4s and details the process by which operators obtain permit coverage and the requirements for reporting to the permitting authority. Program requirements for regulated small MS4s are explained in Fact Sheets 2.0 through 2.8.

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What Permitting Options Are Available to Operators of Regulated Small MS4s?

Unlike the Phase I program that relies on individual permits for medium and large MS4s, the Phase II program enables permitting authorities to use general permits to provide coverage to the typically large number of small MS4s in each state.

For most states, EPA and state permitting authorities use general permits to regulate their small MS4s. There are, however, some permitting authorities that permit their small MS4s under individual permits. The NPDES permitting authority determines which permitting options are available to the regulated small MS4s. Prior to issuance, the public will also be given the opportunity to provide feedback on this decision when the draft permit is published for comment. Refer to [your specific NPDES permitting authority](#) for more details about the permitting option in use in your state.

General Permits

- The Phase II rule provides permitting authorities with the option of using a general permit to permit regulated small MS4s.
- General permits typically prescribe one set of requirements for all applicable permittees. However, under the Phase II rules, permitting authorities can issue a general permit with some conditions that apply to all small MS4s and additional conditions that apply uniquely to individual MS4s.
- MS4s obtain coverage under a general permit by completing and submitting a Notice of Intent (NOI) to the permitting authority. The NOI asserts the MS4's eligibility for coverage and communicates the operator's agreement to comply with the terms and conditions of the general permit. At a minimum, general permit NOIs require the operator to provide its legal name and address, the facility name and address, the type of facility or discharges, and the name of the receiving stream(s), as well as other information required by the permitting authority.
- Under the Phase II regulations, there are two different general permit alternatives that permitting authorities may elect to implement. The permitting authority may use one alternative, the Comprehensive General Permit (also referred to as the "One-Step General Permit"), like any other general permit in that it establishes the full set of permit conditions to which the permittees are subject. Permittees obtain coverage under the comprehensive general permit by submitting a basic NOI with the minimum information required. See 40 CFR §122.28(d)(1). The other alternative is the Two-Step General Permit in which the permitting authority first issues a base general permit, with conditions that apply to all small MS4 permittees, and then establishes additional

Process for Issuing Small MS4 Permits

EPA created a [chart](#) describing the process for developing and administering small MS4 general permits for permit writers using either the comprehensive (one-step) or two-step approach.

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conditions through a second permit step for each individual MS4 that supplement the base permit conditions. Under the Two-Step approach, the MS4 operator must submit the minimum information with its NOI and any other information the permitting authority specifies as necessary to enable it to establish the additional, second-step requirements. See 40 CFR §122.28(d)(2).

The permitting authority must specify which general permit alternative is being used in its permit.

Individual Permits

- Individual permits are required for Phase I “medium” and “large” MS4s. Individual permits are used by a smaller number of permitting authorities for their Phase II small MS4s.
- Small MS4s that apply for coverage under an individual permit must submit an individual permit application under 40 CFR §122.34(b)(2). The small MS4 operator must submit the information required of all other individual permit applicants in 40 CFR §122.21(f) as well as the following: the best management practices (BMPs) that will be implemented for each of the Phase II minimum control measures and the corresponding proposed measurable goals; the persons responsible for implementing the stormwater management program; an estimate of square mileage served by the small MS4; any additional information requested by the permitting authority; and a storm sewer map that shows the location of all outfalls and the names and locations of all waters of the U.S. that receive the discharges from these outfalls.
- The operator of a small MS4 may elect to seek authorization to discharge under an individual permit instead of a general permit. In this case, the operator must submit an individual permit application under the Phase I application regulations at 40 CFR §122.26(d).
- The NPDES permitting authority may allow more than one regulated small MS4 to jointly apply for coverage as co-permittees under an individual permit. See 40 CFR §122.33(b)(2)(iii).

Modification of a Phase I Individual Permit to Include Individual Small MS4s

- The operator of a regulated small MS4 could participate as a co-permittee in a neighboring Phase I MS4’s stormwater management program by seeking a modification to the Phase I MS4’s existing individual permit. A list of Phase I medium and large MS4s is included in the Phase I regulations.
- The permittee must follow Phase I permit application requirements (with some exclusions) under 40 CFR §122.26(d).
- As a co-permittee, the small MS4 will be responsible for compliance with the permit's conditions applicable to its jurisdiction.

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Relying on Another Entity

The small MS4 permittee has the option of relying on other entities to satisfy the permittee's NPDES permit conditions related to one or more of the minimum control measures if they meet certain prerequisite conditions. These prerequisites include that the other entity does in fact implement the control measure, the particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement, and the other entity agrees to implement the control measures on the permittee's behalf. For example, where the regulated small MS4 is located in a county that already has an illicit discharge detection and elimination program in place, the Phase II rules allow the MS4 permittee to rely on the county program instead of formulating and implementing a new program. In such a case, the permittee would not need to implement the particular measure but would still be ultimately responsible for complying with the associated NPDES permit requirements. For this reason, EPA encourages the permittee to enter into a legally binding agreement with the other entity to minimize any uncertainty about compliance with the permit.

If the permittee chooses to rely on another entity, the MS4 submits an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4. A Phase II permittee may even rely on another governmental entity regulated under the NPDES stormwater program to satisfy all the permittee's permit obligations. Should this option be chosen, the permittee must note this in its NOI, but does not need to file periodic reports.

Avoiding Duplication of Effort

The Phase II regulations enable permitting authorities to allow MS4s that are already subject to state, tribal, or local stormwater requirements to continue complying with these requirements where they are consistent with the otherwise applicable NPDES requirements based on the 40 CFR §122.34(b) minimum control measures. In accordance with 40 CFR §122.34(e), where such a "qualifying local program" already implements one or more of the minimum control measures, the permitting authority may include conditions in the MS4 permit that directs the permittee to continue complying with the qualifying program's requirements rather than the corresponding NPDES permit requirements.

What Do Phase II Permits Require?

Regardless of the type of Phase II permit that the permitting authority issues for its small MS4s, all small MS4 permits share certain basic attributes in common. For instance, all small MS4 permits must include terms and conditions that are adequate to meet the Phase II permit standard to:

- Reduce the discharge of pollutants to the "maximum extent practicable" (MEP),
- Protect water quality, and
- Satisfy the appropriate water quality requirements of the Clean Water Act.

Each permit includes requirements that the permitting authority deems necessary to meet this standard, including terms and conditions that address the six minimum control measures in 40

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CFR §122.34(b). See also Fact Sheets 2.3 thru 2.8. The permit may also include additional, more stringent requirements where the permitting authority considers it necessary to protect water quality in accordance with 40 CFR §122.34(c). The federal regulations also require small MS4 permittees to develop a written Stormwater Management Program (SWMP) that describes in detail how they will comply with their permit requirements and the BMPs that will be implemented.

In addition, the federal regulations require that all permit terms and conditions be expressed in a clear, specific, and measurable manner. EPA's MS4 website contains a series of compendium documents that showcase examples of clear, specific, and measurable requirements from state small MS4 permits, as well as training and other resources that provide tips and best practices to assist permitting authorities in establishing conditions that satisfy this requirement. See <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources-resources>.

What Evaluation/Reporting Efforts Are Required?

Frequency of Reports

Reports must be submitted annually during the first permit term. For subsequent permit terms, reports must be submitted in years 2 and 4 only, unless the NPDES permitting authority requests more frequent reports.

Required Report Content

The reports must include the following:

- The status of compliance with permit terms and conditions.
- Results of any information collected and analyzed, including monitoring data, if any, during the reporting period.
- A summary of the stormwater activities the MS4 proposes to undertake to comply with the permit during the next reporting cycle.
- Any change made during the reporting period to the MS4's SWMP.
- Notice of relying on another governmental entity to satisfy some of the permit obligations (if applicable).

These reports are required to be submitted electronically to the permitting authority in accordance with the NPDES electronic reporting rule at 40 CFR Part 127.

What are the Recordkeeping Requirements?

Records required by the NPDES permit must be kept for at least 3 years and made accessible to the public at reasonable times during regular business hours. Records need not be submitted to the NPDES permitting authority unless the permittee is requested to do so.

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What are the Penalties for Noncompliance?

Failure to obtain coverage under an NPDES permit for a small MS4 operator or to meet applicable permit provisions may be subject to the enforcement provisions in Section 309 and 40 CFR §122.41(a), and any penalties consistent with those provisions. This federal enforceability also includes the right for interested parties to sue under the citizen suit provision of the CWA (section 505).

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 \(88 FR 37994\)](#)
- [Industrial Stormwater website](#)
- [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](#)
- [Diagram – Process for Issuing Small MS4 General Permits](#)

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.