ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

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November 25, 2009

Stan Snitzer
Program Supervisor
Maricopa County Stormwater Quality Program
Maricopa County Environmental Services Department
1001 N. Central Avenue, Suite 300
Phoenix, AZ 85004

RE: Maricopa County Stormwater Management Program
MS42002-22

Dear Mr. Snitzer:

Thank you for the submittal of Maricopa County's revised Stormwater Management Program (SWMP), received at ADEQ on November 18, 2009. The Department has determined, based on its review, that the revised pages of the SWMP satisfactorily address the October 20, 2009 listing of deficiencies and substantially complies with the Arizona Pollution Discharge Elimination System, General Permit for Discharge from Small Municipal Separate Storm Sewer System to Waters of the United States (Permit No. AZG2002-002). As such, the county's SWMP is approved and must continue to be implemented as required by the permit.

The Department appreciates the county's efforts to revise the SWMP, and we look forward to continuing to work with Maricopa County throughout program implementation to better serve the county and the State of Arizona. Please contact me if you have any questions regarding the Phase II MS4 Program at (602)771-7614 or jmr@azdeq.gov.

Sincerely,

Joanie M. Rhyner

Joanie M. Rhyner
Stormwater and General Permits Unit
Surface Water Section

cc: John Gibbons, ADEQ, via email

SWGP09:0162

MARICOPA COUNTY, ARIZONA

Stormwater Management Program

In Compliance with the Arizona Pollutant Discharge Elimination System (AZPDES) General Permit (Permit No. AZG2002-2) for Discharge from Small Municipal Separate Storm Sewer Systems (MS4s) to Waters of the United States

Prepared for:
Maricopa County Environmental Services Department
Water & Waste Management Division
1001 North Central Avenue, Suite 201
Phoenix, Arizona 85004

Prepared by:
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1405 West Auto Drive
Tempe, Arizona 85284

June 2009 (Update)

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ACKNOWLEDGEMENTS

During the course of completing this regulatory compliance project, several Maricopa County representatives contributed significant assistance. In particular, Mr. Todd Williams provided general guidance and leadership in the completion of the original document in 2003. In addition, Mr. Stan Snitzer provided general guidance and leadership in completion of this 2009 Update. We extend our thanks for his efforts in making this project successful. The following persons also contributed to the development and completion of this document.

Maricopa County Board of Supervisors

Flood Control District of Maricopa County

Maricopa County Environmental Services Department

Maricopa County Department of Transportation

Maricopa County Office of Management and Budget

Maricopa County Solid Waste Department

Maricopa County Facilities Management Department

Maricopa County Equipment Services Department

Maricopa County Risk Management Department

Maricopa County Sheriff's Office

Maricopa County Parks and Recreation Department

Maricopa County Planning and Development Department

Maricopa County Attorneys

This report was originally prepared in 2003 for the Flood Control District of Maricopa County and the updated document in 2009 has been prepared for Maricopa County Environmental Services Department, Water & Waste Management Division by AMEC Earth & Environmental, Inc.

CERTIFICATION PAGE

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature	Date
County Representative Name	Title

EXECUTIVE SUMMARY

ES.1. Introduction

In December 1999, the U.S. Environmental Protection Agency (EPA) finalized a rule that requires certain small municipal separate storm sewer systems (MS4s) to participate in the National Pollutant Discharge Elimination System (NPDES) program and obtain a stormwater permit. The intent of the rule is to reduce pollutants in stormwater runoff through actions implemented by the operators of MS4s, such as the system operated by Maricopa County. Maricopa County ("County") is one of a number of Arizona MS4s required to obtain a permit.

ES.2. AZPDES Phase II Requirements

The Federal NPDES Phase II Regulations established requirements called Minimum Control Measures (MCMs) for MS4s. The MCMs are:

1. Public education and outreach
2. Public involvement/participation
3. Illicit discharge detection and elimination
4. Construction site runoff control
5. Post-construction stormwater management
6. Pollution prevention/good housekeeping

The Arizona Department of Environmental Quality (ADEQ) is the permitting authority for the State of Arizona through the Arizona Pollutant Discharge Elimination System (AZPDES). The County is currently covered under the AZPDES General Permit (Permit No. AZG2002-2) for stormwater discharge from small MS4s to Waters of the United States. Under the general permit, the County must implement actions that demonstrate compliance with the permit requirements.

MCM 1: Public Education and Outreach

The MS4 must:

- Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

MCM 2: Public Involvement/Participation

The MS4 must:

- At a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program.
- Develop and implement a plan to encourage public involvement and participation.

MCM 3: Illicit Discharge Detection and Elimination

The MS4 must develop, implement, and enforce an illicit discharge program, including:

- Develop a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls.
- To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions.
- Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system.
- Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

MCM 4: Construction Site Runoff Control

The MS4 must develop, implement, and enforce a program for runoff from construction sites, including:

- Program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with Sec. 122.26(b)(15)(i), the MS4 is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.
- An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law.
- Requirements for construction site operators to implement appropriate erosion and sediment control best management practices.
- Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.
- Procedures for site plan review which incorporate consideration of potential water quality impacts.
- Procedures for receipt and consideration of information submitted by the public.
- Procedures for site inspection and enforcement of control measures.

MCM 5: Post-Construction Stormwater Management

The MS4 must develop, implement, and enforce a post-construction stormwater runoff program, including:

- A program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.
- Strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community.
- An ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law.
- Ensure adequate long-term operation and maintenance of BMPs.

MCM 6: Pollution Prevention/Good Housekeeping

The MS4 must:

- Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

The initial application for the AZPDES Phase II permit was due on March 10, 2003. The length of the permit period is five years, with full implementation of the permit activities occurring by December 19, 2007. At the end of this time, the permit will be renegotiated with the community and reissued for five more years.

ES.3. Maricopa County's Stormwater Management Program (SWMP)

Under the Phase II permitting program, MS4s must seek coverage under a general permit or file for an individual permit. Maricopa County completed and submitted a Stormwater Management Program (SWMP) to ADEQ on March 10, 2003, and sought individual permit coverage. After several meetings and discussions between officials from ADEQ and Maricopa County, the County opted instead to file a Notice of Intent (NOI) on December 19, 2007, for coverage under the AZPDES General Permit for Discharge from Small Municipal Separate Storm Sewer Systems (MS4s) to Waters of the United States (Permit No. AZG2002-002).

ADEQ completed their review of the Maricopa County SWMP and provided comments in a letter dated April 11, 2008. Maricopa County's SWMP is being updated to address the comments provided by ADEQ. The Maricopa County Water & Waste Management Division has successfully implemented local regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation.

Maricopa County is empowered to enact a storm water regulation pursuant to A.R.S. 11-251.66 and A.R.S. 49-371. Maricopa County, as a Municipal Separate Storm Sewer System under Phase II of the National Pollutant Discharge Elimination System (NPDES) storm water program of the Environmental Protection Agency (EPA) is empowered to regulate Stormwater by the authority of the Clean Water Act, 33 U.S.C. Sec. 1251 et seq. Those components of the SWMP not yet developed and implemented will be completed in the most economically feasible timeframe.

Costs for the program will be primarily for County staff, professional and outside services, and supplies. Some of the program elements can be implemented through existing County programs, while others will require new funding. The following table provides a rough estimate of the annual costs for development and implementation of the Maricopa County SWMP over the next few years.

Table ES.1
Estimated Costs for the Development and Implementation of the Maricopa County SWMP, 2009-2012

Permit Year			Total
Year 1 (2009-2010)	Year 2 (2010-2011)	Year 3 (2011-2012)	
$40,000	$83,000	$124,000	$247,000

Note: Costs are based on the new cost estimations and schedule provided in Section 4 of this document.

Maricopa County's SWMP meet the requirements of the AZPDES General Permit for Discharges from Small MS4s to Waters of the U.S. (AZG2002-002). The primary focus of Maricopa County's SWMP will be to implement changes in existing programs to meet permit requirements. The County feels that many of its existing programs help meet the intent of the rule. The program elements or "best management practices" (BMPs) selected by the County are actions that the County has identified as achievable to meet the requirements of the General Permit. The SWMP was developed to be appropriate for Maricopa County's population, stormwater system, and existing resources.

Section 1
Stormwater Phase II Regulations

This section provides background on the NPDES Stormwater Phase II regulations and how they apply to Maricopa County.

1.0 Background

The initial focus of the 1972 National Pollutant Discharge Elimination System (NPDES) program, the fundamental regulatory mechanism of the Clean Water Act (CWA), was to regulate discharges of industrial process wastewater and municipal wastewater treatment plants. The regulation of these point source discharges resulted in significant improvements in the water quality of public waterways. Subsequent analyses established that polluted non-point source stormwater runoff remained a leading cause of impairment to U.S. water bodies. In an effort to mitigate diffuse sources of pollution conveyed in stormwater runoff, the 1987 Water Quality Act (as an amendment to the CWA) called for a comprehensive, two-phased program to regulate stormwater runoff. The program uses the NPDES permitting mechanism to require the implementation of stormwater management controls designed to minimize surface water pollution caused by urban stormwater.

The Stormwater Phase I Rule issued on November 16, 1990, targeted medium-sized and large municipal separate storm sewer systems (MS4s). For the most part, it included cities or jurisdictional entities that serve populations over 100,000. In Arizona, the Phase I communities include Phoenix, Tempe, Glendale, Mesa, Scottsdale, Tucson, and Pima County. A "separate storm sewer system" includes any method of conveying runoff, including streets, gutters, ditches, or any other man-made structure that is designed to carry stormwater. Additionally, Phase I required separate permit coverage for stormwater discharges associated with eleven categories of industrial activities and construction sites that impact five or more acres of land.

What is NPDES Phase II?

❖ ***A Federal Law***

The NPDES Phase II Stormwater regulations were adopted by the U.S. Environmental Protection Agency in 1999, pursuant to the Clean Water Act of 1972.

❖ ***An Arizona Program***

The State's Department of Environmental Quality is the EPA-designated permitting authority for Arizona. Specific rules for implementation of Phase II are established at the State level.

❖ ***A Local Responsibility***

Each community that is included in the Phase II program is responsible for funding and implementation of the State Stormwater rules.

The NPDES Stormwater Phase II regulations, which target small MS4s located fully or partially within an "urbanized area1" and construction activities disturbing more than one acre of land, were promulgated by the Environmental Protection Agency (EPA) on December 8, 1999. A copy of the NPDES Stormwater Phase II regulations has been provided in Appendix A of this document. These regulations apply to all jurisdictions within a delineated urbanized area regardless of individual population. The latest decennial census (2000) by the U.S. Census Bureau identified Maricopa County as a community that is operating an MS4 within an urbanized area, thus regulated under the NPDES Stormwater Phase II regulations.

1.1 Provisions of the Federal Phase II NPDES Rule

The Federal NPDES Rule recognizes that urbanized areas can contribute pollutants such as oils, sediment, fertilizers, salts, and litter to stormwater because of high concentrations of these pollutants in urban streets, sidewalks, parking lots, and driveways. The rule also recognizes that illicit wastewater connections and illegal discharges to MS4s can also be significant sources of pollutants. Under the Federal NPDES Rule, operators of small MS4s are required to design programs to reduce pollutants in stormwater discharged to their MS4s to the maximum extent practicable, protect water quality, and satisfy appropriate water quality requirements of the Clean Water Act. The rule lists required components of stormwater management programs, including Minimum Control Measures (MCMs). Small MS4 operators may partner as co-permittees with adjacent regulated MS4s to implement stormwater programs. The rule gives MS4 operators flexibility to tailor their programs to local conditions and resources.

1.2 Provisions of the ADEQ General Permit

In the state of Arizona, the Arizona Department of Environmental Quality (ADEQ) serves as the NPDES permitting authority2. The NPDES program was delegated to ADEQ on December 5, 2002 as a state program known as the Arizona Pollutant Discharge Elimination System (AZPDES). On December 19, 2002, ADEQ finalized a General Permit for discharges from small MS4s to waters of the United States. Under the ADEQ AZPDES permit program there are three permitting and program implementation options for regulated small MS4s: obtaining coverage under a general permit, participating in the implementation of an existing Phase II MS4's stormwater program as a co-permittee, or applying for an individual permit. For all options, the deadline for applying for permit coverage was March 10, 2003.

General permits are drafted by the NPDES permitting authority and describe one set of requirements for all eligible permit applicants. ADEQ has issued General Permit AZG2002-002 effective December 19, 2002 to regulate stormwater discharges into waters of the U.S. from operators of small MS4s in Arizona, in compliance with the provisions of the AZPDES program,

[1] A revised list of urbanized areas based on the new criteria and Census 2000 data was published in the Federal Register on May 1, 2002 (67 FR 21962).

[2] On December 5, 2002, the ADEQ received official delegation of the NPDES Program from the EPA, Region IX, making ADEQ the permitting authority in charge of all NPDES-related permits.

(Arizona Revised Statutes, Title 49, Chapter 2, Article 3.1 and Arizona Administrative Code, Title 18, Chapter 9, Articles 9 and 10). A copy of the AZPDES Small MS4 General Permit is provided in Appendix B.

Pursuant to Arizona Administrative Code R18-9-B901, an entity may also apply for coverage under an individual permit. Maricopa County submitted an individual permit application and Stormwater Management Program (SWMP) to ADEQ on March 10, 2003. A copy of the individual permit submitted to ADEQ on March 10, 2003 has been provided in Appendix L. Following this submittal, Maricopa County proceeded to develop and implement elements of the SWMP while ADEQ reviewed the individual permit application. In June 2006, ADEQ notified Maricopa County that, due to a lack of resources, the agency was unable to review the application and suggested that the County apply for coverage under the applicable General Permit.

After several meeting and discussions with ADEQ, Maricopa County opted to file a NOI for coverage under the AZPDES General Permit for Discharge from Small Municipal Separate Storm Sewer Systems (MS4s) to Waters of the United States (Permit No. AZG2002-002) on December 19, 2007. A copy of the County's NOI submittal and cover letter is provided in Appendix C. ADEQ completed their review of the Maricopa County SWMP and provided comments to the County in a letter dated April 11, 2008. A copy of this letter has been provided in Appendix D. In this letter ADEQ has asked Maricopa County to update and re-submit their SWMP addressing the comments provided by ADEQ.

To obtain and comply with the AZPDES Small MS4 General Permit, each regulated community must develop a Stormwater Management Program (SWMP) that describes how the community will structure its efforts to reduce the discharge of pollutants to its stormwater system. This SWMP has been updated, based on ADEQ's comments, to meet the requirements of the General Permit. Each community's SWMP must address, at a minimum, six designated program elements referred to as Minimum Control Measures (MCMs). Each MCM is listed below (a detailed discussion of each MCM is presented in Section 1.3):

1. Public Education and Outreach
2. Public Involvement/Participation
3. Illicit Discharge Detection and Elimination
4. Construction Site Runoff Control
5. Post-Construction Stormwater Management
6. Pollution Prevention/Good Housekeeping

As part of its SWMP, Maricopa County must specify selected BMPs to comply with each MCM under the Federal Rule. The BMPs can be any combination of programs, structures, and other controls that, in the agreed opinion of the permitting authority and the regulated community, meet the standard of reducing the state's pollution discharge to waters to the Maximum Extent

Practicable (MEP). Each BMP in the SWMP must include measurable goals, including interim milestones, and the months and years in which the permittee will undertake the required actions and the frequency of the action.

Under the permitting approach, a SWMP that fully complies with permit requirements would constitute compliance with the standard of "reducing pollutants to the maximum extent practicable." The AZPDES Small MS4 General Permit also contains more specific and rigorous requirements for special circumstances relating to the condition of the receiving water within and downstream from, the community. For example, if a community discharges into a stream segment that has a Total Maximum Daily Load (TMDL) for a certain pollutant, then the general permit conditions may reflect that community's allocation of the target pollutant.

Additionally, states that administer the general permit, such as Arizona, have modified their permits to adjust for local climates. Most of Arizona is very arid and has mild precipitation, with the exception of the precipitation that occurs during the summer monsoon season. Therefore, many BMPs that are applicable in other states do not apply here.

The steps to permit compliance for a regulated community that applies for a general permit are:

1. Review the conditions of the AZPDES Small MS4 General Permit.
2. Prepare a Stormwater Management Program including BMPs with Measurable Goals for each of the six MCMs.
3. Develop and submit a Notice of Intent (NOI) to comply with AZPDES General Permit.
4. If necessary, provide clarification or additional information regarding the proposed SWMP as requested by the permitting authority.
5. Receive approval of the submittal from the permitting authority.
6. Begin implementing the conditions and programs described in the NOI and SWMP, including recordkeeping and submitting appropriate reports that describe attainment of measurable goals for each BMP.

1.3 The Six MCMs

The six MCMs required for compliance with NPDES Stormwater Phase II regulations are described in detail in the sections below. The permit requirements for each MCM are presented in table format below, quoting the language of the Federal NPDES Rule and the AZPDES Small MS4 General Permit (shown in italics).

For each of the MCMs, communities must also identify BMPs and measurable goals that reflect the communities' choices about how to satisfy the regulatory requirements. These BMPs and goals form the basis on which each community can evaluate the success of the Phase II program – which is ultimately the degree to which the community is satisfying the water quality requirements of the CWA.

The MCMs required by the General Permit are also described in the Federal NPDES Rule and the requirements of both the Federal NPDES Rule and General Permit MCMs are described in detail below.

1.3.1 Public Education and Outreach

Maricopa County must reach out to the public and provide education about the impacts of stormwater pollution and about steps that members of the community can take to prevent pollution in stormwater runoff. This measure recognizes that the best long-term strategy for protecting stormwater quality is prevention. Once pollutants enter stormwater runoff, treatment can be expensive and impractical. Prevention ultimately rests with changing the behavior of citizens, businesses, and organizations across the community. Table 1.1, below, describes the Public Education and Outreach permit requirements as defined in the Federal Rule and AZPDES Small MS4 General Permit.

Table 1.1
Public Education and Outreach Requirements

Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *(1) Public education and outreach on storm water impacts. (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.*	*a. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff* *b. Include the following information in the SWMP:* *i. A description of the education program and outreach activities;* *ii. A description of the methods for disseminating information;* *iii. The target audiences and target pollutants and sources that the applicant will address in the program, and how they were selected;* *iv. An estimation of the number of people with whom the applicant intends to communicate;* *v. A list of measurable goals for the public education and outreach program;* *vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals* *vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the education activities.*

1.3.2 Public Involvement/Participation

Maricopa County must provide an opportunity for the public to participate in developing and implementing its stormwater management program. In addition to acknowledging the importance of preventive measures as described above, this measure recognizes that the more that the public understands and is involved with the community's efforts to protect water quality, the more likely they will support allocating resources toward water quality management. Table 1.2, below, summarizes the Public Involvement/Participation permit requirements as defined in the Federal Rule and AZPDES Small MS4 General Permit.

Table 1.2
Public Involvement/Participation Requirements

Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *2) Public involvement/participation. (i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program.*	*a. Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP.* *b. Comply with state and local public notice requirements when implementing the public involvement/participation program.* *c. Include the following information in the SWMP:* *i. A description of the general plan for informing the public of involvement and participation opportunities* *ii. The types of activities for public involvement that the program will include and the target audiences* *iii. A description of the procedure for receiving and reviewing public comments* *iv. An explanation of how interested parties may access the SWMP and NOI* *v. A list of measurable goals for the public involvement/participation program* *vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals* *vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the public involvement/participation activities*

1.3.3 Illicit Discharge Detection and Elimination

The program requirements under this control measure are more detailed than those of the previous two measures. Under the Federal NPDES Rule, Maricopa County must develop, implement, and enforce a program to find and remove non-stormwater inputs to the storm sewer system. The illicit discharge program must include a regulatory mechanism – a regulation or other appropriate regulatory measure – that prohibits, to the extent possible under state and local law, non-stormwater discharges into the MS4, including appropriate enforcement procedures and actions. In addition, the County must develop a plan for detecting non-stormwater discharges, including illegal dumping, into the MS4 and must identify how those discharges will be addressed. This measure also requires that the County educate public employees, businesses, and the citizenry as to the dangers of illegal discharges, illegal dumping, and improper waste disposal. The Federal Rule also describes a number of non-stormwater discharges, such as lawn watering and residential car washing, which must be addressed only if they are found to be significant contributors of pollutants to waters of the United States. Table 1.3, below, summarizes the Illicit Discharge Detection and Elimination permit requirements as defined in the Federal Rule and the AZPDES Small MS4 General Permit.

This program must include a storm sewer map that shows the location of all applicable outfalls, as well as the names and locations of all Waters of the United States that receive discharges from those outfalls. While mapping is required only from the "end of the pipe" to the receiving water body, additional mapping may provide important information that will help the community manage its storm drainage infrastructure and enable discharges to be more effectively tracked throughout the system.

Table 1.3
Illicit Discharge Detection and Elimination Requirements

Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *(3) Illicit discharge detection and elimination. (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at Sec. 122.26 (b) (2)) into your small MS4.* *(ii) You must:* *(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;*	*a. Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4, except those discharges listed below:* *i. Non-stormwater discharges as listed in Part I, Section C.2. This exception does not apply to those categories of discharge which the permittee or applicant has determined to be a significant contributor of pollutants to the small MS4.* *ii. Occasional incidental non-stormwater discharges (e.g., non-commercial or charity car washes, etc.) that the permittee does not expect (based on information available to the permittee) to be a significant contributor of pollutants to the small*

Table 1.3 *Illicit Discharge Detection and Elimination Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions; *(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and* *(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.* *(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).*	*MS4 because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the small MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive water bodies, BMPs on the wash water, etc.).* *b. Develop, if not already completed, a storm sewer system map that shows the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls.* *c. To the extent allowable under state or local law, effectively prohibit through ordinance or other regulatory mechanism non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions.* *d. Develop and implement a plan to detect, identify the source of, and address non-stormwater discharges, including illegal dumping, to the system.* *e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.* *f. Conduct dry weather field screening for non-stormwater flows. The* *g. Screening must include qualitative field tests based on color, odor, or visually observed characteristics as indicators of discharge sources. If the qualitative field tests do not provide enough information for the permittee to determine the source of the discharge, the permittee must test the discharge, while in the field, for selected chemical parameters. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up this investigation with an action to further study the source of the discharge or eliminate it.* *h. Include the following information in the SWMP:* *i. A description of detection methods.* *ii. A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.*

Table 1.3 *Illicit Discharge Detection and Elimination Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
	iii. A description of enforcement policy and jurisdiction. *iv. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.i.* *v. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.ii.* *vi. The methods for informing/training employees about illicit discharges.* *vii. The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste.* *viii. A list of measurable goals for the illicit detection and elimination program.* *ix. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals.* *x. The name(s) and title(s) of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.*

1.3.4 Construction Site Runoff Control

While the EPA's Phase I regulations addressed construction sites of five or more acres, the Phase II rules with which Maricopa County must comply regulate construction sites that disturb one acre or more. The ADEQ has been delegated primacy by EPA for the NPDES program and has developed an ADEQ construction general permit, which regulates construction sites that disturb one acre or more. However, ADEQ is requiring each MS4 to adopt construction site runoff programs locally to provide for more effective plan review, inspection, and enforcement of construction site runoff. Maricopa County currently fields and responds to citizen complaints about erosion and sediment control issues and regulates construction sites through the County's dust control program. Table 1.4, below, summarizes the Construction Site Runoff Control permit requirements as defined in the Federal Rule and the AZPDES Small MS4 General Permit.

Table 1.4 ***Construction Site Runoff Control Requirements***	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *(4) Construction site storm water runoff control. (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with Sec. 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.* *(ii) Your program must include the development and implementation of, at a minimum:* *(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;* *(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;* *(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;* *(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;* *(E) Procedures for receipt and consideration of information submitted by the public, and* *(F) Procedures for site inspection and enforcement of control measures.*	*a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity that disturbs less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for stormwater discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites.* *b. Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. This ordinance must apply, at a minimum, to those sites described in Part V, Section B.4.a.* *c. Review all site plans for those sites described in Part V, Section B.4.a., for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V, Section B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and verify (in written communication with the construction site operator) that the BMPs for the site are appropriate.* *d. Develop and implement procedures for site inspection and enforcement of control measures for those sites described in Part V, Section B.4.a.*

Table 1.4 *Construction Site Runoff Control Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
	e. Include the following information in the SWMP: *i. A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and ensure proper management of wastes on construction sites per Part V, Section 4.b. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so.* *ii. A description of the sanctions and enforcement mechanism(s) to ensure compliance.* *iii. A description of the procedures for site inspection and enforcement of control measures, and procedures for site plan reviews.* *iv. Procedures for receipt, acknowledgment, and consideration of information submitted by the public.* *v. A list of measurable goals for the construction site runoff control program.* *vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals.* *The name(s) and title(s) of the person(s) responsible for overseeing construction site runoff control activities.*

1.3.5 Post-Construction Stormwater Management

The Federal NPDES Rule requires that Maricopa County develop, implement, and enforce a program to address stormwater runoff from new development and significant redevelopment after construction is complete. Projects that disturb one acre or more are included, as are projects less than one acre that are part of a larger development. With these controls, water quality impacts will be prevented or minimized. The County will need to develop and implement strategies that include both structural and non-structural BMPs appropriate for its MS4. A retention/detention basin is one example of a structural BMP for water quality control. Site design that clusters development and minimizes the amount of impervious surface is an example of a non-structural BMP. Some typical structural and non-structural BMPs, however, are not applicable in Arizona's dry climate. This should be taken into account when deciding which BMPs are best for Maricopa County.

Critical to the long-term effectiveness of structural controls is appropriate maintenance to ensure that the BMPs continue to operate in a manner consistent with the way they were designed. Maricopa County will need to implement a regulation or other regulatory, enforceable mechanism that requires BMP maintenance implementation and ensures the long-term operation of post-construction runoff controls to the extent allowable under State law and local law. Table 1.5, below, summarizes the Post-Construction Stormwater Management permit requirements as defined in the Federal Rule and the AZPDES Small MS4 General Permit.

Table 1.5
Post-Construction Stormwater Management Requirements

Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *(5) Post-construction storm water management in new development and redevelopment.* *(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.* *(ii) You must:* *(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;* *(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and* *(C) Ensure adequate long-term operation and maintenance of BMPs.*	a. Develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb one or more acres, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls that would prevent or minimize water quality impacts are in place. b. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community. c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4. d. Ensure adequate long-term operation and maintenance of BMPs. e. Include the following information in the SWMP: i. A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community. ii. A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so. iii. A description of the procedure to ensure compliance with local requirements. iv. A description of the education program for developers, architects, and the public about

Table 1.5 *Post-Construction Stormwater Management Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
	project designs that minimize water quality impacts. *v.* An identification of the measurable goals for the post-construction runoff control program. vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals. *vii.* The name(s) and title(s) of the person(s) responsible for the development, implementation, and enforcement of post-construction stormwater management.

1.3.6 Pollution Prevention/Good Housekeeping

The County must develop programs to evaluate and address both municipal operating practices and the contribution of stormwater pollutants from municipal sites. As with previous program areas, the ultimate goal is preventing or reducing the contamination of stormwater runoff that leaves municipal sites or is caused by municipal activities. Employee training is an important component of this control measure as the County raises the level of awareness of its employees about both the risks associated with polluted stormwater and ways in which they can protect and preserve water quality. The County will need to evaluate its own facilities for potential illicit connections to the storm sewer system and remedy any connections found. In addition, the County's fleet maintenance operation, as it is currently configured, will require compliance with the Federal Multi-Sector General Permit (MSGP) until Arizona develops its own MSGP/industrial permit. Table 1.6, below, summarizes the Pollution Prevention/Good Housekeeping permit requirements as defined in the Federal Rule and the AZPDES Small MS4 General Permit.

Table 1.6 *Pollution Prevention/Good Housekeeping Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
40 CFR 122.34 (b): *(6) Pollution prevention/good housekeeping for municipal operations. (i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing*	a. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

Table 1.6 *Pollution Prevention/Good Housekeeping Requirements*	
Federal NPDES Rule Requirements	**ADEQ General Permit No. AZG2002-002 Requirements**
pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and storm water system maintenance.	The permittee shall address the following topics in the program: *i.* Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4 *ii.* Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand storage locations and snow disposal areas *iii.* Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris b. Include the following information in the SWMP: *i.* A list of the municipal operations impacted by this operation and maintenance program *ii.* A description of the training program for municipal employees *iii.* A list of measurable goals for the municipal pollution prevention program *iv.* Dates, in terms of months and years, by which the permittee will achieve specific measurable goals *v.* The name(s) and title(s) of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities

1.4 BMP Measurable Goals

The Federal NPDES Rule requires that a regulated community identify measurable goals for developing and implementing each BMP in their SWMP. The measurable goals will identify, as appropriate, the activity levels required to implement the MCMs, including milestones and objectives. It is important that the measurable goals identified are acceptable to the regulated community and that the regulated community can control the activities being measured. For example, a measurable goal for street sweeping should be "the community will conduct street sweeping operations on primary roadways X times per year, as opposed to "the community will remove X pounds of street waste per year from primary roadways." The American Public Works Association provides other examples of measurable goals including:

1. Inspecting or repairing a certain number of drain inlets each year
2. Conducting a certain number of training classes for municipal operations per year
3. Surveying all municipal right-of-ways to identify illicit discharges
4. Soliciting the help of a certain number of volunteers each year to monitor water quality or perform education/outreach activities

1.5 Recordkeeping and Annual Reporting

Sections K and M under Part VI in the AZPDES Small MS4 General Permit deal with the requirements for recordkeeping and annual reporting. Section K specifies that the permittee shall retain records of all monitoring information, a copy of the AZPDES Small MS4 General Permit and all reports associated with permit compliance, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. A copy of the SWMP that was submitted to the permitting authority is presented in Appendix E.

Under the General Permit, the permittee must submit annual reports to the permitting authority for each year of the permit term. Annual reports are due on September 30 of each year following and must cover the activities of the permittee for the previous year up to and including June 30. Maricopa County submitted their first Small MS4 Annual Report to ADEQ on September 30, 2008 following ADEQ's review of the County's SWMP.

The report must include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP and protecting water quality, and the measurable goals for each of the minimum control measures,
b. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;
c. Any changes made to the SWMP since the last annual report and a summary of the stormwater activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);
d. Proposed changes to the stormwater management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;
e. A description of BMPs to be implemented within new areas annexed over the past year that are located within the regulated boundaries of the MS4;
f. A description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and
g. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).

1.6 Additional Requirements and Comments

Implementation of the programs associated with Maricopa County will require two additional components over the term of the permit. Each community that submits an NOI is required to evaluate its success in implementing the BMPs it has chosen and to assess its achievement in meeting the measurable goals that were identified. Each year during the first permit term, the permitted community must prepare and submit an annual report that documents progress and identifies any program adjustments that are being proposed during the balance of the permit term. Under the ADEQ regulations, reports will be submitted to the regional ADEQ offices and those offices will have the right to make announced program visits to evaluate the implementation of programs in permitted communities.

To aid annual reporting, the County will develop record keeping programs/documents and associated policies and procedures early in the permit cycle. Digital tracking of inspections, complaint management, and other programs could greatly reduce the burden of data collection when the County is preparing the annual program review. Maricopa County will also develop policies that dictate the disposition of records pertaining to the Stormwater Management Program.

As Maricopa County continues to develop its stormwater management program it will be important to maintain contact with the ADEQ regarding any new requirements and deadlines. This dialogue will assist the community in shaping its program and will help the regulators understand the various constraints the County faces, including financial capacity and its ability to regulate certain activities.

It should also be noted that the NPDES Stormwater Phase II regulations require regulated communities to implement controls to reduce pollutant discharges to the maximum extent practicable (MEP standard). To allow maximum flexibility in permitting, the EPA deliberately did not define MEP precisely. This provides regulated communities with the flexibility to optimize reductions in stormwater pollutants on a location-by-location basis. The EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, pollutants of specific local concern, and other programming aspects that might be included in a comprehensive watershed plan. Other factors that will shape a community's program may include community size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance. Thus, the standard proposed by EPA and administered by ADEQ is not a numerical reduction goal, but rather a goal that is customized to the water pollution problems faced by each community and its capacity to address those problems. Each of the six minimum criteria must be met with measurable goals, but the regulated communities have some room for negotiation of just what those measurable goals will be.

Section 2
Analysis of Maricopa County's Stormwater Program

This section summarizes the information gathered through documents, interview discussions, and questionnaire responses regarding the stormwater management program in Maricopa County. All information is provided against the backdrop of the NPDES Phase II program's six Minimum Control Measures (MCMs).

2.0 Introduction

Maricopa County is located in central Arizona. With approximately 3.2 million residents, it is the most populous county in the state and the fourth most populous county in the United States, according to the 2000 U.S. census. Maricopa County's population increased by approximately 950,000 persons between 1990 and 2000, a 44.8% increase in 10 years. Recent population estimates indicate that the population of Maricopa County has risen to 3.8 million residents. The County's area is 9,226 square miles, of which 1,441 miles are incorporated and 7,785 miles are unincorporated.

The primary cities in Maricopa County are Phoenix (the state capital and Maricopa County seat), Mesa, Scottsdale, Glendale, Tempe, Peoria, and Chandler. Other communities in the County are Surprise, Paradise Valley, Guadalupe, Sun Lakes, El Mirage, Gilbert, Sun City, Sun City West, Goodyear, Fountain Hills, Buckeye, Gila Bend, Wickenburg, Tolleson, and Avondale. Maricopa County is bounded on the north by Yavapai County, on the east by Pinal and Gila counties, on the south by Pinal and Pima Counties, and on the west by Yuma and La Paz counties.

2.1 Maricopa County Stormwater System

Maricopa County is located in Arizona's Sonoran Desert, which is characterized by long, hot summers and short, mild winters. Precipitation in the County averages 7.6 inches per year (based on 50 years of rainfall data), and falls primarily during the summer thunderstorm season and during winter storms. The major rivers that flow through Maricopa County are the Salt, Gila, and Verde Rivers. The confluence of the Salt and Gila Rivers, which drain most of eastern Arizona, is located in western Maricopa County. The Verde River, which drains much of north-central Arizona, joins the Salt River just east of the Phoenix metropolitan area. The Salt and Gila Rivers are effluent-dominated streams west of Phoenix and are generally dry in the Phoenix metropolitan area due to the presence of upstream impoundments. A drought that began four years ago has greatly reduced the amount of water stored in reservoirs on the Salt and Verde River systems. In 2007 the Flood Control District of Maricopa County (FCDMC) reported an annual average of 4.86 inches of rain fell in Maricopa County.

FCDMC is responsible for flood control in Maricopa County. This includes some areas within municipal boundaries but is mainly outside of municipal corporate boundaries. The FCDMC owns and maintains 22 flood control dams and maintains over 80 flood control structures. The FCDMC also provides erosion and vegetation control, maintains roads and signage, and ensures

that flood control structures comply with environmental laws and regulations. The FCDMC's Capital Improvement Program is responsible for structural flood controls and operates in partnership with numerous municipalities in Maricopa County. Since 1990 the FCDMC has been emphasizing floodplain management and non-structural flood controls rather than structural flood controls such as dams and drainage channels. Maps of the County's stormwater system can be found in Appendix E.

When the SWMP was originally finalized in 2003, FCDMC was the local agency responsible for the management of storm water programs in Maricopa County. Since then, Maricopa County has undergone major restructuring of county programs and program responsibilities. The management of the county's stormwater program was reassigned to the Environmental Services Department and ultimately to the Water & Waste Management Division.

Since the Environmental Services Department has taken over the stormwater program several program advances have been made including:

- A stormwater website has been developed, maintained, and added to the Water & Waste Management Division.
- In cooperation with the Stormwater Outreach for Regional Municipalities (STORM) organization a radio campaign involving public service announcements has been developed and aired, reaching an approximate 2 million residents.
- In cooperation with the STORM organization 25,000 educational materials such as "After the Storm" and "Solution to Stormwater Pollution!" were procured and approximately 12,000 pamphlets have been distributed.
- In fiscal year 2009 the Maricopa County Environmental Services Department, Water & Waste Management Division has developed and obtained the County Board of Supervisors approval of legislation known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation. This regulation clearly defines the County's authority to regulate stormwater related activities.
- In fiscal year 2009 the Maricopa County Environmental Services Department, Water & Waste Management Division has obtained the Board of Supervisors approval for three new staff positions: an inspector position; administrative position; and a public relations / outreach position or public information officer.

2.2 Information-Gathering Process

Several departments of Maricopa County were researched for existing stormwater program elements. The information gathering process involved the following Departments: Parks and Recreation, Planning and Development, Office of Management and Budget, Facilities Management, Sheriff, Equipment Services, Solid Waste, Risk Management, Flood Control District, Transportation, and Environmental Services. Each organizational unit plays a role in Maricopa County's current stormwater program and will have a role in Maricopa County's

compliance with National Pollutant Discharge Elimination System (NPDES) Phase II regulations.

Given the feedback and information gathered, the following briefly summarizes and assesses identified activities that the County currently implements that help fulfill the MCM requirements of the NPDES Phase II regulations and the AZPDES Small MS4 General Permit.

2.2.1 MCM 1: Public Education and Outreach

Prior to development of the current SWMP, Maricopa County has implemented an education and outreach program for many years. The focus of the County's program was flood safety rather than stormwater quality. The County's Parks and Recreation Department also has education programs with stormwater elements.

A. Current Maricopa County Education and Outreach Activities. The County routinely uses door hangers, radio ads, letters, local newspapers, and press releases to educate the public on various stormwater issues, primarily regarding flood safety and flood control projects. The County staffs a booth at the annual Maricopa County Lawn and Garden Show in Phoenix, which 700 to 2,000 people typically visit. This forum and others like it can be used to distribute educational materials on stormwater management and to answer public inquiries.

The Maricopa County Parks and Recreation Department conducts an active education program at its Desert Outdoor Center at Lake Pleasant. This program reaches approximately 20,000 people annually, including school children and members of civic groups. The County's program addresses stormwater in the context that runoff to Lake Pleasant will eventually reach the Phoenix-area drinking water supply and should be protected from pollution.

B. Maricopa County Website. Maricopa County maintains a comprehensive website with links to pages for County agencies and telephone numbers for public inquiries. The FCDMC has its own web page with information regarding flood safety and other topics.

C. Maricopa County Environmental Hotline. The County maintains an environmental hotline that can be used to educate County residents regarding stormwater issues.

Table 2.1 *MCM 1: Public Education and Outreach (40 CFR 122.34(b)(1))*		
Permit Requirements	Existing Components May Contribute	Must Be Developed
1. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities.	**A, B, C**	

The Public Education and Outreach program that Maricopa County plans to implement may be found under MCM 1 in Section 3 of this document.

2.2.2 MCM 2: Public Involvement/Participation

Maricopa County encourages members of the public to participate in volunteer activities and in the regulatory process. The County has a history of volunteer events and has established a number of hotlines to facilitate public input for County issues.

A. Maricopa County Hotlines and Website. The Maricopa County Environmental Services Department (MCESD) has operated a hotline since 1996. Approximately 37,000 complaints were received in 2001, about half of them environmental complaints. All callers are given a tracking number so that they may monitor the progress of their complaints. Complaints may also be filed via the County's website, which receives approximately 10-15 complaints per day.

The Maricopa County Planning and Development Department maintains several hotlines, including zoning, building, planning, building safety, status, and Spanish hotlines. Callers are directed to voice mailboxes where they may leave messages. Any stormwater or drainage complaints regarding construction activities can be directed to these voice mailboxes.

B. Public Notice Requirements. The County complies with all legal requirements regarding public notice and public meetings.

Table 2.2 *MCM 2: Public Involvement/Participation (40 CFR 122.34 (b)(2))*		
Permit Requirements	Existing Components May Contribute	Must Be Developed
1. Identify a plan specifically for receiving public comments on the SWMP.	**A, B**	
2. Make the SWMP available to the public and any other applicable municipal separate storm sewer system (MS4).	**A, B,**	

Maricopa County recognizes the benefits of directly involving the County's residents in its stormwater program. It is the County's experience that many residents are dedicated to providing input to the County on a wide range of issues and are willing to serve as volunteers. The Public Involvement/Participation program that Maricopa County plans to implement may be found under MCM 2 in Section 3 of this document.

2.2.3 MCM 3: Illicit Discharge Detection and Elimination

Maricopa County has established a number of programs to address illicit discharges to the County's stormwater system. These programs include enforcement of illegal dumping regulations and vehicle inspections.

A. Illegal Dumping. Because illegal dumping is an ongoing problem in the County's stormwater system, the County has erected "No Dumping" warning signs at several locations. Items commonly dumped include landscaping debris, tires, appliances, and household waste. Maricopa County Drainage Regulations are broadly worded to prohibit dumping in the stormwater system items that may impede stormwater drainage. The County conducts regular inspections of its stormwater system to identify illegal dumpsites.

Illegal dumping of oil, grease, septic waste, and trash is a problem along roads and in parks in Maricopa County. The MCESD operates a hotline whereby illegal dumping may be reported, and it responds to each complaint. The Maricopa County Planning and Development Department also operates a program to address illegal dumping. Any hazardous substances that are identified by any Maricopa County program are referred to the County's Safety Office.

B. Vehicle Inspection Program. The MCESD operates a vehicle inspection program for waste, grease, and septic-waste haulers. Historically most citations have been issued for leaking trucks.

C. Other Maricopa County Programs. Maricopa County produces and distributes printed materials regarding general housekeeping at restaurants. In addition, the County has installed signage in some areas to address pet waste.

Table 2.3 *MCM 3: Illicit Discharge Detection and Elimination (40 CFR 122.34(b)(3))*		
Permit Requirements	Existing Components May Contribute	Must Be Developed
1. Develop, implement, and enforce an ordinance and program to detect and eliminate illicit discharges as defined in 40 CFR 122.26(b).	**A, B, C**	
2. Develop a storm sewer system map that shows all outfalls and names and locations of waters of the United States.		**X**
3. Develop and implement a plan to detect and address non-stormwater discharges, including illegal dumping.	**A**	
4. Inform public employees, businesses, and the general public regarding the hazards associated with illegal discharges.	**A, B, C**	

The Illicit Discharge Detection and Elimination program that Maricopa County proposes to implement may be found under MCM 3 in Section 3 of this document.

2.2.4 MCM 4: Construction Site Runoff Control

In the fiscal year 2009 Maricopa County has established regulations to specifically regulate construction site stormwater runoff.

A. County Hotlines. The Planning and Development Department maintains several hotlines that citizens may use to make complaints regarding construction site runoff control.

B. Site Inspections. The Water & Waste Management Division will begin performing drainage inspections of construction sites before final permit approvals are given in fiscal year 2010.

C. Erosion Control Manual. Volume 3 of the Maricopa County Drainage and Design Manual is the County's Erosion Control Manual. Information in this volume is designed to inform developers and contractors about erosion and sediment control.

D. Dust Control Inspections. The MCESD conducts construction site inspections to ensure that dust control plans have been properly implemented.

Table 2.4 *MCM 4: Construction Site Runoff Control (40 CFR 122.34(b)(4))*		
Permit Requirements	Existing Components May Contribute	Must Be developed
1. Have a program to reduce pollutants in stormwater from construction activities.	**B, C**	
2. Have an ordinance to require erosion and sediment controls, including control of construction wastes.	**D**	
3. Require construction site operators to implement appropriate erosion and sediment control BMPs.	**C, D**	
4. Have procedures for construction site plan review for erosion and sediment controls.	**B, D**	
5. Have a procedure for receiving and considering information submitted by the public.	**A**	
6. Inspect sites and enforce the ordinance.	**B, D**	

Maricopa County has adopted regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation to control erosion and sedimentation on new development sites that affect one acre or more. The program consists of a combination of legal requirements, technical guidance materials, inspections, plan review, enforcement provisions, and an educational initiative. In addition, the program incorporated provisions for responding to the public through complaint hotlines.

2.2.5 MCM 5: Post-Construction Stormwater Management

In general, post-construction runoff controls are described in the Maricopa County Drainage Regulations. Any post-construction complaints regarding illicit connections or drainage problems are referred to the Water & Waste Management Division. As of June 8, 2009, the Water & Waste Management Division will begin performing drainage inspections of construction sites before final permit approvals are granted.

A. Maricopa County Drainage Regulations. Existing Maricopa County regulations require that developments receive and retain stormwater volume generated by a two-hour, 100-year precipitation event. Retention basins are required to be located not less than 25 feet from septic systems. Runoff that has been retained onsite must be disposed of within 36 hours by percolation, dry wells, or drainage into an approved drainage way, not to exceed pre-development flows. Disposal of stormwater is considered essential for vector control. The drainage regulations also contain language designed to ensure stability and prevent erosion in hillside developments.

B. Maricopa County Policy Regarding First Flush from Precipitation Events. The County has a policy requiring onsite retention of the first flush of runoff from precipitation events when the 100-year/2 hour precipitation event retention requirements have been waived. The statutory authority for this policy is Arizona Revised Statutes §48-3622. .

C. Operation and Maintenance Requirements for Structural Controls. Maricopa County Subdivision Regulations require maintenance of structural runoff controls such as retention and detention basins.

Table 2.5
MCM 5: Post-Construction Stormwater Management (40 CFR 122.34(b)(5))

Permit Requirements	Existing Components May Contribute	Must Be Developed
1. Have a program to address post-construction stormwater runoff.	**A**	
2. Combine structural and/or non-structural BMPs.	**A, B**	
3. Have an ordinance to address post-construction runoff.	**A, C**	
4. Ensure adequate long-term operation and maintenance of BMPs.		**X**

The Post-Construction Stormwater Management program that Maricopa County proposes to implement may be found under MCM 5 in Section 3 of this document.

2.2.6 MCM 6: Pollution Prevention/Good Housekeeping

Maricopa County has instituted a number of programs, policies and procedures to ensure good housekeeping and appropriate pollution prevention at County facilities and by County employees.

A. Existing Pollution Prevention and Good Housekeeping Activities. Maricopa County is self-insured for liability issues related to environmental compliance as well as handling and storage of materials. The County's policy is that all legal requirements regarding pollution prevention and good housekeeping must be met. Maricopa County Risk Management is in the process of auditing County properties for environmental hazards.

The Maricopa County Department of Transportation (MCDOT) maintains about 3,000 miles of roads, of which about 800 miles are unpaved. MCDOT operates four maintenance yards where vehicles are maintained and washed. Materials such as dust suppressants are stockpiled at maintenance yards, but all materials hauling is performed by contractors. The MCDOT inspects its detention and retention basins regularly and has contractors clean and maintain basins when necessary.

The MCDES handles and applies a number of pesticides for vector control purposes. Application equipment is properly cleaned after pesticides are applied. The Vector Control Office stores all chemicals in buildings on County property and conducts annual inventories of all chemicals.

The County owns three golf courses, all of which are operated by contractors who agree in writing to follow all applicable environmental and safety laws. The County inspects each course annually for any environmental problems and follows up with its Risk Management Department if any problems need to be addressed.

B. Employee Training. In general, the County makes efforts to train supervisors on good housekeeping and environmental issues. MCESD pesticide applicators are certified and trained and must complete annual continuing education units to remain certified. The MCDES continuously tracks all staff certifications. The MCDOT conducts training on handling of materials and has recently hired a Safety Officer.

C. Regular Vehicle and Equipment Maintenance. The MCDOT is responsible for maintaining the County's vehicles and most equipment. Maintenance is performed at the County's four maintenance yards and includes washing of vehicles and other activities. Maintenance supervisors at each facility are responsible for proper housekeeping.

D. FCDMC Quarterly Inspections. The FCDMC conducts routine inspections of the entire FCDMC owned and operated drainage system and issues work orders for any cleanup, repairs, or replacements that are needed. The Arizona Canal Diversion Channel is regularly swept.

E. Adopt-a-Highway Program. The MCDOT has an Adopt-a-Highway program through which volunteers pick up litter along segments of County highways.

F. Street Sweeping. The MCDOT sweeps approximately 800 miles of streets and roads on a regular basis, some on a three-week schedule and some on an eight-week schedule.

Table 2.6 ***MCM 6: Pollution Prevention/Good Housekeeping (40 CFR 122.34 (b)(6))***		
Permit Requirements	Existing Components May Contribute	Must Be Developed
1. Reduce pollutant runoff from County operations.	**A, B, C, D, E, F**	
2. Implement pollution prevention training for County employees.	**B**	

The County plans to develop and implement a program that will involve evaluating and refining County maintenance and operations activities for pollution prevention and good housekeeping. The Pollution Prevention/Good Housekeeping program that Maricopa County proposes to implement may be found under MCM 6 in Section 3 of this document.

Section 3
Stormwater Management Program (SWMP)

This section recommends specific Best Management Practices that Maricopa County can conceptually implement during the next five years in order to develop stormwater management programs that match community priorities and that will enable the County to comply with the AZPDES General Permit for Discharge from Small Municipal Separate Storm Sewer Systems (MS4s) to Waters of the United States.

3.0 Stormwater Management Program

Maricopa County's Stormwater Management Program (SWMP) is designed to address the need to prevent or reduce discharges of pollutants to Waters of the U.S. The Program specifically considers the six Minimum Control Measures (MCMs) as required in 40 CFR 122.34 for small municipal separate storm sewer systems (MS4s) as required by R18-9-B901.B.2.c.

The proposed best management practices (BMPs) address the required elements within the regulations, are appropriate for Maricopa County's stormwater system, are measurable, are anticipated to make improvements in the County's stormwater quality, and are achievable. For each BMP, the appropriate measurable goals are delineated along with a schedule including an indicated frequency of planned actions, interim milestones, and a date by which BMP implementation will be established.

3.1 Minimum Control Measure 1: Public Education and Outreach

40 CFR 122.34 (b):

(1) Public education and outreach on storm water impacts. (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

The County will prepare and develop a detailed plan for stormwater education including targeting audiences, information content, schedule and methods of communication. This will enable effective coordination of the overall effort. Maricopa County has many outlets for educating the public with a number of options to use for communication. A written plan will enable the designated pubic information officer of this minimum control measure to effectively follow up and implement the overall strategies chosen. Developing a plan will also enable the County to engage more organizational units in the overall outreach effort. The objective of this MCM is to create and maintain a detailed and coherent strategy for informing the public and Maricopa County employees about their role and responsibilities in protecting stormwater from polluting discharges.

The County will determine which audiences to target and what method is most effective. Locally, resources from the Phase I communities such as the City of Phoenix, coordination with the on-going STORM efforts, and focusing on the arid southwest will be important.

Methods of Communication: In order to reach citizens with targeted messages regarding the County's Stormwater Management Program and their role in it, the County will employ print media and the County's website. The County has an extensively developed website which provides detailed information to the public on County activities, materials and two-way communication.

Targeted Audiences: The education program seeks to reach a broad cross-section of Maricopa County's population. Targeted audiences include:

- The general public, providing information on general pollution prevention at home and work;
- The Spanish speaking population by producing some materials in Spanish in order to reach a diverse ethnic population; and
- School children.

Printed materials to be distributed in County facilities will carry more specific and focused information on ways in which citizens can help in the stormwater effort both at work and at home. Special printed information will target County employees with messages related to workplace pollution prevention and good housekeeping. The Maricopa County website will target the segment of the population who may use the internet rather than newspapers and television as a major information source.

It is estimated that this education plan will reach approximately 45% or 100,000 full-time residents of unincorporated Maricopa County over the 5-year program period.

Targeted pollutants: The education plan will specifically target floatables including trash and illegal pollutant dumping. The County has already made a significant effort in addressing these sources of pollution.

Responsible Department/Position: Maricopa County Environmental Services Department
Water and Waste Management Division
Division Manager or designee
Division Public Information Officer or designee

MCM 1: Public Education and Outreach
BMP 1: Develop and distribute educational materials

The County will procure and obtain free stormwater educational materials to distribute to County residents following the education plan described above. The residents of Maricopa County can participate in the protection of water quality when they are educated and provided communication tools to assist in illicit discharge and construction site management controls. It is important to provide them with information on how to contact the County staff and who to contact in case of an emergency. The materials will target household pollution prevention measures, illicit discharge issues, construction site management issues and other key messages related to the harmful effects of stormwater pollution as identified in BMP 1.

Distribution methods may include: making brochures available in County buildings; distributing to new resident welcoming groups (i.e., The Welcome Wagon or similar agency) to distribute with their new resident information packets; materials available at meetings and events such as the annual Maricopa County Lawn and Garden Show; and making materials available on the County's website. Spanish language materials will be made available.

Measurable Goals: The County will distribute at least 500 pamphlets every year throughout the permit period.

Schedule: Since 2006, Maricopa County has distributed over 12,000 pamphlets and will continue to distribute pamphlets and assess current communication methodologies throughout the remaining permit period.

MCM 1: Public Education and Outreach
BMP 2: Public education radio campaign on stormwater

The County will produce and air a 30-second public service announcement (PSA) on stormwater and what the public can do to prevent stormwater impacts. Coordination with the on-going STORM efforts will be part of the implementation of this BMP.

Measurable Goal: The PSA will air annually for a minimum of 4 weeks. Typically the PSA airs during the monsoon season when the County receives its largest portion of rainfall.

Schedule: Since 2006, it is estimated that 2 million residents have been reached with each PSA. Maricopa County will continue to work with the STORM organization to assess current communication methodologies throughout the remaining permit period.

MCM 1: Public Education and Outreach
BMP 3: Maintain and update the Maricopa County Stormwater Website

The County will implement, maintain, and update as necessary stormwater information on the Maricopa County website with links to appropriate web pages such as EPA and ADEQ and with a link to the e-mail of the County's contact person, providing useful information to the public on household pollution prevention planning, construction site management, post-construction controls and illicit discharge issues. There will be a general message conveyed, based on MCM 1, BMP1, as well as targeted messages for MCM 3, MCM 4 and MCM 5 compliance. The County webpage is richly developed, carrying significant information on County services and providing for two-way communication with County staff. This resource will be most helpful in meeting the outreach efforts defined in the MCM 1, BMP 1, and community communication plan.

Measurable Goals: Provide the County SWMP and NOI for public viewing and feedback on the overall program development on the website by June 30, 2009.

Schedule: The original Stormwater website was established by FCDMC in 2003. Since 2006 the Maricopa County Environmental Services Department has established, revised and maintained the Stormwater website. The County will continue to research and obtain appropriate information for use on the website throughout the remaining permit period.

3.2 Minimum Control Measure 2: Public Involvement/Participation

40 CFR 122.34 (b):

2) Public involvement/participation. (i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program.

The County currently involves residents in a number of ways. In the past, the Flood Control District of Maricopa County (FCDMC) has assisted citizens with volunteer trash pickups in parts of the stormwater system where neighbors have wanted to target cleanup efforts (e.g., Skunk Creek). Volunteers were given trash bags to collect litter and small debris while larger items such as old vehicles and appliances were hauled away by a contractor.

Citizens with specific stormwater problems or suggestions will be targeted through the Hotline currently operated by the Maricopa County Environmental Services Department (MCESD). The community will be informed of public involvement opportunities through the County's website, in the newspaper and in other education materials in MCM 1.

In order to encourage participation in stormwater issues by interested citizens or groups, the County will make available on its stormwater webpage copies of its Stormwater Management Program for stormwater discharge as well as a "Comment" section, allowing for two-way communication. The availability of this information will be advertised through printed educational materials available at County facilities.

The selected BMPs described below reflect Maricopa County's commitment to involving the public in the development and implementation of its SWMP.

Responsible Department/Position: Maricopa County Environmental Services Department
Water and Waste Management Division
Division Manager or designee
Division Public Information Officer or designee

MCM 2: Public Involvement/Participation

BMP 1: Provide various vehicles of communication to the general public for feedback to the County

The Water & Waste Management Division will utilize the hotline currently operated by Maricopa County Environmental Services Department for citizens to provide input and feedback regarding stormwater related issues. The County will develop a procedure for responding to comments from the public. In addition to the hotline, the Water & Waste Management Division has placed a link on the Stormwater website for providing feedback to the department This link allows the general public to send an email directly to the Public Information Officer with comments, questions, or feedback.

The Water & Waste Management Division has implemented a public survey to assist the division in determining the focus of stormwater training efforts. The survey was established during the fiscal year 2008-2009.

The Water and Waste Management Division will place the Stormwater Management Program (SWMP) and NOI on the website for the general public for review and to provide feedback by June 30, 2009. This will allow the general public to make comments regarding stormwater related activities and provide feedback on the SWMP development.

Measurable Goals: The County will procure and handout 500 surveys annually at local community events. The County will monitor and track the number of citizen comments and surveys that the department receives and provide these totals in the annual report.

Schedule: The development and implementation efforts for several of these programs have already been completed and will continue to be maintained throughout the permit period. The SWMP and NOI will be posted on the County's website by June 30, 2009 and will be maintained throughout the permit period.

MCM 2: Public Involvement/Participation
BMP 2: Develop a Stormwater Stakeholders Workshop

The County will establish a Stormwater Stakeholders Workshop which should include but is not limited to representatives from the general public, other County departments, industrial and commercial groups, and construction / developer groups. Involving such stakeholders in the stormwater management planning process will improve and strengthen the County's stormwater programs success. The County will hold stakeholder workshops on an annual basis prior to submitting the stormwater annual report to ADEQ. The County will announce the date and time of the workshop through a formal public notice process. The County will present the previous fiscal years activities, achievements, and contents of the annual report to the stakeholder group and will allow the stakeholders to voice their concerns and provide valuable feedback regarding the annual report and stormwater program.

Measurable Goals: The Stormwater Stakeholder Workshop will be held on an annual basis. the County will report the number of individuals in attendance for the annual workshop.

Schedule: The Stormwater Stakeholder Workshop will be established by August 31, 2009 and will continue to meet annually throughout the permit period.

MCM 2: Public Involvement/Participation
BMP 3: Establish stormwater related contests for school children and local communities

The County staff will promote contests within local communities and within the local schools located in the County's jurisdiction. The purpose of these contests is to generate community involvement regarding good stormwater practices and other stormwater related topics. These contests shall be used as educational tools and to promote awareness within the general public and schools. The County will advertise the contests at local events and at other organized events the department staff participates in around the community. The winners of the contests will be presented an award during the County Board of Supervisor's monthly meetings.

Measurable Goals: The County will support a minimum of one contest per year and report the results of each contest in the annual report.

Schedule: The County will continue to develop this program and begin implementing contest events by December 31, 2009. Events will be scheduled as appropriate throughout the permit period.

3.3 Minimum Control Measure 3: Illicit Discharge Detection and Elimination

40 CFR 122.34 (b):

(3) Illicit discharge detection and elimination. (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at Sec. 122.26 (b) (2)) into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

Maricopa County recognizes the potential for illicit discharges to the County's stormwater system and is committed to addressing the problem. The BMPs in this section have been developed with the County's unique stormwater system and seasonal population in mind. The BMPs are targeted toward known and potential illicit discharges. The program envisioned by Maricopa County will be based on an amended regulation which will define and prohibit illicit discharges to the County's stormwater system, clarifying rights of entry and activities that are prohibited.

40 CFR 122.34(b)(3)(ii)(A): A map of Maricopa County's stormwater system will be created and kept current, identifying the outfalls and receiving bodies of water.

40 CFR 122.34(b)(3)(ii)(B): Existing regulations for the Flood Control District, the County's subdivision ordinance and the County's Department of Transportation regulations may be sufficient authority to address illicit discharges and illegal dumping. Current Maricopa County drainage regulations Section 1203 states that it is a violation "for any person to place or allow to be placed any fill material, rubbish, trash, weeds, filth, or debris which obstructs, retards or diverts any natural or improved drainage system upon any private or public property located in the unincorporated areas of Maricopa County". This current regulatory language targets illegal dumping that may cause drainage obstructions but may not specifically target illicit discharges that could potentially impact water quality. A review of the existing authorities is appropriate and will be completed with the assistance of the County Attorney's Office. Based upon that review, the County will amend existing regulations or create new regulations to effectively prohibit illicit discharges and illegal dumping into the MS4.

40 CFR 122.34(b)(3)(ii)(C): The County will inspect outfalls identified in the mapping process, completing a review of all drainage systems owned or operated by the County within the regulated boundary of the MS4 during the first five years of the permit. Where indicators such as, odor, color, and unidentified flow are found of a potential illegal discharge, the County will initiate an investigation within 30 working days and take action to eliminate the discharge if the source can be identified.

40 CFR 122.34(b)(3)(ii)(D): Educational efforts for the public and employees related to the hazards of illegal discharges and improper waste disposal are included in activities of MCM 1, Public Education and MCM 6, Pollution Prevention/Good Housekeeping. Illegal dumping and illicit discharges will be covered as specific targeted messages in BMPs for the Public Education and Outreach.

40 CFR 122.34(b)(3)(iii): For the purposes of this regulation, all of the non-stormwater discharges specified in 40 CFR 122.34 (b)(3)(iii) will be considered allowable unless specific evidence of contamination is discovered and cause can be determined.

Responsible Department/Position: Maricopa County Environmental Services Department
Water and Waste Management Division
Division Manager or designee

MCM 3: Illicit Discharge Detection and Elimination
BMP 1: Identification of illicit discharges through an inspection program

The County staff will evaluate current inspection programs that could identify illicit discharges and locate illegal dumping and modify these programs as needed to complete an outfall inspection program. The County staff will identify possible illicit discharges to the County's stormwater system and locate illegal dumping through the inspection program with a goal to remove the illicit discharges and find the responsible party for dumping into the stormwater

system. As part of the overall effort the County staff will regularly review and update policies and procedures for outfall inspections, noting on inspection forms the appearance, color, odor, etc of any discharge. If illicit discharges is suspected, County staff will initiate an investigation to identify the pollutant and if possible, the source of the problem. County staff will evaluate what procedures Arizona Phase I communities follow to learn from their experience.

County staff will annually report on inspection activities, describing the process followed and the number of inspections completed. Details will be provided on investigations initiated and outcomes reached.

County staff will complete the Maricopa County storm sewer map showing all outfalls and names and locations of Waters of the United States in support of the program to detect and eliminate illicit discharges.

Measurable Goals: The County will create a minimum of one (1) new staff position by the end of fiscal year 2008-2009 for conducting inspections. Ten percent (10%) of the County's outfalls will be inspected annually. The County will establish and follow performance goals for the outfall inspection program for the remainder of the permit period. .

Schedule: The Maricopa County Board of Supervisors approved a new staff inspector position in fiscal year 2008-2009. It is anticipated that outfall inspections will begin in fiscal year 2009-2010 and will continue throughout the permit period.

MCM 3: Illicit Discharge Detection and Elimination
BMP 2: Implement a complaint response program

To effectively enforce the County's illicit discharge and illegal dumping regulation, the County will engage the general public to provide information to the County on concerns regarding potential illicit discharges or illegal dumping. County staff will coordinate efforts with the Environmental Complaint system in place, undertaking such activities that may include a follow up process and tracking system. Training administrative staff on how to route complaint calls as well as training inspection and enforcement staff on follow up action will be part of the process. The County will promote the phone number to call for illicit discharge and illegal dumping complaints in educational materials developed in MCM 1.

Measurable Goal: The County has developed procedures for complaint handling and will initiate investigation on all of the complaints received within 15 days of complaint receipt, unless there is indication that an emergency response is warranted. The County will annually report on the number of complaints received, type of complaints, investigation response times, and any enforcement actions taken.

Schedule: The County has established a complaint reporting system. Implementation of this BMP is immediate. This program will be maintained throughout the permitting period.

MCM 3: Illicit Discharge Detection and Elimination

BMP 3: Educate businesses and the general public about hazards associated with illegal discharges to storm sewer systems

The County will procure, revise or develop illicit discharge educational materials and distribute to the businesses and the general public to provide awareness of the hazards associated with illegal discharges to the Maricopa County stormwater system. The County staff will procure/obtain from another agency (i.e., ADEQ or EPA) educational materials regarding hazards of illegal discharges to storm sewer systems and revise as necessary to include County contacts for complaints and County-specific concerns. The County staff will place materials for distribution in County buildings and make available to volunteers under MCM 2.

Many existing stormwater programs have focused efforts on illicit discharge detection and elimination, including the development of education materials. Conducting research surrounding Phase I communities and identify potential educational materials addressing illicit discharges and illegal dumping that can be obtained and modified to meet the needs of Maricopa County, and can provide materials free or at a minimal cost. County staff will document efforts and maintain examples of materials used.

Measurable Goal: The County will distribute 5,000 pamphlets containing information about illicit discharges every year beginning June 30, 2009 and will continue to distribute pamphlets throughout the permit period.

Schedule: The County is currently distributing stormwater educational pamphlets to the general public and will continue to provide the residents of the County educational materials regarding illicit discharges throughout the permitting period.

3.4 Minimum Control Measure 4: Construction Site Stormwater Runoff Control

40 CFR 122.34 (b):

(4) Construction site storm water runoff control. (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with Sec. 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

40 CFR 122.34(b)(4)(i): Maricopa County has several on-going programs that will provide the foundation for the controls needed to address the regulations stated above. The County currently provides best management practice guidance through the Drainage Design Manual (Volume III Erosion Control), for construction site management of erosion and sediment control. In addition, the dust control program focuses on key elements of site management including issues of track-out of dirt and other debris and approved best management practices. BMPs in this section have been developed with specific attention given to Maricopa County's arid conditions.

Maricopa County will evaluate what programs it currently has to control construction site management issues on new development sites affecting one acre or more to the maximum extent practicable. The program review will consist of a combination of evaluating legal requirements, technical guidance materials, inspections, plan review, enforcement provisions, and an educational initiative. In addition, the program review may incorporate provisions for response to the public through complaint hotlines. Much of the program depends on a review of current practices set forth in existing regulation and technical guidance materials, defining the requirements for construction site operators and site plans.

40 CFR 122.34(b)(4)(ii)(A): The County will review existing regulations, prepare and adopt amendments to them as needed to govern construction site management. The regulation will include requirements for proper management and disposal of construction and sanitary waste at the construction site.

40 CFR 122.34(b)(4)(ii)(B) and (C): The County will utilize the ADEQ Construction Site Management General Permit as a first level of control and enforcement, requiring documentation from the development community that they have complied with the NOI process and stormwater pollution prevention plan development for each site. In addition, the County provides guidance on appropriate sediment and erosion control procedures through the Drainage Design Manual. The County will review and modify if necessary existing procedures for compliance with this requirement.

40 CFR 122.34(b)(4)(ii)(D): The County development management process will be reviewed and amended to incorporate the acceptance of construction site management plans and documents in support of the ADEQ general permit. The plan review process currently utilized by the County coordinates all activities at one location. This will assist in getting information to the construction industry regarding these requirements. For sites that are not impacted by the Construction Site Management General Permit, no action will be necessary.

40 CFR 122.34(b)(4)(ii)(E): The County will follow the same procedures as outlined in MCM 3, regarding input on illicit discharge concerns from the general public (MCM 3 BMP 5) for receipt of input from the general public on construction site management issues and concerns. The current Environmental Complaint system will serve both minimum control measures.

40 CFR 122.34(b)(4)(ii)(F): The County will evaluate existing policies and procedures for ongoing inspection and enforcement programs and modify as necessary to address an inspection program for construction site management. Initial enforcement will be through the authority of ADEQ's Construction Site Management General Permit and the current dust control program for construction sites.

Responsible Department/Position: Maricopa County Environmental Services Department
Water and Waste Management Division
Division Manager or designee

MCM 4: Construction Site Stormwater Runoff Control
BMP 1: Establish an enforcement mechanism to require erosion and sediment controls at construction sites ≥ 1 acre

County staff will evaluate existing programs, policies and regulations that may address the prevention of or reduced impacts of stormwater runoff from construction sites disturbing one acre or more as defined in 122.34(b)(4)(i). Staff will review County regulations that require controls at construction sites, ensuring that they address activities that disturb one acre or more and that they are sufficient to control the potential for pollutant contamination of stormwater runoff. It is anticipated that amendments will be needed and these may incorporate requirements for new development projects to submit plans prior to beginning land-disturbing activities; to properly install and maintain appropriate measures; to properly manage and dispose of construction waste; and enforcement sanctions. Enforcement sanctions may include a number of options such as penalties, stop work orders and/or permit revocation. The regulation may reference the requirement for compliance with the ADEQ Construction Site Management General Permit.

The County will annually report on the status of the regulatory changes, including opportunities for public input through public meetings. Once changes are made, the County will provide the details regarding the on-going progress in the annual reports.

Measurable Goal: The County will establish rules and regulations creating the legal authority for Maricopa County to regulate stormwater activities by June 30, 2009.

Schedule: The County has established regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation during the fiscal year 2008-2009.

MCM 4: Construction Site Stormwater Runoff Control
BMP 2: Review and update Maricopa County construction site BMP manual.

County staff will review and update the existing Maricopa County Drainage Design BMP manual with particular attention to Volume III – Erosion and Sediment Controls to ensure an up-to-date manual regarding construction site runoff controls for developers and contractors in Maricopa County. The County staff will research arid-condition BMPs for construction site management and determine if the manual needs to be changed or additions made to address this minimum control measure. The latest version of the BMP Manual will be included on Maricopa County's website.

The County will report annually on the status of the review and report on changes or amendments being considered.

Measurable goals: The County will research Best Management Practices (BMPs) and update the Maricopa County Drainage Design BMP manual with particular focus on Volume III by December 31, 2009.

Schedule: The County has updated the Drainage Policies and Design Manual and included a new section titled "First Flush." Initial updates will be made available by December 31, 2009. The County will continue to review and make changes as necessary throughout the permitting period.

MCM 4: Construction Site Stormwater Runoff Control
BMP 3: Review plans and permit applications

The County staff will review and update policies and procedures if necessary for construction site management control plan review to ensure that construction site runoff is addressed prior to issuing a construction permit. This may include revising plan review checklists to include construction site management control items, such as documentation that the Construction General Permit has been applied for, that erosion and sediment controls are specified. The plan review process may require documentation on the contractor's NOI to comply with the ADEQ or prevailing Construction Site Management General Permit. The County may train plan review staff in construction site management requirements based on updated regulations.

The County will document the number of permit applications and plans reviewed for runoff controls and coordinate this information with the inspection program to ensure that the most effective procedures are utilized.

Measurable Goal: The County will implement a plan review process and establish a minimum of one (1) new staff position to assist in the plan review process by June 30, 2009. The County will report the number of permit applications reviewed on an annual basis.

Schedule: The County has established regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation during the fiscal year 2008-2009. A new staff position has been approved by the Maricopa County Board of Supervisors during the fiscal year 2008-2009. The implementation of this program is immediate. The County will maintain and continue to strengthen this program throughout the permitting period.

MCM 4: Construction Site Stormwater Runoff Control
BMP 4: Establish a stormwater inspection program

The County will review current procedures for site inspections and enforcement of dust control and drainage management programs and amend as needed to address site inspections and enforcement of the construction site management program. It is the County's goal to effectively inspect construction sites for compliance and to efficiently integrate inspection procedures with other on-going construction site inspection activities. The County staff will draft and finalize inspection policies and procedures and then train County inspectors to inspect construction sites for compliance with County and state regulations. The County will require documentation of all inspections.

Measurable Goal: The County will establish a Stormwater inspection program by June 30, 2009. Beginning in the fiscal year 2009-2010, the County will conduct all permit required inspections. The County will report annually on the overall inspection activities, which may include items such as but not limited to the number of inspections, type of issues or problems identified, and enforcement actions.

Schedule: The County has established regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation during the fiscal year 2008-2009. A new staff inspector position has been approved by the Maricopa County Board of Supervisors during the fiscal year 2008-2009. The implementation of the inspection program is immediate. The County will maintain and continue to strengthen this program throughout the permitting period.

MCM 4: Construction Site Stormwater Runoff Control
BMP 5: Establish complaint response program

The County will coordinate with the existing Environmental Complaint system to receive input from the general public and respond to public inquiries and complaints concerning construction site management issues on regulated sites. Integrating into existing complaint procedures provides an effective communication system for the public to use and provides an effective system for the County to track complaints and follow up actions taken. The County will publicize the use of the Environmental Complaint system, coordinated through the strategies in MCM 1, Public Education and Outreach.

The residents of Maricopa County can file a complaint and track their complaint on the County Environmental Services Department web page. Additionally, the County will set-up a Hotline where environmental complaints can be filed by telephone.

Measurable Goal: The County has developed procedures for complaint handling and will initiate investigation on all of the complaints received within 15 days of complaint receipt, unless there is indication that an emergency response is warranted. The County will annually report the number of complaints received, type of complaints, investigation response times, and any enforcement actions taken.

Schedule: The County has established a complaint reporting system. Implementation of this BMP is immediate. This program will be maintained throughout the permitting period.

MCM 4: Construction Site Stormwater Runoff Control
BMP 6: Provide educational information on the County's Stormwater website

The County will provide educational information for the Maricopa County development community regarding the construction site runoff control regulation and technical guidance materials on the County's stormwater webpage. The County will inform developers and construction contractors about construction site runoff controls and County regulations, as well as procedures requiring documentation of compliance with the AZPDES Construction General Permit.

The County will maintain up to date information on construction site requirements on the County website.

Measurable Goal: The County will develop educational materials to be included on the webpage by June 30, 2009.

Schedule: The County has completed the development of such educational materials and will continue efforts to provide the information to the general public. The educational information will be included on the County's website by June 30, 2009 and throughout the remainder of the permit period.

3.5 Minimum Control Measure 5: Post-Construction Stormwater

Management in New Development and Redevelopment

40 CFR 122.34 (b):

(5) Post-construction storm water management in new development and redevelopment.

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

40 CFR 122.34(b)(5)(i): The Maricopa County Subdivision Regulations contain provisions regarding onsite retention of stormwater in new subdivisions, along with the area drainage master plans and watercourse master plans constitute the foundation for operation and maintenance of stormwater control structures that address water quantity and water quality.

The program will involve the review and, if needed, the revision of the County's existing subdivision regulations requiring retention/detention of stormwater at sites disturbing an acre or more as defined above in 122.34(b)(5). The regulation will contain enforcement and inspection provisions, integrating with other County inspection practices if possible. In addition, educational materials will be developed and distributed to contractors, developers and other appropriate parties.

40 CFR 122.34(b)(5)(ii)(A): The program will include structural (i.e., retention basins) and non-structural BMPs that can be used to reduce reliance on structural BMPs. The County Drainage Design Manual will be reviewed and amended as needed to incorporate additional strategies to address water quality controls and construction standards.

40 CFR 122.34(b)(5)(ii)(B): The County will review existing subdivision, drainage, and transportation regulations to determine if they are adequate to accomplish the goals of the permit. Where needed the regulations will be amended or new regulations adopted to establish the framework for post-development controls.

40 CFR 122.34(b)(5)(ii)(C): The County will review current inspection practices to address an ongoing inspection program for post-construction BMPs. In addition, subdivision regulations will be reviewed and amended as necessary to incorporate requirements for long-term management of any structural controls approved and implemented. Enforcement strategies will be included in this process of regulatory review and amendment. The County Attorney's office will assist in developing adequate enforcement strategies.

Responsible Department/Position: Maricopa County Environmental Services Department
Water and Waste Management Division
Division Manager or designee

MCM 5: Post Construction Stormwater Management in New Development and Redevelopment

BMP 1: Develop and adopt technical guidance materials

The County will review and update technical guidance materials addressing the design, installation and maintenance of structural post-construction stormwater features (BMPs), including the Drainage Design Manual, to ensure that effective materials are made available to the development community. This activity may include research of stormwater quality programs in other arid communities, identification of technical guidance materials that can be revised and made Maricopa County-specific or creation of new guidance materials addressing stormwater quality runoff controls. The County will make materials available to the development community through the website, mailings and other public education tools. The guidance will be coordinated with the development of regulations.

Measurable Goals: The County will review and develop technical guidance information for distribution to the residents of Maricopa County or posting to the County stormwater website by December 31, 2009. The County will begin distributing 500 technical guidance materials to the development community annually.

Schedule: The County is currently reviewing existing technical guidance materials in conjunction with the review of existing regulations to develop educational materials and will continue with this effort throughout the permitting period. Guidance information will be distributed by December 31, 2009.

MCM 5: Post Construction Stormwater Management in New Development and Redevelopment
BMP 2: Review plans and permit applications

The County will evaluate existing policies and procedures for post-construction stormwater quality plan review for all new development and redevelopment projects affecting one acre or greater as defined in 122.34(b)(5). The County will modify or develop new policies and procedures if necessary to address a program process to reduce pollutants in post-construction stormwater runoff to the maximum extent practicable. The County will train County staff on the stormwater quality program and plan review requirements and begin plan and permit application review during the permit term.

Measurable Goal: The County will implement a plan review process and establish a minimum of one (1) new staff positions to assist in the plan review process by June 30, 2009. The County will report the number of permit applications reviewed on an annual basis.

Schedule: The County has established regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation during the fiscal year 2008-2009. A new staff position has been approved by the Maricopa County Board of Supervisors during the fiscal year 2008-2009. The implementation of this program is immediate. The County will maintain and continue to strengthen this program throughout the permitting period.

MCM 5: Post Construction Stormwater Management in New Development and Redevelopment
BMP 3: Conduct construction site inspections

The County will evaluate existing programs for inspection of site development within the County and develop an on-going post-construction BMP inspection program to ensure that structural and non-structural BMPs are constructed / implemented as approved for use and are maintained over time. The inspection program will be developed in coordination with the BMPs under MCM 5. The County will establish a policy addressing maintenance responsibilities for post-construction structural BMPs as well as policies and procedures for routine inspections by the County. The program will address two key components: assurance that the BMPs approved for each new or redevelopment project are built to standards and that the owner/operator of them maintains them over time. The County will research programs implemented by other communities as well as any model programs available for review.

Site inspections will be conducted to ensure that, during development and redevelopment, post-construction stormwater management is being addressed through proper design, implementation, operation, and maintenance.

Measurable Goal: The County will establish a Stormwater inspection program and begin conducting permit required inspections by June 30, 2009. The County will report annually on the overall inspection activities, which may include items such as, but not limited to the number of inspections, type of issues or problems identified, and enforcement actions.

Schedule: The County has established regulations known as the Maricopa County Stormwater Quality Management and Discharge Control Regulation during the fiscal year 2008-2009. A new staff position has been approved by the Maricopa County Board of Supervisors during the fiscal year 2008-2009. The implementation of the inspection program is immediate. The County will maintain and continue to strengthen this program throughout the permitting period.

MCM 5: Post Construction Stormwater Management in New Development and Redevelopment

BMP 4: Create and distribute educational materials for the development community

The County will create educational materials outlining the requirements of the post-construction stormwater management program and integrate this effort with BMP 2 of MCM 5. The County will educate the development community and the general public on the stormwater management program requirements for post construction controls, using Maricopa County regulations and policies as the focus of the education outreach. The County will emphasize how the development community can access new guidance standards, policy requirements, plan review procedures and enforcement efforts. The County will utilize the webpage and printed materials for distribution.

Measurable Goal: The County will create, publish and distribute final educational materials to the development community by December 31, 2010. Five hundred (500) pamphlets will be distributed per year beginning in 2011.

Schedule: The County is currently reviewing existing technical guidance materials in conjunction with the review of existing regulations to develop educational materials and will continue with this effort throughout the permitting period. Materials will be finalized by December 31, 2010 and distributed starting January 2011.

3.6 Minimum Control Measure 6: Pollution Prevention/Good Housekeeping for Municipal Operations

40 CFR 122.34 (b):

(6) Pollution prevention/good housekeeping for municipal operations. (i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from

activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

40 CFR 122.34(b)(6)(i): Maricopa County recognizes that any Stormwater Management Plan requires diligent good housekeeping and pollution prevention to be successful. Maricopa County already practices many pollution prevention activities, and the County is committed to improving their good housekeeping practices in operations and maintenance. The County also realizes that evaluation and refinement of good housekeeping and pollution prevention is beneficial, and is committed to the BMPs and schedules described below.

The County plans to develop and implement a program that will involve evaluation and refinement of County operations and maintenance. Specifically, the County will identify operations that should be evaluated for their impact on stormwater quality, focusing on the operations and maintenance activities impacting roadways, bridges, parking lots, fleet maintenance, public buildings and other County facilities that are identified through a risk assessment process. A comprehensive pollution prevention plan will be developed for County operations as needed. As pollution prevention plans are developed, County staff will be trained on policies and procedures. As part of this plan, procedures for construction and maintenance by County maintenance crews will be evaluated. Operations and maintenance at Maricopa County facilities, including parks, roads and maintenance and storage facilities will also be evaluated.

Responsible Department/Position: Maricopa County Environmental Services
Water and Waste Management Division
Division Manager or designee
Maricopa County Risk Management
Department designee
Facilities Management Department
Department designee
Maricopa County Department of Transportation
Department designee

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations
BMP 1: Maintain a regular street sweeping program

An important activity in keeping floatables and sediment out of the stormwater system is street sweeping. Maricopa County will evaluate its street sweeping practices from the standpoint of water quality and will make changes if necessary. The County will evaluate current standards for equipment and sweeping schedules, as well as employee training to determine if changes in practices are appropriate.

Measurable Goals: The County is currently researching the contracted companies capabilities for tracking the miles traveled within the unincorporated areas of Maricopa County and anticipates 4,500 miles of unincorporated county streets being swept annually.

Schedule: The County will track and report the number of miles swept within the unincorporated areas of Maricopa County beginning June 30, 2009. The County will maintain this program throughout the remaining permit period.

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations
BMP 2: Evaluate County facilities with regards to pollution prevention practices

The County owns many facilities and properties throughout the corporate boundaries and with approximately 16,000 employees, provides many services to the community. The County will evaluate County operations and maintenance activities and evaluate County owned facilities to determine if stormwater runoff measures are in place or need to be added to ensure that pollutants are being reduced to the maximum extent practicable. The County will prioritize both facilities and operations based on potential risk and evaluate the high priority sites or operations during the first permit period. The County will develop pollution prevention plans and operating procedures for each activity or facility identified, if appropriate. Employees will be trained on new procedures and practices prior to implementation of changes.

During the fiscal year 2008-2009 the County completed 200 site inspections of County owned or operated facilities. Each facility was evaluated to determine if pollution prevention practices were being upheld to the maximum extent practicable.

Measurable Goals: The County will continue to evaluate a minimum of 20 County owned or operated facilities annually beginning in fiscal year 2009-2010. The County will evaluate and develop recommendations for procedural or policy changes for at least two sites/facilities annually beginning in 2011.

Schedule: The County has begun coordination with the Risk Management and Facilities Management Departments to initiate a risk assessment of all county facilities and their practices. The first group of facilities will be audited / evaluated by December 31, 2010 and recommendations will begin in 2011.

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations
BMP 3: Development of a centralized, County-wide employee education and training program regarding pollution prevention

The County will develop and implement a centralized education and training program regarding pollution prevention for County employees utilizing existing training opportunities such as new employee orientation as well as specific training activities related to MCM 6, BMP 2.

The County will develop a pollution prevention education and training program potentially using modules for Maricopa County employees for self-instruction, conducting appropriate educational and training classes and utilizing the County intranet for articles and communication directly

with employees. The County may place articles in the employee newsletter for on-going reinforcement of specific training and add message of pollution prevention in new employee orientation.

Measurable Goals: The County will conduct a minimum of two educational training workshops for County employees on an annual basis. The County will report annually the number of employees that participate in the training workshops.

Schedule: Implementation of this BMP is immediate (January 2009). The County has purchased educational videos covering stormwater pollution and preventative measures. These videos have been presented to staff at four different County departments. In October of 2006, the County printed a message on 15,000 employee pay stubs about preventing stormwater pollution. The County has distributed more than 2,000 stormwater program educational pamphlets to County employees.

Section 4
Stormwater Management Program (SWMP) Cost Estimates

This section provides information on cost estimates and potential funding sources for Maricopa County's Stormwater Management Program during the 2009-2012 permit period.

4.0 Introduction

Based on the Stormwater Management Program (SWMP) described in Section 3, program cost estimates have been developed for Maricopa County's program for the permit period. These estimates are based on a number of factors, including status of the existing program, current and future staff needs, capital costs, projected costs for professional and outside services, and other factors.

4.1 Current SWMP Elements and Costs

Interviews held with County staff identified existing programs to be used for meeting NPDES permit requirements and existing levels of effort. Current SWMP components provided by Maricopa County include street sweeping, code enforcement, engineering plan review and technical assistance, public education via television, radio, newspaper, and newsletter, volunteer events, and other elements. While not all program components identified are currently used for stormwater purposes, these components can be modified.

The costs and current expenditures for stormwater services are not restricted to one specific area of County services and are not identified as stormwater-specific. Other, non-structural components of the County's existing stormwater program include municipal pollution prevention, County hotlines, public education, and other activities. Current costs are widely distributed over a number of Maricopa County agencies and will continue to be widely distributed as the program is implemented.

4.2 Development of the Maricopa County SWMP

Initially, interviews with Maricopa County staff and review of County records were used to identify potential BMPs for the County's SWMP. Estimated costs for consultant services and supplies were also applied to the cost estimate. Finally, cost estimates were combined with the SWMP schedule and have been adjusted using a 3% annual inflation factor to produce the final cost estimates including annual and total program costs. Although Maricopa County's ultimate SWMP will be negotiated with ADEQ, the County asked AMEC Earth & Environmental, Inc. to develop conceptual costs based on BMPs identified in the County's Individual Application.

Accuracy of the cost estimates are of course dependent on a number of factors, including hourly rates, overhead costs, and number of hours required to implement the various BMPs. The County's overall SWMP under its General Permit will be negotiated with ADEQ so the specific

components of the final program are not now known. There was no effort made to adjust for factors such as large increases in items such as health insurance, the future costs of which cannot be accurately determined. Consultant/contractor costs were estimated for various BMPs, but the County may choose to have more or fewer BMPs implemented by consultants.

Numerous assumptions have been made when formulating cost estimates for Maricopa County's SWMP, including:

- **Impacts of SWMP evaluation during Years One and Two cannot be completely quantified at this time.** Many of the costs *for the upcoming three years may be a result of program evaluation and planning as well as program changes that may occur based on evaluations conducted in earlier years of the program development are not yet known.*
- **Costs represent levels of effort only.** Costs are not attached to any organizational unit within the County or within the Environmental Services Department.
- **Training costs do not represent class time for County employees.** Costs captured represent costs for development of training programs only.
- **Pollution Prevention/Good Housekeeping costs do not include improvements or modifications to County facilities.** Costs captured represent costs for evaluation of County facilities but not for any capital improvements or changes in procedures.
- **Legal services are assumed to be contract services.** Legal fees are captured based on estimated review times by legal contractors.

Estimates of SWMP costs have been compiled by several organizations including the Environmental Protection Agency (EPA) and the National Association of Flood and Stormwater Management Agencies (NAFSMA). The range of annual NPDES costs for Phase II communities is $1.39 to $7.83 per capita based on the EPA analysis. The NAFSMA study reinforced this analysis through review of current NPDES costs for Phase I permittees.

Level-of-magnitude costs anticipated for the Maricopa County SWMP implementation over the next three years is provided in Table 4.1. A proposed SWMP schedule is provided in Table 4.2. Costs and schedule are dependent on approval of this SWMP by ADEQ.

Estimated costs for Maricopa County's SWMP are $247,000 over the next three years (2009-2011), or an average cost of approximately $83,000 per year.

Two important points should be considered when evaluating the estimates of future costs for Maricopa's SWMP. First, these estimates don not include existing program costs and are not all new resources—that is, the County already dedicates funding and staff to existing programs that can be used and/or modified to satisfy the NPDES Phase II requirements. Second, these estimates reflect conceptual costs for the first permit period (2008-2011) only. Permit periods after 2011 are expected to have added provisions that will require increased funding and staff in order to meet permit requirements.

4.3 Stormwater Program Funding Methods Available for Maricopa County

The following revenue sources and funding mechanisms are available to fund the County's stormwater management program. This is not intended to be an all-inclusive list but a summary of some available funding sources.

Cost sharing and partnering. The County can share costs with Phase I and Phase II permittees through local or regional cooperation. Several permittees can share costs for brochures, newspaper space, or billboards and can collectively order items in quantity to reduce costs. The County can also partner with non-profit environmental/water quality organizations to conduct monitoring, education, cleanups, and other activities.

Internet Resources. There are a number of websites which can provide guidance and documents for stormwater management purposes. Several of these websites are listed in Appendix M.

Arizona Highway Users Revenue Fund (HURF): HURF funds are primarily gasoline and vehicle license taxes and are available to the state, counties and cities. Although the stormwater management program in Maricopa County has not yet been defined and funded, some funding for the new program may come from HURF funding allocations. HURF monies are limited to highway funding by Article IX, Section 14 of the Arizona Constitution.

Stormwater utility: In the Spring of 2008, the Arizona State Legislature passed Senate Bill (SB) 1228 which allows certain counties to adopt ordinances and fees related to the implementation of a local stormwater quality program. Fees collected through a stormwater utility or through specific ordinance adoptions has the given local municipalities the authority, to implement program funding through the community as deemed appropriate. Stormwater utilities typically provide more stable revenue than other funding options, offering the opportunity to design a service fee rate methodology that results in an equitable allocation of the cost of services and facilities. Service fee rate structures are designed to recover costs based on the demands placed on the stormwater systems and programs. There are several ways of augmenting a stormwater service fee that enhance both equity and revenue sufficiency under this approach. Fees may be collected using existing billings such as those for water and solid waste services.

Special assessments: Special assessments for stormwater are workable in a very localized application. For example, improving a ditch or channel that directly serves a few properties or a relatively small area is an appropriate project for special assessment funding. Because so much of what must be done to effectively manage stormwater quantity and quality in Maricopa County is not directly and specifically beneficial to individual properties, assessments are not recommended as the prime source of funding for the stormwater management program.

Bonding for capital improvements: The chief advantage of bonding is that it allows construction of major improvements to be expedited in advance of what could be funded from annual budget resources. In the case of stormwater management, expediting a capital project by several years through bonding may result in significant public and private savings if flooding, other damaging impacts, and inflation of land acquisition and construction costs are avoided. Major disadvantages of bonding are interest expenses and that this option cannot be used for all SWMP components.

In-lieu-of-construction fees: In-lieu-of-construction fees could conceivably be adopted as one element of a comprehensive stormwater service fee rate methodology. The major advantage of in-lieu-of-construction fees is that the County would not solely bear the capital expense for regional detention and other systems to mitigate the runoff impact created by private development projects. The most important disadvantage of in-lieu-of-construction fees is that they rarely generate sufficient revenue to fund construction of regional detention facilities or to enlarge conveyance systems.

System development charges: System development charges provide a mechanism whereby developers participate in paying for excess capacity that was previously built into a public system in anticipation of their needs. The use of such fees for stormwater management capital costs is clearly appropriate since most drainage systems are consciously designed to provide excess capacity to accommodate future development in an economical manner.

Plan review, inspection, and other fees: Maricopa County has been reviewing stormwater plans in conjunction with development approvals for many years. Although there is no specific statutory authority for special service fees for stormwater plan review and inspections, they could reasonably be included under the scope of a stormwater service fee rate methodology. In the case of Maricopa County, separate fees for stormwater system plan review and inspection can provide a small additional amount of revenue, but enhance the equity of the cost distribution. With the regulatory requirements from Phase II, establishing new fees for annual inspection of structural controls may be appropriate.

Developer extension/latecomer fees: Developer extension/latecomer fees are not specifically provided for funding extensions of stormwater systems. They are not a revenue mechanism, but rather a means of properly distributing capital investment costs among several properties when one developer builds a facility with excess capacity to accommodate adjacent or nearby properties that are to be developed subsequently.

Federal and state funding opportunities: There are some federal and state funding mechanisms for local stormwater management programs. Federal involvement in stormwater management (other than regulatory programs) is typically limited to advisory assistance, cooperative programs like those provided by the United States Geological Survey and the United States Army Corps of Engineers, and emergency response following devastating floods.

4.4 Recommendations

Based on input from County staff and the staff's interpretation of the political acceptance of the various funding methods available, it is anticipated that Maricopa County can potentially its NPDES Phase II compliance effort with a combination of funds. The County should explore coordinating with local Phase I and Phase II permittees, especially those whose stormwater systems border on the County's system. Funding may include, but will not necessarily be limited to, stormwater utility funds, dedicated Flood Control Tax funding, the County's General Fund, and possibly HURF funds in situations that are allowed by statute.

Table 4.1

MARICOPA COUNTY, ARIZONA

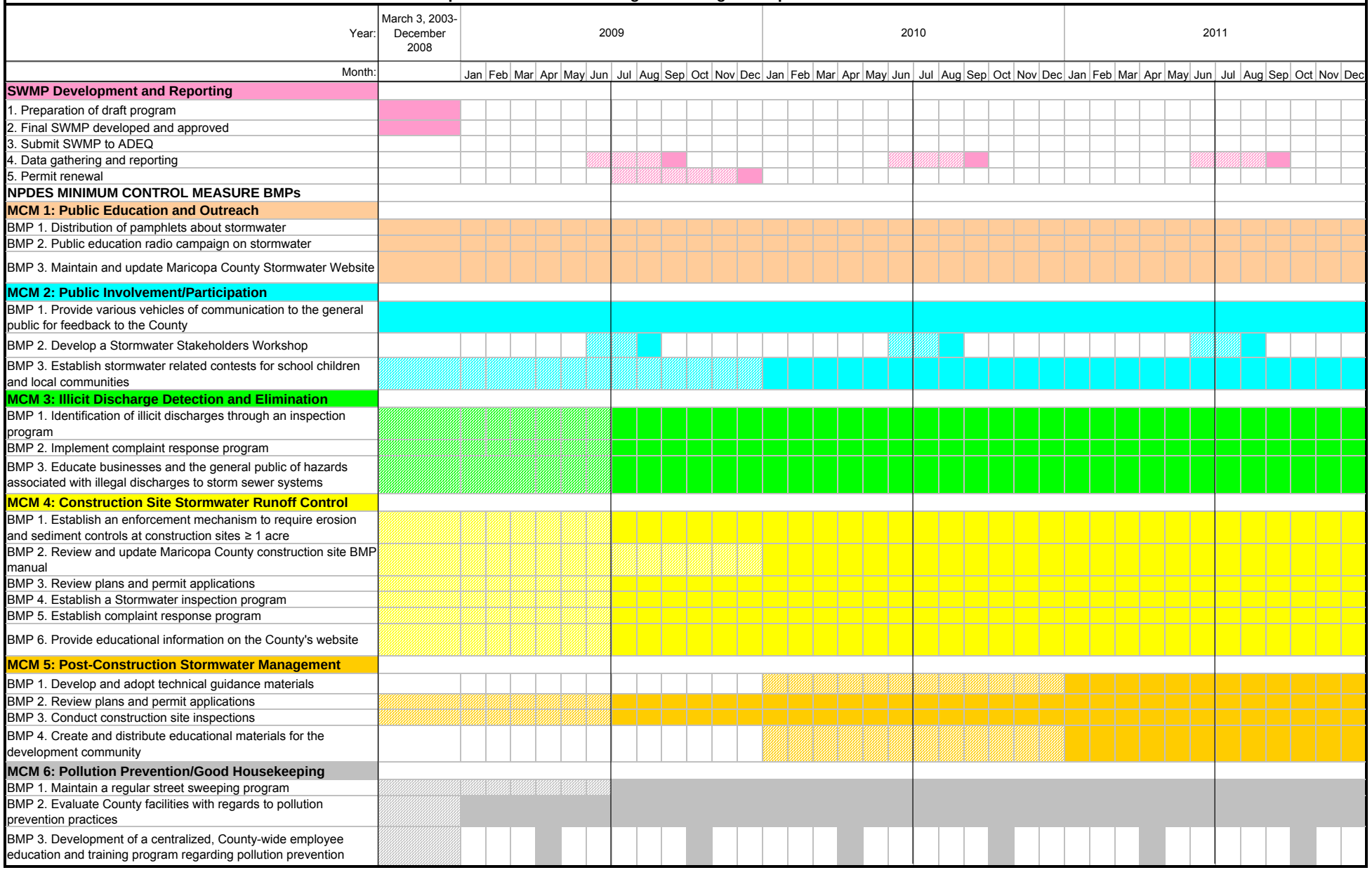
Stormwater Phase II Compliance
Level-of-Magnitude Stormwater Management Program Cost Estimation

NPDES MINIMUM CONTROL MEASURE BMPs	Development Costs	Implementation Costs*
MCM 1: Public Education and Outreach		
BMP 1. Distribution of pamphlets about stormwater	$6,000.00	$5,000.00
BMP 2. Public education radio campaign on stormwater	N/A	$4,000.00
BMP 3. Maintain and update Maricopa County Stormwater Website	N/A	$1,000.00
MCM 2: Public Involvement/Participation		
BMP 1. Provide various vehicles of communication to the general public for feedback to the County	N/A	$3,000.00
BMP 2. Develop a Stormwater Stakeholders Workshop	N/A	$0.00
BMP 3. Facilitate volunteer trash pick-up events within Maricopa County	N/A	$3,000.00
MCM 3: Illicit Discharge Detection and Elimination		
BMP 1. Establish an outfall inspection program	$11,000.00	$8,000.00
BMP 2. Implement complaint response program	N/A	$9,000.00
BMP 3. Educate businesses and the general public of hazards associated with illegal discharges to storm sewer systems	$5,000.00	$3,000.00
MCM 4: Construction Site Stormwater Runoff Control		
BMP 1. Establish an enforcement mechanism to require erosion and sediment controls at construction sites ≥ 1 acre	$8,000.00	$4,000.00
BMP 2. Review and update Maricopa County construction site BMP manual	N/A	N/A
BMP 3. Review plans and permit applications	$8,000.00	$15,000.00
BMP 4. Establish a Stormwater inspection program	$8,000.00	$15,000.00
BMP 5. Establish complaint response program	N/A	$9,000.00
BMP 6. Provide educational information on the County's website	$5,000.00	$1,000.00
MCM 5: Post-Construction Stormwater Management		
BMP 1. Develop and adopt technical guidance materials	$4,000.00	$3,000.00
BMP 2. Review plans and permit applications	$8,000.00	$15,000.00
BMP 3. Conduct construction site inspections	$8,000.00	$15,000.00
BMP 4. Create and distribute educational materials for the development community	$5,000.00	$3,000.00
MCM 6: Pollution Prevention/Good Housekeeping		
BMP 1. Establish street sweeper tracking devices	$11,000.00	$4,000.00
BMP 2. Evaluate County facilities with regards to pollution prevention practices	$4,000.00	$13,000.00
BMP 3. Development of a centralized, County-wide employee education and training program regarding pollution prevention	$3,000.00	$5,000.00

N/A = BMPs have already been implemented therefore development costs may not be applicable at this time.

*** = Implementation costs are assumed to be an annual cost.**

Table 4.2
MARICOPA COUNTY, ARIZONA
Stormwater Phase II Compliance
Proposed Stormwater Management Program Implementation Schedule



Note: The diagonal colored lines indicates each BMPs Development Effort, while the solid colored cells indicates each BMPs Implementation Effort.

APPENDIX A

FEDERAL NPDES STORMWATER PHASE II RULE, DECEMBER 8, 1999

federal register

Wednesday
December 8, 1999

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, 123, and 124
National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule

Report to Congress on the Phase II Storm Water Regulations; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122 , 123, and 124

[FRL—6470–8]

RIN 2040–AC82

National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's regulations (Phase II) expand the existing National Pollutant Discharge Elimination System (NPDES) storm water program (Phase I) to address storm water discharges from small municipal separate storm sewer systems (MS4s) (those serving less than 100,000 persons) and construction sites that disturb one to five acres. Although these sources are automatically designated by today's rule, the rule allows for the exclusion of certain sources from the national program based on a demonstration of the lack of impact on water quality, as well as the inclusion of others based on a higher likelihood of localized adverse impact on water quality. Today's regulations also exclude from the NPDES program storm water discharges from industrial facilities that have ''no exposure'' of industrial activities or materials to storm water. Finally, today's rule extends from August 7, 2001 until March 10, 2003 the deadline by which certain industrial facilities owned by small MS4s must obtain coverage under an NPDES permit. This rule establishes a cost-effective, flexible approach for reducing environmental harm by storm water discharges from many point sources of storm water that are currently unregulated.

EPA believes that the implementation of the six minimum measures identified for small MS4s should significantly reduce pollutants in urban storm water compared to existing levels in a cost-effective manner. Similarly, EPA believes that implementation of Best Management Practices (BMP) controls at small construction sites will also result in a significant reduction in pollutant discharges and an improvement in surface water quality. EPA believes this rule will result in monetized financial, recreational and health benefits, as well as benefits that EPA has been unable to monetize. Expected benefits include reduced scouring and erosion of streambeds, improved aesthetic quality of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, tourism benefits, biodiversity benefits and reduced costs for siting reservoirs. In addition, the costs of industrial storm water controls will decrease due to the exclusion of storm water discharges from facilities where there is ''no exposure'' of storm water to industrial activities and materials.

DATES: This regulation is effective on February 7, 2000. The incorporation by reference of the rainfall erosivity factor publication listed in the rule is approved by the Director of the Federal Register as of February 7, 2000. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time, on December 22, 1999 as provided in 40 CFR 23.2.

ADDRESSES: The complete administrative record for the final rule and the ICR have been established under docket numbers W–97–12 (rule) and W–97–15 (ICR), and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The record is available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: George Utting, Office of Wastewater Management, Environmental Protection Agency, Mail Code 4203, 401 M Street, SW, Washington, DC 20460; (202) 260–5816; sw2@epa.gov.

SUPPLEMENTARY INFORMATION: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Federal, State, Tribal, and Local Governments.	Operators of small separate storm sewer systems, industrial facilities that discharge storm water associated with industrial activity or construction activity disturbing 1 to 5 acres.
Industry	Operators of industrial facilities that discharge storm water associated with industrial activity.
Construction Activity.	Operators of construction activity disturbing 1 to 5 acres.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in §§ 122.26(b), 122.31, 122.32, and 123.35 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents:

I. Background

A. Proposed Rule and Pre-Proposal Outreach

On January 9, 1998 (63 FR 1536), EPA proposed to expand the National Pollutant Discharge Elimination System (NPDES) storm water program to include storm water discharges from municipal separate storm sewer systems (MS4s) and construction sites that were smaller than those previously included in the program. The proposal also addressed industrial sources that have ''no exposure'' of industrial activities and materials to storm water. Today, EPA is promulgating a final rule to implement most of the proposed revisions with minor changes based on public comments received on the proposal. Today's final rule also extends the deadline by which certain industrial facilities operated by municipalities of less than 100,000 population must be covered by a NPDES permit; the deadline is changed from August 7, 2001 until March 10, 2003.

In 1972, Congress amended the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (CWA)) to prohibit the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by an NPDES permit. The NPDES program is a program designed to track point sources and require the implementation of the controls necessary to minimize the discharge of pollutants. Initial efforts to improve water quality under the NPDES program primarily focused on reducing pollutants in industrial process wastewater and municipal sewage. These discharge sources were easily identified as responsible for poor, often drastically degraded, water quality conditions.

As pollution control measures for industrial process wastewater and municipal sewage were implemented and refined, it became increasingly evident that more diffuse sources of water pollution were also significant causes of water quality impairment. Specifically, storm water runoff draining large surface areas, such as agricultural and urban land, was found to be a major cause of water quality impairment, including the nonattainment of designated beneficial uses.

In 1987, Congress amended the CWA to require implementation, in two phases, of a comprehensive national program for addressing storm water discharges. The first phase of the program, commonly referred to as ''Phase I,'' was promulgated on November 16, 1990 (55 FR 47990). Phase I requires NPDES permits for storm water discharge from a large number of priority sources including municipal separate storm sewer systems (''MS4s'') generally serving populations of 100,000 or more and several categories of industrial activity, including construction sites that disturb five or more acres of land.

Today's rule, which is the second phase of the storm water program, expands the existing program to include discharges of storm water from smaller municipalities in urbanized areas and from construction sites that disturb between one and five acres of land. Today's rule allows certain sources to be excluded from the national program based on a demonstrable lack of impact on water quality. The rule also allows other sources not automatically regulated on a national basis to be designated for inclusion based on increased likelihood for localized adverse impact on water quality.

Today's rule also conditionally excludes storm water discharges from industrial facilities that have ''no exposure'' of industrial activities or materials to storm water. Today's rule and the effort that led to its development are commonly referred to as ''Phase II.'' On August 7, 1995, EPA promulgated a final rule that required facilities to be regulated under Phase II to apply for a NPDES permit by August 7, 2001, unless the NPDES permitting authority designates them as requiring a permit by an earlier date. (60 FR 40230). That rule is referred to as ''the Interim Phase II Rule.'' Today's rule replaces the Interim Phase II rule.

EPA performed extensive outreach and worked with a variety of stakeholders prior to proposing today's rule. On September 9, 1992, EPA published a notice requesting information and public comment on how to prepare regulations under CWA section 402(p)(6) (see 57 FR 41344). The notice identified three sets of issues associated with developing new NPDES storm water regulations: (1) How should EPA identify unregulated sources of storm water to protect water quality, (2) what types of control strategies should EPA develop for these sources, and (3) what are appropriate deadlines for implementing new requirements. The notice recognized that potential sources for coverage under the section 402(p)(6) regulations would fall into two main categories: municipal separate storm sewer systems and individual (commercial and residential) sources. EPA received more than 130 comments on the September 9, 1992, notice. For further discussion of the comments received, see *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System: Report to Congress* (EPA, 1995a), pp. 1–21 to 1–22, and Appendix J (which provides a detailed summary of the comments received as they relate to the specific issues raised in the notice).

In early 1993, the Rensselaerville Institute and EPA held public and expert meetings to assist in developing and analyzing options for identifying unregulated sources and possible controls. The report on the 1993 meetings identified two options that were favored by the various groups that participated. One option was a program that allowed States to select sources to be controlled in a manner consistent with criteria developed by EPA. A second option was a tiered approach under which EPA would select high priority sources for control by NPDES permits and States would select other sources for control under a State water quality program other than the NPDES program. For additional details see the ''Report on the EPA Storm Water Management Program (Rensselaerville Study),'' Appendix I of *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System: Report to Congress* (EPA, 1995a).

EPA also conducted outreach with representatives of small entities in conjunction with the convening of a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). This process is discussed in section IV.E of today's preamble. For additional background see the discussion in the preamble to the proposal for today's rule.

To assist EPA by providing advice and recommendations regarding the urban municipal wet weather water pollution control program, EPA established the Urban Wet Weather Flows Federal Advisory Committee (hereinafter, ''FACA Committee'') under the Federal Advisory Committee Act (FACA). The Office of Management and Budget approved the charter for the FACA Committee on March 10, 1995. The FACA Committee provided a forum for identifying and addressing issues associated with water quality impacts from storm water sources.

The FACA Committee established two subcommittees: the Storm Water Phase II FACA Subcommittee and the Sanitary Sewer Overflows (SSOs) FACA Subcommittee. Consistent with the requirements of FACA, the membership of both the FACA Committee and the subcommittees was balanced among EPA's various outside stakeholder interests, including representatives from municipalities, States, Indian Tribes, EPA, industrial and commercial sectors, agriculture, and environmental and public interest groups.

The Storm Water Phase II FACA Subcommittee (''Subcommittee'') met fourteen times between September 1995 and June 1998. The 32 Subcommittee members discussed possible regulatory frameworks at these meetings as well as during numerous other meetings and conference calls. Members of the FACA Committee provided views regarding the development of the ''no exposure'' provision and other provisions in drafts of the Phase II rule. EPA provided Subcommittee members with four successive drafts of the proposed rule and preamble, outlines of the rule, summaries of the written comments received on each draft, and documents identifying the changes made to each draft. In the course of providing input to the Committee, individual Subcommittee members provided significant input and advice that EPA considered in the context of public comments received. Ultimately, the Subcommittee did not provide a written report back to the FACA Committee, and the FACA Committee did not provide written advice and recommendations to EPA. The Agency, therefore, did not rely on group recommendations in developing today's rule, but does consider the process to have resulted in important public outreach.

B. Water Quality Concerns/ Environmental Impact Studies and Assessments

Storm water runoff from lands modified by human activities can harm surface water resources and, in turn, cause or contribute to an exceedance of water quality standards by changing natural hydrologic patterns, accelerating stream flows, destroying aquatic habitat, and elevating pollutant concentrations and loadings. Such runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients (phosphorous and nitrogen), heavy metals and other toxic pollutants, pathogens, toxins, oxygen-demanding substances (organic material), and floatables (U.S. EPA. 1992. *Environmental Impacts of Storm Water Discharges: A National Profile.* EPA 841–R–92–001. Office of Water. Washington, DC). After a rain, storm water runoff carries these pollutants into nearby streams, rivers, lakes, estuaries, wetlands, and oceans. The highest concentrations of these contaminants often are contained in ''first flush'' discharges, which occur during the first major storm after an extended dry period (Schueler, T.R. 1994. ''First Flush of Stormwater Pollutants Investigated in Texas.'' Note 28. *Watershed Protection Techniques* 1(2)). Individually and combined, these pollutants impair water quality, threatening designated beneficial uses and causing habitat alteration or destruction.

Uncontrolled storm water discharges from areas of urban development and construction activity negatively impact receiving waters by changing the physical, biological, and chemical composition of the water, resulting in an unhealthy environment for aquatic organisms, wildlife, and humans. The following sections discuss the studies and data that address and support this finding.

Although water quality problems also can occur from agricultural storm water discharges and return flows from irrigated agriculture, this area of

concern is statutorily exempted from regulation as a point source under the Clean Water Act and is not discussed here. (See CWA section 502(14)). Other storm water sources not specifically identified in the regulations may be of concern in certain areas and can be addressed on a case-by-case (or category-by-category) basis through the NPDES designation authority preserved by CWA section 402(p)(2)(6), as well as today's rule.

1. Urban Development

Urbanization alters the natural infiltration capability of the land and generates a host of pollutants that are associated with the activities of dense populations, thus causing an increase in storm water runoff volumes and pollutant loadings in storm water discharged to receiving waterbodies (U.S. EPA, 1992). Urban development increases the amount of impervious surface in a watershed as farmland, forests, and meadowlands with natural infiltration characteristics are converted into buildings with rooftops, driveways, sidewalks, roads, and parking lots with virtually no ability to absorb storm water. Storm water and snow-melt runoff wash over these impervious areas, picking up pollutants along the way while gaining speed and volume because of their inability to disperse and filter into the ground. What results are storm water flows that are higher in volume, pollutants, and temperature than the flows in less impervious areas, which have more natural vegetation and soil to filter the runoff (U.S. EPA, 1997. *Urbanization and Streams: Studies of Hydrologic Impacts.* EPA 841–R–97-009. Office of Water. Washington, DC).

Studies reveal that the level of imperviousness in an area strongly correlates with the quality of the nearby receiving waters. For example, a study in the Puget Sound lowland ecoregion found that when the level of basin development exceeded 5 percent of the total impervious area, the biological integrity and physical habitat conditions that are necessary to support natural biological diversity and complexity declined precipitously (May, C.W., E.B. Welch, R.R. Horner, J.R. Karr, and B.W. May. 1997. *Quality Indices for Urbanization Effects in Puget Sound Lowland Streams,* Technical Report No. 154. University of Washington Water Resources Series). Research conducted in numerous geographical areas, concentrating on various variables and employing widely different methods, has revealed a similar conclusion: stream degradation occurs at relatively low levels of imperviousness, such as 10 to 20 percent (even as low as 5 to 10 percent according to the findings of the Washington study referenced above) (Schueler, T.R. 1994. ''The Importance of Imperviousness.'' *Watershed Protection Techniques* 1(3); May, C., R.R. Horner, J.R. Karr, B.W. Mar, and E.B. Welch. 1997. ''Effects Of Urbanization On Small Streams In The Puget Sound Lowland Ecoregion.'' *Watershed Protection Techniques* 2(4); Yoder, C.O., R.J. Miltner, and D. White. 1999. ''Assessing the Status of Aquatic Life Designated Uses in Urban and Suburban Watersheds.'' In *Proceedings: National Conference on Retrofits Opportunities in Urban Environments.* EPA 625–R–99–002, Washington, DC; Yoder, C.O and R.J. Miltner. 1999. ''Assessing Biological Quality and Limitations to Biological Potential in Urban and Suburban Watersheds in Ohio.'' In *Comprehensive Stormwater & Aquatic Ecosystem Management Conference Papers,* Auckland, New Zealand). Furthermore, research has indicated that few, if any, urban streams can support diverse benthic communities at imperviousness levels of 25 percent or more. An area of medium density single family homes can be anywhere from 25 percent to nearly 60 percent impervious, depending on the design of the streets and parking (Schueler, 1994).

In addition to impervious areas, urban development creates new pollution sources as population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, pet waste, litter, pesticides, and household hazardous wastes, which may be washed into receiving waters by storm water or dumped directly into storm drains designed to discharge to receiving waters. More people in less space results in a greater concentration of pollutants that can be mobilized by, or disposed into, storm water discharges from municipal separate storm sewer systems. A modeling system developed for the Chesapeake Bay indicated that contamination of the Bay and its tributaries from runoff is comparable to, if not greater than, contamination from industrial and sewage sources (Cohn-Lee, R. and D. Cameron. 1992. ''Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation.'' *The Environmental Professional,* Vol. 14).

a. Large-Scale Studies and Assessments

In support of today's regulatory designation of MS4s in urbanized areas, the Agency relied on broad-based assessments of urban storm water runoff and related water quality impacts, as well as more site-specific studies. The first national assessment of urban runoff characteristics was completed for the *Nationwide Urban Runoff Program (NURP)* study (U.S. EPA. 1983. *Results of the Nationwide Urban Runoff Program, Volume 1—Final Report.* Office of Water. Washington, D.C.). The NURP study is the largest nationwide evaluation of storm water discharges, which includes adverse impacts and sources, undertaken to date.

EPA conducted the NURP study to facilitate understanding of the nature of urban runoff from residential, commercial, and industrial areas. One objective of the study was to characterize the water quality of discharges from separate storm sewer systems that drain residential, commercial, and light industrial (industrial parks) sites. Storm water samples from 81 residential and commercial properties in 22 urban/suburban areas nationwide were collected and analyzed during the 5-year period between 1978 and 1983. The majority of samples collected in the study were analyzed for eight conventional pollutants and three heavy metals.

Data collected under the NURP study indicated that discharges from separate storm sewer systems draining runoff from residential, commercial, and light industrial areas carried more than 10 times the annual loadings of total suspended solids (TSS) than discharges from municipal sewage treatment plants that provide secondary treatment. The NURP study also indicated that runoff from residential and commercial areas carried somewhat higher annual loadings of chemical oxygen demand (COD), total lead, and total copper than effluent from secondary treatment plants. Study findings showed that fecal coliform counts in urban runoff typically range from tens to hundreds of thousands per hundred milliliters of runoff during warm weather conditions, with the median for all sites being around 21,000/100 ml. This is generally consistent with studies that found that fecal coliform mean values range from 1,600 coliform fecal units (CFU)/100 ml to 250,000 cfu/100 ml (Makepeace, D.K., D.W. Smith, and S.J. Stanley. 1995. ''Urban Storm Water Quality: Summary of Contaminant Data.'' *Critical Reviews in Environmental Science and Technology* 25(2):93-139). Makepeace, et al., summarized ranges of contaminants from storm water, including physical contaminants such as total solids (76—36,200 mg/L) and copper (up to 1.41 mg/L); organic chemicals; organic compounds, such as oil and grease (up to 110 mg/L); and microorganisms.

Monitoring data summarized in the NURP study provided important information about urban runoff from residential, commercial, and light industrial areas. The study concluded that the quality of urban runoff can be affected adversely by several sources of pollution that were not directly evaluated in the study, including illicit discharges, construction site runoff, and illegal dumping. Data from the NURP study were analyzed further in the U.S. Geological Survey (USGS) Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States study (Driver, N.E., M.H. Mustard, R.B. Rhinesmith, and R.F. Middleburg. 1985. *U.S. Geological Survey Urban Storm Water Data Base for 22 Metropolitan Areas Throughout the United States.* Report No. 85–337 USGS. Lakewood, CO). The USGS report summarized additional monitoring data compiled during the mid-1980s, covering 717 storm events at 99 sites in 22 metropolitan areas and documented problems associated with metals and sediment concentrations in urban storm water runoff. More recent reports have confirmed the pollutant concentration data collected in the NURP study (Marsalek, J. 1990. ''Evaluation of Pollutant Loads from Urban Nonpoint Sources.'' *Wat. Sci. Tech.* 22(10/11):23–30; Makepeace, et al., 1995).

Commenters argued that the NURP study does not support EPA's contention that urban activities significantly jeopardize attainment of water quality standards. One commenter argued that the NURP study and the 1985 USGS study are seriously out of date. Because they were issued 10 years or more before the implementation of the current storm water permit program, the data in those reports do not reflect conditions that exist after implementation of permits issued by authorized States and EPA for storm water from construction sites, large municipalities, and industrial activities.

In response, EPA notes that it is not relying solely on the NURP study to describe current water quality impairment. Rather, EPA is citing NURP as a source of data on typical pollutant concentrations in urban runoff. Recent studies have not found significantly different pollutant concentrations in urban runoff when compared to the original NURP data (see Makepeace, et al., 1995; Marsalek, 1990; and Pitt, et al., 1995).

America's Clean Water—the States' Nonpoint Source Assessment (Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). 1985. *America's Clean Water—The States' Nonpoint Source Assessment.* Prepared in cooperation with the U.S. EPA, Office of Water, Washington, DC), a comprehensive study of diffuse pollution sources conducted under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA revealed that 38 States reported urban runoff as a major cause of designated beneficial use impairment and 21 States reported storm water runoff from construction sites as a major cause of beneficial use impairment. In addition, the 1996 305(b) Report (U.S. EPA. 1998. *The National Water Quality Inventory, 1996 Report to Congress.* EPA 841–R–97–008. Office of Water. Washington, DC), provides a national assessment of water quality based on biennial reports submitted by the States as required under CWA section 305(b) of the CWA. In the CWA 305(b) reports, States, Tribes, and Territories assess their individual water quality control programs by examining the attainment or nonattainment of the designated uses assigned to their rivers, lakes, estuaries, wetlands, and ocean shores. A designated use is the legally applicable use specified in a water quality standard for a watershed, waterbody, or segment of a waterbody. The designated use is the desirable use that the water quality should support. Examples of designated uses include drinking water supply, primary contact recreation (swimming), and aquatic life support. Each CWA 305(b) report indicates the assessed fraction of a State's waters that are fully supporting, partially supporting, or not supporting designated beneficial uses.

In their reports, States, Tribes, and Territories first identified and then assigned the sources of water quality impairment for each impaired waterbody using the following categories: industrial, municipal sewage, combined sewer overflows, urban runoff/storm sewers, agricultural, silvicultural, construction, resource extraction, land disposal, hydrologic modification, and habitat modification. The 1996 Inventory, based on a compilation of 60 individual 305(b) reports submitted by States, Tribes, and Territories, assessed the following percentages of total waters nationwide: 19 percent of river and stream miles; 40 percent of lake, pond, and reservoir acres; 72 percent of estuary square miles; and 6 percent of ocean shoreline waters. The 1996 Inventory indicated that approximately 40 percent of the Nation's assessed rivers, lakes, and estuaries are impaired. Waterbodies deemed as ''impaired'' are either partially supporting designated uses or not supporting designated uses.

The 1996 Inventory also found urban runoff/discharges from storm sewers to be a major source of water quality impairment nationwide. Urban runoff/storm sewers were found to be a source of pollution in 13 percent of impaired rivers; 21 percent of impaired lakes, ponds, and reservoirs; and 45 percent of impaired estuaries (second only to industrial discharges). In addition, urban runoff was found to be the leading cause of ocean impairment for those ocean miles surveyed.

In addition, a recent USGS study of urban watersheds across the United States has revealed a link between urban development and contamination of local waterbodies. The study found the highest levels of organic contaminants, known as polycyclic aromatic hydrocarbons (PAHs) (products of combustion of wood, grass, and fossil fuels), in the reservoirs of urbanized watersheds (U.S. Geological Survey (USGS). 1998. *Research Reveals Link Between Development and Contamination in Urban Watersheds.* USGS news release. USGS National Water-Quality Assessment Program).

Urban storm water also can contribute significant amounts of toxicants to receiving waters. Pitt, et. al. (1993), found heavy metal concentrations in the majority of samples analyzed. Industrial or commercial areas were likely to be the most significant pollutant source areas (Pitt, R., R. Field, M. Lalor, M. Brown 1993. ''Urban stormwater toxic pollutants: assessment, sources, and treatability'' *Water Environment Research,* 67(3):260–75).

b. Local and Watershed-Based Studies

In addition to the large-scale nationwide studies and assessments, a number of local and watershed-based studies from across the country have documented the detrimental effects of urban storm water runoff on water quality. A study of urban streams in Milwaukee County, Wisconsin, found local streams to be highly degraded due primarily to urban runoff, while three studies in the Atlanta, Georgia, region were characterized as being ''the first documentation in the Southeast of the strong negative relationship between urbanization and stream quality that has been observed in other ecoregions'' (Masterson, J. and R. Bannerman. 1994. ''Impacts of Storm Water Runoff on Urban Streams in Milwaukee County, Wisconsin.'' Paper presented at National Symposium on Water Quality: American Water Resources Association; Schueler, T.R. 1997. ''Fish Dynamics in Urban Streams Near Atlanta, Georgia.''

Technical Note 94. *Watershed Protection Techniques* 2(4)). Several other studies, including those performed in Arizona (Maricopa County), California (San Jose's Coyote Creek), Massachusetts (Green River), Virginia (Tuckahoe Creek), and Washington (Puget Sound lowland ecoregion), all had the same finding: runoff from urban areas greatly impair stream ecology and the health of aquatic life; the more heavily developed the area, the more detrimental the effects (Lopes, T. and K. Fossum. 1995. ''Selected Chemical Characteristics and Acute Toxicity of Urban Stormwater, Streamflow, and Bed Material, Maricopa County, Arizona.'' *Water Resources Investigations Report* 95–4074. USGS; Pitt, R. 1995. ''Effects of Urban Runoff on Aquatic Biota.'' In *Handbook of Ecotoxicology;* Pratt, J. and R. Coler. 1979. ''Ecological Effects of Urban Stormwater Runoff on Benthic Macroinvertebrates Inhabiting the Green River, Massachusetts.'' Completion Report Project No. A–094. Water Resources Research Center. University of Massachusetts at Amherst.; Schueler, T.R. 1997. ''Historical Change in a Warmwater Fish Community in an Urbanizing Watershed.'' Technical Note 93. *Watershed Protection Techniques* 2(4); May, C., R. Horner, J. Karr, B. Mar, and E. Welch. 1997. ''Effects Of Urbanization On Small Streams In The Puget Sound Lowland Ecoregion.'' *Watershed Protection Techniques* 2(4)).

Pitt and others also described the receiving water effects on aquatic organisms associated with urban runoff (Pitt, R.E. 1995. ''Biological Effects of Urban Runoff Discharges'' In *Stormwater Runoff and Receiving Systems: Impact, Monitoring, and Assessment,* ed. E.E Herricks, Lewis Publishers; Crunkilton, R., J. Kleist, D. Bierman, J. Ramcheck, and W. DeVita. 1999. ''Importance of Toxicity as a Factor Controlling the Distribution of Aquatic Organisms in an Urban Stream.'' In *Comprehensive Stormwater & Aquatic Ecosystem Management Conference Papers.* Auckland, New Zealand).

In Wisconsin, runoff samples were collected from streets, parking lots, roofs, driveways, and lawns. Source areas were broken up into residential, commercial, and industrial. Geometric mean concentration data for residential areas included total solids of about 500–800 mg/L from streets and 600 mg/L from lawns. Fecal coliform data from residential areas ranged from 34,000 to 92,000 cfu/100 mL for streets and driveways. Contaminant concentration data from commercial and industrial source areas were lower for total solids and fecal coliform, but higher for total zinc (Bannerman, R.T., D.W. Owens, R.B. Dods, and N.J. Hornewer. 1993. ''Sources of Pollutants in Wisconsin Stormwater.'' *Wat. Sci. Tech.* 28(3–5):241–59).

Bannerman, et al. also found that streets contribute higher loads of pollutants to urban storm water than any other residential development source. Two small urban residential watersheds were evaluated to determine that lawns and streets are the largest sources of total and dissolved phosphorus in the basins (Waschbusch, R.J., W.R. Selbig, and R.T. Bannerman. 1999. ''Sources of Phosphorus in Stormwater and Street Dirt from Two Urban Residential Basins In Madison, Wisconsin, 1994–95.'' *Water Resources Investigations Report* 99–4021. U.S. Geological Survey). A number of other studies have indicated that urban roadways often contain significant quantities of metal elements and solids (Sansalone, J.J. and S.G. Buchberger. 1997. ''Partitioning and First Flush of Metals in Urban Roadway Storm Water.'' *ASCE Journal of Environmental Engineering* 123(2); Sansalone, J.J., J.M. Koran, J.A. Smithson, and S.G. Buchberger. 1998. ''Physical Characteristics of Urban Roadway Solids Transported During Rain Events'' *ASCE Journal of Environmental Engineering* 124(5); Klein, L.A., M. Lang, N. Nash, and S.L. Kirschner. 1974. ''Sources of Metals in New York City Wastewater'' *J. Water Pollution Control Federation* 46(12):2653–62; Barrett, M.E, R.D. Zuber, E.R. Collins, J.F. Malina, R.J. Charbeneau, and G.H Ward., 1993. ''A Review and Evaluation of Literature Pertaining to the Quantity and Control of Pollution from Highway Runoff and Construction.'' Research Report 1943–1. Center for Transportation Research, University of Texas, Austin).

c. Beach Closings/Advisories

Urban wet weather flows have been recognized as the primary sources of estuarine pollution in coastal communities. Urban storm water runoff, sanitary sewer overflows, and combined sewer overflows have become the largest causes of beach closings in the United States in the past three years. Storm water discharges from urban areas not only pose a threat to the ecological environment, they also can substantially affect human health. A survey of coastal and Great Lakes communities reports that in 1998, more than 1,500 beach closings and advisories were associated with storm water runoff (Natural Resources Defense Council. 1999. ''A Guide to Water Quality at Vacation Beaches'' New York, NY). Other reports also document public health, shellfish bed, and habitat impacts from storm water runoff, including more than 823 beach closings/advisories issued in 1995 and more than 407 beach closing/advisories issued in 1996 due to urban runoff (Natural Resources Defense Council. 1996. *Testing the Waters Volume VI: Who Knows What You're Getting Into.* New York, NY; NRDC. 1997. *Testing the Waters Volume VII: How Does Your Vacation Beach Rate.* New York, NY; Morton, T. 1997. *Draining to the Ocean: The Effects of Stormwater Pollution on Coastal Waters.* American Oceans Campaign, Santa Monica, CA). The Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay (Haile, R.W., et. al. 1996. ''An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay.'' *Final Report prepared for the Santa Monica Bay Restoration Project*) concluded that there is a 57 percent higher rate of illness in swimmers who swim adjacent to storm drains than in swimmers who swim more than 400 yards away from storm drains. This and other studies document a relationship between gastrointestinal illness in swimmers and water quality, the latter of which can be heavily compromised by polluted storm water discharges.

2. Non-Storm Water Discharges Through Municipal Storm Sewers

Studies have shown that discharges from MS4s often include wastes and wastewater from non-storm water sources. Federal regulations (§ 122.26(b)(2)) define an illicit discharge as ''* * * any discharge to an MS4 that is not composed entirely of storm water * * *,'' with some exceptions. These discharges are ''illicit'' because municipal storm sewer systems are not designed to accept, process, or discharge such wastes. Sources of illicit discharges include, but are not limited to: sanitary wastewater; effluent from septic tanks; car wash, laundry, and other industrial wastewaters; improper disposal of auto and household toxics, such as used motor oil and pesticides; and spills from roadway and other accidents.

Illicit discharges enter the system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the MS4 from cracked sanitary systems, spills collected by drain outlets, and paint or used oil dumped directly into a drain). The result is untreated discharges that contribute high levels of pollutants,

including heavy metals, toxics, oil and grease, solvents, nutrients, viruses and bacteria into receiving waterbodies. The NURP study, discussed earlier, found that pollutant levels from illicit discharges were high enough to significantly degrade receiving water quality and threaten aquatic, wildlife, and human health. The study noted particular problems with illicit discharges of sanitary wastes, which can be directly linked to high bacterial counts in receiving waters and can be dangerous to public health.

Because illicit discharges to MS4s can create severe widespread contamination and water quality problems, several municipalities and urban counties performed studies to identify and eliminate such discharges. In Michigan, the Ann Arbor and Ypsilanti water quality projects inspected 660 businesses, homes, and other buildings and identified 14 percent of the buildings as having improper storm sewer drain connections. The program assessment revealed that, on average, 60 percent of automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities, had illicit connections to storm sewer drains. The program assessment also showed that a majority of the illicit discharges to the storm sewer system resulted from improper plumbing and connections, which had been approved by the municipality when installed (Washtenaw County Statutory Drainage Board. 1987. Huron River Pollution Abatement Program).

In addition, an inspection of urban storm water outfalls draining into Inner Grays, Washington, indicated that 32 percent of these outfalls had dry weather flows. Of these flows, 21 percent were determined to have pollutant levels higher than the pollutant levels expected in typical urban storm water runoff characterized in the NURP study (U.S. EPA. 1993. *Investigation of Inappropriate Pollutant Entries Into Storm Drainage Systems—A User's Guide.* EPA 600/R–92/238. Office of Research and Development. Washington, DC). That same document reports a study in Toronto, Canada, that found that 59 percent of outfalls from the MS4 had dry-weather flows. Chemical tests revealed that 14 percent of these dry-weather flows were determined to be grossly polluted.

Inflows from aging sanitary sewer collection systems are one of the most serious illicit discharge-related problems. Sanitary sewer systems frequently develop leaks and cracks, resulting in discharges of pollutants to receiving waters through separate storm sewers. These pollutants include sanitary waste and materials from sewer main construction (e.g., asbestos cement, brick, cast iron, vitrified clay). Municipalities have long recognized the reverse problem of storm water infiltration into sanitary sewer collection systems; this type of infiltration often disrupts the operation of the municipal sewage treatment plant.

The improper disposal of materials is another illicit discharge-related problem that can result in contaminated discharges from separate storm sewer systems in two ways. First, materials may be disposed of directly in a catch basin or other storm water conveyance. Second, materials disposed of on the ground may either drain directly to a storm sewer or be washed into a storm sewer during a storm event. Improper disposal of materials to street catch basins and other storm sewer inlets often occurs when people mistakenly believe that disposal to such areas is an environmentally sound practice. Part of the confusion may occur because some areas are served by combined sewer systems, which are part of the sanitary sewer collection system, and people assume that materials discharged to a catch basin will reach a municipal sewage treatment plant. Materials that are commonly disposed of improperly include used motor oil; household toxic materials; radiator fluids; and litter, such as disposable cups, cans, and fast-food packages. EPA believes that there has been increasing success in addressing these problems through initiatives such as storm drain stenciling and recycling programs, including household hazardous waste special collection days.

Programs that reduce illicit discharges to separate storm sewers have improved water quality in several municipalities. For example, Michigan's Huron River Pollution Abatement Program found the elimination of illicit connections caused a measurable improvement in the water quality of the Washtenaw County storm sewers and the Huron River (Washtenaw County Statutory Drainage Board, 1987). In addition, an illicit detection and remediation program in Houston, Texas, has significantly improved the water quality of Buffalo Bayou. Houston estimated that illicit flows from 132 sources had a flow rate as high as 500 gal/min. Sources of the illicit discharges included broken and plugged sanitary sewer lines, illicit connections from sanitary lines to storm sewer lines, and floor drain connections (Glanton, T., M.T. Garrett, and B. Goloby. 1992. The Illicit Connection: Is It the Problem? *Wat. Env. Tech.* 4(9):63–8).

3. Construction Site Runoff

Storm water discharges generated during construction activities can cause an array of physical, chemical, and biological water quality impacts. Specifically, the biological, chemical, and physical integrity of the waters may become severely compromised. Water quality impairment results, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the primary pathway for introducing key pollutants, such as nutrients (particularly phosphorus), metals, and organic compounds into aquatic systems (Novotny, V. and G. Chesters. 1989. ''Delivery of Sediment and Pollutants from Nonpoint Sources: A Water Quality Perspective.'' *Journal of Soil and Water Conservation,* 44(6):568–76). Estimates indicate that 80 percent of the phosphorus and 73 percent of the Kjeldahl nitrogen in streams is associated with eroded sediment (U.S. Department of Agriculture. 1989. ''The Second RCA Appraisal, Soil, Water and Related Resources on Nonfederal Land in the United States, Analysis of Condition and Trends.'' Cited in Fennessey, L.A.J., and A.R. Jarrett. 1994. ''The Dirt in a Hole: a Review of Sedimentation Basins for Urban Areas and Construction Sites.'' *Journal of Soil and Water Conservation,* 49(4):317–23).

In watersheds experiencing intensive construction activity, the localized impacts of water quality may be severe because of high pollutant loads, primarily sediments. Siltation is the largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes (U.S. EPA, 1998). The 1996 305(b) report also found that construction site discharges were a source of pollution in: 6 percent of impaired rivers; 11 percent of impaired lakes, ponds, and reservoirs; and 11 percent of impaired estuaries. Introduction of coarse sediment (coarse sand or larger) or a large amount of fine sediment is also a concern because of the potential of filling lakes and reservoirs (along with the associated remediation costs for dredging), as well as clogging stream channels (e.g., Paterson, R.G., M.I. Luger, E.J. Burby, E.J. Kaiser, H.R. Malcolm, and A.C. Beard. 1993. ''Costs and Benefits of Urban Erosion and Sediment Control: North Carolina Experience.'' *Environmental Management* 17(2):167–78). Large inputs of coarse sediment into

stream channels initially will reduce stream depth and minimize habitat complexity by filling in pools (U.S. EPA. 1991. *Monitoring Guidelines to Evaluate Effects of Forestry Activities on Streams in the Pacific Northwest and Alaska.* EPA 910/9–91–001. Seattle, WA). In addition, studies have shown that stream reaches affected by construction activities often extend well downstream of the construction site. For example, between 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed were observed to be impacted by sediment inputs (Fox, H.L. 1974. ''Effects of Urbanization on the Patuxent River, with Special Emphasis on Sediment Transport, Storage, and Migration.'' Ph.D. dissertation. Johns Hopkins University, Baltimore, MD. As Cited in Klein, R.D. 1979. ''Urbanization and Stream Quality Impairment.'' *Water Resources Bulletin* 15(4): 948–63).

A primary concern at most construction sites is the erosion and transport process related to fine sediment because rain splash, rills (i.e., a channel small enough to be removed by normal agricultural practices and typically less than 1-foot deep), and sheetwash encourage the detachment and transport of this material to waterbodies (Storm Water Quality Task Force. 1993. *California Storm Water Best Management Practice Handbooks—Construction Activity.* Oakland, CA: Blue Print Service). Construction sites also can generate other pollutants associated with onsite wastes, such as sanitary wastes or concrete truck washout.

Although streams and rivers naturally carry sediment loads, erosion from construction sites and runoff from developed areas can elevate these loads to levels well above those in undisturbed watersheds. It is generally acknowledged that erosion rates from construction sites are much greater than from almost any other land use (Novotny, V. and H. Olem. 1994. *Water Quality: Prevention, Identification, and Management of Diffuse Pollution.* New York: Van Nostrand Reinhold). Results from both field studies and erosion models indicate that erosion rates from construction sites are typically an order of magnitude larger than row crops and several orders of magnitude greater than rates from well-vegetated areas, such as forests or pastures (USDA. 1970. ''Controlling Erosion on Construction Sites.'' *Agriculture Information Bulletin,* Washington, DC; Meyer, L.D., W.H. Wischmeier, and W.H. Daniel. 1971. ''Erosion, Runoff and Revegetation of Denuded Construction Sites.'' *Transactions of the ASAE* 14(1):138–41; Owen, O.S. 1975. *Natural Resource Conservation.* New York: MacMillan. As cited in Paterson, et al., 1993).

A recent review of the efficiency of sediment basins indicated that inflows from 12 construction sites had a mean TSS concentration of about 4,500 mg/L (Brown, W.E. 1997. ''The Limits of Settling.'' Technical Note No. 83. *Watershed Protection Techniques* 2(3)). In Virginia, suspended sediment concentrations from housing construction sites were measured at 500–3,000 mg/L, or about 40 times larger than the concentrations from already-developed urban areas (Kuo, C.Y. 1976. ''Evaluation of Sediment Yields Due to Urban Development.'' Bulletin No. 98. Virginia Water Resources Research Center, Virginia Polytechnic Institute and State University, Blacksburg, VA).

Similar impacts from storm water runoff have been reported in a number of other studies. For example, Daniel, et al., monitored three residential construction sites in southeastern Wisconsin and determined that annual sediment yields were more than 19 times the yields from agricultural areas (Daniel, T.C., D. McGuire, D. Stoffel, and B. Miller. 1979. ''Sediment and Nutrient Yield from Residential Construction Sites'' *Journal of Environmental Quality* 8(3):304–08). Daniel, et al., identified total storm runoff, followed by peak storm runoff, as the most influential factors controlling the sediment loadings from residential construction sites. Daniel, et al., also found that suspended sediment concentrations were 15,000–20,000 mg/L in moderate events and up to 60,000 mg/L in larger events.

Wolman and Schick (Wolman, M.G. and A.P. Schick. 1967. ''Effects of Construction on Fluvial Sediment, Urban and Suburban Areas of Maryland.'' *Water Resources Research* 3(2): 451–64) studied the impacts of development on fluvial systems in Maryland and determined that sediment yields in areas undergoing construction were 1.5 to 75 times greater than detected in natural or agricultural catchments. The authors summarize the potential impacts of construction on sediment yields by stating that ''the equivalent of many decades of natural or even agricultural erosion may take place during a single year from areas cleared for construction'' (Wolman and Schick, 1967).

A number of studies have examined the effects of road construction on erosion rates and sediment yields. A highway construction project in West Virginia disturbed only 4.2 percent of a 4.72-square-mile basin, but resulted in a three-fold increase in suspended sediment yields (Downs, S.C. and D.H. Appel. 1986. *Progress Report on the Effects of Highway Construction on Suspended-Sediment Discharge in the Coal River and Trace Fork, West Virginia,* 1975–81. USGS Water Resources Investigations Report 84–4275. Charlestown, WV). During the largest storm event, it was estimated that 80 percent of the sediment in the stream originated from the construction site. As is often the case, the increase in suspended sediment load could not be detected further downstream, where the drainage area was more than 50 times larger (269 square miles).

Another study evaluated the effect of 290 acres of highway construction on watersheds ranging in size from 5 to 38 square miles. Suspended sediment loads in the smallest watershed increased by 250 percent, and the estimated sediment yield from the construction area was 37 tons/acre during a 2-year period (Hainly, R.A. 1980. *The Effects of Highway Construction on Sediment Discharge into Blockhouse Creek and Stream Valley Run, Pennsylvania.* USGS Water Resources Investigations Report 80–68. Harrisburg, PA). A more recent study in Hawaii showed that highway construction increased suspended sediment loads by 56 to 76 percent in three small (1 to 4 square mile) basins (Hill, B.R. 1996. *Streamflow and Suspended-Sediment Loads Before and During Highway Construction, North Halawa, Haiku, and Kamooalii Drainage Basins, Oahu, Hawaii, 1983–91.* USGS Water Resources Investigations Report 96–4259. Honolulu, HI). A 1970 study determined that sediment yields from construction areas can be as much as 500 times the levels detected in rural areas (National Association of Counties Research Foundation. 1970. *Urban Soil Erosion and Sediment Control.* Water Pollution Control Research Series, Program #15030 DTL. Federal Water Quality Administration, U.S. Department of Interior. Washington, DC)

Yorke and Herb (Yorke, T.H., and W.J. Herb. 1978. *Effects of Urbanization on Streamflow and Sediment Transport in the Rock Creek and Anacostia River Basins, Montgomery County, Maryland, 1962–74.* USGS Professional Paper 1003, Washington, DC) evaluated nine subbasins in the Maryland portion of the Anacostia watershed for more than a decade in an effort to define the impacts of changing land use/land cover on sediment in runoff. Average annual suspended sediment yields for construction sites ranged from 7 to 100 tons/acre. Storm water discharges from construction sites that occur when the land area is disturbed (and prior to

surface stabilization) can significantly impact designated uses. Examples of designated uses include public water supply, recreation, and propagation of fish and wildlife. The siltation process described previously can threaten all three designated uses by (1) depositing high concentrations of pollutants in public water supplies; (2) decreasing the depth of a waterbody, which can reduce the volume of a reservoir or result in limited use of a water body by boaters, swimmers, and other recreational enthusiasts; and (3) directly impairing the habitat of fish and other aquatic species, which can limit their ability to reproduce.

Excess sediment can cause a number of other problems for waterbodies. It is associated with increased turbidity and reduced light penetration in the water column, as well as more long-term effects associated with habitat destruction and increased difficulty in filtering drinking water. Numerous studies have examined the effect that excess sediment has on aquatic ecosystems. For example, sediment from road construction activity in Northern Virginia reduced aquatic insect and fish communities by up to 85 percent and 40 percent, respectively (Reed, J.R. 1997. ''Stream Community Responses to Road Construction Sediments.'' Bulletin No. 97. Virginia Water Resources Research Center, Virginia Polytechnic Institute, Blacksburg, VA. As cited in Klein, R.D. 1990. *A Survey of Quality of Erosion and Sediment Control and Storm Water Management in the Chesapeake Bay Watershed.* Annapolis, MD: Chesapeake Bay Foundation). Other studies have shown that fine sediment (fine sand or smaller) adversely affects aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within a streambed, and reducing the intergravel dissolved oxygen by reducing the permeability of the bed material (Everest, F.H., J.C. Beschta, K.V. Scrivener, J.R. Koski, J.R. Sedell, and C.J. Cederholm. 1987. ''Fine Sediment and Salmonid Production: A Paradox.'' *Streamside Management: Forestry and Fishery Interactions,* Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA). For example, 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed in Maryland were found to have fine sediment amounts 15 times greater than normal (Fox, 1974. As cited in Klein, 1979). Benthic organisms in the streambed can be smothered by sediment deposits, causing changes in aquatic flora and fauna, such as fish species composition (Wolman and Schick, 1967). In addition, the primary cause of coral reef degradation in coastal areas is attributed to land disturbances and dredging activities due to urban development (Rogers, C.S. 1990. ''Responses of Coral Reefs and Reef Organizations to Sedimentation.'' *Marine Ecology Progress Series,* 62:185–202).

EPA believes that the water quality impact from small construction sites is as high as or higher than the impact from larger sites on a per acre basis. The concentration of pollutants in the runoff from smaller sites is similar to the concentrations in the runoff from larger sites. The proportion of sediment that makes it from the construction site to surface waters is likely the same for larger and smaller construction sites in urban areas because the runoff from either site is usually delivered directly to the storm drain network where there is no opportunity for the sediment to be filtered out.

The expected contribution of total sediment yields from small sites depends, in part, on the extent to which erosion and sedimentation controls are being applied. Because current storm water regulations are more likely to require erosion and sedimentation controls on larger sites in urban areas, smaller construction sites that lack such programs are likely to contribute a disproportionate amount of the total sediment from construction activities (MacDonald, L.H. 1997. *Technical Justification for Regulating Construction Sites 1–5 Acres in Size.* Unpublished report submitted to U.S. EPA, Washington, DC). Smaller construction sites are less likely to have an effective plan to control erosion and sedimentation, are less likely to properly implement and maintain their plans, and are less likely to be inspected (Brown, W. and D. Caraco. 1997. *Controlling Storm Water Runoff Discharges from Small Construction Sites: A National Review.* Submitted to Office of Wastewater Management, U.S. EPA, Washington, DC., by the Center for Watershed Protection, Silver Spring, MD). The proportion of sediment that makes it from the construction site to surface waters is likely the same for larger and smaller construction sites in urban areas because the runoff from either site is usually delivered directly to the storm drain network, where there is no opportunity for the sediment to be filtered out.

To confirm its belief that sediment yields from small sites are as high as or higher than the 20 to 150 tons/acre/year measured from larger sites, EPA gave a grant to the Dane County, Wisconsin Land Conservation Department, in cooperation with the USGS, to evaluate sediment runoff from two small construction sites. The first was a 0.34 acre residential lot and the second was a 1.72 acre commercial office development. Runoff from the sites was channeled to a single discharge point for monitoring. Each site was monitored before, during, and after construction.

The Dane County study found that total solids concentrations from these small sites are similar to total solids concentrations from larger construction sites. Results show that for both of the study sites, total solids and suspended solids concentrations were significantly higher during construction than either before or after construction. For example, preconstruction total solids concentrations averaged 642 mg/L during the period when ryegrass was established, active construction total solids concentrations averaged 2,788 mg/L, and post-construction total solids concentrations averaged 132 mg/L (on a pollutant load basis, this equaled 7.4 lbs preconstruction, 35 lbs during construction, and 0.6 lbs post-construction for total solids). While this site was not properly stabilized before construction, after construction was complete and the site was stabilized, post-construction concentrations were more than 20 times less than during construction. The results were even more dramatic for the commercial site. The commercial site had one preconstruction event, which resulted in total solids concentrations of 138 mg/L, while active construction averaged more than 15,000 mg/L and post-construction averaged only 200 mg/L (on a pollutant load basis, this equaled 0.3 lbs preconstruction, 490 lbs during construction, and 13.4 lbs post-construction for total solids). The active construction period resulted in more than 75 times more sediment than either before or after construction (Owens, D.W., P. Jopke, D.W. Hall, J. Balousek and A. Roa. 1999. ''Soil Erosion from Small Construction Sites.'' Draft USGS Fact Sheet. USGS and Dane County Land Conservation Department, WI). The total solids concentrations from these small sites in Wisconsin are similar to total solids concentrations from larger construction sites. For example, a study evaluating the effects of highway construction in West Virginia found that a small storm produced a sediment concentration of 7,520 mg/L (Downs and Appel, 1986).

One important aspect of small construction sites is the number of small sites relative to larger construction sites

and total land area within the watershed. Brown and Caraco surveyed 219 local jurisdictions to assess erosion and sediment control (ESC) programs. Seventy respondents provided data on the number of ESC permits for construction sites smaller than 5 acres. In 27 cases (38 percent of the respondents), more than three-quarters of the permits were for sites smaller than 5 acres; in another 18 cases (26 percent), more than half of the permits were for sites smaller than 5 acres.

In addition, data on the total acreage disturbed by smaller construction sites have been collected recently in two States (MacDonald, 1997). The most recent and complete data set is the listing of the disturbed area for each of the 3,831 construction sites permitted in North Carolina for 1994–1995 and 1995–1996. Nearly 61 percent of the sites that were 1 acre or larger were between 1.0 and 4.9 acres in size. This proportion was consistent between years. Data showed that this range of sites accounted for 18 percent of the total area disturbed by construction. The values showed very little variation between the 2 years of data. The total disturbed area for all sites over this 2-year period was nearly 33,000 acres, or about 0.1 percent of the total area of North Carolina.

EPA estimates that construction sites disturbing greater than 5 acres disturb 2.1-million acres of land (78.1 percent of the total) while sites disturbing between 1 and 5 acres of land disturb 0.5-million acres of land (19.4 percent). The remaining sites on less than 1 acres of land disturb 0.07-million acres of land (only 2.5 percent of the total). Given the high erosion rates associated with most construction sites, small construction sites can be a significant source of water quality impairment, particularly in small watersheds that are undergoing rapid development. Exempting sites under 1 acre will exclude only about 2.5 percent of acreage from program coverage, but will exclude a far higher number of sites, approximately 25 percent.

Several studies have determined that the most effective construction runoff control programs rely on local plan review and field enforcement (Paterson, R. G. 1994. ''Construction Practices: the Good, the Bad, and the Ugly.'' *Watershed Protection Techniques* 1(3)). In his review, Paterson suggests that, given the critical importance of field implementation of erosion and sediment control programs and the apparent shortcomings that exist, much more focus should be given to plan implementation.

Several commenters disputed the data presented in the proposed rule for storm water discharges from smaller construction sites. One commenter stated that EPA has not adequately explained the basis for permitting construction activity down to 1 disturbed acre. Another commenter stated that EPA did not present sufficient data on water quality impacts from construction sites disturbing less than 5 acres.

EPA believes that the data presented above sufficiently support nationwide designation of storm water discharges from construction activity disturbing more than 1 acre. Based on total disturbed land area within a watershed, the cumulative effects of numerous small construction sites can have impacts similar to those of larger sites in a particular area. In addition, waivers for storm water discharges from smaller construction activity will exclude sites not expected to impair water quality. EPA will continue to collect water quality data on construction site storm water runoff.

C. Statutory Background

In 1972, Congress enacted the CWA to prohibit the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by an NPDES permit. Congress added CWA section 402(p) in 1987 to require implementation of a comprehensive program for addressing storm water discharges. Section 402(p)(1) required EPA or NPDES-authorized States or Tribes to issue NPDES permits for the following five classes of storm water discharges composed entirely of storm water (''storm water discharges'') specifically listed under section 402(p)(2):

(A) a discharge subject to an NPDES permit before February 4, 1987

(B) a discharge associated with industrial activity

(C) a discharge from a municipal separate storm sewer system serving a population of 250,000 or more

(D) a discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000

(E) a discharge that an NPDES permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.

Section 402(p)(3)(A) requires storm water discharges associated with industrial activity to meet all applicable provisions of section 402 and section 301 of the CWA, including technology-based requirements and any more stringent requirements necessary to meet water quality standards. Section 402(p)(3)(B) establishes NPDES permit standards for discharges from municipal separate storm sewer systems, or MS4s. NPDES permits for discharges from MS4s (1) may be issued on a system or jurisdiction-wide basis, (2) must include a requirement to effectively prohibit non-storm water discharges into the storm sewers, and (3) must require controls to reduce pollutant discharges to the maximum extent practicable, including best management practices, and other provisions as the Administrator or the States determine to be appropriate for the control of such pollutants. At this time, EPA determines that water quality-based controls, implemented through the iterative processes described today are appropriate for the control of such pollutants and will result in reasonable further progress towards attainment of water quality standards. See sections II.L and II.H.3 of the preamble.

In CWA section 402(p)(4), Congress established statutory deadlines for the initial steps in implementing the NPDES program for storm water discharges. This section required development of NPDES permit application regulations, submission of NPDES permit applications, issuance of NPDES permits for sources identified in section 402(p)(2), and compliance with NPDES permit conditions. In addition, this section required industrial facilities and large MS4s to submit NPDES permit applications for storm water discharges by February 4, 1990. Medium MS4s were to submit NPDES permit applications by February 4, 1992. EPA and authorized NPDES States were prohibited from requiring an NPDES permit for any other storm water discharges until October 1, 1994.

Section 402(p)(5) required EPA to conduct certain studies and submit a report to Congress. This requirement is discussed in the following section.

Section 402(p)(6) requires EPA, in consultation with States and local officials, to issue regulations for the designation of additional storm water discharges to be regulated to protect water quality. It also requires EPA to extend the existing storm water program to regulate newly designated sources. At a minimum, the extension must establish (1) priorities, (2) requirements for State storm water management programs, and (3) expeditious deadlines. Section 402(p)(6) specifies that the program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as

appropriate. Today's rule implements this section.

D. EPA's Reports to Congress

Under CWA section 402(p)(5), EPA, in consultation with the States, was required to conduct a study. The study was to identify unregulated sources of storm water discharges, determine the nature and extent of pollutants in such discharges, and establish procedures and methods to mitigate the impacts of such discharges on water quality. Section 402(p)(5) also required EPA to report the results of the first two components of that study to Congress by October 1, 1988, and the final report by October 1, 1989.

In March 1995, EPA submitted to Congress a report that reviewed and analyzed the nature of storm water discharges from municipal and industrialacilities that were not already regulated under the initial NPDES regulations for storm water (U.S. Environmental Protection Agency, Office of Water. 1995. *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program: Report to Congress.* Washington, D.C. EPA 833–K–94–002) (''Report''). The Report also analyzed associated pollutant loadings and water quality impacts from these unregulated sources. Based on identification of unregulated municipal sources and analysis of information on impacts of storm water discharges from municipal sources, the Report recommended that the NPDES program for storm water focus on the 405 ''urbanized areas'' identified by the Bureau of the Census. The Report further found that a number of discharges from unregulated industrial facilities warranted further investigation to determine the need for regulation. It classified these unregulated industrial discharges in two groups: Group A and Group B. Group A comprised sources that may be considered a high priority for inclusion in the NPDES program for storm water because discharges from these sources are similar or identical to already regulated sources. These ''look alike'' storm water discharge sources were not covered in the initial NPDES regulations for storm water due to the language used to define ''associated with industrial activity.'' In the initial regulations for storm water, ''industrial activity'' is identified using Standard Industrial Classification (SIC) codes. The use of SIC codes led to incomplete categorization of industrial activities with discharges that needed to be regulated to protect water quality. Group B consisted of 18 industrial sectors, which included sources that EPA expected to contribute to storm water contamination due to the activities conducted and pollutants anticipated onsite (e.g., vehicle maintenance, machinery and electrical repair, and intensive agricultural activities).

EPA reported on the latter component of the section 402(p)(5) study via President Clinton's Clean Water Initiative, which was released on February 1, 1994 (U.S. Environmental Protection Agency, Office of Water. 1994. *President Clinton's Clean Water Initiative.* Washington, D.C. EPA 800–R–94–001) (''Initiative''). The Initiative addressed a number of issues associated with NPDES requirements for storm water discharges and proposed (1) establishing a phased compliance with a water quality standards approach for discharges from municipal separate storm sewer systems with priority on controlling discharges from municipal growth and development areas, (2) clarifying that the maximum extent practicable standard should be applied in a site-specific, flexible manner, taking into account cost considerations as well as water quality effects, (3) providing an exemption from the NPDES program for storm water discharges from industrial facilities with no activities or significant materials exposed to storm water, (4) providing extensions to the statutory deadlines to complete implementation of the NPDES program for the storm water program, (5) targeting urbanized areas for the requirements in the NPDES program for storm water, and (6) providing control of discharges from inactive and abandoned mines located on Federal lands in a more targeted, flexible manner. Additionally, prior to promulgation of today's rule, section 431 of the Agency's Appropriation Act for FY 2000 (Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 2000, Public Law 106–74, section 432 (1999)) directed EPA to report on certain matters to be covered in today's rule. That report supplements the study required by CWA Section 402(p)(5). EPA is publishing the availability of that report elsewhere in this issue of the **Federal Register**.

Several commenters asserted that the Report to Congress is an inadequate basis for the designation and regulation of sources covered under today's final rule, specifically the nationwide designation of small municipal separate storm sewer systems within urbanized areas and construction activities disturbing between one and five acres.

EPA believes that it has developed an adequate record for today's regulation both through the Report to Congress and the Clean Water Initiative and through more recent activities, including the FACA Subcommittee process, regulatory notices and evaluation of comments, and recent research and analysis. EPA does not interpret the congressional reporting requirements of CWA section 402(p)(5) to be the sole basis for determining sources to be regulated under today's final rule.

EPA's decision to designate on a national basis small MS4s in urbanized areas is supported by studies that clearly show a direct correlation between urbanization and adverse water quality impacts from storm water discharges. (Schueler, T. 1987. *Controlling Urban Runoff: A Practical Manual for Planning & Designing Urban BMPs.* Metropolitan Washington Council of Governments). ''Urbanized areas''—within which all small MS4s would be covered—represent the most intensely developed and dense areas of the Nation. They constitute only two percent of the land area but 63 percent of the total population. See section I.B.1, Urban Development, above, for studies and assessments of the link between urban development and storm water impacts on water resources.

Commenters argued that the Report to Congress does not address storm water discharges from construction sites. They further argued that the designation of small construction sites per today's final rule goes beyond the President's 1994 Initiative because the Initiative only recommends requiring municipalities to implement a storm water management program to control unregulated storm water sources, ''including discharges from construction of less than 5 acres, which are part of growth, development and significant redevelopment activities.'' They point out that the Initiative provides that unregulated storm water discharges not addressed through a municipal program would not be covered by the NPDES program. Commenters assert that EPA has not developed a record independent of its section 402(p)(5) studies that demonstrates the necessity of regulating under a separate NPDES permit storm water discharges from smaller construction sites ''to protect water quality.'' EPA disagrees.

EPA evaluated the nature and extent of pollutants from construction site sources in a process that was separate and distinct from the development of the Report to Congress. Today's decision to regulate certain storm water discharges from construction sites disturbing less than 5 acres arose in part

out of the 9th Circuit remand in *NRDC* v. *EPA,* 966 F.2d 1292 (9th Cir. 1992). In that case, the court remanded portions of the Phase I storm water regulations related to discharges from construction sites. Those regulations define ''storm water discharges associated with industrial activity'' to include only those storm water discharges from construction sites disturbing 5 acres or more of total land area (see 40 CFR 122.26(b)(14)(x)). In its decision, the court concluded that the 5-acre threshold was improper because the Agency had failed to identify information ''to support its perception that construction activities on less than 5 acres are non-industrial in nature'' (966 F.2d at 1306). The court remanded the below 5 acre exemption to EPA for further proceedings (966 F.2d at 1310).

In a **Federal Register** notice issued on December 18, 1992, EPA noted that it did not believe that the Court's decision had the effect of automatically subjecting small construction sites to the existing application requirements and deadlines. EPA believed that additional notice and comment were necessary to clarify the status of these sites. The information received during the notice and comment process and additional research, as discussed in section I.B.3 Construction Site Runoff, formed the basis for the designation of construction activity disturbing between one and five acres on a nationwide basis. EPA's objectives in today's proposal include an effort to (1) address the 9th Circuit remand, (2) address water quality concerns associated with construction activities that disturb less than 5 acres of land, and (3) balance conflicting recommendations and concerns of stakeholders.

One commenter noted that EPA's proposal would fail to regulate industrial facilities identified as Group A and Group B in the March 1995 *Report to Congress.* EPA is relying on the analysis in the Report, which provided that the recommendation for coverage was meant as guidance and was not intended to be an identification of specific categories that must be regulated under Section 402(p)(6). *Report to Congress,* p. 4–1. The Report recognized the existence of limited data on which to base loadings estimates to support the nationwide designation of individual or categories of sources. *Report to Congress,* p. 4–44. Furthermore, during FACA Subcommittee discussion, EPA continued to urge stakeholders to provide further data relating to industrial and commercial storm water sources, which EPA did not receive. EPA concluded that, due to insufficient data, these sources were not appropriate for nationwide designation at this time.

E. Industrial Facilities Owned or Operated by Small Municipalities

Congress granted extensions to the NPDES permit application process for selected classes of storm water discharges associated with industrial activity. On December 18, 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), which postponed NPDES permit application deadlines for most storm water discharges associated with industrial activity at facilities that are owned or operated by small municipalities. EPA and States authorized to administer the NPDES program could not require any municipality with a population of less than 100,000 to apply for or obtain an NPDES permit for any storm water discharge associated with industrial activity prior to October 1, 1992, except for storm water discharges from airports, power plants, or uncontrolled sanitary landfills. See 40 CFR 122.26(e)(1); 57 FR 11524, April 2, 1992 (reservation of NPDES application deadlines for ISTEA facilities).

The facilities exempted by ISTEA discharge storm water in the same manner (and are expected to use identical processes and materials) as the industrial facilities regulated under the 1990 Phase I regulations. Accordingly, these facilities pose similar water quality problems. The extended moratorium for these facilities was necessary to allow municipalities additional time to comply with NPDES requirements. The proposal for today's rule would have maintained the existing deadline for seeking coverage under an NPDES permit (August 7, 2001).

Today's rule changes the permit application deadline for such municipally owned or operated facilities discharging industrial storm water to make it consistent with the application date for small regulated MS4s. Because EPA missed its March 1999 deadline for promulgating today's rule, and the deadline for MS4s to submit permit applications has been extended to three years and 90 days from the date of this notice, the deadline for permitting ISTEA sources has been similarly extended. The permitting of these sources is discussed below in section ''II.I.3. ISTEA Sources.''

F. Related Nonpoint Source Programs

Today's rule addresses point source discharges of storm water runoff and non-storm water discharges into MS4s. Many of these sources have been addressed by nonpoint source control programs, which are described briefly below.

In 1987, section 319 was added to the CWA to provide a framework for funding State and local efforts to address pollutants from nonpoint sources not addressed by the NPDES program. To obtain funding, States are required to submit Nonpoint Source Assessment Reports identifying State waters that, without additional control of nonpoint sources of pollution, could not reasonably be expected to attain or maintain applicable water quality standards or other goals and requirements of the CWA. States are also required to prepare and submit for EPA approval a statewide Nonpoint Source Management Program for controlling nonpoint source water pollution to navigable waters within the State and improving the quality of such waters. State program submittals must identify specific best management practices (BMPs) and measures that the State proposes to implement in the first four years after program submission to reduce pollutant loadings from identified nonpoint sources to levels required to achieve the stated water quality objectives.

State nonpoint source programs funded under section 319 can include both regulatory and nonregulatory State and local approaches. Section 319(b)(2)(B) specifies that a combination of ''nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects' may be used, as necessary, to achieve implementation of the BMPs or measures identified in the section 319 submittals.

Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 provides that States with approved coastal zone management programs must develop coastal nonpoint pollution control programs and submit them to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval. Failure to submit an approvable program will result in a reduction of Federal grants under both the Coastal Zone Management Act and section 319 of the CWA.

State coastal nonpoint pollution control programs under CZARA must include enforceable policies and mechanisms that ensure implementation of the management measures throughout the coastal management area. *EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* under section 6217(g) in

January 1993. The guidance identifies management measures for five major categories of nonpoint source pollution. The management measures reflect the greatest degree of pollutant reduction that is economically achievable for each of the listed sources. These management measures provide reference standards for the States to use in developing or refining their coastal nonpoint programs. A few management measures, however, contain quantitative standards that specify pollutant loading reductions. For example, the New Development Management Measure, which is applicable to construction in urban areas, requires (1) that by design or performance the average annual total suspended solid loadings be reduced by 80 percent and (2) to the extent practicable, that the pre-development peak runoff rate and average volume be maintained.

EPA and NOAA published *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (1993). The document clarifies that States generally must implement management measures for each source category identified in the EPA guidance developed under section 6217(g). Coastal Nonpoint Pollution Control Programs are not required to address sources that are clearly regulated under the NPDES program as point source discharges. Specifically, such programs would not need to address small MS4s and construction sites covered under NPDES storm water permits (both general and individual).

II. Description of Program

A. Overview

1. Objectives EPA Seeks To Achieve in Today's Rule

EPA seeks to achieve several objectives in today's final rule. First, EPA is implementing the requirement under CWA section 402(p)(6) to provide a comprehensive storm water program that designates and controls additional sources of storm water discharges to protect water quality. Second, EPA is addressing storm water discharges from the activities exempted under the 1990 storm water permit application regulations that were remanded by the Ninth Circuit Court of Appeals in NRDC v. EPA, 966 F.2d 1292 (9th Circuit, 1992). These are construction activities disturbing less than 5 acres and so-called ''light'' industrial activities not exposed to storm water (see discussion of ''no exposure'' below). Third, EPA is providing coverage for the so-called ''donut holes'' created by the existing NPDES storm water program. Donut holes are geographic gaps in the NPDES storm water program's regulatory scheme. They are MS4s located within areas covered by the existing NPDES storm water program, but not currently addressed by the storm water program because it is based on political jurisdictions. Finally, EPA also is trying to promote watershed planning as a framework for implementing water quality programs where possible.

Although EPA had options for different approaches (see alternatives discussed in the January 9, 1998, proposed regulation), EPA believes it can best achieve its objectives through flexible innovations within the framework of the NPDES program. Unlike the interim section 402(p)(6) storm water regulations EPA promulgated in 1995, EPA no longer designates all of the unregulated storm water discharges for nationwide coverage under the NPDES program for storm water. The framework for today's final rule is one that balances automatic designation on a nationwide basis and locally-based designation and waivers. Nationwide designation applies to those classes or categories of storm water discharges that EPA believes present a high likelihood of having adverse water quality impacts, regardless of location. Specifically, today's rule designates discharges from small MS4s located in urbanized areas and storm water discharges from construction activities that result in land disturbance equal to or greater than one and less than five acres. As noted under Section I.B., Water Quality Concerns/Environmental Impact Studies and Assessments, these two categories of storm water sources, when unregulated, tend to cause significant adverse water quality impacts. Additional sources are not covered on a nationwide basis either because EPA currently lacks information indicating a consistent potential for adverse water quality impact or because EPA believes that the likelihood of adverse impacts on water quality is low, with some localized exceptions. Additional individual sources or categories of storm water discharges could, however, be covered under the program through a local designation process. A permitting authority may designate additional small MS4s after developing designation criteria and applying those criteria to small MS4s located outside of an urbanized area, in particular those with a population of 10,000 or more and a population density of at least 1,000. Exhibit 1 illustrates the designation framework for today's final rule.

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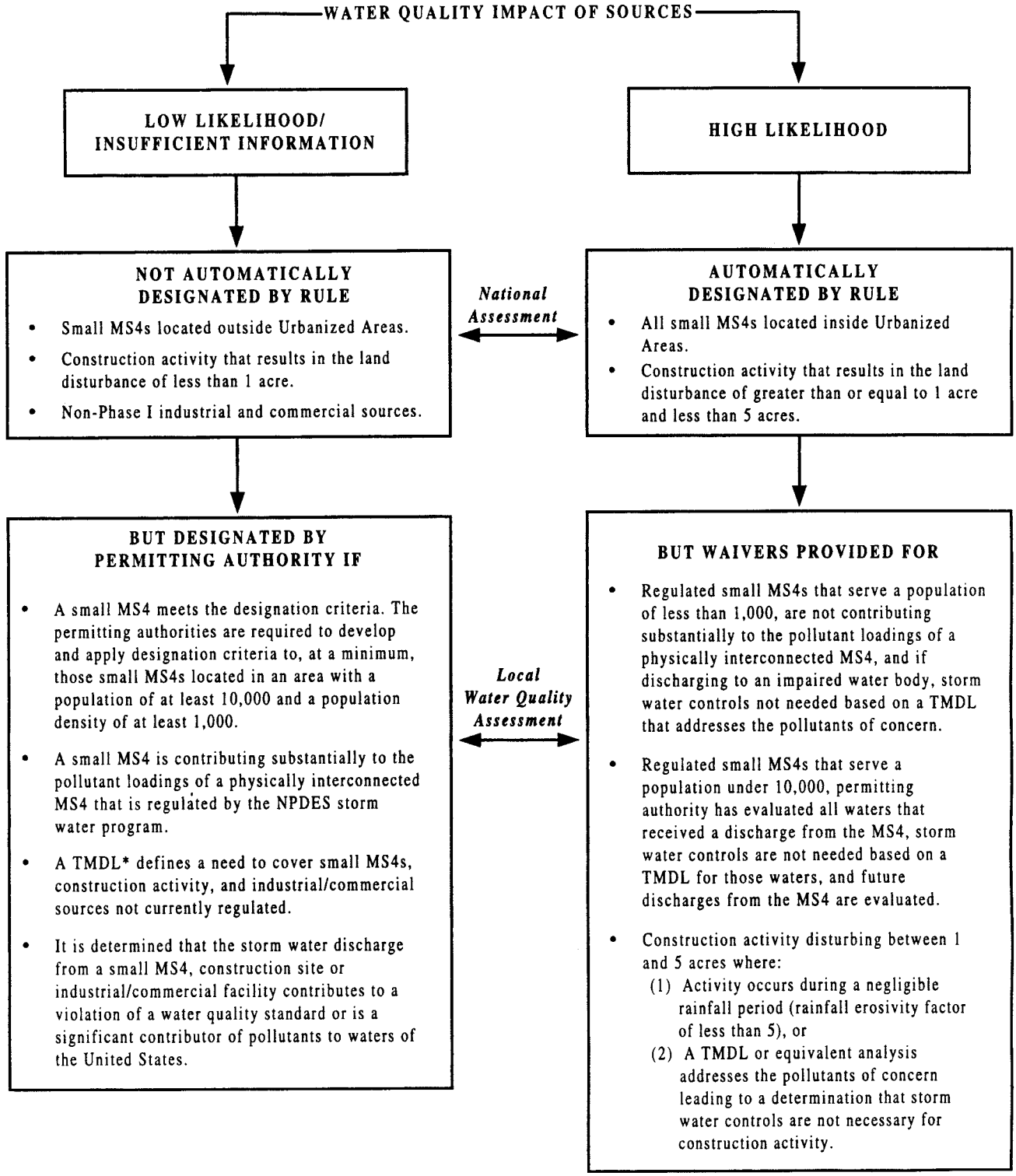
EXHIBIT 1.—PHASE II SOURCE DECISIONS



*EPA will continue to require States to comply with their Total Maximum Daily Load (TMDL) implementation schedules.

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The designation framework for today's final rule provides a significant degree of flexibility. The proposed provisions for nationwide designation of storm water discharges from construction and from small MS4s in urbanized areas allowed for a waiver of applicable requirements based on appropriate water quality conditions. Today's final rule expands and simplifies those waivers.

The permitting authority may waive the requirement for a permit for any small MS4 serving a jurisdiction with a population of less than 1,000 unless storm water controls are needed because the MS4 is contributing to a water quality impairment. The permitting authority may also waive permit coverage for MS4s serving a jurisdiction with a population of less than 10,000 if all waters that receive a discharge from the MS4 have been evaluated and discharges from the MS4 do not significantly contribute to a water quality impairment or have the potential to cause an impairment. Today's rule also allows States with a watershed permitting approach to phase in coverage for MS4s in jurisdictions with populations under 10,000.

Water quality conditions are also the basis for a waiver of requirements for storm water discharges from construction activities disturbing between one and five acres. For these small construction sources, the rule provides significant flexibility for waiving otherwise applicable regulatory requirements where a permitting authority determines, based on water quality and watershed considerations, that storm water discharge controls are not needed.

Coverage can be extended to municipal and construction sources outside the nationwide designated classes or categories based on watershed and case-by-case assessments. For the municipal storm water program, today's rule provides broad discretion to NPDES permitting authorities to develop and implement criteria for designating storm water discharges from small MS4s outside of urbanized areas. Other storm water discharges from unregulated industrial, commercial, and residential sources will not be subject to the NPDES permit requirements unless a permitting authority determines on a case-by-case basis (or on a categorical basis within identified geographic areas such as a State or watershed) that regulatory controls are needed to protect water quality. EPA believes that the flexibility provided in today's rule facilitates watershed planning.

2. General Requirements for Regulated Entities Under Today's Rule

As previously noted, today's final rule defines additional classes and categories of storm water discharges for coverage under the NPDES program. These designated dischargers are required to seek coverage under an NPDES permit. Furthermore, all NPDES-authorized States and Tribes are required to implement these provisions and make any necessary amendments to current State and Tribal NPDES regulations to ensure consistency with today's final rule. EPA remains the NPDES permitting authority for jurisdictions without NPDES authorization.

Today's final rule includes some new requirements for NPDES permitting authorities implementing the CWA section 402(p)(6) program. EPA has made a significant effort to build flexibility into the program while attempting to maintain an appropriate level of national consistency. Permitting authorities must ensure that NPDES permits issued to MS4s include the minimum control measures established under the program. Permitting authorities also have the ability to make numerous decisions including who is regulated under the program, i.e., case-by-case designations and waivers, and how responsibilities should be allocated between regulated entities.

Today's final rule extends the NPDES program to include discharges from the following: small MS4s within urbanized areas (with the exception of systems waived from the requirements by the NPDES permitting authority); other small MS4s meeting designation criteria to be established by the permitting authority; and any remaining MS4 that contributes substantially to the storm water pollutant loadings of a physically interconnected MS4 already subject to regulation under the NPDES program. Small MS4s include urban storm sewer systems owned by Tribes, States, political subdivisions of States, as well as the United States, and other systems located within an urbanized area that fall within the definition of an MS4. These include, for example, State departments of transportation (DOTs), public universities, and federal military bases.

Today's final rule requires all regulated small MS4s to develop and implement a storm water management program. Program components include, at a minimum, 6 minimum measures to address: public education and outreach; public involvement; illicit discharge detection and elimination; construction site runoff control; post-construction storm water management in new development and redevelopment; and pollution prevention and good housekeeping of municipal operations. These program components will be implemented through NPDES permits. A regulated small MS4 is required to submit to the NPDES permitting authority, either in its notice of intent (NOI) or individual permit application, the BMPs to be implemented and the measurable goals for each of the minimum control measures listed above.

The rule addresses all storm water discharges from construction site activities involving clearing, grading and excavating land equal to or greater than 1 acre and less than 5 acres, unless requirements are otherwise waived by the NPDES permitting authority. Discharges from such sites, as well as construction sites disturbing less than 1 acre of land that are designated by the permitting authority, are required to implement requirements set forth in the NPDES permit, which may reference the requirements of a qualifying local program issued to cover such discharges.

The rule also addresses certain other sources regulated under the existing NPDES program for storm water. For municipally-owned industrial sources required to be regulated under the existing NPDES storm water program but exempted from immediate compliance by the Intermodal Surface Transportation Act of 1991 (ISTEA), the rule revises the existing deadline for seeking coverage under an NPDES permit (August 7, 2001) to make it consistent with the application date for small regulated MS4s. (See section I.3. below.) The rule also provides relief from NPDES storm water permitting requirements for industrial sources with no exposure of industrial materials and activities to storm water.

3. Integration of Today's Rule With the Existing Storm Water Program

In developing an approach for today's final rule, numerous early interested stakeholders encouraged EPA to seek opportunities to integrate, where possible, the proposed Phase II requirements with existing Phase I requirements, thus facilitating a unified storm water discharge control program. EPA believes that this objective is met by using the NPDES framework. This framework is already applied to regulated storm water discharge sources and is extended to those sources designated under today's rule. This approach facilitates program consistency, public access to information, and program oversight.

EPA believes that today's final rule provides consistency in terms of program coverage and requirements for existing and newly designated sources. For example, the rule includes most of the municipal donut holes, those MS4s located in incorporated places, townships or towns with a population under 100,000 that are within Phase I counties. These MS4s are not addressed by the existing NPDES storm water program while MS4s in the surrounding county are currently addressed. In addition, the minimum control measures required in today's rule for regulated small MS4s are very similar to a number of the permit requirements for medium and large MS4s under the existing storm water program. Following today's rule, permit requirements for all regulated MS4s (both those under the existing program and those under today's rule) will require implementation of BMPs. Furthermore, with regard to the development of NPDES permits to protect water quality, EPA intends to apply the August 1, 1996, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits* (hereinafter, ''Interim Permitting Approach'') (see Section II.L.1. for further description) to all MS4s covered by the NPDES program.

EPA is applying NPDES permit requirements to construction sites below 5 acres that are similar to the existing requirements for those above 5 acres and above. In addition, today's rule allows compliance with qualifying local, Tribal, or State erosion and sediment controls to meet the erosion and sediment control requirements of the general permits for storm water discharges associated with construction, both above and below 5 acres.

4. General Permits

EPA recommends using general permits for all newly regulated storm water sources under today's rule. The use of general permits, instead of individual permits, reduces the administrative burden on permitting authorities, while also limiting the paperwork burden on regulated parties seeking permit authorization. Permitting authorities may, of course, require individual permits in some cases to address specific concerns, including permit non-compliance.

EPA recommends that general permits for MS4s, in particular, be issued on a watershed basis, but recognizes that each permitting authority must decide how to develop its general permit(s). Permit conditions developed to address concerns and conditions of a specific watershed could reflect a watershed plan; such permit conditions must provide for attainment of applicable water quality standards (including designated uses), allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL. If the permitting authority issues a State-wide general permit, the permitting authority may include separate conditions tailored to individual watersheds or urbanized areas. Of course, for a newly regulated MS4, modification of an existing individual MS4 permit to include the newly regulated MS4 as a ''limited co-permittee'' also remains an option.

5. Tool Box

During the FACA process, many Storm Water Phase II FACA Subcommittee representatives expressed an interest, which was endorsed by the full Committee, in having EPA develop a ''tool box'' to assist States, Tribes, municipalities, and other parties involved in the Phase II program. EPA made a commitment to work with Storm Water Phase II FACA Subcommittee representatives in developing such a tool box, with the expectation that a tool box would facilitate implementation of the storm water program in an effective and cost-efficient manner. EPA has developed a preliminary working tool box (available on EPA's web page at www.epa.gov/owm/sw/toolbox). EPA intends to have the tool box fully developed by the time of the first general permits. EPA also intends to update the tool box as resources and data become available. The tool box will include the following eight main components: fact sheets; guidances; a menu of BMPs for the six MS4 minimum measures; an information clearinghouse; training and outreach efforts; technical research; support for demonstration projects; and compliance monitoring/assistance tools. EPA intends to issue the menu of BMPs, both structural and non-structural, by October 2000. In addition, EPA will issue by October 2000 a ''model'' permit and will issue by October 2001 guidance materials on the development of measurable goals for municipal programs.

In an attempt to avoid duplication, the Agency has undertaken an effort to identify and coordinate sources of information that relate to the storm water discharge control program from both inside and outside the Agency. Such information includes research and demonstration projects, grants, storm water management-related programs, and compendiums of available documents, including guidances, related directly or indirectly to the comprehensive NPDES storm water program. Based on this effort, EPA is developing a tool box containing fact sheets and guidance documents pertaining to the overall program and rule requirements (e.g., guidance on municipal and construction programs, and permitting authority guidance on designation and waiver criteria); models of current programs aimed at assisting States, Tribes, municipalities, and others in establishing programs; a comprehensive list of reference documents organized according to subject area (e.g., illicit discharges, watersheds, water quality standards attainment, funding sources, and similar types of references); educational materials; technical research data; and demonstration project results. The information collected by EPA will not only provide the background for tool box materials, but will also be made available through an information clearinghouse on the world wide web.

With assistance from EPA, the American Public Works Association (APWA) developed a workbook and series of workshops on the proposed Phase II rule. Ten workshops were held from September 1998 through May 1999. Depending on available funding, these workshops may continue after publication of today's final rule. EPA also intends to provide training to enable regional offices to educate States, Tribes, and municipalities about the storm water program and the availability of the tool box materials.

The CWA currently provides funding mechanisms to support activities related to storm water. These mechanisms will be described in the tool box. Activities funded under grant and loan programs, which could be used to assist in storm water program development, include programs in the nonpoint source area, storm water demonstration projects, source water protection and wastewater construction projects. EPA has already provided funding for numerous research efforts in these areas, including a database of BMP effectiveness studies (described below), an assessment of technologies for storm water management, a study of the effectiveness of storm water BMPs for controlling the impacts of watershed imperviousness, protocols for wet weather monitoring, development of a dynamic model for wet weather flows, and numerous outreach projects.

EPA has entered into a cooperative agreement with the Urban Water Resources Research Council of the American Society of Civil Engineers (ASCE) to develop a scientifically-based management tool for the information

needed to evaluate the effectiveness of urban storm water runoff BMPs nationwide. The long-term goal of the National Stormwater BMP Database project is to promote technical design improvements for BMPs and to better match their selection and design to the local storm water problems being addressed. The project team has collected and evaluated hundreds of existing published BMP performance studies and created a database covering about 75 test sites. The database includes detailed information on the design of each BMP and its watershed characteristics, as well as its performance. Eventually the database will include the nationwide collection of information on the characteristics of structural and non-structural BMPs, data collection efforts (*e.g.,* sampling and flow gaging equipment), climatological characteristics, watershed characteristics, hydrologic data, and constituent data. The database will continue to grow as new BMP data become available. The initial release of the database, which includes data entry and retrieval software, is available on CD–ROM and operates on Windows®-compatible personal computers. The ASCE project team envisions that periodic updates to the database will be distributed through the Internet. The team is currently developing a system for Internet retrieval of selected database records, and this system is expected to be available in early 2000.

EPA and ASCE invite BMP designers, owners and operators to participate in the continuing database development effort. To make this effort successful, a large database is essential. Interested persons are encouraged to submit their BMP performance evaluation data and associated BMP watershed characteristics for potential entry into the database. The software included in the CD-ROM allows data providers to enter their BMP data locally, retain and edit the data as needed, and submit them to the ASCE Database Clearinghouse when ready.

To obtain a copy of the database, please contact Jane Clary, Database Clearinghouse Manager, Wright Water Engineers, Inc., 2490 W. 26th Ave., Suite 100A, Denver, CO 80211; Phone 303–480–1700; E-mail clary@wrightwater.com.

In addition, EPA requests that researchers planning to conduct BMP performance evaluations compile and collect BMP reporting information according to the standard format developed by ASCE. The format is provided with the database software and is also available on the ASCE website at www.asce.org/peta/tech/nsbd01.html.

6. Deadlines Established in Today's Action

Exhibit 2 outlines the various deadlines established under today's final rule. EPA believes that the dates allow sufficient time for completion of both the NPDES permitting authority's and the permittee's program responsibilities.

EXHIBIT 2–STORM WATER PHASE II ACTIONS DEADLINES

Activity	Deadline date
NPDES-authorized States modify NPDES program if no statutory change is required.	1 year from date of publication of today's rule in the **Federal Register**.
NPDES-authorized States modify NPDES program if statutory change is required.	2 years from date of publication of today's rule in the **Federal Register**.
EPA issues a menu of BMPs for regulated small MS4s	October 27, 2000
ISTEA sources submit permit application	3 years and 90 days from date of publication of today's rule in the **Federal Register**.
Permitting authority issues general permit(s) (if this type of permit coverage is selected).	3 years from date of publication of today's rule in the **Federal Register**.
Regulated small MS4s submit permit application:	
a. If designated under § 122.32(a)(1) unless the permitting authority has established a phasing schedule under § 123.35(d)(3).	a. 3 years and 90 days from date of publication of today's rule in the **Federal Register**.
b. If designated under § 122.32(a)(2) or §§ 122.26(a)(9)(i) (C) or (D).	b. Within 180 days of notice.
Storm water discharges associated with small construction activity submit permit application:	
a. If designated under § 122.26(b)(15)(i)	a. 3 years and 90 days from date of publication of today's rule in the **Federal Register**
b. If designated under § 122.26(b)(15)(ii)	b. Within 180 days of notice.
Permitting authority designates small MS4s under § 123.35(b)(2)	3 years from date of publication of today's rule in the **Federal Register** or 5 years from date of publication of today's rule in the **Federal Register** if a watershed plan is in place
Regulated small MS4s' program fully developed and implemented	Up to 5 years from date of permit issuance.
Reevaluation of the municipal storm water rules by EPA	13 years from date of publication of today's rule in the **Federal Register**
Permitting authority determination on a petition	Within 180 days of receipt.
Non-municipal sources designated under § 122.26(a)(9)(i) (C) or (D) submit permit application.	Within 180 days of notice.
Submission of No Exposure Certification	Every 5 years.

B. Readable Regulations

Today, EPA is finalizing new regulations in a ''readable regulation'' format. This reader-friendly, plain language approach is a departure from traditional regulatory language and should enhance the rule's readability. These plain language regulations use questions and answers, ''you'' to identify the person who must comply, and terms like ''must'' rather than ''shall'' to identify a mandate. This new format, which minimizes layers of subparagraphs, should also allow the reader to easily locate specific provisions of the regulation.

Some sections of today's final rule are presented in the traditional language and format because these sections amend existing regulations. The readable regulation format was not used in these existing provisions in an attempt to avoid confusion or disruption

of the readability of the existing regulations.

Most commenters supported EPA's use of plain language and agreed with EPA that the question and answer format makes the rule easier to understand. Three commenters thought that EPA should retain the traditional rule format. The June 1, 1998, Presidential memorandum directs all government agencies to write documents in plain language. Based on the majority of the comments, EPA has retained the plain language format used in the January 9, 1998, proposal in today's final rule.

The proposal to today's final rule included guidance as well as legal requirements. The word ''must'' indicates a requirement. Words like ''should,'' ''could,'' or ''encourage'' indicate a recommendation or guidance. In addition, the guidance was set off in parentheses to distinguish it from requirements.

EPA received numerous comments supporting the inclusion of guidance in the text of the Code of Federal Regulations (CFR), as well as comments opposing inclusion of guidance. Supporters stated that preambles and guidance documents are often not accessible when rules are implemented. Any language not included in the CFR is therefore not available when it may be most needed. Commenters that opposed including guidance in the CFR expressed the concern that any language in the rule might be interpreted as a requirement, in spite of any clarifying language. They suggested that guidance be presented in the preamble and additional guidance documents.

The majority of commenters on this issue thought that the guidance should be retained but the distinction between requirements and guidance should be better clarified. Suggestions included clarifying text, symbols, and a change from use of the word ''should'' to ''EPA recommends'' or ''EPA suggests''. EPA believes that it is important to include the guidance in the rule and agrees that the distinction between requirements and EPA recommendations must be very clear. In today's final rule, EPA has put the guidance in paragraphs entitled ''Guidance'' and replaced the word ''should'' with ''EPA recommends.'' This is intended to clarify that the recommendations contained in the guidance paragraphs are not legally binding.

C. Program Framework: NPDES Approach

Today's rule regulates Phase II sources using the NPDES permit program. EPA interprets Clean Water Act section 402(p)(6) as authorizing the Agency to develop a storm water program for Phase II sources either as part of the existing NPDES permit program or as a stand alone non-NPDES program such as a self-implementing rule. Under either approach, EPA interprets section 402(p)(6) as directing EPA to publish regulations that ''regulate'' the remaining unregulated sources, specifically to establish requirements that are federally enforceable under the CWA. Although EPA believes that it has the discretion to not require sources regulated under CWA section 402(p)(6) to be covered by NPDES permits, the Agency has determined, for the reasons discussed below, that it is most appropriate to use NPDES permits in implementing the program to address the sources designated for regulation in today's rule.

As discussed in Section II.A, Overview, EPA sought to achieve certain goals in today's final rule. EPA believes that the NPDES program best achieves EPA's goals for today's final rule for the reasons discussed below.

Requiring Phase II sources to be covered by NPDES permits helps address the consistency problems currently caused by municipal ''donut holes.'' Donut holes are gaps in program coverage where a small unregulated MS4 is located next to or within a regulated larger MS4 that is subject to an NPDES permit under the Phase I NPDES storm water program. The existence of such ''donut holes'' creates an equity problem because similar discharges may remain unregulated even though they cause or contribute to the same adverse water quality impacts. Using NPDES permits to regulate the unregulated discharges in these areas is intended to facilitate the development of a seamless regulatory program for the mitigation and control of contaminated storm water discharges in an urbanized area. For example, today's rule allows a newly regulated MS4 to join as a ''limited'' co-permittee with a regulated MS4 by referencing a common storm water management program. Such cooperation should be further encouraged by the fact that the minimum control measures required in today's rule for regulated small MS4s are very similar to a number of the permit requirements for medium and large MS4s under the Phase I storm water program. The minimum control measures applicable to discharges from smaller MS4s are described with slightly more generality than under the Phase I permit application regulations for larger MS4s, thus enabling maximum flexibility for operators of smaller MS4s to optimize efforts to protect water quality.

Today's rule also applies NPDES permit requirements to construction sites below 5 acres that are similar to the existing requirements for those 5 acres and above. In addition, the rule would allow compliance with qualifying local, Tribal, or State erosion and sediment controls to meet the erosion and sediment control requirements of the general permits for storm water discharges associated with construction, both above and below 5 acres.

Incorporating the CWA section 402(p)(6) program into the NPDES program capitalizes upon the existing governmental infrastructure for administration of the NPDES program. Moreover, much of the regulated community already understands the NPDES program and the way it works.

Another goal of the NPDES program approach is to provide flexibility in order to facilitate and promote watershed planning and sensitivity to local conditions. NPDES permits promote those goals in several ways. NPDES general permits may be used to cover a category of regulated sources on a watershed basis or within political boundaries. The NPDES permitting process provides a mechanism for storm water controls tailored on a case-by-case basis, where necessary. In addition, the NPDES permit requirements of a permittee may be satisfied by another cooperating entity. Finally, NPDES permits may incorporate the requirements of existing State, Tribal and local programs, thereby accommodating State and Tribes seeking to coordinate the storm water program with other programs, including those that focus on watershed-based nonpoint source regulation.

In promoting the watershed approach to program administration, EPA believes NPDES general permits can cover a category of dischargers within a defined geographic area. Areas can be defined very broadly to include political boundaries (e.g., county), watershed boundaries, or State or Tribal land.

NPDES permits generally require an application or a notice of intent(NOI) to trigger coverage. This information exchange assures communication between the permitting authority and the regulated community. This communication is critical in ensuring that the regulated community is aware of the requirements and the permitting authority is aware of the potential for adverse impacts to water quality from identifiable locations. The NPDES permitting process includes the public as a valuable stakeholder and ensures

that the public is included and information is made publicly available.

Another concern for EPA and several stakeholders was that the program ensure citizen participation. The NPDES approach ensures opportunities for citizen participation throughout the permit issuance process, as well as in enforcement actions. NPDES permits are also federally enforceable under the CWA.

EPA believes that the use of NPDES permits makes a significant difference in the degree of compliance with regulations in the storm water program. The NPDES program provides for public participation in the development, enforcement and revision of storm water management programs. Citizen suit enforcement has assisted in focusing attention on adverse water quality impacts on a localized, public priority basis. Citizens frequently rely on the NPDES permitting process and the availability of NOIs to track program implementation and help them enforce regulatory requirements.

NPDES permits are also advantageous to the permittee. The NPDES permit informs the permittee about the scope of what it is expected do to be in compliance with the Clean Water Act. As explained more fully in EPA's April 1995 guidance, *Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits*, compliance with an NPDES permit constitutes compliance with the Clean Water Act (see CWA section 402(k)). In addition, NPDES permittees are excluded from duplicative regulatory regimes under the Resource Conservation and Recovery Act and the Comprehensive Emergency Response, Compensation and Liability Act under RCRA's exclusions to the definition of ''solid waste'' and CERCLA's exemption for ''federally permitted releases.''

EPA considered suggestions that the Agency authorize today's rule to be implemented as a self-implementing rule. This would be a regulation promulgated at the Federal, State, or Tribal level to control some or all of the storm water dischargers regulated under today's rule. Under this approach, a rule would spell out the specific requirements for dischargers and impose the restrictions and conditions that would otherwise be contained in an NPDES permit. It would be effective until modified by EPA, a State, or a Tribe, unlike an NPDES permit which cannot exceed a duration of five years. Some stakeholders believed that this approach would reduce the burden on the regulated community (e.g., by not requiring permit applications), and considerably reduce the amount of additional paperwork, staff time and accounting required to administer the proposed permit requirements.

EPA is sensitive to the interest of some stakeholders in having a streamlined program that minimizes the burden associated with permit administration and maximizes opportunities for field time spent by regulatory authorities. Key provisions in today's rule address some of these concerns by promoting a streamlined approach to permit issuance by, for example, using general permits and allowing the incorporation of existing programs. By adopting the NPDES approach rather than a self-implementing rule, today's rule also allows for consistent regulation between larger MS4s and construction sites regulated under the existing storm water management rule and smaller sources regulated under today's rule.

EPA believes that it is most appropriate to use NPDES permits to implement a program to address the sources regulated by today's rule. In addition to the reasons discussed above, NPDES permits provide a better mechanism than would a self-implementing rule for tailoring storm water controls on a case-by-case basis, where necessary. One commenter reasoned this concern could be addressed by including provisions in the regulation that allow site-specific BMPs (*i.e.,* case-by-case permits), suggesting storm water discharges that might require site-specific BMPs can be identified during the designation process of the regulatory authority. EPA believes that, in addition to its complexity, the commenter's approach lacks the other advantages of the NPDES permitting process.

A self-implementing rule would not ensure the degree of public participation that the NPDES permit process provides for the development, enforcement and revision of the storm water management program. A self-implementing rule also might not have provided the regulated community the ''permit shield'' under CWA section 402(k) that is provided by an NPDES permit. Based on all these considerations, EPA declined to adopt a self-implementing rule approach and adopted the NPDES approach.

Some State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. These State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives believed the NPDES approach would undercut State programs that had developed storm water controls tailored to local watershed concerns. Finally, a number of commenters expressed the view that States implement a variety of programs not based on the CWA that are effective in controlling storm water, and that EPA should provide incentives for their implementation and improvement in performance.

Throughout the development of the rule, State representatives sought alternatives to the NPDES approach for State implementation of the storm water program for Phase II sources. Discussions focused on an approach whereby States could develop an alternative program that EPA would approve or disapprove based on identified criteria, including that the alternative non-NPDES program would result in ''equivalent or better protection of water quality.'' The State representatives, however, were unable to propose or recommend criteria for gauging whether a program would provide equivalent protection. EPA also did not receive any suggestions for objective, workable criteria in response to the Agency's explicit request for specific criteria (by which EPA could objectively judge such programs) in the preamble to the proposed rule.

EPA evaluated several existing State initiatives to address storm water and found many cases where standards under State programs may be coordinated with the Federal storm water program. Where the NPDES permit is developed in coordination with State standards, there are opportunities to avoid duplication and overlapping requirements. Under today's rule, an NPDES permitting authority may include conditions in the NPDES permit that direct an MS4 to follow the requirements imposed under State standards, rather than the requirements of § 122.34(b). This is allowed as long as the State program at a minimum imposes the relevant requirements of § 122.34(b). Additional opportunities follow from other provisions in today's rule.

Seeking to further explore the feasibility of a non-NPDES approach, the Agency, after the proposal, had extensive discussions with representatives of a number of States. Discussions related specifically to possible alternatives for regulations of urban storm water discharges and MS4s specifically. The Agency also sought input on these issues from other stakeholders.

As a result of these discussions, many of the commenters provided input on issues such as: whether or not the Agency should require NPDES permits; whether location of MS4s in urbanized

areas should be the basis for designation or whether designation should be based on other determinations relating to water quality; whether States should be allowed to satisfy the conditions of the rule through the use of existing State programs; and issues concerning timing and resources for program implementation.

In response, today's rule still follows the regulatory scheme of the proposed rule, but incorporates additional flexibility to address some of the concerns raised by commenters.

In order to facilitate implementation by States that utilize a watershed permitting approach or similar approach (*i.e.,* based on a State's unified watershed assessments), today's rule allows States to phase in coverage for MS4s in jurisdictions with a population less than 10,000. Under such an approach, States could focus their resources on a rolling basis to assist smaller MS4s in developing storm water programs.

In addition, in response to concerns that the rule should not require permit coverage for MS4s that do not significantly contribute to water quality impairments, today's rule provides options for two waivers for small MS4s. The rule allows permitting authorities to exempt from the requirement for a permit any MS4 serving a jurisdiction with a population less than 1,000, unless the State determines that the MS4 must implement storm water controls because it is significantly contributing to a water quality impairment. A second waiver option applies to MS4s serving a jurisdiction with a population less than 10,000. For those MS4s, the State must determine that discharges from the MS4 do not significantly contribute to a water quality impairment, or have the potential for such an impairment, in order to provide the exemption. The State must review this waiver on a periodic basis no less frequently than once every five years.

Throughout the development of today's rule, commenters questioned whether the Clean Water Act authorized the use of the NPDES permit program, pointing out that the text of CWA 402(p)(6) does not use the word ''permit.'' Based on the absence of the word ''permit'' and the express mention of State storm water management programs, the commenters asserted that Congress did not intend for Phase II sources to be regulated using NPDES permits.

EPA disagrees with the commenters' interpretation of section 402(p)(6). Section 402(p)(6) does not preclude use of permits as part of the ''comprehensive program'' to regulate designated sources. The language provides EPA with broad discretion in the establishment of the ''comprehensive program.'' Absence of the word ''permit'' (a term that the statute does not otherwise define) does not preclude use of a permit, which is a familiar and reasonably well understood regulatory implementation vehicle. First, section 402(p)(6) says that EPA must establish a comprehensive program that ''shall, at a minimum, establish priorities, establish requirements for State stormwater management programs, and establish expeditious deadlines.'' The ''at a minimum'' language suggests that the Agency may, and perhaps should, develop a comprehensive program that does more than merely attend to these minimum criteria. Use of the term ''at a minimum'' preserves for the Agency broad discretion to establish a comprehensive program that includes use of NPDES permits.

Further, in the final sentence of the section, Congress included additional language to affirm the Agency's discretion. The final sentence clarifies that the Phase II program ''may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.'' Under existing CWA programs, performance standards, (effluent limitations) guidelines, management practices, and treatment requirements are typically implemented through NPDES or dredge and fill permits.

Although EPA believes that it had the discretion to not require permits, the Agency has determined that it is reasonable to interpret section 402(p)(6) to authorize permits. Moreover, for the reasons discussed above, the Agency believes that it is appropriate to use NPDES permits in implementing today's rule.

D. Federal Role

Today's final rule describes EPA's approach to expand the existing storm water program under CWA section 402(p)(6). As in all other Federal programs, the Federal government plays an integral role in complying with, developing, implementing, overseeing, and enforcing the program. This section describes EPA's role in the revised storm water program.

1. Develop Overall Framework of the Program

The storm water discharge control program under CWA section 402(p)(6) consists of the rule, tool box, and permits. EPA's primary role is to ensure timely development and implementation of all components. Today's rule is a refinement of the first step in developing the program. EPA is fully committed to continuing to work with involved stakeholders on developing the tool box and issuing permits. As noted in today's rule, EPA will assess the municipal storm water program based on (1) evaluations of data from the NPDES municipal storm water program, (2) research concerning water quality impacts on receiving waters from storm water, and (3) research on BMP effectiveness. (Section II.H, Municipal Role, provides a more detailed discussion of this provision.)

EPA is planning to standardize minimum requirements for construction and post-construction BMPs in a new rulemaking under Title III of the CWA. While larger construction sites are already subject to NPDES permits (and smaller sites will be subject to permits pursuant to today's rule), the permits generally do not contain specific requirements for BMP design or performance. The permits require the preparation of storm water pollution prevention plans, but actual BMP selection and design is at the discretion of permittees, in conformance with applicable State and local requirements. Where there are existing State and local requirements specific to BMPs, they vary widely, and many jurisdictions do not have such requirements.

In developing these regulations, EPA intends to evaluate the inclusion of design and maintenance criteria as minimum requirements for a variety of BMPs used for erosion and sediment control at construction sites, as well as for permanent BMPs used to manage post-construction storm water discharges. The Agency plans to consider the merits and performance of all appropriate management practices (both structural and non-structural) that can be used to reduce adverse water quality impacts. EPA does not intend to require the use of particular BMPs at specific sites, but plans to assist builders and developers in BMP selection by publishing data on the performance to be expected by various BMP types. EPA would like to build upon the successes of some of the effective State and local storm water programs currently in place around the country, and to establish nation-wide criteria to support builders and local jurisdictions in appropriate BMP selection.

2. Encourage Consideration of Smart Growth Approaches

In the proposal, EPA invited comment on possible approaches for providing

incentives for local decision making that would limit the adverse impacts of growth and development on water quality. EPA asked for comments on this ''smart growth'' approach.

EPA received comments on all sides of this issue. A number of commenters supported the idea of ''smart growth'' incentives but did not present concrete ideas. Several commenters suggested ''smart growth'' criteria. States that have adopted ''smart growth'' laws were worried that EPA's focus on urbanized areas for municipal requirements could encourage development outside of designated growth areas. Today's final rule clearly allows States to expand coverage of their municipal storm water program outside of urbanized areas. In addition, the flexibility of the six municipal minimum measures should avoid encouragement of development into rural rather than urban areas. For example, as part of the post-construction minimum measure, EPA recommends that municipalities consider policies and ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure, in order to meet the measure's intent.

EPA also received several comments expressing concern that incorporating ''smart growth'' incentives threatened the autonomy of local governments. One commenter was worried that ''incentives'' could become more onerous than the minimum measures. EPA is very aware of municipal concerns about possible federal interference with local land use planning. EPA is also cognizant of the difficulty surrounding incentives for ''smart growth'' activities due to these concerns. However, the Agency believes it has addressed these concerns by proposing a flexible approach and will continue to support the concept of ''smart growth'' by encouraging policies that limit the adverse impacts of growth and development on water quality.

3. Provide Financial Assistance

Although Congress has not established a fund to fully finance implementation of the proposed extension of the existing NPDES storm water program under CWA section 402(p)(6), numerous federal financing programs (administered by EPA and other federal agencies) can provide some financial assistance. The primary funding mechanism is the Clean Water State Revolving Fund (SRF) program, which provides sources of low-cost financing for a range of water quality infrastructure projects, including storm water. In addition to the SRF, federal financial assistance programs include the Water Quality Cooperative Agreements under CWA section 104(b)(3), Water Pollution Control Program grants to States under CWA section 106, and the Transportation Equity Act for the 21st Century (TEA–21) among others. In addition, Section 319 funds may be used to fund any urban storm water activities that are not specifically required by a draft or final NPDES permit. EPA will develop a list of potential funding sources as part of the tool box implementation effort. EPA anticipates that some of these programs will provide funds to help develop and, in limited circumstances, implement the CWA section 402(p)(6) storm water discharge control program.

EPA received numerous comments that requested additional funding. Congress provided one substantial new source of potential funding for transportation related storm water projects—TEA–21. The Department of Transportation has included a number of water-related provisions in its TEA–21 planning. These include Transportation Enhancements, Environmental Restoration and Pollution Abatement, and Environmental Streamlining. More information on TEA–21 is available at the following internet sites: www.fhwa.dot.gov/tea21/outreach.htm and www.tea21.org.

4. Implement the Program in Jurisdictions Not Authorized To Administer the NPDES Program

Because today's final rule uses the NPDES framework, EPA will be the NPDES permitting authority in several States, Tribal jurisdictions, and Territories. As such, EPA will have the same responsibilities as any other NPDES permitting authority—issuing permits, designating additional sources, and taking appropriate enforcement actions—and will seek to tailor the storm water discharge control program to the specific needs in that State, Tribal jurisdiction, or Territory. EPA also plans to provide support and oversight, including outreach, training, and technical assistance to the regulated communities. Section II.G. of today's preamble provides a separate discussion related to the NPDES permitting authority's responsibilities for today's final rule.

5. Oversee State and Tribal Programs

Under the NPDES program, EPA plays an oversight role for NPDES-approved States and Tribes. In this role, EPA and the State or Tribe work together to implement, enforce, and improve the NPDES program. Part of this oversight role includes working with States and Tribes to modify their programs where programmatic or implementation concerns impede program effectiveness. This role will be vitally important when States and Tribes make adjustments to develop, implement, and enforce today's extension of the existing NPDES storm water discharge control program. In addition, States maintain a continuing planning process (CPP) under CWA section 303(e), which EPA periodically reviews to assess the program's achievements.

In its oversight role, EPA takes action to address States and Tribes who have obtained NPDES authorization but are not fulfilling their obligations under the NPDES program. If an NPDES-authorized State or Tribe fails to implement an adequate NPDES storm water program, for example, EPA typically enters into extensive discussions to resolve outstanding issues. EPA has the authority to withdraw the entire NPDES program when resolution cannot be reached. Partial program withdrawal is not provided for under the CWA except for partial approvals.

EPA is also working with the States and Tribes to improve nonpoint source management programs and assessments to incorporate key program elements. Key nonpoint source program elements include setting short and long term goals and objectives; establishing public and private partnerships; using a balanced approach incorporating Statewide and watershed-wide abatement of existing impairments; preventing future impairments; developing processes to address both impaired and threatened waters; reviewing and upgrading all program components, including program revisions on a 5-year cycle; addressing federal land management and activities inconsistent with State programs; and managing State nonpoint source management programs effectively.

In particular, EPA works with the States and Tribes to strengthen their nonpoint source pollution programs to address all significant nonpoint sources, including agricultural sources, through the CWA section 319 program. EPA is working with other government agencies, as well as with community groups, to effect voluntary changes regarding watershed protection and reduced nonpoint source pollution.

In addition, EPA and NOAA have published programmatic and technical guidance to address coastal nonpoint source pollution. Under Section 6217 of the CZARA, States are developing and implementing coastal nonpoint pollution control programs approved by EPA and NOAA.

6. Comply With Applicable Requirements as a Discharger

Today's final rule covers federally operated facilities in a variety of ways. These facilities are generally areas where people reside, such as a federal prison, hospital, or military base. It also includes federal parkways and road systems with separate storm sewer systems. Today's rule requires federal MS4s to comply with the same application deadlines that apply to regulated small MS4s generally. EPA believes that all federal MS4s serve populations of less than 100,000.

EPA received several comments that asked if individual buildings like post offices are considered to be small MS4s and thereby regulated in today's rule if they are in an urbanized area. Most of these buildings have at most a parking lot with runoff or a storm sewer that connects with a municipality's MS4. EPA does not intend that individual federal buildings be considered to be small MS4s. This is discussed in section II.H.2.b. of today's preamble.

Federal facilities can also be included under requirements addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities will need to comply with all applicable NPDES requirements and any additional water quality-related requirements imposed by a State, Tribal, or local government. Failure to comply can result in enforcement actions. Federal facilities can act as models for municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

E. State Role

Today's final rule sets forth an NPDES approach for implementing the extension of the existing storm water discharge control program under CWA section 402(p)(6). State assumption of the NPDES program is voluntary, consistent with the principles of federalism. Because most States are approved to implement the NPDES program, they will tailor their storm water discharge control programs to address their water quality needs and objectives. While today's rule establishes the basic framework for the section 402(p)(6) program, States as well as Tribes (see discussion in section II.F) have an important role in fine-tuning the program to address the water quality issues within their jurisdictions. The basic framework allows for adjustments based on factors that vary geographically, including climate patterns and terrain.

Where States do not have NPDES authority, they are not required to implement the storm water discharge control program, but they may still participate in water quality protection through participation in the CWA section 401 certification process (for any permits) and through development of water quality standards and TMDLs.

1. Develop the Program

In expanding the existing NPDES program for storm water discharges, States must evaluate whether revisions to their NPDES programs are necessary. If so, modifications must be made in accordance with § 123.62. Under § 123.62, States must revise their NPDES programs within 1 year, or within 2 years if statutory changes are necessary.

Some States and departments of transportation (DOTs) commented that this timeframe is too short, anticipating that the State legislative process and the modification of regulations combined would take beyond 2 years. The deadline language in § 123.62 is not new language for the storm water discharge control program; it applies to all NPDES programs. EPA believes the vast majority of States will meet the deadline and will work with States in those cases where there may be difficulty meeting this deadline due to the timing of legislative sessions and the regulatory development process.

An authorized State NPDES program must meet the requirements of CWA section 402(b) and conform to the guidelines issued under CWA section 304(i)(2). Today's final rule under § 123.25 adds specific cross references to the storm water discharge control program components to ensure that States adequately address these requirements.

2. Comply With Applicable Requirements as a Discharger

Today's final rule covers State operated separate storm sewer systems in a variety of ways. These systems generally drain areas where people reside, such as a prison, hospital, or other populated facility. These systems are included under the definition of a regulated small MS4, which specifically identifies systems operated by State departments of transportation. Alternatively, storm water discharges from State activities may be regulated under the section addressing storm water discharges associated with small construction activities. In any case, discharges from these facilities must comply with all applicable NPDES requirements. Failure to comply can result in enforcement actions. State facilities can act as models for municipal and private sector facilities and implement or test state-of-the-art management practices and control measures.

3. Communicate With EPA

Under approved NPDES programs, States have an ongoing obligation to share information with EPA. This dialogue is particularly important in the CWA section 402(p)(6) storm water program where these governments continue to develop a great deal of the guidance and outreach related to water quality.

F. Tribal Role

The proposal to today's final rule provides background information on EPA's 1984 Indian Policy and the criteria for treatment of an Indian Tribe in the same manner as a State. Today's final rule extends the existing NPDES program for storm water discharges to two types of dischargers located in Indian country. First, the final rule designates storm water discharges from any regulated small MS4, including Tribal systems. Second, the final rule regulates discharges associated with construction activity disturbing between one and five acres of land, including sites located in Indian country. Operators in each of these categories of regulated activity must apply for coverage under an NPDES permit by 3 years and 90 days from the date of publication of today's final rule. Under existing regulations, however, EPA or an authorized NPDES Tribe may require a specified storm water discharger to apply for NPDES permit coverage before this deadline based on a determination that the discharge is contributing to a violation of a water quality standard (including designated uses) or is a significant contributor of pollutants.

Under today's rule, a Tribal governmental entity may regulate storm water discharges on its reservation in two ways—as either an NPDES-authorized Tribe or as a regulated MS4. If a Tribe is authorized to operate the NPDES program, the Tribe must implement today's final rule for the NPDES program for storm water for covered dischargers located within the EPA recognized boundaries. Otherwise, EPA is generally the permitting/program authority within Indian country. Discussions about the State Role in the preceding section also apply to NPDES authorized Tribes. For additional information on the role and responsibilities of the permitting authority in the NPDES storm water program, see § 123.35 (and Section II.G. of today's preamble) and § 123.25(a).

Under today's final rule, if the Indian reservation is located entirely or partially within an ''urbanized area,'' as defined in § 122.32(a)(1), the Tribe must obtain an NPDES permit if it operates a small MS4 within the urbanized area portion. Tribal MS4s located outside an urbanized area are not automatically covered, but may be designated by EPA pursuant to § 122.32(a)(2) of today's rule or may request designation as a regulated small MS4 from EPA. A Tribe that is a regulated MS4 for NPDES program purposes is required to implement the six minimum control measures to the extent allowable under Federal law.

The Tribal representative on the Storm Water Phase II FACA Subcommittee asked EPA to provide a list of the Tribes located in urbanized areas that would fall within the NPDES storm water program under today's final rule. In December 1996, EPA developed a list of federally recognized American Indian Areas located wholly or partially in Bureau of the Census-designated urbanized areas (see Appendix 1). Appendix 1 not only provides a listing of reservations and individual Tribes, but also the name of the particular urbanized area in which the reservation is located and an indication of whether the urbanized area contains a medium or large MS4 that is already covered by the existing Phase I regulations.

Some of the Tribes listed in Appendix 1 are only partially located in an urbanized area. If the Tribe's MS4 serves less than 1,000 people within an urbanized area, the permitting authority may waive the Tribe's MS4 storm water requirements if it meets the conditions of § 122.32(c). EPA does not have information on the Tribal populations within the urbanized areas, so it can not identify the Tribes that are eligible for a waiver. Therefore, a Tribe that believes it qualifies for a waiver should contact its permitting authority.

G. NPDES Permitting Authority's Role for the NPDES Storm Water Small MS4 Program

As noted previously, the NPDES permitting authority can be EPA or an authorized State or an authorized Tribe. The following discussion describes the role of the NPDES permitting authority under today's final rule.

1. Comply With Implementation Requirements

NPDES permitting authorities must perform certain duties to implement the NPDES storm water municipal program. Section 123.35(a) of today's final rule emphasizes that permitting authorities have existing obligations under the NPDES program. Section 123.35 focuses on specific issues related to the role of the NPDES authority to support administration and implementation of the municipal storm water program under CWA section 402(p)(6).

2. Designate Sources

Section 123.35(b) of today's final rule addresses the requirements for the NPDES permitting authority to designate sources of storm water discharges to be regulated under §§ 122.32 through 122.36. NPDES permitting authorities must develop a process, as well as criteria, to designate small MS4s. They must also have the authority to designate a small MS4 if and when circumstances that support a waiver under § 122.32(c) change. EPA may make designations if an NPDES-approved State or Tribe fails to do so.

NPDES permitting authorities must examine geographic jurisdictions that they believe should be included in the storm water discharge control program but are not located in an ''urbanized area''. Small MS4s in these areas are not designated automatically. Discharges from such areas should be brought into the program if found to have actual or potential exceedances of water quality standards, including impairment of designated uses, or other adverse impacts on water quality, as determined by local conditions or watershed and TMDL assessments. EPA's aim is to address discharges to impaired waters and to protect waters with the potential for problems. EPA encourages NPDES permitting authorities, local governments, and the interested public to work together in the context of a watershed plan to address water quality issues, including those associated with municipal storm water runoff.

EPA received comments stating that the process of developing criteria and applying it to all MS4s outside an urbanized area serving a population of 10,000 or greater and with a density of 1,000 people per square mile is too time-consuming and resource-intensive. These commenters believe that the permitting authority should decide which MS4s must be brought into the storm water discharge control program and that population and density should not be an overriding criteria. One suggested way of doing so was to only designate MS4s with demonstrated contributions to the impairment of water quality uses as shown by a TMDL. EPA disagrees with this suggestion. The TMDL process is time-consuming. MS4s outside of urbanized areas may cause water quality problems long before a TMDL is completed.

EPA believes that permitting authorities should consider the potential water quality impacts of storm water from all jurisdictions with a population of 10,000 or greater and a density of 1,000 people per square mile. EPA is using data summarized in the NURP study and in the CWA section 305(b) reports to support this approach for targeted designation outside of urbanized areas. EPA is not mandating which criteria are to be used, but has provided examples of criteria that may be useful in evaluating potential water quality impacts. EPA believes that the flexibility provided in this section of today's final rule allows the permitting authority to develop criteria and a designation process that is easy to use and protects water quality. Therefore, the provisions of § 123.35(b) remain as proposed.

a. Develop Designation Criteria

Under § 123.35(b), the NPDES permitting authority must establish designation criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including adverse habitat and biological impacts.

EPA recommends that NPDES permitting authorities consider, in a balanced manner, certain locally-focused criteria for designating any MS4 located outside of an urbanized area on the basis of significant water quality impacts. EPA recommends consideration of criteria such as discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contribution of pollutants to waters of the United States, and ineffective control of water quality concerns by other programs. These suggested designation criteria are intended to help encourage the permitting authority to use an objective method for identifying and designating, on a local basis, sources that adversely impact water quality. More information about these criteria and the reasons why they are suggested by EPA is included in the January 9, 1998, proposal (63 FR 1561) for today's final rule.

The suggested criteria are meant to be taken in the aggregate, with a great deal of flexibility as to how each should be weighed in order to best account for watershed and other local conditions and to allow for a more tailored case-by-case analysis. The application of criteria is meant to be geographically specific. Furthermore, each criterion does not have to be met in order for a small MS4

to qualify for designation, nor should an MS4 necessarily be designated on the basis of one or two criteria alone.

EPA believes that the application of the recommended designation criteria provides an objective indicator of real and potential water quality impacts from urban runoff on both the local and watershed levels. EPA encourages the application of the recommended criteria in a watershed context, thereby allowing for the evaluation of the water quality impacts of the portions of a watershed outside of an urbanized area. For example, situations exist where the urbanized area represents a small portion of a degraded watershed, and the adjacent nonurbanized areas of the watershed have significant cumulative effects on the quality of the receiving waters.

EPA received numerous suggestions of additional criteria that should be added and reasons why some of the criteria in the proposal to today's final rule were not appropriate. EPA developed its suggested designation criteria based on findings of the NURP study and other studies that indicate pollutants of concern, including total suspended solids, chemical oxygen demand, and temperature. These criteria were the subject of considerable discussion by the Storm Water Phase II FACA Subcommittee. EPA developed them in response to recommendations from the subcommittee during development of the proposed rule. The listed criteria are only suggestions. Permitting authorities are required to develop their own criteria. EPA has not found any reason to change its suggested list of criteria and the suggestions remain as proposed.

b. Apply Designation Criteria

After customizing the designation criteria for local conditions, the permitting authority must apply such criteria, at a minimum, to any MS4 located outside of an urbanized area serving a jurisdiction with a population of at least 10,000 and a population density of 1,000 people per square mile or greater (see § 123.35(b)(2)). If the NPDES permitting authority determines that an MS4 meets the criteria, the permitting authority must designate it as a regulated small MS4. This designation must occur within 3 years of publication of today's final rule. Alternatively, the NPDES authority can designate within 5 years from the date of final regulation if the designation criteria are applied on a watershed basis where a comprehensive watershed plan exists (a comprehensive watershed plan is one that includes the equivalents of TMDLs) (see § 123.35(b)(3)). The extended 5 year deadline is intended to provide incentives for watershed-based designations. If an NPDES-authorized State or Tribe does not develop and apply designation criteria within this timeframe, then EPA has the opportunity to do so in lieu of the authorized State or Tribe.

NPDES permitting authorities can designate any small MS4, including one below 10,000 in population and 1,000 in density. EPA established the 10,000/1,000 threshold based on the likelihood of adverse water quality impacts at these population and density levels. In addition, the 1,000 persons per square mile threshold is consistent with both the Bureau of the Census definition of an ''urbanized area'' (see Section II.H.2. below) and stakeholder discussions concerning the definition of a regulated small MS4.

One commenter requested that EPA develop interim deadlines for development of designation criteria. EPA believes that the designation deadline identified in today's final rule at § 123.35(b)(3) provides States and Tribes with a flexibility that allows them to develop and apply the criteria locally in a timely fashion, while at the same time establishing an expeditious deadline.

c. Designate Physically Interconnected Small MS4s

In addition to applying criteria on a local basis for potential designation, the NPDES permitting authority must designate any MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the NPDES program for storm water discharges (see § 123.35(b)(4)). To be ''physically interconnected,'' the MS4 of one entity, including roads with drainage systems and municipal streets, is physically connected directly to the municipal separate storm sewer of another entity. This provision applies to all MS4s located outside of an urbanized area. EPA added this section in recognition of the concerns of local government stakeholders that a local government should not have to shoulder total responsibility for a storm water program when storm water discharges from another MS4 are also contributing pollutants or adversely affecting water quality. This provision also helps to provide some consistency among MS4 programs and to facilitate watershed planning in the implementation of the NPDES storm water program. EPA recommended physical interconnectedness in the existing NPDES storm water regulations as a factor for consideration in the designation of additional sources.

Today's final rule does not include interim deadlines for identifying physically interconnected MS4s. However, consistent with the deadlines identified in § 123.35(b)(3) of today's final rule, EPA encourages the permitting authority to make these determinations within 3 years from the date of publication of the final rule or within 5 years if the permitting authority is implementing a comprehensive watershed plan. Alternatively, the affected jurisdiction could use the petition process under 40 CFR 122.26(f) in seeking to have the permitting authority designate the contributing jurisdiction.

Several commenters expressed concerns about who could be designated under this provision (§ 123.35(b)(4)). One commenter requested that the word ''substantially'' be deleted from the rule because they believe any MS4 that contributes at all to a physically interconnected municipal separate storm sewer should be regulated. EPA believes that the word ''substantially'' provides necessary flexibility to the permitting authorities. The permitting authority can decide if an MS4 is contributing discharges to another municipal separate storm sewer in a manner that requires regulation. If the operator of a regulated municipal separate storm sewer believes that some of its pollutant loadings are coming from an unregulated MS4, it can petition the permitting authority to designate the unregulated MS4 for regulation.

d. Respond to Public Petitions for Designation

Today's final rule reiterates the existing opportunity for the public to petition the permitting authority for designation of a point source to be regulated to protect water quality. The petition opportunity also appears in existing NPDES regulations at 40 CFR 122.26(f). Any person may petition the permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States (see § 123.32(b)). The NPDES permitting authority must make a final determination on any petition within 180 days after receiving the petition (see § 123.35(c)). EPA believes that a 180 day limit balances the public's need for a timely final determination with the NPDES permitting authority's need to prioritize its workload. If an NPDES-approved State or Tribe fails to act

within the 180-day timeframe, EPA may make a determination on the petition. EPA believes that public involvement is an important component of the NPDES program for storm water and feels that this provision encourages public participation. Section II.K, Public Involvement/Public Role, further discusses this topic.

3. Provide Waivers

Today's rule provides two opportunities for the NPDES permitting authority to exempt certain small MS4s from the need for a permit based on water quality considerations. See §§ 122.32(d) and (e). The two waiver opportunities have different size thresholds and take different approaches to considering the water quality impacts of discharges from the MS4.

In the proposal, EPA requested comment on the option of waiving coverage for all MS4s with less than 1,000 people unless the permitting authority determined that the small MS4 should be regulated based on significant adverse water quality impacts. A number of commenters supported this option. They expressed concern that compliance with the rule requirements and certification of one of the waiver provisions were both costly for very small communities. They stated that the permitting authority should identify a water quality problem before requiring compliance. Today's rule essentially adopts this alternative approach for MS4s serving a population under 1,000.

The final rule has expanded the waiver provision that EPA proposed for small MS4s with a population less than 1,000. The proposed rule would have required a small MS4 operator to certify that storm water controls are not needed based on either wasteload allocations that are part of TMDLs that address the pollutants of concern, or a comprehensive watershed plan implemented for the waterbody that includes the equivalents of TMDLs and addresses the pollutant(s) of concern. Commenters noted that the proposed waivers would be unattainable if a TMDL or equivalent analysis was required for every pollutant that could possibly be present in any amount in discharges from an MS4 regardless of whether the pollutant is causing water quality impairment. Commenters asked that EPA identify what constitutes the ''pollutant(s) of concern'' for which a TMDL or its equivalent must be developed. For example, § 122.30(c) indicates that the MS4 program is intended to control ''sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.'' Commenters asked whether TMDLs or equivalent analyses have to address all of these.

EPA has revised the proposed waiver in response to these concerns. Under today's rule, NPDES permitting authorities may waive the requirements of today's rule for any small MS4 with a population less than 1,000 that does not contribute substantially to the pollutant loadings of a physically interconnected MS4, unless the small MS4 discharges pollutants that have been identified as a cause of impairment of the waters to which the small MS4 discharges. If the small MS4 does discharge pollutants that have been identified as impairing the water body into which the small MS4 discharges, the NPDES permitting authority may grant a waiver only if it determines that storm water controls are not needed based on an EPA approved or established TMDL that addresses the pollutant(s) of concern.

Unlike the proposed rule, § 122.32(d) does not allow the waiver for MS4s serving a population under 1,000 to be based on ''the equivalent of a TMDL.'' Because § 122.32(d) requires a pollutant specific analysis only for a pollutant that has been identified as a cause of impairment, a TMDL is required for such pollutant before the waiver may be granted. Once a pollutant has been identified as the cause of impairment of a water body, the State should develop a TMDL for that pollutant for that water body. Thus, § 122.32(d) takes a different approach than that taken for the waiver in § 122.32(e) for MS4s serving a population under 10,000, which can be based upon an analysis that is ''the equivalent of a TMDL.'' This is because § 122.32(d) requires an analysis to support the waiver for MS4s under 1,000 only if a waterbody to which the MS4 discharges has been identified as impaired. The § 122.32(e) waiver, on the other hand, would be available for larger MS4s but only after the State affirmatively establishes lack of impairment based upon a comprehensive analysis of smaller urban waters that might not otherwise be evaluated for the purposes of CWA section 303. Since § 122.32(e) requires the analysis of waters that have not been identified as impaired, an actual TMDL is not required and an analysis that is the equivalent of a TMDL can suffice to support the waiver.

Where a State is the NPDES permitting authority, the permitting authority is responsible for the development of the TMDLs as well as the assessment of the extent to which a small MS4's discharge contributes pollutants to a neighboring regulated system. In States where EPA is the permitting authority, EPA will use a State's TMDLs to determine whether storm water controls are required for the small MS4s.

The proposed rule would have required the operator of the small MS4 serving a population under 1,000 to certify that its discharge was covered under a TMDL that indicated that discharges from its particular system were not having an adverse impact on water quality (*i.e.,* it was either not assigned wasteload allocations under TMDLs or its discharge is within an assigned allocation). Many commenters expressed concerns that MS4 operators serving less than 1,000 persons may lack the technical capacity to certify that their discharges are not contributing to adverse water quality impacts. These commenters thought that the permitting authority should make such a certification. Today's rule provides flexibility as to how the waiver is administered. Permitting authorities are ultimately responsible for granting the waiver, but are free to determine whether or not to require small MS4 operators that are seeking waivers to submit information or a written certification.

Under § 122.32(e) a State may grant a waiver to an MS4 serving a population between 1,000 and 10,000 only if the State has made a comprehensive effort to ensure that the MS4 will not cause or contribute to water quality impairment. To grant a § 122.32(e) waiver, the NPDES permitting authority must evaluate all waters of the U.S. that receive a discharge from the MS4 and determine that storm water controls are not needed. The permitting authority's evaluation must be based on wasteload allocations that are part of an EPA approved or established TMDL or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. The pollutants of concern that the permitting authority must evaluate include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4. Finally, the permitting authority must have determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant

water quality impacts, including habitat and biological impacts.

Although EPA did not propose this specific approach, the Agency did request comment on whether to increase the proposed 1,000 population threshold for a waiver. The § 122.32(e) waiver was developed in response to comments, including States' concerns that they needed greater flexibility to focus their efforts on MS4s that were causing water quality impairment. Several commenters thought that the threshold should be increased from 1,000 to 5,000 or 10,000. Others suggested additional ways of qualifying for a waiver for MS4s that discharge to waters that are not covered by a TMDL or watershed plan. EPA carefully considered all the options for expanding the waiver provisions and has decided to expand the waiver only in the very narrow circumstances described above where a comprehensive analysis has been undertaken to demonstrate that the MS4 is not causing water quality impairment.

The NPDES permitting authority can, at any time, mandate compliance with program requirements from a previously waived small MS4 if circumstances change. For example, a waiver can be withdrawn in circumstances where the permitting authority later determines that a waived small MS4's storm water discharge to a small stream will cause adverse impacts to water quality or significantly interfere with attainment of water quality standards. A ''change in circumstances'' could involve receipt of new information. Changed circumstances can also allow a regulated small MS4 operator to request a waiver at any time.

Some commenters expressed concerns about allowing any small MS4 waivers. One commenter stated that storm water pollution prevention plans are necessary to control storm water pollution and should be required from all regulated small MS4s. For the reasons stated in the Background section above, EPA agrees that the discharges from most MS4s in urbanized areas should be addressed by a storm water management program outlined in today's rule. For MS4s serving very small areas, however, the TMDL development process provides an opportunity to determine whether an MS4 serving a population less than 1,000 is having a negative impact on any receiving water that is impaired by a pollutant that the MS4 discharges. MS4s serving populations up to 10,000 may receive a waiver only if a comprehensive analysis of its impact on receiving water has been performed.

Other commenters said that waivers should not be allowed for small MS4s that discharge into another regulated MS4. These commenters stated that the word ''substantially'' should be removed from § 122.32(d)(i) so that a waiver would not be allowed for any system ''contributing to the storm water pollutant loadings of a physically interconnected regulated MS4.'' As previously mentioned under the designation discussion of section II.G.2.c, EPA believes that the word ''substantially'' provides needed flexibility to the permitting authorities. It is important to note that this is only one aspect that the permitting authority must consider when deciding on the appropriateness of a waiver.

4. Issue Permits

NPDES permitting authorities have a number of responsibilities regarding the permit process. Sections 123.35(d) through (g) ensure a certain level of consistency for permits, yet provide numerous opportunities for flexibility. NPDES permitting authorities must issue NPDES permits to cover municipal sources to be regulated under § 122.32, unless waived under § 122.32(c). EPA encourages permitting authorities to use general permits as the vehicle for permitting and regulating small MS4s. The Agency notes, however, that some operators may wish to take advantage of the option to join as a co-permittee with an MS4 regulated under the existing NPDES storm water program.

Today's final rule includes a provision, § 123.35(f), that requires NPDES permitting authorities to either include the requirements in § 122.34 for NPDES permits issued for regulated small MS4s or to develop permit limits based on a permit application submitted by a small MS4. See Section II.H.3.a, Minimum Control Measures, for more details on the actual § 122.34 requirements. See Section II.H.3.c for alternative and joint permitting options.

In an attempt to avoid duplication of effort, § 122.34(c) allows NPDES permitting authorities to include permit conditions that direct an MS4 to meet the requirements of a qualifying local, Tribal, or State municipal storm water management program. For a local, Tribal, or State program to ''qualify,'' it must impose, at a minimum, the relevant requirements of § 122.34(b). A regulated small MS4 must still follow the procedural requirements for an NPDES permit (*i.e.,* submit an application, either an individual application or an NOI under a general permit) but will instead follow the substantive pollutant control requirements of the qualifying local, Tribal, or State program.

Under § 122.35(b), NPDES permitting authorities may also recognize existing responsibilities among governmental entities for the minimum control measures in an NPDES small MS4 storm water permit. For example, the permit might acknowledge the existence of a State administered program that addresses construction site runoff and require that the municipalities only develop substantive controls for the remaining minimum control measures. By acknowledging existing programs, this provision is meant to reduce the duplication of efforts and to increase the flexibility of the NPDES storm water program.

Section 123.35(e) of today's final rule requires permitting authorities to specify a time period of up to 5 years from the issuance date of an NPDES permit for regulated small MS4 operators to fully develop and implement their storm water programs. As discussed more fully below, permitting authorities should be providing extensive support to the local governments to assist them in developing and implementing their programs.

In the proposed rule, EPA stated that the permitting authority would develop the menu of BMPs and if they failed to do so, EPA would develop the menu. Commenters felt that EPA should develop a menu of BMPs, rather than just providing guidance. In the settlement agreement for seeking an extension to the deadline for issuing today's rule, EPA committed to developing a menu of BMPs by October 27, 2000. Permitting authorities can adopt EPA's menu or develop their own. The menu itself is not intended to replace more comprehensive BMP guidance materials. As part of the tool box efforts, EPA will provide separate guidance documents that discuss the results from EPA-sponsored nationwide studies on the design, operation and maintenance of BMPs. Additionally, EPA expects that the new rulemaking on construction BMPs may provide more specific design, operation and maintenance criteria.

5. Support and Oversee the Local Programs

NPDES permitting authorities are responsible for supporting and overseeing the local municipal programs. Section 123.35(h) of today's final rule highlights issues associated with these responsibilities.

To the extent possible, NPDES permitting authorities should provide financial assistance to MS4s, which

often have limited resources, for the development and implementation of local programs. EPA recognizes that funding for programs at the State and Tribal levels may also be limited, but strongly encourages States and Tribes to provide whatever assistance is possible. In lieu of actual dollars, NPDES permitting authorities can provide cost-cutting assistance in a number of ways. For example, NPDES permitting authorities can develop outreach materials for MS4s to distribute or the NPDES permitting authority can actually distribute the materials. Another option is to implement an erosion and sediment control program across an entire State (or Tribal land), thus alleviating the need for the MS4 to implement its own program. The NPDES permitting authority must balance the need for site-specific controls, which are best handled by a local MS4, with its ability to offer financial assistance. EPA, States, Tribes, and MS4s should work as a team in making these kinds of decisions.

NPDES permitting authorities are responsible for overseeing the local programs. Permitting authorities should work with the regulated community and other stakeholders to assist in local program development and implementation. This might include sharing information, analyzing reports, and taking enforcement actions, as necessary. NPDES permitting authorities play a vital role in supporting local programs by providing technical and programmatic assistance, conducting research projects, and monitoring watersheds. The NPDES permitting authority can also assist the MS4 permittee in obtaining adequate legal authority at the local level in order to implement the local component of the CWA section 402(p)(6) program.

NPDES permitting authorities are encouraged to coordinate and utilize the data collected under several programs. States and Tribes address point and nonpoint source storm water discharges through a variety of programs. In developing programs to carry out CWA section 402(p)(6), EPA recommends that States and Tribes coordinate all of their water pollution evaluation and control programs, including the continuing planning process under CWA section 303(e), the existing NPDES program, the CZARA program, and nonpoint source pollution control programs.

In addition, NPDES permitting authorities are encouraged to provide a brief (*e.g.,* two-page) reporting format to facilitate compilation and analysis of data from reports submitted under § 122.34(g)(3). EPA intends to develop a model form for this purpose.

H. Municipal Role

1. Scope of Today's Rule

Today's final rule attempts to establish an equitable and comprehensive four-pronged approach for the designation of municipal sources. First, the approach defines for automatic coverage the municipal systems believed to be of highest threat to water quality. Second, the approach designates municipal systems that meet a set of objective criteria used to measure the potential for water quality impacts. Third, the approach designates on a case-by-case basis municipal systems that ''contribute substantially to the pollutant loadings of a physically-interconnected [regulated] MS4.'' Finally, the approach designates on a case-by-case basis, upon petition, municipal systems that ''contribute to a violation of a water quality standard or are a significant contributor of pollutants.''

Today's final rule automatically designates for regulation small MS4s located in urbanized areas, and requires that NPDES permitting authorities examine for potential designation, at a minimum, a particular subset of small MS4s located outside of urbanized areas. Today's rule also includes provisions that allow for waivers from the otherwise applicable requirements for the smallest MS4s that are not causing impairment of a receiving water body. Qualifications for the waivers vary depending on whether the MS4 serves a population under 1,000 or a population under 10,000. See §§ 122.32(d) and (e). These waivers are discussed further in section II.G.3. Any small MS4 automatically designated by the final rule or designated by the permitting authority under today's final rule is defined as a ''regulated'' small MS4 unless it receives a waiver.

In today's final rule, all regulated small MS4s must establish a storm water discharge control program that meets the requirements of six minimum control measures. These minimum control measures are public education and outreach on storm water impacts, public involvement participation, illicit discharge detection and elimination, construction site storm water runoff control, post-construction storm water management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations.

Today's rule allows for a great deal of flexibility in how an operator of a regulated small MS4 is authorized to discharge under an NPDES permit, by providing various options for obtaining permit coverage and satisfying the required minimum control measures. For example, the NPDES permitting authority can incorporate by reference qualifying State, Tribal, or local programs in an NPDES general permit and can recognize existing responsibilities among different governmental entities for the implementation of minimum control measures. In addition, a regulated small MS4 can participate in the storm water management program of an adjoining regulated MS4 and can arrange to have another governmental entity implement a minimum control measure on their behalf.

2. Municipal Definitions

a. Municipal Separate Storm Sewer Systems (MS4s)

The CWA does not define the term ''municipal separate storm sewer.'' EPA defined municipal separate storm sewer in the existing storm water permit application regulations to mean, in part, a conveyance or system of conveyances (including roads with drainage systems and municipal streets) that is ''owned or operated by a State, city, town borough, county, parish, district, association, or other public body * * * designed or used for collecting or conveying storm water which is not a combined sewer and which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2'' (see § 122.26(b)(8)(i)). Section 122.26 contains definitions of medium and large municipal separate storm sewer systems but no definition of a municipal separate storm sewer *system,* even though the term MS4 is commonly used. In today's rule, EPA is adding a definition of municipal separate storm sewer system and small municipal separate storm sewer system along with the abbreviations MS4 and small MS4.

The existing municipal permit application regulations define ''medium'' and ''large'' MS4s as those located in an incorporated place or county with a population of at least 100,000 (medium) or 250,000 (large) as determined by the latest Decennial Census (see §§ 122.26(b)(4) and 122.26(b)(7)). In today's final rule, these regulations have been revised to define all medium and large MS4s as those meeting the above population thresholds according to the 1990 Decennial Census.

Today's rule also corrects the titles and contents of Appendices F, G, H,& I to Part 122. EPA is adding those incorporated places and counties whose 1990 population caused them to be defined as a ''medium'' or ''large'' MS4. All of these MS4s have applied for

permit coverage so the effect of this change to the appendices is simply to make them more accurate. They will not need to be revised again because today's rule ''freezes'' the definition of ''medium'' and ''large'' MS4s at those that qualify based on the 1990 census.

EPA received several comments supporting and opposing the proposal to ''freeze'' the definitions based on the 1990 census. Commenters who disagreed with EPA's position cited the unfairness of municipalities that reach the medium or large threshold at a later date having fewer permitting requirements compared to those that were already at the population thresholds when the existing storm water regulations took effect. EPA recognizes this disparity but does not believe it is unfair, as explained in the proposed rule. The decision was based on the fact that the deadlines from the existing regulations have lapsed, and because the permitting authority can always require more from operators of MS4s serving ''newly over 100,000'' populations.

b. Small Municipal Separate Storm Sewer Systems

The proposal to today's final rule added ''the United States'' as a potential owner or operator of a municipal separate storm sewer. This addition was intended to address an omission from existing regulations and to clarify that federal facilities are, in fact, covered by the NPDES program for municipal storm water discharges when the federal facility is like other regulated MS4s. EPA received a comment that this change would cause federal facilities located in Phase 1 areas to be considered Phase 1 dischargers due to the definition of medium and large MS4s. All MS4s located in Phase 1 cities or counties are defined as Phase 1 medium or large MS4s. EPA believes that all federal facilities serve a population of under 100,000 and should be regulated as small MS4s. Therefore, in § 122.26(a)(16) of today's final rule, EPA is adding federal facilities to the NPDES storm water discharge control program by changing the proposed definition of small municipal separate storm sewer system. Paragraph (i) of this section restates the definition of municipal separate storm sewer with the addition of ''the United States'' as a owner or operator of a small municipal separate storm sewer. Paragraph (ii) repeats the proposed language that states that a small MS4 is a municipal separate storm sewer that is not medium or large.

Most commenters agreed that federal facilities should be covered in the same way as other similar MS4s. However, EPA received several comments asking whether individual federal buildings such as post offices or urban offices of the U.S. Park Service must apply for coverage as regulated small MS4s. Most of these buildings have, at most, a parking lot with runoff or a storm sewer that connects with a municipality's MS4. In § 122.26(a)(16)(iii), EPA clarifies that the definition of small MS4 does not include individual buildings. These buildings may have a municipal separate storm sewer but they do not have a ''system'' of conveyances. The minimum measures for small MS4s were written to apply to storm sewer ''systems'' providing storm water drainage service to human populations and not to individual buildings. This is true of municipal separate storm sewers from State buildings as well as from federal buildings.

There will likely be situations where the permitting authority must decide if a federal or State complex should be regulated as a small MS4. A federal complex of two or three buildings could be treated as a single building and not be required to apply for coverage. In these situations, permitting authorities will have to use their best judgment as to the nature of the complex and its storm water conveyance system. Permitting authorities should also consider whether the federal or State complex cooperates with its municipality's efforts to implement their storm water management program.

Along with the questions about individual buildings, EPA received many questions about how various provisions of the rule should be interpreted for federal and State facilities. EPA acknowledges that federal and State facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commenters asked about how to interpret the term ''public'' for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of ''public'' for DOD facilities as ''the resident and employee population within the fence line of the facility.''

EPA also received many comments from State departments of transportation (DOTs) that suggested the ways in which they are different from municipalities and should therefore be regulated differently. Storm water discharges from State DOTs in Phase 1 areas should already be regulated under Phase I. The preamble to Phase 1 clearly states that ''all systems within a geographical area including highways and flood control districts will be covered.'' Many permitting authorities regulated State DOTs as co-permittees with the Phase 1 municipality in which the highway is located. State DOTs that are already regulated under Phase I are not required to comply with Phase II. State DOTs that are not already regulated have various options for meeting the requirements of today's rule. These options are discussed in Section II.H.3.c.iv below. Several DOTs commented that some of the minimum measures are outside the scope of their mission or that they do not have the legal authority required for implementation. EPA believes that the flexibility of the minimum measures allows them to be implemented by most MS4s, including DOTs. When a DOT does not have the necessary legal authority, EPA encourages the DOT to coordinate their storm water management efforts with the surrounding municipalities and other State agencies. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities. DOTs may also want to work with their permitting authority to develop a State-wide DOT storm water permit.

There are many storm water discharges from State DOTs and other State MS4s located in Phase 1 areas that were not regulated under Phase 1. Today's rule adds many more State facilities as well as all federal facilities located in urbanized areas. All of these State and federal facilities that fit the definition of a small MS4 must be covered by a storm water management program. The individual permitting authorities must decide what type of permit is most applicable.

The existing NPDES storm water program already regulates storm water from federally or State-operated industrial sources. Federal or State facilities that are currently regulated due to their industrial discharges may already be implementing some of today's rule requirements.

EPA received comments that questioned the apparent inconsistency between regulating a federal facility such as a hospital and not regulating a similar private facility. Normally, this type of private facility is regulated by the MS4. EPA believes that federal facilities are subject to local water quality regulations, including storm water requirements, by virtue of the waiver of sovereign immunity in CWA section 313. However, there are special problems faced by MS4s in their efforts to regulate federal facilities that have not been encountered in regulating

similar private facilities. To ensure comprehensive coverage, today's rule merely clarifies the need for permit coverage for these federal facilities.

i. Combined Sewer Systems (CSS). The definition of small MS4s does not include combined sewer systems. A combined sewer system is a wastewater collection system that conveys sanitary wastewater and storm water through a single set of pipes to a publicly-owned treatment works (POTW) for treatment before discharging to a receiving waterbody. During wet weather events when the capacity of the combined sewer system is exceeded, the system is designed to discharge prior to the POTW treatment plant directly into a receiving waterbody. Such an overflow is a combined sewer overflow or CSO. Combined sewer systems are not subject to existing regulations for municipal storm water discharges, nor will they be subject to today's regulations. EPA addresses combined sewer systems and CSOs in the National Combined Sewer Overflow (CSO) Control Policy issued on April 19, 1994 (59 FR 18688). The CSO Control Policy contains provisions for developing appropriate, site-specific NPDES permit requirements for combined sewer systems. CSO discharges are subject to limitations based on the best available technology economically achievable for toxic pollutants and based on the best conventional pollutant control technology for conventional pollutants. MS4s are subject to a different technology standard for all pollutants, specifically to reduce pollutants to the maximum extent practicable.

Some municipalities are served by both separate storm sewer systems and combined sewer systems. If such a municipality is located within an urbanized area, only the separate storm sewer systems within that municipality is included in the NPDES storm water program and subject to today's final rule. If the municipality is not located in an urbanized area, then the NPDES permitting authority has discretion as to whether the discharges from the separate storm sewer system is subject to today's final rule. The NPDES permitting authority will use the same process to designate discharges from portions of an MS4 for permit coverage where the municipality is also served by a combined sewer system.

EPA recognizes that municipalities that have both combined and separate storm sewer systems may wish to find ways to develop a unified program to meet all wet weather water pollution control requirements more efficiently. In the proposal to today's final rule, EPA sought comment on ways to achieve such a unified program. Many municipalities that are served by CSSs and MS4s commented that it is inequitable to force them to comply with Phase II at this time because implementation of the CSO Control Policy through their NPDES permits already imposes a significant financial burden. They requested an extension of the implementation time frame. They did not provide ideas on how to unify the two programs. EPA encourages permitting authorities to work with these municipalities as they develop and begin implementation of their CSO and storm water management programs. If both sets of requirements are carefully coordinated early, a cost-effective wet weather program can be developed that will address both CSO and storm water requirements.

ii. Owners/Operators. Several commenters mentioned the difference between the existing storm water application requirement for municipal operators and the proposed municipal requirement for owners or operators to apply. They felt that this inconsistency is confusing. The preamble to the existing regulations makes numerous references to owner/operator so there was no intent to make a clear distinction between Phase I and Phase II. Section 122.21(b) states that when the owner and operator are different, the operator must obtain the permit. MS4s often have several operators. The owner may be responsible for one part of the system and a regional authority may be responsible for other aspects. EPA proposed the ''owner or operator'' language to convey this dual responsibility. However, when the owner is responsible for some part of a storm water management plan, it is also an operator.

EPA has revised the regulation language to clarify that ''an operator'' must apply for a permit. When responsibilities for the MS4 are shared, all operators must apply.

c. Regulated Small MS4s

In today's final rule, all small MS4s located in an urbanized area are automatically designated as ''regulated'' small MS4s provided that they were not previously designated into the existing storm water program. Unlike medium and large MS4s under the existing storm water regulations, not all small MS4s are designated under today's final rule. Therefore, today's rule distinguishes between ''small'' MS4s and ''regulated small'' MS4s.

EPA's definition of ''regulated small MS4s'' in the proposal to today's rule included mention of incorporated places and counties. Along with the definition, EPA included Appendices 6 and 7 to assist in the identification of areas that would probably require coverage as ''automatically designated'' (Appendix 6) or ''potentially designated'' (Appendix 7). The definition and the appendices raised many questions about exactly who was required to comply with the proposed requirements. Commenters raised issues about the definition of ''incorporated place'' and the status of towns, townships, and other places that are not considered incorporated by the Census Bureau. They also asked about special districts, regional authorities, MS4s already regulated, and other questions in order to clarify the rule's coverage.

EPA has revised § 122.32(a) to clarify that discharges are regulated under today's rule if they are from a small MS4 that is in an urbanized area and has not received a waiver or they are designated by the permitting authority. Today's rule does not regulate the county, city, or town. Today's rule regulates the MS4. Therefore, even though a county may be listed in Appendix 6, if that county does not own or operate the municipal storm sewer systems, the county does not have to submit an application or develop a storm water management program. If another entity does own or operate an MS4 within the county, for example, a regional utility district, that other entity needs to submit the application and develop the program.

Some commenters suggested that EPA should change the rule language to specifically allow regional authorities to be the permitted entity and to allow small MS4s to apply as co-permittees. EPA believes that the best way to clarify that regional authorities can be the primary permitted entity is the change to § 122.32(a) and the explanation above. Because EPA assumes that today's regulation will be implemented through general permits, MS4s will not be co-permittees under a general permit in the same manner as under individual permits. EPA has added § 122.33(a)(4) and made a minor change to § 122.35(a) to clarify that small MS4s can work together to share the responsibilities of a storm water management program. This is discussed further in Section II.H.3.c.iv below.

The proposed rule stated that when a county or Federal Indian reservation is only partially included in an urbanized area, only MS4s in the urbanized portion of the county or Federal Indian reservation would be regulated. In the rare cases when an incorporated place is only partially included in the urbanized area, the entire incorporated place would be regulated. EPA received comments asking about towns and

townships, because they were not considered to be incorporated areas according to the Census Bureau's definition. Would the whole town/township be covered or only the part of the town/township in the urbanized area? States use many different types of systems in their geographical divisions. Some towns are similar to incorporated cities and others are large areas that are more similar to counties. Some commenters thought that the urbanized area boundary was arbitrary, and if part of a town or county was covered, it all should be covered. Other commenters noted that some townships and counties encompass very large areas of which only a small portion is urbanized. Due to the great variety of situations, EPA has decided that for all geographical entities, only MS4s in the urbanized area are automatically designated. The population densities associated with the Census Bureau's designation of urbanized areas provide the basis for designation of these areas to protect water quality. This focused designation provides for consistency and allows for flexibility on the part of the MS4 and the permitting authority. In those situations where an incorporated place or a town is not all in an ''urbanized area'', there is a good possibility that it is served by more than one MS4. In those cases where the area is served by the same MS4, it makes sense to develop a storm water program for the whole area. Permitting authorities may also decide to designate all MS4s within a county or township, if they believe it is necessary to protect water quality.

Most operators of MS4s will not need to independently determine the status of coverage under today's rule. EPA has revised the proposed Appendices 6 and 7 to include towns and townships. Therefore, these appendices will alert most MS4s as to whether they are likely to be covered under today's rule. However, each permitting authority must make the decision as to who requires coverage. Most likely, an illustrative list of the regulated areas will be published with the general permit. If not, the operator can contact its permitting authority or the Bureau of the Census to find out if their separate storm sewer systems are within an urbanized area.

i. Urbanized Area Description. Under the Bureau of the Census definition of ''urbanized area,'' adopted by EPA for the purposes of today's final rule, ''an urbanized area (UA) comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people.'' The proposal to today's rule provided the full definition and case studies to help explain the census category of ''urbanized area.'' Appendix 2 is a simplified urbanized area illustration to help demonstrate the concept of urbanized areas in relation to today's final rule. The ''urbanized area'' is the shaded area that includes within its boundaries incorporated places, a portion of a Federal Indian reservation, portions of two counties, an entire town, and portions of another town. All small MS4s located in the shaded area are covered by the rule, unless and until waived by the permitting authority. Any small MS4s located outside of the shaded area are subject to potential designation by the permitting authority.

There are 405 urbanized areas in the United States that cover 2 percent of total U.S. land area and contain approximately 63 percent of the nation's population (see Appendix 3 for a listing of urbanized areas of the United States and Puerto Rico). These numbers include U.S. Territories, although Puerto Rico is the only territory to have Census-designated urbanized areas. Urbanized areas constitute the largest and most dense areas of settlement. The purpose of determining an ''urbanized area'' is to delineate the boundaries of development and map the actual built-up urban area. The Bureau of the Census geographers liken it to flying over an urban area and drawing a line around the boundary of the built-up area as seen from the air.

Using data from the latest decennial census, the Census Bureau applies the urbanized area definition nationwide (including U.S. Tribes and Territories) and determines which places and counties are included within each urbanized area. For each urbanized area, the Bureau provides full listings of who is included, as well as detailed maps and special CD-ROM files for use with computerized mapping systems (such as GIS). Each State's data center receives a copy of the list, and some maps, automatically. The States also have the CD–ROM files and a variety of publications available to them for reference from the Bureau of the Census. In addition, local or regional planning agencies may have urbanized area files already. New listings for urbanized areas based on the 2000 Census will be available by July/August 2001, but the more comprehensive computer files will not be available until late 2001/early 2002.

Additional designations based on subsequent census years will be governed by the Bureau of the Census' definition of an urbanized area in effect for that year. Based on historical trends, EPA expects that any area determined by the Bureau of the Census to be included within an urbanized area as of the 1990 Census will not later be excluded from the urbanized area as of the 2000 Census. However, it is important to note that even if this situation were to occur, for example, due to a possible change in the Bureau of the Census' urbanized area definition, a small MS4 that is automatically designated into the NPDES program for storm water under an urbanized area calculation for any given Census year will remain regulated regardless of the results of subsequent urbanized area calculations.

ii. Rationale for Using Urbanized Areas. EPA is using urbanized areas to automatically designate regulated small MS4s on a nationwide basis for several reasons: (1) studies and data show a high correlation between degree of development/ urbanization and adverse impacts on receiving waters due to storm water (U.S. EPA, 1983; Driver et al., 1985; Pitt, R.E. 1991. ''Biological Effects of Urban Runoff Discharges.'' Presented at the Engineering Foundation Conference: *Urban Runoff and Receiving Systems; An Interdisciplinary Analysis of Impact, Monitoring and Management,* August 1991. Mt. Crested Butte, CO. American Society of Civil Engineers, New York. 1992.; Pitt, R.E. 1995. ''Biological Effects of Urban Runoff Discharges,'' in *Storm water Runoff and Receiving Systems: Impact, Monitoring, and Assessment.* Lewis Publishers, New York.; Galli, J. 1990. *Thermal Impacts Associated with Urbanization and Storm water Management Best Management Practices.* Prepared for the Sediment and Storm water Administration of the Maryland Department of the Environment.; Klein, 1979), (2) the blanket coverage within the urbanized area encourages the watershed approach and addresses the problem of ''donut-holes,'' where unregulated areas are surrounded by areas currently regulated (storm water discharges from donut hole areas present a problem due to their contributing uncontrolled adverse impacts on local waters, as well as by frustrating the attainment of water quality goals of neighboring regulated communities), (3) this approach targets present and future growth areas as a preventative measure to help ensure water quality protection, and (4) the determination of urbanized areas by the Bureau of the Census allows operators of small MS4s to quickly determine whether they are included in the NPDES storm water program as a regulated small MS4.

Urbanized areas have experienced significant growth over the past 50 years. According to EPA calculations

based on Census data from 1980 to 1990, the national average rate of growth in the United States during that 10-year period was more than 4 percent. For the same period, the average growth within urbanized areas was 15.7 percent and the average for outside of urbanized areas was just more than 1 percent. The new development occurring in these growing areas can provide some of the best opportunities for implementing cost-effective storm water management controls.

EPA received many comments on the proposal to designate discharges based on location within urbanized areas. EPA considered numerous other approaches, several of which are discussed in the proposal to today's final rule. Several commenters wanted designation to be based on proven water quality problems rather than inclusion in an urbanized area. One commenter proposed an approach based on the CWA 303(d) listing of impaired waters and the wasteload allocation conducted under the TMDL process. (See section II.L. on the section 303(d) and TMDL process). The commenter's proposal would designate small MS4s on a case-by-case basis, covering only those discharges where receiving streams are shown to have water quality problems, particularly a failure to meet water quality standards, including designated uses. The commenter further described a non-NPDES approach where a State would require cost-effective measures based on a proportionate share under a waste load allocation, equitably allocated among all pollutant contributors. These waste load allocations would be developed with input from all stakeholders, and remedial measures would be implemented in a phased manner based on the probability of results and/or economic feasibility. The States would then periodically reassess the receiving streams to determine whether the remedial measures are working, and if not, require additional control measures using the same procedure used to establish the initial measures. What the commenter describes is almost a TMDL.

EPA considered a remedial approach based on water quality impairment and rejected it for failure to prevent almost certain degradation caused by urban storm water. EPA's main concern in opting not to take a case-by-case approach to designation was that this approach would not provide controls for storm water discharges in receiving streams until after a site-specific demonstration of adverse water quality impact. The commenter's suggestion would do nothing to prevent pollution in waters that may be meeting water quality standards, including supporting designated uses. The approach would also rely on identifying storm water management programs following comprehensive watershed plans and TMDL development. In most States, water quality assessments have traditionally been conducted for principal mainstream rivers and their major tributaries, not all surface waters. The establishment of TMDLs nationwide will take many years, and many States will conduct additional monitoring to determine water quality conditions prior to establishing TMDLs. In addition, a case-by-case approach would not address the problem of ''donut holes'' within urbanized areas and a lack of consistency among similarly situated municipal systems would remain commonplace. After careful consideration of all comments, EPA still believes that the approach in today's rule is the most appropriate to protect water quality. Protection includes prevention as well as remediation.

d. Municipal Designation by the Permitting Authority

Today's final rule also allows NPDES permitting authorities to designate MS4s that should be included in the storm water program as regulated small MS4s but are not located within urbanized areas. The final rule requires, at a minimum, that a set of designation criteria be applied to all small MS4s within a jurisdiction that serves a population of at least 10,000 and has a population density of at least 1,000. Appendix 7 to this preamble provides an illustrative list of places that the Agency anticipates meet this criteria. In addition, any small MS4 may be the subject of a petition to the NPDES permitting authority for designation. See Section II.G, NPDES Permitting Authority's Role for more details on the designation and petition processes. EPA believes that the approach of combining nationwide and local designation to determine municipal coverage balances the potential for significant adverse impacts on water quality with local watershed protection and planning efforts.

e. Waiving the Requirements for Small MS4s

Today's final rule includes some flexibility in the nationwide coverage of all small MS4s located in urbanized areas by providing the NPDES permitting authority with the discretion to waive the otherwise applicable requirements of the smallest MS4s that are not causing the impairment of a receiving water body. Qualifications for the waiver vary depending on whether the MS4 serves a population under 1,000 or a population between 1,000 and 10,000. Note that even if a small MS4 has requirements waived, it can subsequently be brought back into the program if circumstances change. See Section II.G, NPDES Permitting Authority's Role, for more details on this process.

3. Municipal Permit Requirements

a. Overview

i. Summary of Permitting Options. Today's rule outlines six minimum control measures that constitute the framework for a storm water discharge control program for regulated small MS4s that, when properly implemented, will reduce pollutants to the maximum extent practicable (MEP). These six minimum control measures are specified in § 122.34(b) and are discussed below in section ''II.H.3.b, Program Requirements-Minimum Control Measures.'' All operators of regulated small MS4s are required to obtain coverage under an NPDES permit, unless the requirement is waived by the permitting authority in accordance with today's rule. Implementation of § 122.34(b) may be required either through an individual permit or, if the State or EPA makes one available to the facility, through a general permit. The process for issuing and obtaining these permits is discussed below in section ''II.H.3.c, Application Requirements.''

As an alternative to implementing a program that complies with the requirements of § 122.34, today's rule provides operators of regulated small MS4s with the option of applying for an individual permit under § 122.26(d). The permit application requirements in § 122.26 were originally drafted to apply to medium and large MS4s. Although EPA believes that the requirements of § 122.34 provide a regulatory option that is appropriate for most small MS4s, the operators of some small MS4s may prefer more individualized requirements. This alternative permitting option for regulated small MS4s that wish to develop their own program is discussed below in section ''II.H.3.c.iii. Alternative Permit Option.'' The second alternative permitting option for regulated small MS4s is to become co-permittees with a medium or large MS4 regulated under § 122.26(d), as discussed below in section ''II.H.3.c.v. Joint Permit Programs.''

ii. Water Quality-Based Requirements. Any NPDES permit issued under today's rule must, at a minimum, require the operator to develop, implement, and

enforce a storm water management program designed to reduce the discharge of pollutants from a regulated system to the MEP, to protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act (see MEP discussion in the following section). Absent evidence to the contrary, EPA presumes that a small MS4 program that implements the six minimum measures in today's rule does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. As discussed further below, however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. If the program is inadequate to protect water quality, including water quality standards, then the permit will need to be modified to include any more stringent limitations necessary to protect water quality.

Regardless of the basis for the development of the effluent limitations (whether designed to implement the six minimum measures or more stringent or prescriptive limitations to protect water quality), EPA considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) expresses a preference for narrative rather than numeric effluent limits, for example, by reference to ''management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.'' 33 U.S.C. 1342(p)(3)(B)(iii). EPA determines that pollutants from wet weather discharges are most appropriately controlled through management measures rather than end-of-pipe numeric effluent limitations. As explained in the Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996 [61 FR 43761 (November 26, 1996), EPA believes that the currently available methodology for derivation of numeric water quality-based effluent limitations is significantly complicated when applied to wet weather discharges from MS4s (compared to continuous or periodic batch discharges from most other types of discharge). Wet weather discharges from MS4s introduce a high degree of variability in the inputs to the models currently available for derivation of water quality based effluent limitations, including assumptions about instream and discharge flow rates, as well as effluent characterization. In addition, EPA anticipates that determining compliance with any such numeric limitations may be confounded by practical limitations in sample collection.

In the first two to three rounds of permit issuance, EPA envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the NPDES permit requirements for the large majority of regulated small MS4s. Because the six measures represent a significant level of control if properly implemented, EPA anticipates that a permit for a regulated small MS4 operator implementing BMPs to satisfy the six minimum control measures will be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.

If a small MS4 operator implements the six minimum control measures in § 122.34(b) and the discharges are determined to cause or contribute to non-attainment of an applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. EPA envisions that this process will occur during the first two to three permit terms. After that period, EPA will revisit today's regulations for the municipal separate storm sewer program.

If the permitting authority (rather than the regulated small MS4 operator) needs to impose additional or more specific measures to protect water quality, then that action will most likely be the result of an assessment based on a TMDL or equivalent analysis that determines sources and allocations of pollutant(s) of concern. EPA believes that the small MS4's additional requirements, if any, should be guided by its equitable share based on a variety of considerations, such as cost effectiveness, proportionate contribution of pollutants, and ability to reasonably achieve wasteload reductions. Narrative effluent limitations in the form of BMPs may still be the best means of achieving those reductions.

See Section II.L, Water Quality Issues, for further discussion of this approach to permitting, consistent with EPA's interim permitting guidance. Pursuant to CWA section 510, States implementing their own NPDES programs may develop more stringent or more prescriptive requirements than those in today's rule.

EPA's interpretation of CWA section 402(p)(3)(B)(iii) was recently reviewed by the Ninth Circuit in *Defenders of Wildlife, et al* v. *Browner,* No. 98–71080 (September 15, 1999). The Court upheld the Agency's action in issuing five MS4 permits that included water quality-based effluent limitations. The Court did, however, disagree with EPA's interpretation of the relationship between CWA sections 301 and 402(p). The Court reasoned that MS4s are not compelled by section 301(b)(1)(C) to meet all State water quality standards, but rather that the Administrator or the State may rely on section 402(p)(3)(B)(iii) to require such controls. Accordingly, the *Defenders of Wildlife* decision is consistent with the Agency's 1996 ''Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits.''

As noted, the 1996 Policy describes how permits would implement an iterative process using BMPs, assessment, and refocused BMPs, leading toward attainment of water quality standards. The ultimate goal of the iteration would be for water bodies to support their designated uses. EPA believes this iterative approach is consistent with and implements section 301(b)(1)(C), notwithstanding the Ninth Circuit's interpretation. As an alternative to basing these water quality-based requirements on section 301(b)(1)(C), however, EPA also believes the iterative approach toward attainment of water quality standards represents a reasonable interpretation of CWA section 402(p)(3)(B)(iii). For this reason, today's rule specifies that the ''compliance target'' for the design and implementation of municipal storm water control programs is ''to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA.'' The first component, reductions to the MEP, would be realized through implementation of the six minimum measures. The second component, to protect water quality, reflects the overall design objective for municipal programs based on CWA section 402(p)(6). The third component, to implement other applicable water quality requirements of the CWA, recognizes the Agency's specific determination under CWA section 402(p)(3)(B)(iii) of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative BMP process, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to

MS4s, as they would to other point sources.

EPA does not presume that water quality will be protected if a small MS4 elects not to implement all of the six minimum measures and instead applies for alternative permit limits under § 122.26(d). Operators of such small MS4s that apply for alternative permit limits under § 122.26(d) must supply additional information through individual permit applications so that the permit writer can determine whether the proposed program reduces pollutants to the MEP and whether any other provisions are appropriate to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.

iii. *Maximum Extent Practicable.* Maximum extent practicable (MEP) is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES permits for discharges from MS4s ''shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods.'' CWA Section 402(p)(3)(B)(iii). This section also calls for ''such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants.'' EPA interprets this standard to apply to all MS4s, including both existing regulated (large and medium) MS4s, as well as the small MS4s regulated under today's rule.

For regulated small MS4s under today's rule, authorization to discharge may be under either a general permit or individual permit, but EPA anticipates and expects that general permits will be the most common permit mechanism. The general permit will explain the steps necessary to obtain permit authorization. Compliance with the conditions of the general permit and the series of steps associated with identification and implementation of the minimum control measures will satisfy the MEP standard. Implementation of the MEP standard under today's rule will typically require the permittee to develop and implement appropriate BMPs to satisfy each of the required six minimum control measures.

In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures. Permits typically will require small MS4 permittees to identify in their NOI the BMPs to be performed and to develop the measurable goals by which implementation of the BMPs can be assessed. Upon receipt of the NOI from a small MS4 operator, the NPDES permitting authority will have the opportunity to review the NOI to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. If necessary, the NPDES permitting authority may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement. Where the NPDES permit is not written to implement the minimum control measures specified under § 122.34(b), for example in the case of an individual permit under § 122.33(b)(2)(ii), the MEP standard will be applied based on the best professional judgment of the permit writer.

Commenters argued that MEP is, as yet, an undefined term and that EPA needs to further clarify the MEP standards by providing a regulatory definition that includes recognition of cost considerations and technical feasibility. Commenters argued that, without a definition, the regulatory community is not adequately on notice regarding the standard with which they need to comply. EPA disagrees that affected MS4 permittees will lack notice of the applicable standard. The framework for the small MS4 permits described in this notice provides EPA's interpretation of the standard and how it should be applied.

EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance.

The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. Permit writers may evaluate small MS4 operator's proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs.

EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit. EPA envisions that this process may take two to three permit terms.

One commenter observed that MEP is not static and that if the six minimum control measures are not achieving the necessary water quality improvements, then an MS4 should be expected to revise and, if necessary, expand its program. This concept, it is argued, must be clearly part of the definition of MEP and thus incorporated into the binding and operative aspects of the rule. As is explained above, EPA believes that it is. The iterative process described above is intended to be sensitive to water quality concerns. EPA believes that today's rule contains provisions to implement an approach that is consistent with this comment.

b. Program Requirements'Minimum Control Measures

A regulated small MS4 operator must develop and implement a storm water management program designed to reduce the discharge of pollutants from their MS4 to protect water quality. The storm water management program must include the following six minimum measures.

i. Public Education and Outreach on Storm Water Impacts. Under today's final rule, operators of small MS4s must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution. The public education program should inform individuals and households about the problem and the steps they can take to reduce or prevent storm water pollution.

EPA believes that as the public gains a greater understanding of the storm water program, the MS4 is likely to gain

more support for the program (including funding initiatives). In addition, compliance with the program will probably be greater if the public understands the personal responsibilities expected of them. Well-informed citizens can act as formal or informal educators to further disseminate information and gather support for the program, thus easing the burden on the municipalities to perform all educational activities.

MS4s are encouraged to enter into partnerships with their States in fulfilling the public education requirement. It may be more cost-effective to utilize a State education program instead of numerous MS4s developing their own programs. MS4 operators are also encouraged to work with other organizations (e.g., environmental, nonprofit and industry organizations) that might be able to assist in fulfilling this requirement.

The public education program should be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities (particularly minority and disadvantaged communities). Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. Operators of MS4s may use storm water educational information provided by the State, Tribe, EPA, or environmental, public interest, trade organizations, or other MS4s. Examples of successful public education efforts concerning polluted runoff can be found in many State nonpoint source pollution control programs under CWA section 319.

The public education program should inform individuals and households about steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. Additionally, the program could inform individuals and groups on how to become involved in local stream and beach restoration activities as well as activities coordinated by youth service and conservation corps and other citizen groups. Finally, materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, MS4 operators should provide information to restaurants on the impact of grease clogging storm drains and to auto garages on the impacts of used oil discharges.

EPA received comments from representatives of State DOTs and U.S. Department of Defense (DOD) installations seeking exemption from the public education requirement. While today's rule does not exempt DOTs and military bases from the user education requirement, the Agency believes the flexibility inherent in the Rule addresses many of the concerns expressed by these commenters.

Certain DOT representatives commented that if their agencies were not exempt from the user education measure's requirements, they should at least be allowed to count DOT employee education as an adequate substitute. EPA supports the use of existing materials and programs, granted such materials and programs meet the rule's requirement that the MS4 user community (*i.e.,* the public) is also educated concerning the impacts of storm water discharges on water bodies and the steps to reduce storm water pollution.

Finally, certain DOD representatives requested that ''public,'' as applied to their installations, be defined as the resident and employee populations within the fence line of the facility. EPA agrees that the education effort should be directed toward those individuals who frequent the federally owned land (*i.e.,* residents and individuals who come there to work and use the MS4 facilities).

EPA also received a number of comments from municipalities stating that education would be more thorough and cost effective if accomplished by EPA on the national level. EPA believes that a collaborative State and local approach, in conjunction with significant EPA technical support, will best meet the goal of targeting, and reaching, specific local audiences. EPA technical support will include a tool box which will contain fact sheets, guidance documents, an information clearinghouse, and training and outreach efforts.

Finally, EPA received comments expressing concern that the public education program simply encourages the distribution of printed material. EPA is sensitive to this concern. Upon evaluation, the Agency made changes to the proposal's language for today's rule. The language has been changed to reflect EPA's belief that a successful program is one that includes a variety of strategies locally designed to reach specific audiences.

ii. Public Involvement/Participation. Public involvement is an integral part of the small MS4 storm water program. Accordingly, today's final rule requires that the municipal storm water management program must comply with applicable State and local public notice requirements. Section 122.34(b)(2) recommends a public participation process with efforts to reach out and engage all economic and ethnic groups. EPA believes there are two important reasons why the public should be allowed and encouraged to provide valuable input and assistance to the MS4's program.

First, early and frequent public involvement can shorten implementation schedules and broaden public support for a program. Opportunities for members of the public to participate in program development and implementation could include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. Moreover, members of the public may be less likely to raise legal challenges to a MS4's storm water program if they have been involved in the decision making process and program development and, therefore, internalize personal responsibility for the program themselves.

Second, public participation is likely to ensure a more successful storm water program by providing valuable expertise and a conduit to other programs and governments. This is particularly important if the MS4's storm water program is to be implemented on a watershed basis. Interested stakeholders may offer to volunteer in the implementation of all aspects of the program, thus conserving limited municipal resources.

EPA recognizes that there are a number of challenges associated with public involvement. One challenge is in engaging people in the public meeting and program design process. Another challenge is addressing conflicting viewpoints. Nevertheless, EPA strongly believes that these challenges can be addressed by use of an aggressive and inclusive program. Section II.K. provides further discussion on public involvement.

A number of municipalities sought clarification from EPA concerning what the public participation program must

actually include. In response, the actual requirements are minimal, but the Agency's *recommendations* are more comprehensive. The public participation program must only comply with applicable State and local public notice requirements. The remainder of the preamble, as well as the Explanatory Note accompanying the regulatory text, provide guidance to the MS4s concerning what elements a successful and inclusive program should include. EPA will provide technical support as part of the tool box (*i.e.,* providing model public involvement programs, conducting public workshops, *etc.*) to assist MS4 operators meet the intent of this measure.

Finally, the Agency encourages MS4s to seek public participation prior to submitting an NOI. For example, public participation at this stage will allow the MS4 to involve the public in developing the BMPs and measurable goals for their NOI.

iii. Illicit Discharge Detection and Elimination. Discharges from small MS4s often include wastes and wastewater from non-storm water ''illicit'' discharges. Illicit discharge is defined at 40 CFR 122.26(b)(2) as any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit and discharges resulting from fire fighting activities. As detailed below, other sources of non-storm water, that would otherwise be considered illicit discharges, do not need to be addressed unless the operator of the MS4 identifies one or more of them as a significant source of pollutants into the system. EPA's Nationwide Urban Runoff Program (NURP) indicated that many storm water outfalls still discharge during substantial dry periods. Pollutant levels in these dry weather flows were shown to be high enough to significantly degrade receiving water quality. Results from a 1987 study conducted in Sacramento, California, revealed that slightly less than one-half of the water discharged from a municipal separate storm sewer system was not directly attributable to precipitation runoff (U.S. Environmental Protection Agency, Office of Research and Development. 1993. *Investigation of Inappropriate Pollutant Entries Into Storm Drainage Systems—A User's Guide.* Washington, DC EPA 600/R–92/238.) A significant portion of these dry weather flows results from illicit and/or inappropriate discharges and connections to the municipal separate storm sewer system. Illicit discharges enter the system through either direct connections (*e.g.,* wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (*e.g.,* infiltration into the storm drain system or spills collected by drain inlets).

Under the existing NPDES program for storm water, permit applications for large and medium MS4s are to include a program description for effective prohibition against non-storm water discharges into their storm sewers (see 40 CFR 122.26 (d)(1)(v)(B) and (d)(1)(iv)(B)). Further, EPA believes that in implementing municipal storm water management plans under these permits, large and medium MS4 operators generally found their illicit discharge detection and elimination programs to be cost-effective. Properly implemented programs also significantly improved water quality.

In today's rule, any NPDES permit issued to an operator of a regulated small MS4 must, at a minimum, require the operator to develop, implement and enforce an illicit discharge detection and elimination program. Inclusion of this measure for regulated small MS4s is consistent with the ''effective prohibition'' requirement for large and medium MS4s. Under today's rule, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop (if not already completed) a storm sewer system map showing the location of all outfalls, and names and location of all waters of the United States that receive discharges from those outfalls; (2) to the extent allowable under State, Tribal, or local law, effectively prohibit through ordinance, or other regulatory mechanism, illicit discharges into the separate storm sewer system and implement appropriate enforcement procedures and actions as needed; (3) develop and implement a plan to detect and address illicit discharges, including illegal dumping, to the system; and (4) inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

The illicit discharge and elimination program need only address the following categories of non-storm water discharges if the operator of the small MS4 identifies them as significant contributors of pollutants to its small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the definition of illicit discharge and only need to be addressed where they are identified as significant sources of pollutants to waters of the United States). If the operator of the MS4 identifies one or more of these categories of sources to be a significant contributor of pollutants to the system, it could require specific controls for that category of discharge or prohibit the discharges completely.

Several comments were received on the mapping requirements of the proposal. Most comments said that more flexibility should be given to the MS4s to determine their mapping needs, and that resources could be better spent in addressing problems once the illicit discharges are detected. EPA reviewed the mapping requirements in the proposed rule and agrees that some of the information is not necessary in order to begin an illicit discharge detection and elimination program. Today's rule requires a map or set of maps that show the locations of all outfalls and names and locations of receiving waters. Knowing the locations of outfalls and receiving waters are necessary to be able to conduct dry weather field screening for non-storm water flows and to respond to illicit discharge reports from the public. EPA recommends that the operator collect any existing information on outfall locations (*e.g.,* review city records, drainage maps, storm drain maps), and then conduct field surveys to verify the locations. It will probably be necessary to ''walk'' (*i.e.* wade small receiving waters or use a boat for larger receiving waters) the streambanks and shorelines, and it may take more than one trip to locate all outfalls. A coding system should be used to mark and identify each outfall. MS4 operators have the flexibility to determine the type (*e.g.* topographic, GIS, hand or computer drafted) and size of maps which best meet their needs. The map scale should be such that the outfalls can be accurately located. Once an illicit discharge is detected at an outfall, it may be necessary to map that portion of the storm sewer system leading to the outfall in order to locate the source of the discharge.

Several comments requested clarification of the requirement to develop and implement a plan to detect and eliminate illicit discharges. EPA recommends that plans include procedures for the following: locating priority areas; tracing the source of an illicit discharge; removing the source of the discharge; and program evaluation

and assessment. EPA recommends that MS4 operators identify priority areas (*i.e.,* problems areas) for more detailed screening of their system based on higher likelihood of illicit connections (*e.g.,* areas with older sanitary sewer lines), or by conducting ambient sampling to locate impacted reaches. Once priority areas are identified, EPA recommends visually screening outfalls during dry weather and conducting field tests, where flow is occurring, of selected chemical parameters as indicators of the discharge source. EPA's manual for investigation of inappropriate pollutant entries into the storm drainage system (EPA, 1993) suggests the following parameter list: specific conductivity, fluoride and/or hardness concentration, ammonia and/or potassium concentration, surfactant and/or fluorescence concentration, chlorine concentration, pH and other chemicals indicative of industrial sources. The manual explains why each parameter is a good indicator and how the information can be used to determine the type of source flow. The Agency is not recommending that fluoride and chlorine, generally used to locate potable water discharges, be addressed under this program, therefore a short list of parameters may include conductivity, ammonia, surfactant and pH. Some MS4s have found it useful to measure for fecal coliform or E. coli in their testing program. Observations of physical characteristics of the discharge are also helpful such as flow rate, temperature, odor, color, turbidity, floatable matter, deposits and stains, and vegetation.

The implementation plan should also include procedures for tracing the source of an illicit discharge. Once an illicit discharge is detected and field tests provide source characteristics, the next step is to determine the actual location of the source. Techniques for tracing the discharge to its place of origin may include: following the flow up the storm drainage system via observations and/or chemical testing in manholes or in open channels; televising storm sewers; using infrared and thermal photography; conducting smoke or dye tests.

The implementation plan should also include procedures for removing the source of the illicit discharge. The first step may be to notify the property owner and specify a length of time for eliminating the discharge. Additional notifications and escalating legal actions should also be described in this part of the plan.

Finally, the implementation plan should include procedures for program evaluation and assessment. Procedures could include documentation of actions taken to locate and eliminate illicit discharges such as: number of outfalls screened, complaints received and corrected, feet of storm sewers televised, numbers of discharges and quantities of flow eliminated, number of dye or smoke tests conducted. Appropriate records of such actions should be kept and should be submitted as part of the annual reports for the first permit term, as specified by the permitting authority (reports only need to be submitted in years 2 and 4 in later permits). For more on reporting requirements, see § 122.34(g).

EPA received comments regarding an MS4's legal authority beyond its jurisdictional boundaries to inspect or take enforcement against illicit discharges. EPA recognizes that illicit flows may originate in one jurisdiction and cross into one or more jurisdictions before being discharged at an outfall. In such instances, EPA expects the MS4 that detects the illicit flow to trace it to the point where it leaves their jurisdiction and notify the adjoining MS4 of the flow, and any other physical or chemical information. The adjoining MS4 should then trace it to the source or to the location where it enters their jurisdiction. The process of notifying the adjoining MS4 should continue until the source is located and eliminated. In addition, because any non-storm water discharge to waters of the U.S. through an MS4 is subject to the prohibition against unpermitted discharges pursuant to CWA section 301 (a), remedies are available under the federal enforcement provisions of CWA sections 309 and 505.

EPA requested and received comments regarding the prohibition and enforcement provision for this minimum measure. Commenters specifically questioned the proposal that the operator only has to implement the appropriate prohibition and enforcement procedures ''to the extent allowable under State or Tribal law.'' They raised concerns that by qualifying prohibition and enforcement procedures in this manner, the operator could altogether ignore this minimum measure where affirmative legal authority did not exist. Comments suggested that EPA require States to grant authority to those municipalities where it did not exist. Other comments, however, stated that municipalities cannot exercise legal authority not granted to them under State law, which varies considerably from one State to another. EPA has no intention of directing State legislatures on how to allocate authority and responsibility under State law. As noted above, there is at least one remedy (the federal CWA) to control non-storm water discharges through MS4s. If State law prevents political subdivisions from controlling discharges through storm sewers, EPA anticipates common sense will prevail to provide those MS4 operators with the ability to meet the requirements applicable for their discharges.

One comment reinforced the importance of public information and education to the success of this measure. EPA agrees and suggests that MS4 operators consider a variety of ways to inform and educate the public which could include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of visual and/or printed outreach materials. Recycling and other public outreach programs could be developed to address potential sources of illicit discharges, including used motor oil, antifreeze, pesticides, herbicides, and fertilizers.

EPA received comments that State DOT's lack authority to implement this measure. EPA believes that most DOTs can implement most parts of this measure. If a DOT does not have the necessary legal authority to implement any part of this measure, EPA encourages them to coordinate their storm water management efforts with the surrounding MS4s and other State agencies. Many DOTs that are regulated under Phase I of this program are co-permittees with the local regulated MS4. Under today's rule, DOTs can use any of the options of § 122.35 to share their storm water management responsibilities.

EPA received comments requesting clarification of various terms such as ''outfall'' and ''illicit discharge.'' One comment asked EPA to reinforce the point that a ''ditch'' could be considered an outfall. The term ''outfall'' is defined at 40 CFR 122.26(b)(9) as ''a point source at the point where a municipal separate storm sewer discharges to waters of the United States * * *''. The term municipal separate storm sewer is defined at 40 CFR § 122.26(b)(8) as ''a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) * * *''. Following the logic of these definitions, a ''ditch'' may be part of the municipal separate storm sewer, and at the point where the ditch discharges to waters of the United States, it would be an outfall. As with any determination about jurisdictional provisions of the CWA, however, final decisions require case specific evaluations of fact.

One commenter specifically requested clarification on the relationship between the term ''illicit discharge'' and non-storm water discharges from fire fighting. The comment suggested that it would be impractical to attempt to determine whether the flow from a specific fire (*i.e.,* during a fire) is a significant source of pollution. EPA intends that MS4s will address all allowable non-storm water flows categorically rather than individually. If an MS4 is concerned that flows from fire fighting are, as a category, contributing substantial amounts of pollutants to their system, they could develop a program to address those flows prospectively. The program may include an analysis of the flow from several sources, steps to minimize the pollutant contribution, and a plan to work with the sources of the discharge to minimize any adverse impact on water quality. During the development of such a program, the MS4 may determine that only certain types of flows within a particular category are a concern, for example, fire fighting flows at industrial sites where large quantities of chemicals are present. In this example, a review of existing procedures with the fire department and/or hazardous materials team may reveal weaknesses or strengths previously unknown to the MS4 operator.

EPA received comments requesting modifications to the rule to include on-site sewage disposal systems (i.e., septic systems) in the scope of the illicit discharge program. On-site sewage disposal systems that flow into storm drainage systems are within the definition of illicit discharge as defined by the regulations. Where they are found to be the source of an illicit discharge, they need to be eliminated similar to any other illicit discharge source. Today's rule was not modified to include discharges from on-site sewage disposal systems specifically because those sources are already within the scope of the existing definition of illicit discharge.

iv. Construction Site Storm Water Runoff Control. Over a short period of time, storm water runoff from construction site activity can contribute more pollutants, including sediment, to a receiving stream than had been deposited over several decades (see section I.B.3). Storm water runoff from construction sites can include pollutants other than sediment, such as phosphorus and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. Generally, properly implemented and enforced construction site ordinances effectively reduce these pollutants. In many areas, however, the effectiveness of ordinances in reducing pollutants is limited due to inadequate enforcement or incomplete compliance with such local ordinances by construction site operators (Paterson, R.G. 1994. ''Construction Practices: The Good, the Bad, and the Ugly.'' *Watershed Protection Techniques* 1(2)).

Today's rule requires operators of regulated small MS4s to develop, implement, and enforce a pollutant control program to reduce pollutants in any storm water runoff from construction activities that result in land disturbance of 1 or more acres (see § 122.34(b)(4)). Construction activity on sites disturbing less than one acre must be included in the program if the construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

The construction runoff control program of the regulated small MS4 must include an ordinance or other regulatory mechanism to require erosion and sediment controls to the extent practicable and allowable under State, Tribal or local law. The program also must include sanctions to ensure compliance (for example, non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance). The program must also include, at a minimum: requirements for construction site operators to implement appropriate erosion and sediment control BMPS, such as silt fences, temporary detention ponds and diversions; procedures for site plan review by the small MS4 which incorporate consideration of potential water quality impacts; requirements to control other waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may adversely impact water quality; procedures for receipt and consideration of information submitted by the public to the MS4; and procedures for site inspection and enforcement of control measures by the small MS4.

Today's rule provides flexibility for regulated small MS4s by allowing them to exclude from their construction pollutant control program runoff from those construction sites for which the NPDES permitting authority has waived NPDES storm water small construction permit requirements. For example, if the NPDES permitting authority waives permit coverage for storm water discharges from construction sites less than 5 acres in areas where the rainfall erosivity factor is less than 5, then the regulated small MS4 does not have to include these sites in its storm water management program. Even if requirements for a discharge from a given construction site are waived by the NPDES permitting authority, however, the regulated small MS4 may still chose to control those discharges under the MS4's construction pollutant control program, particularly where such discharges may cause siltation problems in storm sewers. See Section II.I.1.b for more information on construction waivers by the permitting authority.

Some commenters suggested that the proposed construction minimum measure requirements went beyond the permit application requirements concerning construction for medium and large MS4s. In response, EPA has made changes to the proposed measure so that it more closely resembles the MS4 permit application requirements in existing regulations. For example, as described below, the Agency revised the proposed requirements for ''pre-construction review of site management plans'' to require ''procedures for site plan review.''

One commenter expressed concerns that addressing runoff from construction sites within urbanized areas (through the small MS4 program) differently from construction sites outside urbanized areas (which will not be covered by the small MS4 program) will encourage urban sprawl. Today's rule, together with the existing requirements, requires all construction greater than or equal to 1 acre, unless waived, to be covered by an NPDES permit whether it is located inside or outside of an urbanized area (see § 122.26(b)(15)). Today's rule does not require small MS4s to control runoff from construction sites more stringently or prescriptively than is required for construction site runoff outside urbanized areas. Therefore, today's rule imposes no substantively different onsite controls on runoff of storm water from construction sites in urbanized areas than from construction sites outside of urbanized areas.

One commenter recommended that the small MS4 construction site storm water runoff control program address all storm water runoff from construction sites, not just the runoff into the MS4. The commenter also believed that MS4s should provide clear, objective standards for all construction sites. EPA agrees. Because today's rule only regulates discharges from the MS4, the construction pollutant control measure only requires small MS4 operators to control runoff into its system. As a practical matter, however, EPA anticipates that MS4 operators will find that regulation of all construction site

runoff, whether they runoff into the MS4 or not, will prove to be the most simple and efficient program. The Agency may provide more specific criteria for construction site BMPs in the forthcoming rule being developed under CWA section 402(m). See section II.D.1 of today's rule.

One commenter stated that there is no need for penalties at the local level by the small MS4 because the CWA already imposes sufficient penalties to ensure compliance. EPA disagrees and believes that enforcement and compliance at the local level is both necessary and preferable. Examples of sanctions, some not available under the CWA, include non-monetary penalties, monetary fines, bonding requirements, and denial of future or other local permits.

One commenter recommended that EPA should not include the requirement to control pollutants other than sediment from construction sites in this measure. EPA disagrees with this comment. The requirement is to control waste that ''may cause adverse impacts on water quality.'' Such wastes may include discarded building materials, concrete truck washout, chemicals, pesticides, herbicides, litter, and sanitary waste. These wastes, when exposed to and mobilized by storm water, can contribute to water quality impairment.

The proposed rule required ''procedures for pre-construction review of site management plans.'' EPA requested comment on expanding this provision to require both review and approval of construction site storm water plans. Many commenters expressed the concern that review and approval of site plans is not only costly and time intensive, but may unnecessarily delay construction projects and unduly burden staff who administer the local program. In addition, some commenters expressed confusion whether EPA proposed pre-construction review for all site management plans or only higher priority sites. To address these comments, and be consistent with the permit application requirements for larger MS4s, EPA changed ''procedures for pre-construction review of site management plans'' to ''procedures for site plan review.'' Today's rule requires the small MS4 to develop procedures for site plan review so as to incorporate consideration of adverse potential water quality impacts. Procedures should include review of site erosion and sediment control plans, preferably before construction activity begins on a site. The objective is for the small MS4 operator and the construction site operator to address storm water runoff from construction activity early in the project design process so that potential consequences to the aquatic environment can be assessed and adverse water quality impacts can be minimized or eliminated.

One commenter requested that EPA delete the requirement for ''procedures for receipt and consideration of information submitted by the public'' because it went beyond existing storm water requirements. Another commenter stated that establishing a separate process to respond to public inquiries on a project is a burden to small communities, especially if the project has gone through an environmental review. One commenter requested clarification of this provision. EPA has retained this requirement in today's final rule to require some formality in the process for addressing public inquiries regarding storm water runoff from construction activities. EPA does not intend that small MS4s develop a separate, burdensome process to respond to every public inquiry. A small MS4 could, for example, simply log public complaints on existing storm water runoff problems from construction sites and pass that information on to local inspectors. The inspectors could then investigate complaints based on the severity of the violation and/or priority area.

One commenter believed that the proposed requirement of ''regular inspections during construction'' would require every construction project to be inspected more than once by the small MS4 during the term of a construction project. EPA has deleted the reference to ''regular inspections.'' Instead, the small MS4 will be required to ''develop procedures for site inspection and enforcement of control measures.'' Procedures could include steps to identify priority sites for inspection and enforcement based on the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.

In order to avoid duplication of small MS4 construction requirements with NPDES construction permit requirements, today's rule adds § 122.44(s) to recognize that the NPDES permitting authority can incorporate qualifying State, Tribal, or local erosion and sediment control requirements in NPDES permits for construction site discharges. For example, a construction site operator who complies with MS4 construction pollutant control programs that are referenced in the NPDES construction permit would satisfy the requirements of the NPDES permit. See section II.I.1.d for more information on incorporating qualifying programs by reference into NPDES construction permits. This provision has no impact on, or direct relation to, the small MS4 operator's responsibilities under the construction site storm water runoff control minimum measure. Conversely, under § 122.35(b), the permitting authority may recognize in the MS4's permit that another governmental entity, or the permitting authority itself, is responsible for implementing one or more of the minimum measures (including construction site storm water runoff control), and not include this measure in the small MS4's permit. In this case, the other governmental entity's program must satisfy all of the requirements of the omitted measure.

v. Post-Construction Storm Water Management in New Development and Redevelopment. The NURP study and more recent investigations indicate that prior planning and designing for the minimization of pollutants in storm water discharges is the most cost-effective approach to storm water quality management. Reducing pollutant concentrations in storm water after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from storm water discharges. If potential adverse water quality impacts are considered from the beginning stages of a project, new development and redevelopment provides more opportunities for water quality protection. For example, minimization of impervious areas, maintenance or restoration of natural infiltration, wetland protection, use of vegetated drainage ways, and use of riparian buffers have been shown to reduce pollutant loadings in storm water runoff from developed areas. EPA encourages operators of regulated small MS4s to identify specific problem areas within their jurisdictions and initiate innovative solutions and designs to focus attention on those areas through local planning.

In today's rule at § 122.34(b)(5), NPDES permits issued to an operator of a regulated small MS4 will require the operator to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. Specifically, the NPDES permit will require the operator of a regulated small MS4 to: (1) Develop and implement

strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community; (2) use an ordinance, or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; (3) ensure adequate long-term operation and maintenance of BMPs; and (4) ensure that controls are in place that would minimize water quality impacts. EPA intends the term ''redevelopment'' to refer to alterations of a property that change the ''footprint'' of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

EPA received comments requesting guidance and clarification of the rule requirements. The scope of the comments ranged from general requests for more details on how MS4 operators should accomplish the four requirements listed above, to specific requests for information regarding transfer of ownership for structural controls, as well as ongoing responsibility for operation and maintenance. By the term ''combination'' of BMPs, EPA intends a combination of structural and/or non-structural BMPs. For this requirement, the term ''combination'' is meant to emphasize that multiple BMPs should be considered and adopted for use in the community. A single BMP generally cannot significantly reduce pollutant loads because pollutants come from many sources within a community. The BMPs chosen should: (1) Be appropriate for the local community; (2) minimize water quality impacts; and (3) attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages small MS4 operators to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders. Each new development and redevelopment project should have a BMP component. If an approach is chosen that primarily focuses on regional or non-structural BMPs, however, then the BMPs may be located away from the actual development site (*e.g.,* a regional water quality pond).

Non-structural BMPs are preventative actions that involve management and source controls such as: (1) Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (2) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure; (3) education programs for developers and the public about project designs that minimize water quality impacts; and (4) other measures such as minimization of the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention. Detailed examples of non-structural BMPs follow.

Preserving open space may help to protect water quality as well as provide other benefits such as recharging groundwater supplies, detaining storm water, supporting wildlife and providing recreational opportunities. Although securing funding for open space acquisition may be difficult, various funding mechanisms have been used. New Jersey uses a portion of their State sales tax (voter approved for a ten year period) as a stable source of funding to finance the preservation of historic sites, open space and farmland. Colorado uses part of the proceeds from the State lottery to acquire and manage open space. Some local municipalities use a percentage of the local sales tax revenue to pay for open space acquisition (*e.g.,* Jefferson County, CO has had an open space program in place since 1977 funded by a 0.50 percent sales tax). Open space can be acquired in the form of: fee simple purchase; easements; development rights; purchase and sellback or leaseback arrangements; purchase options; private land trusts; impact fees; and land dedication requirements. Generally, fee simple purchases provide the highest level of development control and certainty of preservation, whereas the other forms of acquisition may provide less control, though they would also generally be less costly.

Cluster development, while allowing housing densities comparable to conventional zoning practice, concentrates housing units in a portion of the total site area which provides for greater open space, recreation, stream protection and storm water control. This type of development, by reducing lot sizes, can protect sensitive areas and result in less impervious surface, as well as reduce the cost for roads and other infrastructure.

Minimizing directly connected impervious areas (DCIAs) is a drainage strategy that seeks to reduce paved areas and directs storm water runoff to landscaped areas or to structural controls such as grass swales or buffer strips. This strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water. It can be made an integral part of drainage planning for any development (Urban Drainage and Flood Control District, Denver, CO. 1992. *Urban Storm Drainage Criteria Manual, Volume 3—Best Management Practices).* The Urban Drainage and Flood Control District manual describes three levels for minimizing DCIAs. At Level 1 all impervious surfaces are made to drain over grass-covered areas before reaching a storm water conveyance system. Level 2 adds to Level 1 and replaces street curb and gutter systems with low-velocity grass-lined swales and pervious street shoulders. In addition to Levels 1 and 2, Level 3 over-sizes swales and configures driveway and street crossing culverts to use grass-lined swales as elongated detention basins.

Structural BMPs include: (1) Storage practices such as wet ponds and extended-detention outlet structures; (2) filtration practices such as grassed swales, sand filters and filter strips; and (3) infiltration practices such as infiltration basins and infiltration trenches.

EPA recommends that small MS4 operators ensure the appropriate implementation of the structural BMPs by considering some or all of the following: (1) Pre-construction review of BMP designs; (2) inspections during construction to verify BMPs are built as designed; (3) post-construction inspection and maintenance of BMPs; and (4) sanctions to ensure compliance with design, construction or operation and maintenance (O&M) requirements of the program.

EPA cautions that certain infiltration systems such as dry wells, bored wells or tile drainage fields may be subject to Underground Injection Control (UIC) program requirements (see 40 CFR Part 144.12.). To find out more about these requirements, contact your state UIC Program, or call EPA's Safe Drinking Water Hotline at 1–800–426–4791.

In order to meet the third post-construction requirement (ensuring adequate long-term O&M of BMPs), EPA recommends that small MS4 operators evaluate various O&M management agreement options. The most common options are agreements between the

MS4 operator and another party such as post-development landowners (*e.g.,* homeowners' associations, office park owners, other government departments or entities), or regional authorities (*e.g.,* flood control districts, councils of government). These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which: allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes; and in some cases specify that the property owner submit periodic reports.

In providing the guidance above, EPA intends the requirements in today's rule to be consistent with the permit application requirements for large MS4s for post-construction controls for new development and redevelopment. MS4 operators have significant flexibility both to develop this measure as appropriate to address local concerns, and to apply new control technologies as they become available. Storm water pollution control technologies are constantly being improved. EPA recommends that MS4s be responsive to these changes, developments or improvements in control technologies. EPA will provide more detailed guidance addressing the responsibility for long-term O&M of storm water controls in guidance materials. The guidance will also provide information on appropriate planning considerations, structural controls and non-structural controls. EPA also intends to develop a broad menu of BMPs as guidance to ensure flexibility to accommodate local conditions.

EPA received comments suggesting that requirements for new development be treated separately from redevelopment in the rule. The comment stressed that new development on raw land presents fewer obstacles and more opportunities to incorporate elements for preventing water quality impacts, whereas redevelopment projects are constrained by space limitations and existing infrastructure. Another comment suggested allowing waivers from the redevelopment requirements if the redevelopment does not result in additional adverse water quality impacts, and where BMPs are not technologically or economically feasible. EPA recognizes that redevelopment projects may have more site constraints which narrow the range of appropriate BMPs. Today's rule provides small MS4 operators with the flexibility to develop requirements that may be different for redevelopment projects, and may also include allowances for alternate or off-site BMPs at certain redevelopment projects. Non-structural BMPs may be the most appropriate approach for smaller redevelopment projects.

EPA received comments requesting clarification on what is meant by ''pre-development'' conditions within the context of redevelopment. Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.

EPA received comments on the guidance language in the proposed rule and preamble which suggest that implementation of this measure should ''attempt to maintain pre-development runoff conditions'' and that ''post-development conditions should not be different than pre-development conditions in a way that adversely affects water quality.'' Many comments expressed concern that maintaining pre-development runoff conditions is impossible and cost-prohibitive, and objected to any reference to ''flow'' or increase in volume of runoff. Other comments support the inclusion of this language in the final rule. Similar references in today's rule relating to pre-development runoff conditions are intended as *recommendations* to *attempt* to maintain pre-development runoff conditions. With these recommendations, EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges following development unavoidably must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that municipalities consider these factors when developing their post-construction storm water management program.

Some comments said that the quoted phrases in the paragraph above are directives that imply federal land use control, which they argue is beyond the authority of the CWA. EPA recognizes that land use planning is within the authority of local governments.

EPA disagrees, however, with the implication that today's rule dictates any such land use decisions. The requirement for small MS4 operators to develop a program to address discharges resulting from new development and redevelopment is essentially a pollution prevention measure. The Rule provides the MS4 operator with flexibility to determine the appropriate BMPs to address local water quality concerns. EPA recognizes that these program goals may not be applied to every site, and expects that MS4s will develop an appropriate combination of BMPs to be applied on a site-by-site, regional or watershed basis.

vi. Pollution Prevention/Good Housekeeping for Municipal Operations. Under today's final rule, operators of MS4s must develop and implement an operation and maintenance program (''program'') that includes a training component and has the ultimate goal of preventing or reducing storm water from municipal operations (in addition to those that constitute storm water discharges associated with industrial activity). This measure's emphasis on proper O&M of MS4s and employee training, as opposed to requiring the MS4 to undertake major new activities, is meant to ensure that municipal activities are performed in the most efficient way to minimize contamination of storm water discharges.

The program must include government employee training that addresses prevention measures pertaining to municipal operations such as: parks, golf courses and open space maintenance; fleet maintenance; new construction or land disturbance; building oversight; planning; and storm water system maintenance. The program can use existing storm water pollution prevention training materials provided by the State, Tribe, EPA, or environmental, public interest, or trade organizations.

EPA also encourages operators of MS4s to consider the following in developing a program: (1) Implement maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; (2) implement controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas operated by the MS4; (3) adopt procedures for the proper disposal of waste removed from the separate storm sewer systems and areas listed above in (2), including dredge

spoil, accumulated sediments, floatables, and other debris; and (4) adopt procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices. Ultimately, the effective performance of the program measure depends on the proper maintenance of the BMPs, both structural and non-structural. Without proper maintenance, BMP performance declines significantly over time. Additionally, BMP neglect may produce health and safety threats, such as structural failure leading to flooding, undesirable animal and insect breeding, and odors. Maintenance of structural BMPs could include: replacing upper levels of gravel; dredging of detention ponds; and repairing of retention basin outlet structure integrity. Maintenance of non-structural BMPs could include updating educational materials periodically.

EPA emphasizes that programs should identify and incorporate existing storm water practices and training, as well as non-storm water practices or programs that have storm water pollution prevention benefits, as a means to avoid duplication of efforts and reduce overall costs. EPA recommends that MS4s incorporate these new obligations into their existing programs to the greatest extent feasible and urges States to evaluate MS4 programs with programmatic efficiency in mind. EPA designed this minimum control measure as a modified version of the permit application requirements for medium and large MS4s described at 40 CFR 122.26(d)(2)(iv), in order to provide more flexibility for these smaller MS4s. Today's requirements provide for a consistent approach to control pollutants from O&M among medium, large, and regulated small MS4s.

By properly implementing a program, operators of MS4s serve as a model for the rest of the regulated community. Furthermore, the establishment of a long-term program could result in cost savings by minimizing possible damage to the system from floatables and other debris and, consequently, reducing the need for repairs.

EPA received comments requesting clarification of what this measure requires. Certain municipalities expressed concern that the measure has the potential to impose significant costs associated with EPA's requirement that operators of MS4s consider implementing controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, and salt/sand storage locations and snow disposal areas operated by the municipality. EPA disagrees that a requirement to *consider* such controls will impose considerable costs.

One commenter objected to the preamble language from the proposal suggesting that EPA does not expect the MS4 to undertake new activity. While it remains the Agency's expectation that major new activity will not be required, the MEP process should drive MS4s to incorporate the measure's obligations into their existing programs to achieve the pollutant reductions to the maximum extent practicable.

Certain commenters requested a definition for ''municipal operations.'' EPA has revised the language to more clearly define municipal operations. Questions may remain concerning whether discharges from specific municipal activities constitute discharges associated with industrial activities (requiring NPDES permit authorization according to the requirements for industrial storm water that apply in that State) or from municipal operations (subject only to the controls developed in the MS4 control program). Even though there may be different substantive requirements that apply depending on the source of the discharge, EPA has modified the deadlines for permit coverage so that all the regulated municipally owned and operated sources become subject to permit requirements on the same date. The deadline is the same for permit coverage for this minimum measure as for permit coverage for municipally owned/operated industrial sources.

c. Application Requirements

An NPDES permit that authorizes the discharge from a regulated small MS4 may take the form of either an individual permit issued to one or more facilities as co-permittees or a general permit that applies to a group of MS4s. For reasons of administrative efficiency and to reduce the paperwork burden on permittees, EPA expects that most discharges from regulated small MS4s will be authorized under general permits. These NPDES general permits will provide specific instructions on how to obtain coverage, including application requirements. Typically, such application requirements will be satisfied by the submission of a Notice of Intent (NOI) to be covered by the general permit. In this section, EPA explains the small MS4 operator's application requirements for obtaining coverage under a NPDES permit for storm water.

i. Best Management Practices and Measurable Goals, Section 122.34(d) of today's rule requires the operator of a regulated small MS4 that wishes to implement a program under § 122.34 to identify and submit to the NPDES permitting authority a list of the best management practices (''BMPs'') that will be implemented for each minimum control measure in their storm water management program. They also must submit measurable goals for the development and implementation of each BMP. The BMPs and the measurable goals must be included either in an NOI to be covered under a general permit or in an individual permit application.

The operator's submission must identify, as appropriate, the months and years in which the operator will undertake actions required to implement each of the minimum control measures, including interim milestones and the frequency of periodic actions. The Agency revised references to ''starting and completing'' actions from the proposed rule because many actions will be repetitive or ongoing. The submission also must identify the person or persons responsible for implementing or coordinating the small MS4 storm water program. See § 122.34(d). The submitted BMPs and measurable goals become enforceable according to the terms of the permit. The first permit can allow the permittee up to five years to fully implement the storm water management program.

Several commenters opposed making the measurable goals enforceable permit conditions. Some suggested that a permittee should be able to change its goals so that BMPs that are not functioning as intended can be replaced. EPA agrees that a permittee should be free to switch its BMPs and corresponding goals to others that accomplish the minimum measure or measures. The permittee is required to implement BMPs that address the minimum measures in § 122.34(b). If the permittee determines that its original combination of BMPs are not adequate to achieve the objectives of the municipal program, the MS4 should revise its program to implement BMPs that are adequate and submit to the permitting authority a revised list of BMPs and measurable goals. EPA suggests that permits describe the process for revising BMPs and measurable goals, such as whether the permittee should follow the same procedures as were required for the submission of the original NOI and whether the permitting authority's approval is necessary prior to the permittee implementing the revised

BMPs. The permittee should indicate on its periodic report whether any BMPs and measurable goals have been revised since the last periodic report.

Some commenters expressed concern that making the measurable goals enforceable would encourage the development of easily attained goals and, conversely, discourage the setting of ambitious goals. Others noted that it is often difficult to determine the pollutant reduction that can be achieved by BMPs until several years after implementation. Much of the opposition to the enforceability of measurable goals appears to have been based on a mistaken understanding that measurable goals must consist of pollutant reduction targets to be achieved by the corresponding BMPs.

Today's rule requires the operator to submit either measurable goals that serve as BMP design objectives or goals that quantify the progress of implementation of the actions or performance of the permittee's BMPs. At a minimum, the required measurable goals should describe specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions. Although the operator may choose to do so, it is not required to submit goals that measure whether a BMP or combination of BMPs is effective in achieving a specific result in terms of storm water discharge quality. For example, a measurable goal might involve a commitment to inspect a given number of drainage areas of the collection system for illicit connections by a certain date. The measurable goal need not commit to achieving a specific amount of pollutant reduction through the elimination of illicit connections. Other measurable goals could include the date by which public education materials would be developed, a certain percentage of the community participating in a clean-up campaign, the development of a mechanism to address construction site runoff, and a reduction in the percentage of imperviousness associated with new development projects.

To reduce the risk that permittees will develop inadequate BMPs, EPA intends to develop a menu of BMPs to assist the operators of regulated small MS4s with the development of municipal programs. States may also develop a menu of BMPs. Today's rule provides that the measurable goals that demonstrate compliance with the minimum control measures in §§ 122.34 (b)(3) through (b)(6) do not have to be met if the State or EPA has not issued a menu of BMPs at the time the MS4 submits its NOI. Commenters pointed out that the proposed rule would have made the measurable goals unenforceable if the menu of BMPs was not available, but the proposal was silent as to the enforceability of the implementation of BMPs. Today's rule clarifies that the operators are not free to do nothing prior to the issuance of a menu of BMPs; they still must make a good faith effort to implement the BMPs designed to comply with each measure. See § 122.34(d)(2). The operators would not, however, be liable for failure to meet its measurable goals if a menu of BMPs was not available at the time they submit their NOI.

The proposed rule provision in § 123.35 stated that the ''[f]ailure to issue the menu of BMPs would not affect the legal status of the general permit.'' This concept is included in the final rule in § 122.34(d)(2)'s clarification that the permittee still must comply with other requirements of the general permit.

Unlike the proposed rule, today's rule does not require that each BMP in the menu developed by the State or EPA be regionally appropriate, cost-effective and field-tested. Various commenters criticized those criteria as unworkable, and one described them as ''ripe for ambiguity and abuse.'' Other commenters feared that the operators of regulated small MS4s would never be required to achieve their goals until menus were developed that were cost-effective, field-tested and appropriate for every conceivable subregion.

While some municipal commenters supported the requirement that a menu of BMPs be made available that included BMPs that had been determined to be regionally appropriate, field-tested and cost-effective, others raised concerns that they would be restricted to a limited menu. Some commenters supported such a detailed menu because they thought they would only be able to select BMPs that were on the menu, while others thought that it was the permitting authority's responsibility to develop BMPs narrowly tailored to their situation. In response, EPA notes that the operators will not be restricted to implementing only, or all of, the BMPs included on the menu. Since the menu does not require permittees to implement the BMPs included on the menu, it is also not necessary to apply the public notice and other procedures that some commenters thought should be applied to the development of the menu of BMPs.

The purpose of the BMP menu is to provide guidance to assist the operators of regulated small MS4s with the development and refinement of their local program, not to limit their options. Permittees may implement BMPs other than those on the menu unless a State restricts its permittees to specific BMPs. To the extent possible, EPA will develop a menu of BMPs that describes the appropriateness of BMPs to specific regions, whether the BMPs have been field-tested, and their approximate costs. The menu, however, is not intended to relieve permittees of the need to implement BMPs that are appropriate for their specific circumstances.

If there are no known relevant BMPs for a specific circumstance, a permittee has the option of developing and implementing pilot BMPs that may be better suited to their circumstances. Where BMPs are experimental, the permittee should consider committing to measurable goals that address its schedule for implementing its selected BMPs rather than goals of achieving specific pollutant reductions. If the BMPs implemented by the permittee do not achieve the desired objective, the permittee may be required to commit to different or revised BMPs.

As stated in § 123.35(g), EPA is committed to issuing a menu of BMPs prior to the deadline for the issuance of permits. This menu would serve as guidance for all operators of regulated small MS4s nationwide. After developing the initial menu of BMPs, EPA intends to periodically modify, update, and supplement the menu of BMPs based on the assessments of the MS4 storm water program and research. States may rely on EPA's menu of BMPs or issue their own. If States develop their own menus, they would constitute additional guidance (or perhaps requirements in some States) for the operators to follow. Several commenters were confused by the proposed rule language that stated that States must provide or issue a menu of BMPs and, if they fail to do so, EPA ''may'' do so. Some read this language as not requiring either EPA or the State to develop the menu. EPA had intended that it would develop a menu and that States could either provide the EPA developed menu or one developed by the State.

EPA has dropped the proposed language that States ''must'' develop the menu of BMPs. Some commenters thought that it was inappropriate to require States to issue guidance. A menu of BMPs issued by either EPA or a permittee's State will satisfy the condition in § 122.34(d) that a regulatory authority provide a menu of BMPs. A State could require its permittees to follow its menu of BMPs provided that they are adequate to implement § 122.34(b).

Several commenters raised concerns that operators of small MS4s could be

required to submit their BMPs and measurable goals before EPA or the State has issued a menu of BMPs. EPA has assumed primary responsibility for developing a menu of BMPs to minimize the possibility of this occurring. Should a general permit be issued before a menu of BMPs is available, the permit writer would have the option of delaying the date by which the identification of the BMPs and measurable goals must be submitted to the permitting authority until some time after a menu of BMPs is available.

Several municipal commenters raised concerns that they would begin to develop a program only to be later told by the permitting authority or challenged in a citizen suit that their BMPs were inadequate. They expressed a need for certainty regarding what their permit required. Several commenters suggested that EPA require permitting authorities to approve or disapprove the submitted BMPs and measurable goals. EPA disagrees that formal approval or disapproval by the permitting authority is needed.

EPA acknowledges that the lack of a formal approval process does place on the permittee some responsibility for designing and determining the adequacy of its BMPs. Once the permittee has submitted its BMPs to the permitting authority as part of its NOI, it must implement them in order to achieve the corresponding measurable goals. EPA does not believe that this results in the uncertainty to the extent expressed by some commenters or unduly expose the permittee to the risk of citizen suit. If the permit is very specific regarding what the permittee must do, then the uncertainty is eliminated. If the permit is less prescriptive, the permittee has greater latitude in determining for itself what constitutes an adequate program. A citizen suit could impose liability on the permittee only if the program that it develops and implements clearly does not satisfy the requirements of the general permit. EPA believes today's approach strikes a balance between the competing goals of providing certainty as to what constitutes an adequate program and providing flexibility to the permittees.

Commenters were divided on whether five years was a reasonable and expeditious schedule for a MS4 to implement its program. Some thought that it was an appropriate amount of time to allow for the development and implementation of adequate programs. One questioned whether the permittee had to be implementing all of its program within that time, and suggested that there may be cases where a permitting authority would need flexibility to allow more time. One commenter suggested that five years is too long and would amount to a relaxation of implementation in their area. EPA believes it will take considerable time to complete the tasks of initially developing a program, commencing to implement it, and achieving results. EPA notes, however, that full implementation of an appropriate program must occur as expeditiously as possible, and not later than five years.

EPA solicited comment on how an NOI form might best be formatted to allow for measurable goal information (*e.g.,* through the use of check boxes or narrative descriptions) while taking into account the Agency's intention to facilitate computer tracking. All commenters supported the development of a checklist NOI, but most noted that there would need to be room for additional information to cover unusual situations. One noted that, while a summary of measurable goals might be reduced to one sheet, attachments that more fully described the program and the planned BMPs would be necessary. EPA agrees that in most cases a ''checklist'' will not be able to capture the information on what BMPs a permittee intends to implement and its measurable goals for their implementation. EPA will continue to consider whether to develop a model NOI form and make it available for permitting authorities that choose to use it. What will be required on an MS4's NOI, however, is more extensive than what is usually required on an NOI, so a ''form'' NOI for MS4s may be impractical.

ii. Individual Permit Application for a § 122.34(b) program. In some cases, an operator of a regulated small MS4s may seek coverage under an individual NPDES permit, either because it chooses to do so or because the NPDES permitting authority has not made the general permit option available to that source. For small MS4s that are to implement a § 122.34(b) program in today's rule, EPA is promulgating simplified individual permit application requirements at § 122.33(b)(2)(i). Under the simplified individual permit application requirements, the operator submits an application to the NPDES permitting authority that includes the information required under § 122.21(f) and an estimate of square mileage served by the small MS4. They are also required to supply the BMP and measurable goal information required under § 122.34(d). Consistent with CWA section 308 and analogous State law, the permitting authority could request any additional information to gain a better understanding of the system and the areas draining into the system.

Commenters suggested that the requirements of § 122.21(f) are not necessarily applicable to a small MS4. One suggested that it was not appropriate to require the following information: a description of the activities conducted by the applicant which require it to obtain an NPDES permit; the name, mailing address, and location of the facility; and up to four Standard Industrial Classification (''SIC'') codes which best reflect the principal products or services provided by the facility. In response, EPA notes that the requirements in § 122.21(f) are generic application requirements applicable to NPDES applicants. With the exception of the SIC code requirement, EPA believes that they are applicable to MS4s. In the SIC code portion of the standard application, the applicant may simply put ''not applicable.''

One commenter asked that EPA clarify whether § 122.21(f)(5)'s requirement to indicate ''whether the facility is located on Indian lands,'' referred to tribal lands, Indian country, or Indian reservations. For some local governments this is a complex issue with no easy ''yes'' or ''no'' answer. See the discussion in the Section II.F in the proposal to today's rule regarding what tribal lands are subject to the federal trust responsibility for purposes of the NPDES program.

One commenter suggested that the application should not have to list the permits and approvals required under § 122.21(f)(6). EPA notes that the applicant must only list the environmental permits that the applicant has received that cover the small MS4. The applicant is not required to list permits for other operations conducted by the small MS4 operator (*e.g.,* for an operation of an airport or landfill). Again, in most cases the applicant could respond ''not applicable'' to this portion of the application.

One commenter suggested that the topographic map requirement of § 122.21(f)(7) was completely different from, and significantly more onerous than, the mapping requirement outlined in the proposed rule at § 122.34(b)(3)(i). EPA agrees and has modified the final rule to clarify that a map that satisfies the requirements of § 122.34(b)(3)(i) also satisfies the map requirements for MS4 applicants seeking individual permits under § 122.33(b)(2)(i).

EPA is adding a new paragraph to § 122.44(k) to clarify that requirements to implement BMPs developed pursuant to CWA 402(p) are appropriate permit

conditions. While such conditions could be included under the existing provision in § 122.44(k)(3) for ''practices reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA,'' EPA believes it is clearer to specifically list in § 122.44(k) BMPs that implement storm water programs in light of the frequency with which they are used as effluent limitations.

iii. Alternative Permit Options/Tenth Amendment. As an alternative to implementing a program that addresses each of the six minimum measures according to the requirements of § 122.34(b), today's rule provides the operators of regulated small MS4s with the option of applying for an individual permit under existing § 122.26(d). *See* § 122.33(b)(2)(ii). If a system operator does not want to be held accountable for implementation of each of the minimum measures, an individual permit option under § 122.33(b)(2)(ii) remains available. (As explained in the next section of this preamble, § 122.35(b) also provides an opportunity for relief from permit obligations for some of the minimum measures, but that relief exists within the framework of the minimum measures.)

EPA originally drafted the individual permit application requirements in § 122.26(d) to apply to medium and large MS4s. Today's rule abbreviates the individual permit application requirements for small MS4s. Although EPA believes that the storm water management program requirements of § 122.34, including the minimum measures, provide the most appropriate means to control pollutants from most small MS4s, the Agency does recognize that the operators of some small MS4s may prefer more individualized permit requirements. Among other possible reasons, an operator may seek to avoid having to ''regulate'' third parties discharging into the separate storm sewer system. Alternatively, an operator may determine that structural controls, such as constructed wetlands, are more appropriate or effective to address the discharges that would otherwise be addressed under the construction and/or development/redevelopment measures.

Some MS4s commenters alleged that an absolute requirement to implement the minimum measures violates the Tenth Amendment to the U.S. Constitution. While EPA disagrees that requiring MS4s to implement the minimum measures would violate the Constitution, today's rule does provide small MS4s with the option of developing more individualized measures to reduce the pollutants and pollution associated with urban storm water that will be regulated under today's rule.

Some commenters specifically objected that § 122.34's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties. The minimum measures include requirements for small MS4 operators to prohibit certain non-storm water discharges, control storm water discharges from construction greater than one acre, and take other actions to control third party sources of storm water discharges into their MS4s. Commenters also argued that it was inappropriate for EPA to require local governments to enact ordinances that will consume local revenues and put local governments in the position of bearing the political responsibility for implementing the program. One commenter argued that EPA was prohibited from conditioning the issuance of an NPDES permit upon the small MS4 operators waiving their constitutional right to be free from such requirements to regulate third parties. The Agency replies to each comment in turn.

Because the rule does rely on local governments—who operate municipal separate storm sewer systems—to regulate discharges from third parties into storm sewers, EPA acknowledges that the rule implicates the Tenth Amendment and constitutional principles of federalism. EPA disagrees, however, that today's rule is inconsistent with federalism principles. [As political subdivisions of States, municipalities enjoy the same protections as States under the Tenth Amendment.]

The Supreme Court has interpreted the Tenth Amendment to preclude federal actions that compel States or their political subdivisions to enact or administer a federal regulatory program. *See New York* v. *United States,* 505 U.S. 144 (1992); *Printz* v. *United States,* 117 S.Ct. 2365 (1997). The *Printz* case, however, did acknowledge that the restriction does not apply when federal requirements of general applicability—requirements that regulate all parties engaging in a particular activity—do not excessively interfere with the functioning of State governments when those requirements are applied to States (or their political subdivisions). *See Printz,* 117 S.Ct. at 2383.

Today's rule imposes a federal requirement of general applicability, namely, the requirement to obtain and comply with an NPDES permit, on municipalities that operate a municipal separate storm sewer system. By virtue of this rule, the permit will require the municipality/storm sewer operator to develop a storm water control program. The rule specifies the components of the control program, which are primarily ''management'-type controls, for example, municipal regulation of third party storm water discharges associated with construction, as well as development and redevelopment, when those discharges would enter the municipal system.

Unlike the circumstances reviewed in the *New York* and *Printz* cases, today's rule merely applies a generally applicable requirement (the CWA permit requirement) to municipal point sources. The CWA establishes a generally applicable requirement to obtain an NPDES permit to authorize point source discharge to waters of the United States. Because municipalities own and operate separate storm sewers, including storm sewers into which third parties may discharge pollutants, NPDES permits may require municipalities to control the discharge of pollutants into the storm sewers in the first instance. Because NPDES permits can impose end-of-pipe numeric effluent limits, narrative effluent limits in the form of ''management'' program requirements are also within the scope of Clean Water Act authority. As noted above, however, EPA believes that such narrative limitations are the most appropriate form of effluent limitation for these types of permits. For municipal separate storm sewer permits, CWA section 402(p)(3)(B)(iii) specifically authorizes ''controls to reduce pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.''

The Agency did not design the minimum measures in § 122.34 to ''commandeer'' state regulatory mechanisms, but rather to reduce pollutant discharges from small MS4s. The permit requirement in CWA section 402 is a requirement of general applicability. The operator of a small MS4 that does not prohibit and/or control discharges into its system essentially accepts ''title'' for those discharges. At a minimum, by providing free and open access to the MS4s that convey discharges to the waters of the United States, the municipal storm sewer system enables water quality impairment by third parties. Section 122.34 requires the operator of a regulated small MS4 to control a third

party only to the extent that the MS4 collection system receives pollutants from that third party and discharges it to the waters of the United States. The operators of regulated small MS4s cannot passively receive and discharge pollutants from third parties. The Agency concedes that administration of a municipal program will consume limited local revenues for implementation; but those consequences stem from the municipal operator's identity as a permitted sewer system operator. The Tenth Amendment does not create a blanket municipal immunity from generally applicable requirements. Development of a program based on the minimum measures and implementation of that program should not ''excessively interfere'' with the functioning of municipal government, especially given the ''practicability'' threshold under CWA section 402(p)(3)(B)(iii).

As noted above, today's rule also allows regulated small MS4s to opt out of the minimum measures approach. The individual permit option provides for greater flexibility in program implementation and also responds to the comment about requiring a municipal permit applicant's waiver of any arguable constitutional rights. The individual permit option responds to questions about the rule's alleged unconstitutionality by more specifically focusing on the pollutants discharged from municipal point sources. Today's rule gives operators of MS4s the option to seek an individual permit that varies from the minimum measures/management approach that is otherwise specified in today's rule. Even if the minimum measures approach was constitutionally suspect, a requirement that standing alone would violate constitutional principles of federalism does not raise concerns if the entity subject to the requirement may opt for an alternative action that does not raise a federalism issue.

For municipal system operators who seek to avoid third party regulation according to all or some of the minimum measures, § 122.26(d) requires the operator to submit a narrative description of its storm water sewer system and any existing storm water control program, as well as the monitoring data to enable the permit writer to develop appropriate permit conditions. The permit writer can then develop permit conditions and limitations that vary from the six minimum measures prescribed in today's rule. The information will enable the permit writer to develop an NPDES permit that will result in pollutant reduction to the maximum extent practicable. *See NRDC* v. *EPA,* 966 F.2d at 1308, n17. If determined appropriate under CWA section 402(p)(3)(B)(iii), for example BMPs to meet water quality standards, the permit could also incorporate any more stringent or prescriptive effluent limits based on the individual permit application information.

For small MS4 operators seeking an individual permit, both Part 1 and Part 2 of the application requirements in § 122.26(d)(1) and (2) are required to be submitted within 3 years and 90 days of the date of publication of this **Federal Register** notice. Some of the information required in Part 1 will necessarily have to be developed by the permit applicant prior to the development of Part 2 of the application. The permit applicant should coordinate with its permitting authority regarding the timing of review of the information.

The operators of regulated small MS4s that apply under § 122.26(d) may apply to implement certain of the § 122.34(b) minimum control measures, and thereby focus the necessary evaluation for additional limitations on alternative controls to the § 122.34(b) measures that the small MS4 will not implement. The permit writer may determine ''equivalency'' for some or all of the minimum measures by developing a rough estimate of the pollutant reduction that would be achieved if the MS4 implemented the § 122.34 minimum measure and to incorporate that pollutant reduction estimate in the small MS4's individual permit as an effluent limitation. The Agency recognizes that, based on current information, any such estimates will probably have a wide range. Anticipation of this wide range is one of the reasons EPA believes MS4 operators need flexibility in determining the mix of BMPs (under the minimum measures) to achieve water quality objectives. Therefore, for example, if a system operator seeks to employ an alternative that involves structural controls, wide ranges will probably be associated with gross pollutant reduction estimates. Permit writers will undoubtedly develop other ways to ensure that permit limits ensure reduction of pollutants to the maximum extent practicable.

Small MS4 operators that pursue this individual permit option do not need to submit details about their future program requirements (*e.g.*, the MS4's future plans to obtain legal authority required by §§ 122.26(d)(1)(ii) and (d)(2)). A small MS4 operator might elect to supply such information if it intends for the permit writer to take those plans into account when developing the small MS4's permit conditions.

Several operators of small MS4s commented that they currently lacked the authority they would need to implement one or more of the minimum measures in § 122.34(b). Today's rule recognizes that the operators of some small MS4s might not have the authority under State law to implement one or more of the measures using, for example, an ordinance or other regulatory mechanism. To address these situations, each minimum measure in § 122.34(b) that would require the small MS4 operator to develop an ordinance or other regulatory mechanism states that the operator is only required to implement that requirement to ''the extent allowable under State, Tribal or local law.'' See § 122.34(b)(3)(ii) (illicit discharge elimination), § 122.34(b)(4)(ii) (construction runoff control) and § 122.34(b)(5)(ii) (post-construction storm water management). This regulatory language does not mean that a operator of a small MS4 with ordinance making authority can simply fail to pass an ordinance necessary for a § 122.34(b) program. The reference to ''the extent allowable under * * * local law'' refers to the local laws of *other* political subdivisions to which the MS4 operator is subject. Rather, a small MS4 operator that seeks to implement a program under section § 122.34(b) may omit a requirement to develop an ordinance or other regulatory mechanism only to the extent its municipal charter, State constitution or other legal authority prevents the operator from exercising the necessary authority. Where the operator cannot obtain the authority to implement any activity that is only required to ''the extent allowable under State, Tribal or local law,'' the operator may satisfy today's rule by administering the remaining § 122.34(b) requirements.

Finally, although today's rule provides operators of small MS4s with an option of applying for a permit under § 122.26(d), States authorized to administer the NPDES program are not required to provide this option. NPDES-authorized States could require all regulated small MS4s to be permitted under the minimum measures management approach in § 122.34 as a matter of State law. Such an approach would be deemed to be equally or more stringent than what is required by today's rule. *See* 40 CFR 123.2(i). The federalism concerns discussed above do not apply to requirements imposed by a State on its political subdivisions.

iv. Satisfaction of Minimum Measure Obligations by Another Entity. An operator of a regulated small MS4 may

satisfy the requirement to implement one or more of the six minimum measures in § 122.34(b) by having a third party implement the measure or measures. Today's rule provides a variety of means for small MS4 operators to share responsibility for different aspects of their storm water management program. The means by which the operators of various MS4s share responsibility may affect who is ultimately responsible for performance of the minimum measure and who files the periodic reports on the implementation of the minimum measure. Section 122.35 addresses these issues. The rule describes two different variants on third party implementation with different consequences if the third party fails to implement the measure.

If the permit covering the discharge from a regulated small MS4 identifies the operator as the entity responsible for a particular minimum control measure, then the operator-permittee remains responsible for the implementation of that measure even if another entity has agreed to implement the control measure. Section 122.35(a). Another party may satisfy the operator-permittee's responsibility by implementing the minimum control measure in a manner at least as stringent or prescriptive as the corresponding NPDES permit requirement. If the third party fails to do so, the operator-permittee remains responsible for its performance. The operator of the MS4 should consider entering into an agreement with the third party that acknowledges the responsibility to implement the minimum measure. The operator-permittee's NOI and its annual § 122.34(f)(3) reports submitted to the NPDES permitting authority must identify the third party that is satisfying one or more of the permit obligations. This requirement ensures that the permitting authority is aware which entity is supposed to implement which minimum measures.

If, on the other hand, the regulated small MS4's permit recognizes that an NPDES permittee other than the operator-permittee is responsible for a particular minimum control measure, then the operator-permittee is relieved from the responsibility for implementing that measure. The operator-permittee is also relieved from the responsibility for implementing any measure that the operator's permit indicates will be performed by the NPDES permitting authority. Section 122.35(b). The MS4 operator-permittee would be responsible for implementing the remaining minimum measures.

Today's final rule differs from the proposed version of § 122.35(b), which stated that, even if the third party's responsibility is recognized in the permit, the MS4 operator-permittee remained responsible for performance if the third party failed to perform the measure consistent with § 122.34(b). Under today's rule, the operator-permittee is relieved from responsibility for performance of a measure if the third party is an NPDES permittee whose permit makes it responsible for performance of the measure (including, for example, a State agency other than the State agency that issues NPDES permits) or if the third party is the NPDES permitting authority itself. Because the permitting authority is acknowledging the third party's responsibility in the permit, commenters thought that the MS4 operator-permittee should not be responsible for ensuring that the other entity is implementing the control measure properly. EPA agrees that the operator-permittee should not be conditionally responsible when the requirements are enforceable against some other NPDES permittee. If the third party fails to perform the minimum measure, the requirements will be enforceable against the third party. In addition, the NPDES permitting authority could reopen the operator-permittee's permit under § 122.62 and modify the permit to make the operator responsible for implementing the measure. A new paragraph has been added to § 122.62 to clarify that the permit may be reopened in such circumstances.

Today's rule also provides that the operator-permittee is not conditionally responsible where it is the State NPDES permitting authority itself that fails to implement the measure. The permitting authority does not need to issue a permit to itself (i.e., to the same State agency that issues the permit) for the sole purpose of relieving the small MS4 from responsibility in the event the State agency does not satisfy its obligation to implement a measure. EPA does not believe that the small MS4 should be responsible in the situation where the NPDES permit issued to the small MS4 operator recognizes that the State agency that issues the permit is responsible for implementing a measure. If the State does fail to implement the measure, the State agency could be held accountable for its commitment in the permit to implement the measure. Where the State does not fulfill its responsibility to implement a measure, a citizen also could petition for withdrawal of the State's NPDES program or it could petition to have the MS4's permit reopened to require the MS4 operator to implement the measure.

EPA notes that not every State program that addresses erosion and sediment control from construction sites will be adequate to satisfy the requirement that each regulated small MS4 have a program to the extent required by § 122.34(b)(4). For example, although all NPDES States are required to issue NPDES permits for construction activity that disturbs greater than one acre, the State's NPDES permit program will not necessarily be extensive enough to satisfy a regulated small MS4's obligation under § 122.34(b)(4). NPDES States will not necessarily be implementing all of the required elements of that minimum measure, such as procedures for site plan review in each jurisdiction required to develop a program and procedures for receipt and consideration of information submitted by the public on individual construction sites. In order for a State erosion and sediment control program to satisfy a small MS4 operator's obligation to implement § 122.34(b)(4), the State program would have to include all of the elements of that minimum measure.

Where the operator-permittee is itself performing one or more of the minimum measures, the operator-permittee remains responsible for all of the reporting requirements under § 122.34(f)(3). The operator-permittee's reports should identify each entity that is performing the control measures within the geographic jurisdiction of the regulated small MS4. If the other entity also operates a regulated MS4 and files reports on the progress of implementation of the measures within the geographic jurisdiction of the MS4, then the operator-permittee need not include that same information in its own reports.

If the other entity operates a regulated MS4 and is performing all of the minimum measures for the permittee, the permittee is not required to file the reports required by § 122.34(f)(3). This relief from reporting is specified in § 122.35(a).

Section 122.35 addresses the concerns of some commenters who sought relief for governmental facilities that are classified as small MS4s under today's rule. These facilities frequently discharge storm water through another regulated MS4 and could be regulated by that MS4's program. For example, a State owned office complex that operates its storm sewer system in an urbanized area will be regulated as an MS4 under today's rule even though its system may be subject to the storm water controls of the municipality in

which it is located. Today's rule specifically revised the definition of MS4 to recognize that different levels of government often operate MS4s and that each such separate entity (including the federal government) should be responsible for its discharges. If both MS4s agree, the downstream MS4 can develop a storm water management program that regulates the discharge from both MS4s. The upstream small MS4 operator still must submit an NOI that identifies the entity on which the upstream small MS4 operator is relying to satisfy its permit obligations. No reports are required from the upstream small MS4 operator, but the upstream operator must remain in compliance with the downstream MS4 operator's storm water management program. This option allows small MS4s to work together to develop one storm water management program that satisfies the permit obligations of both. If they cannot agree, the upstream small MS4 operator must develop its own program.

As mentioned previously, comments from federal facilities and State organizations that operate MS4s requested that their permit requirements differ from those of MS4s that are political subdivisions of States (cities, towns, counties, etc.). EPA acknowledges that there are differences; e.g., many federal and State facilities do not serve a resident population and thus might require a different approach to public education. EPA believes, however, that MS4s owned by State and federal governments can develop storm water management plans that address the minimum measures. Federal and State owned small MS4s may choose to work with adjacent municipally owned MS4s to develop a unified plan that addresses all of the required measures within the jurisdiction of all of the contiguous MS4s. The options in § 122.35 minimize the burden on small MS4s that are covered by another MS4's program.

One commenter recommended that if one MS4 discharges into a second MS4, the operator of the upstream MS4 should have to provide a copy of its NOI or permit application to the operator of the receiving MS4. EPA did not adopt this recommendation because the NOI and permit application will be publicly available; but EPA does recommend that NPDES permitting authorities consider it as a possible permit requirement. The commenter also suggested that monitoring data should be collected by the upstream MS4 and provided to the downstream MS4. EPA is not adopting such a uniform monitoring requirement because EPA believes it is more appropriate to let the MS4 operators work out the need for such data. If necessary, the downstream MS4s might want to make such data a condition to allowing the upstream MS4 to connect to its system.

v. Joint Permit Programs. Many commenters supported allowing the operators of small MS4s to apply as co-permittees so they each would not have to develop their own storm water management program. Today's rule specifically allows regulated small MS4s to join with either other small MS4s regulated under § 122.34(d) or with medium and large MS4s regulated under § 122.26(d).

As is discussed in the previous section, regulated small MS4s may indicate in their NOIs that another entity is performing one or more of its required minimum control measures. Today's rule under § 122.33(b)(1) also specifically allows the operators of regulated small MS4s to jointly submit an NOI. The joint NOI must clearly indicate which entity is required to implement which control measure in each geographic jurisdiction within the service area of the entire small MS4. The operator of each regulated small MS4 remains responsible for the implementation of each minimum measure for its MS4 (unless, as is discussed in the previous section above, the permit recognizes that another entity is responsible for completing the measure.) The joint NOI, therefore, is legally equivalent to each entity submitting its own NOI. EPA is, however, revising the rule language to specifically authorize the joint submission of NOIs in response to comments that suggested that such explicit authorization might encourage programs to be coordinated on a watershed basis.

Section 122.33(b)(2)(iii) authorizes regulated small MS4s to jointly apply for an individual permit to implement today's rule, where allowed by an NPDES permitting authority. The permit application should contain sufficient information to allow the permitting authority to allocate responsibility among the parties under one of the two permitting options in §§ 122.33(b)(2)(i) and (ii).

Section 122.33(b)(3) of today's rule also allows an operator of a regulated small MS4 to join as a co-permittee in an existing NPDES permit issued to an adjoining medium or large MS4 or source designated under the existing storm water program. This co-permittee option applies only with the agreement of all co-permittees. Under this co-permittee arrangement, the operator of the regulated small MS4 must comply with the terms and conditions of the applicable permit rather than the permit condition requirements of § 122.34 of today's rule. The regulated small MS4 that wishes to be a co-permittee must comply with the applicable requirements of § 122.26(d), but would not be required to fulfill all the permit application requirements applicable to medium and large MS4s. Specifically, the regulated small MS4 is not required to comply with the application requirements of § 122.26(d)(1)(iii) (Part 1 source identification), § 122.26 (d)(1)(iv) (Part 1 discharge characterization), and § 122.26(d)(2)(iii) (Part 2 discharge characterization data). Furthermore, the regulated small MS4 operator could satisfy the requirements in § 122.26(d)(1)(v) (Part 1 management programs) and § 122.26(d)(2)(iv) (Part 2 proposed management program) by referring to the adjoining MS4 operator's existing plan. An operator pursuing this option must describe in the permit modification request how the adjoining MS4's storm water program addresses or needs to be supplemented in order to adequately address discharges from the MS4. The request must also explain the role of the small MS4 operator in coordinating local storm water activities and describe the resources available to accomplish the storm water management plan.

EPA sought comments regarding the appropriateness of the application requirements in these subsections of § 122.26(d). One commenter stated that newly regulated smaller MS4s should not be required to meet the existing regulations' Part II application requirements under § 122.26(d) regarding the control of storm water discharges from industrial activity. EPA disagrees. The smaller MS4 operators designated for regulation in today's rule may satisfy this requirement by referencing the legal authority of the already regulated MS4 program to the extent the newly regulated MS4 will rely on such legal authority to satisfy its permit requirements. If the smaller MS4 operator plans to rely on its own legal authorities, it must identify it in the application. If the smaller MS4 operator does not elect to use its own legal authority, they may file an individual permit application for an alternate program under § 122.33(b)(2)(ii).

The explanatory language in § 122.33(b)(3) recommends that the smaller MS4s designated under today's rule identify how an existing plan ''would need to be supplemented in order to adequately address your discharges.'' One commenter suggested that this must be regulatory language and not guidance. EPA disagrees that this needs to be mandatory language.

Since many of the smaller MS4s designated today are ''donut holes'' within the geographic jurisdiction of an already regulated MS4, the larger MS4's program generally will be adequate to address the newly regulated MS4's discharges. The small MS4 applicant should consider the adequacy of the existing MS4's program to address the smaller MS4's water quality needs, but EPA is not imposing specific requirements. Where circumstances suggest that the existing program is inadequate with respect to the newly designated MS4 and the applicant does not address the issue, the NPDES permitting authority must require that the existing program be supplemented.

Commenters recommended that the application deadline for smaller MS4s designated today be extended so that existing regulated MS4s would not have to modify their permit in the middle of their permit term, provided that permit renewal would occur within a reasonable time (12 to 18 months) of the deadline. In response, EPA notes that today's rule allows operators of newly designated small MS4s up to three years and 90 days from the promulgation of today's rule to submit an application to be covered under the permit issued to an already regulated MS4. The permitting authority has a reasonable time after receipt of the application to modify the existing permit to include the newly designated source. If an existing MS4's permit is up for renewal in the near future, the operator of a newly designated small MS4 may take that into account when timing its application and the NPDES permitting authority may take that into account when processing the application.

Another commenter suggested that the rule should include a provision to allow permit application requirements for smaller MS4s designated today to be determined by the permitting authority to account for the particular needs/wants of an already regulated MS4 operator. EPA does not believe that the regulations should specifically require this approach. When negotiating whether to include a newly designated MS4 in its program, the already regulated MS4 operator may require the newly designated MS4's operator to provide any information that is necessary.

The co-permitting approach allows small MS4s to take advantage of existing programs to ease the burden of creating their own programs. The operators of regulated small MS4s, however, may find it simpler to apply for a program under today's rule, and to identify the medium or large MS4 operator that is implementing portions of its § 122.34(b) minimum measures.

d. Evaluation and Assessment

Under today's rule, operators of regulated small MS4s are required to evaluate the appropriateness of their identified BMPs and progress toward achieving their identified measurable goals. The purpose of this evaluation is to determine whether or not the MS4 is meeting the requirements of the minimum control measures. The NPDES permitting authority is responsible for determining whether and what types of monitoring needs to be conducted and may require monitoring in accordance with State/Tribe monitoring plans appropriate to the watershed. EPA does not encourage requirements for ''end-of-pipe'' monitoring for regulated small MS4s. Rather, EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs. Permitting authorities should consider a combination of physical, chemical, and biological monitoring or the use of other environmental indicators such as exceedance frequencies of water quality standards, impacted dry weather flows, and increased flooding frequency. (Claytor, R. and W. Brown. 1996. *Environmental Indicators to Assess Storm Water Control Programs and Practices.* Center for Watershed Protection, Silver Spring, MD.) Section II.L., Water Quality Issues, discusses monitoring in greater detail.

As recommended by the Intergovernmental Task Force on Monitoring Water Quality (ITFM), the NPDES permitting authority is encouraged to consider the following watershed objectives in determining monitoring requirements: (1) To characterize water quality and ecosystem health in a watershed over time, (2) to determine causes of existing and future water quality and ecosystem health problems in a watershed and develop a watershed management program, (3) to assess progress of watershed management program or effectiveness of pollution prevention and control practices, and (4) to support documentation of compliance with permit conditions and/or water quality standards. With these objectives in mind, the Agency encourages participation in group monitoring programs that can take advantage of existing monitoring programs undertaken by a variety of governmental and nongovernental entities. Many States may already have a monitoring program in effect on a watershed basis. The ITFM report is included in the docket for today's rule (Intergovernmental Task Force on Monitoring Water Quality. 1995. *The Strategy for Improving Water-Quality Monitoring in the United States: Final Report of the Intergovernmental Task Force on Monitoring Water Quality.* Copies can be obtained from: U.S. Geological Survey, Reston, VA.).

EPA expects that many types of entities will have a role in supporting group monitoring activities—including federal agencies, State agencies, the public, and various classes or categories of point source dischargers. Some regulated small MS4s might be required to contribute to such monitoring efforts. EPA expects, however, that their participation in monitoring activities will be relatively limited. For purposes of today's rule, EPA recommends that, in general, NPDES permits for small MS4s should not require the conduct of any additional monitoring beyond monitoring that the small MS4 may be already performing. In the second and subsequent permit terms, EPA expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s. EPA expects that such monitoring will only be done in identified locations for relatively few pollutants of concern. EPA does not anticipate ''end-of-pipe'' monitoring requirements for regulated small MS4s.

EPA received a wide range of comments on this section of the rule. Some commenters believe that EPA should require monitoring; others want a strong statement that the newly regulated small MS4s should not be required to monitor. Many commenters raised questions about exactly what EPA expects MS4s to do to evaluate and assess their BMPs. EPA has intentionally written today's rule to provide flexibility to both MS4s and permitting authorities regarding appropriate evaluation and assessment. Permitting authorities can specify monitoring or other means of evaluation when writing permits. If additional requirements are not specified, MS4s can decide what they believe is the most appropriate way to evaluate their storm water management program. As mentioned above, EPA expects that the necessity for monitoring and its extent may change from permit cycle to permit cycle. This is another reason for making the evaluation and assessment rule requirements very flexible.

i. Recordkeeping. The NPDES permitting authority is required to include at least the minimum appropriate recordkeeping conditions in each permit. Additionally, the NPDES permitting authority can specify that permittees develop, maintain, and/or

submit other records to determine compliance with permit conditions. The MS4 operator must keep these records for at least 3 years but is not required to submit records to the NPDES permitting authority unless specifically directed to do so. The MS4 operator must make the records, including the storm water management program, available to the public at reasonable times during regular business hours (see 40 CFR 122.7 for confidentiality provision). The MS4 operator is also able to assess a reasonable charge for copying and to establish advance notice requirements for members of the public.

EPA received a comment that questioned EPA's authority to require MS4s to make their records available to the public. EPA disagrees with the commenter and believes that the CWA does give EPA the authority to require that MS4 records be available. It is also more practical for the public to request records directly from the MS4 than to request them from EPA who would then make the request to the MS4. Based on comments, EPA revised the proposed rule so as not to limit the time for advance notice requirements to 2 business days.

ii. Reporting. Under today's rule, the operator of a regulated small MS4 is required to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the MS4 operator must submit reports in years 2 and 4 unless the NPDES permitting authority requires more frequent reports. EPA received several comments supporting this timing for report submittal. Other commenters suggested that annual reports during the first permit cycle are too burdensome and not necessary. EPA believes that annual reports are needed during the first 5-year permit term to help permitting authorities track and assess the development of MS4 programs, which should be established by the end of the initial term. Information contained in these reports can also be used to respond to public inquiries.

The report must include (1) the status of compliance with permit conditions, an assessment of the appropriateness of identified BMPs and progress toward achieving measurable goals for each of the minimum control measures, (2) results of information collected and analyzed, including monitoring data, if any, during the reporting period, (3) a summary of what storm water activities the permittee plans to undertake during the next reporting cycle, and (4) a change in any identified measurable goal(s) that apply to the program elements.

The NPDES permitting authority is encouraged to provide a brief two-page reporting format to facilitate compiling and analyzing the data from submitted reports. EPA does not believe that submittal of a brief annual report of this nature is overly burdensome, and has not changed the required reporting time frame from the proposal. The permitting authority will use the reports in evaluating compliance with permit conditions and, where necessary, will modify the permit conditions to address changed conditions.

iii. Permit-As-A-Shield. Section 122.36 describes the scope of authorization (i.e. ''permit-as-a-shield'') under an NPDES permit as provided by section 402(k) of the CWA. Section 402(k) provides that compliance with an NPDES permit is deemed compliance, for purposes of enforcement under CWA sections 309 and 505, with CWA sections 301, 302, 306, 307, and 403, except for any standard imposed under section 307 for toxic pollutants injurious to human health.

EPA's Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits, originally issued on July 1, 1994, and revised on April 11, 1995, provides additional information on this matter.

e. Other Applicable NPDES Requirements

Any NPDES permit issued to an operator of a regulated small MS4 must also include other applicable NPDES permit requirements and standard conditions, specifically the applicable requirements and conditions at 40 CFR 122.41 through 122.49. Reporting requirements for regulated small MS4s are governed by § 122.34 and not the existing requirements for medium and large MS4s at § 122.42(c). In addition, the NPDES permitting authority is encouraged to consult the Interim Permitting Approach, issued on August 1, 1996. The discussion on the Interim Permitting Approach in Section II.L.1, Water Quality Based Effluent Limits, provides more information. The provisions of §§ 122.41 through 122.49 establish permit conditions and limitations that are broadly applicable to the entire range of NPDES permits. These provisions should be interpreted in a manner that is consistent with provisions that address specific classes or categories of discharges. For example, § 122.44(d) is a general requirement that each NPDES permit shall include conditions to meet water quality standards. This requirement will be met by the specific approach outlined in today's rule for the implementation of BMPs. BMPs are the most appropriate form of effluent limitations to satisfy technology requirements and water quality-based requirements in MS4 permits (see the introduction to Section II.H.3, Municipal Permit Requirements, Section II.H.3.h, Reevaluation of Rule, and the discussion of the Interim Permitting Policy in Section II.L.1. below).

f. Enforceability

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in CWA sections 309, 504, and 505 or under similar water pollution enforcement provisions of State, tribal or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403 (except any standard imposed under section 307 for toxic pollutants injurious to human health).

g. Deadlines

Today's final rule includes ''expeditious deadlines'' as directed by CWA section 402(p)(6). In proposed § 122.26(e), the permit application for the ''ISTEA'' facilities was maintained as August 7, 2001 and the permit application deadline for storm water discharges associated with other construction activity was established as 3 years and 90 days from the final rule date. In proposed § 122.33(c)(1), operators of regulated small MS4s were required to seek permit coverage within 3 years and 90 days from the date of publication of the final rule. In proposed § 122.33(c)(2), operators of regulated small MS4s designated by the NPDES permitting authority on a local basis under § 122.32(a)(2) must seek coverage under an NPDES permit within 60 days of notice, unless the NPDES permitting authority specifies a later date.

In order to increase the clarity of today's final rule, EPA has changed the location of some of the above requirements. All application deadlines for both Phase I and Phase II are now listed or referenced in § 122.26(e). Section 122.26(e)(1) contains the deadlines for storm water associated with industrial activity. Paragraph (i) has been changed to correct a typographical error. Paragraph (ii) has been revised to reflect the changed application date for ''ISTEA'' facilities. (See discussion in section I.3, ISTEA Sources). The application deadline for storm water discharges associated with other construction activity is now in a new § 122.26(e)(8). The application deadline for regulated small MS4s

remains in § 122.33(c) because this section is written in ''readable regulation'' format, but it is also described in a new § 122.26(e)(9).

Under today's rule, permitting authorities are allowed up to 3 years to issue a general permit and MS4s designated under § 122.32(a)(1) are allowed up to 3 years and 90 days to submit a permit application. Operators of regulated small MS4s that choose to be a co-permittee with an adjoining MS4 with an existing NPDES storm water permit must apply for a modification of that permit within the same time frame. Several commenters stated that 90 days was not adequate time to submit an NOI. This might be true if facilities did not start developing their storm water program until publication of their general permit. In fact, municipalities should start developing their storm water program upon publication of today's final rule, if they have not already done so. Municipalities that are uncertain if they fall within the urbanized area should ask their permitting authority. EPA believes that municipalities should not automatically take three years and 90 days to develop a program and submit their NOI. Three years is the maximum amount of time to issue a general permit. MS4s that are automatically designated under today's rule may have less than 3 years and 90 days if the permitting authority issues a permit that requires submission of NOIs before that time. EPA encourages States to modify their NPDES program to include storm water and issue their permits as soon as possible. It is important for permitting authorities to keep their municipalities informed of their progress in developing or modifying their NPDES storm water requirements.

EPA recognizes that MS4s brought into the program due to the 2000 Census calculations do not have as much time to develop a program as those already designated from the 1990 Census. However, the official Bureau of the Census urbanized area calculation for the 2000 Census is expected to be published in the **Federal Register** in the spring of 2002, which should give the potentially affected MS4s adequate time to prepare for compliance under the applicable permit. However, if the publication of this information is delayed, MS4s in newly designated urbanized areas will have 180 days from the time the new designations are published to submit an NOI, consistent with the time frame for other regulated MS4s that are designated after promulgation of the rule.

The proposed application deadline for MS4s designated under § 122.32(a)(2) was within 60 days of notice. Many commenters stated that 60 days does not provide adequate time for the preparation of an NOI or permit application. EPA agrees that newly designated MS4s may not be aware that they might be designated since the permitting authority could take several years to develop designation criteria. EPA has decided that the application time frame for these facilities should be consistent with the 180 days allowed for facilities designated under §§ 122.26(a)(9)(i)(C) and (D). Section 122.33(c)(2) of today's final rule contains the modified time frame of 180 days to apply for coverage.

h. Reevaluation of Rule

The municipal caucus of the Storm Water Phase II FACA Subcommittee asked EPA to demonstrate its commitment to revisit the municipal requirements of today's rule and make changes where necessary after evaluating the storm water program and researching the effectiveness of municipal BMPs. In § 122.37 of today's final rule, EPA commits to revisiting the regulations for the municipal storm water discharge control program after completion of the first two permit terms. EPA intends to use this time to work closely with stakeholders on research efforts. Gathering and analyzing data related to the storm water program, including data regarding the effectiveness of BMPs, is critical to EPA's storm water program evaluation. EPA does not intend to change today's NPDES municipal storm water program until the end of this period, except under the following circumstances: a court decision requires changes; a technical change is necessary for implementation; or the CWA is modified, thereby requiring changes. After careful analysis, EPA might also consider changes from consensus-based stakeholder requests regarding requirements applicable to newly regulated MS4s. EPA will apply the August 1, 1996, Interim Permitting Approach to today's program during this interim period and encourages all permitting authorities to use this approach in municipal storm water permits for newly regulated MS4s and in determining MS4 permit requirements under a TMDL approach. After careful consideration of the data, EPA will make modifications as necessary.

EPA received comments that supported waiting two permit cycles before re-evaluating the rule and other comments that requested re-evaluation much sooner. EPA anticipates two full permit cycles are necessary to obtain enough data to significantly evaluate the rule. The re-evaluation time frame of 13 years from today remains as proposed.

I. Other Designated Storm Water Discharges

1. Discharges Associated with Small Construction Activity

Section 122.26(b)(15) of today's rule designates certain construction activities for regulation as ''storm water discharges associated with small construction activity.'' Specifically, storm water discharges from construction activity equal to or greater than 1 acre and less than 5 acres are automatically designated except in those circumstances where the operator (i.e., person responsible for discharges that might occur) certifies to the permitting authority that one of two specific waiver circumstances (described in section b. below) applies. Sites below one acre may be designated under § 122.26(b)(15)(ii) where necessary to protect water quality.

Today's rule regulates these construction-related storm water sources under CWA section 402(p)(6) to protect water quality rather than under CWA section 402(p)(2). Designation under 402(p)(6) gives States and EPA the flexibility to waive the permit requirement for construction activity that is not likely to impair water quality, and to designate additional sources below one acre that are likely to cause water quality impairment. Thus, the one acre threshold of today's rule is not an absolute threshold like the five acre threshold that applies under the existing storm water rule.

Today's rule regulating certain storm water discharges from construction activity disturbing less than 5 acres is consistent with the 9th Circuit remand in *NRDC* v. *EPA,* 966 F.2d 1292 (9th Cir. 1992). In that case, the court remanded portions of the existing storm water regulations related to discharges from construction sites. The existing Phase I regulations define ''storm water discharges associated with industrial activity'' to include storm water discharges from construction sites disturbing 5 acres or more of total land area (see 40 CFR 122.26(b)(14)(x)). In its decision, the court concluded that the 5-acre threshold was improper because the Agency had failed to identify information ''to support its perception that construction activities on less than 5 acres are non-industrial in nature'' (966 F.2d at 1306). The court remanded the exemption to EPA for further proceedings (966 F.2d at 1310). EPA's objectives in today's action include an effort to (1) address the 9th Circuit

remand to reconsider regulation of storm water discharges from construction activities that disturb less than 5 acres of land, (2) address water quality concerns associated with such activities, and (3) balance conflicting recommendations and concerns of stakeholders in the regulation of additional construction activity.

EPA responded to the Ninth Circuit's decision by designating discharges from construction activities that disturb between 1 and 5 acres as ''discharges associated with small construction activity'' under CWA section 402(p)(6), rather than as ''discharges associated with industrial activity'' under CWA section 402(p)(2)(B). Although a size criterion alone may be an indicator of whether runoff from construction sites between 1 and 5 acres is ''associated with industrial activity,'' the Agency is instead relying on a size threshold in tandem with provisions that allow for designations and waivers based on potential for ''predicted water quality impairments'' to regulate construction sites between 1 and 5 acres under CWA section 402(p)(6). This approach was chosen by the Agency for the sake of simplicity and certainty and, most importantly, to protect water quality consistent with the mandate of CWA section 402(p)(6). Today's rule also includes extended application deadlines for this new category of dischargers under the authority of CWA section 402(p)(6) (see § 122.26(e)(8) of today's rule).

In today's rule, EPA is regulating storm water discharges from additional construction sites to better protect the Nation's waters, while remaining sensitive to a concern that the Agency should not regulate discharges from construction sites that might not or do not have adverse water quality impacts. EPA believes that today's rule will successfully accomplish this objective by establishing a 1-acre threshold nationwide that includes the flexibility to allow the permitting authority to both waive requirements for discharges from sites that are not expected to cause adverse water quality impacts and to designate discharges from sites below 1-acre based on adverse water quality impacts.

In addition to the diminishing water quality benefits of regulating all sites below one acre, the Agency relied on practical considerations in establishing a one acre threshold and not setting a lower threshold. Regardless of the threshold established by EPA, a NPDES permit can only be required if a construction site has a point source discharge. A point source discharge means that pollutants are added to waters of the United States through a discernible, confined, discrete conveyance. ''Sheet flow'' runoff from a small construction site would not result in a point source discharge unless and until it channelized. As the amount of disturbed land surface decreases, precipitation is less likely to channelize and create a ''point source'' discharge (assuming the absence of steep slopes or other factors that lead to increased channelization). Categorical designation of very small sites may create confusion about applicability of the NPDES permitting program to those sites. EPA's one acre threshold reflects, in part, the need to recognize that smaller sites are less likely to result in point source discharges. Of course, the NPDES permitting authority could designate smaller sites (below one acre, assuming point source discharges occur from the smaller designated sites) for regulation if a watershed or other local assessment indicated the need to do so. The Phase II rule includes this designation authority at 40 CFR 122.26(a)(9)(i)(D) and (b)(15)(ii).

The one acre threshold also provides an administrative tool for more easily identifying those sites that are identified for coverage by the rule (but may receive a waiver) and those that are not automatically covered (but may be designated for inclusion). Although all construction sites less than five acres could have a significant water quality impact cumulatively, EPA is automatically designating for permit coverage only those storm water discharges from construction sites that disturb land equal to or greater than one acre. Categorical regulation of discharges from construction below this one acre threshold would overwhelm the resources of permitting authorities and might not yield corresponding water quality benefits. Construction activities that disturb less than one acre make up, in total, a very small percentage of the total land disturbance from construction nationwide. The one acre threshold is reasonable for accomplishing the water quality goals of CWA section 402(p)(6) because it results in 97.5% of the total acreage disturbed by construction being designated for coverage by the NPDES storm water program, while excluding from automatic coverage the numerous smaller sites that represent 24.7% of the total number of construction sites.

Some commenters believed that EPA has not adequately identified water quality problems associated with storm water discharges from construction activity disturbing less than five acres. Other commenters believed that storm water discharges from small construction activity is a significant water quality problem nationwide. Section I.B.3, Construction Site Runoff, provides a detailed discussion of adverse water quality impacts resulting from construction site storm water discharges. EPA is regulating storm water discharges from construction activity disturbing between 1 and 5 acres because the cumulative impact of many sources, and not just a single identified source, is typically the cause for water quality impairments, particularly for sediment-related water quality standards.

Several commenters requested that EPA regulate discharges from small construction activity as ''discharges associated with industrial activity'' under CWA 402(p)(4) and not, as proposed, as ''storm water discharges associated with other activity'' under CWA 402(p)(6). EPA is regulating discharges from small construction sites as ''small construction activity'' under the authority of CWA section 402(p)(6), rather than section 402(p)(4), to ensure that regulation of these sources is water quality-sensitive. CWA section 402(p)(6) affords the opportunity for designations and waivers of sources based on potential for ''predicted water quality impairments.'' Regulation of storm water ''associated with industrial activity'' does not necessarily focus regulation to protect water quality.

a. Scope

The definition of ''storm water discharges associated with small construction activity'' includes discharges from construction activities, such as clearing, grading, and excavating activities, that result in the disturbance of equal to or greater than 1 acre and less than 5 acres (see § 122.26(b)(15)(i)). Such activities could include: road building; construction of residential houses, office buildings, or industrial buildings; or demolition activity. The definition of ''storm water discharges associated with small construction activity'' also includes any other construction activity, regardless of size, designated based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States (§ 122.26(b)(15)(ii)). This designation is made by the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator.

For the purposes of today's rule, the definition of ''storm water discharges associated with small construction activity'' includes discharges from activities disturbing less than 1 acre if that construction activity is part of a

''larger common plan of development or sale'' with a planned disturbance of equal to or greater than 1 acre of land. A ''larger common plan of development or sale'' means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, *e.g.*, a housing development of five ¼ acre lots (§ 122.26(b)(15)(i)).

In addition to the regulatory text for smaller construction, the Agency is also revising the existing text of § 122.26(b)(14)(x) to clarify EPA's intention regarding construction projects involving a larger common plan of development or sale ultimately disturbing 5 or more acres. Operators of such sites are required to seek coverage under an NPDES permit regardless of the number of lots in the larger plan because designation for permit coverage is based on the total amount of land area to be disturbed under the common plan. This designation attempts to address the potential cumulative effects of numerous construction activities concentrated in a given area.

Several commenters asked that EPA allow the permitting authority to set the appropriate size threshold based on water quality studies. While EPA agrees that location-specific water quality studies provide an ideal information base from which to make regulatory decisions, today's rule establishes a default standard for regulation in the absence of location-specific studies. The rule does allow for deviation from the default standard through additional designations and waivers, however, when supported by location-specific water quality information. The rule codifies the ability of permitting authorities to provide waivers for sites greater than or equal to one acre (the default standard) and designate additional discharges from small sites below one acre when location-specific information suggests that the default 1 acre standard is either unnecessary (waivers) or too limited (designations) to protect water quality.

Some commenters wanted EPA to base the regulation of storm water discharges from construction sites not only on size, but also on the duration and intensity of activity occurring on the site. EPA believes that a national 1-acre threshold, in combination with waivers and additional designations, is the most effective and simplest way to address adverse water quality impacts from storm water from small construction sites. Moreover, as discussed below, the waiver for rainfall erosivity does account for projects of limited duration. EPA believes, however, that the intensity of activity occurring on-site would be a very difficult condition to quantify.

Many commenters requested that EPA maintain the 5 acre threshold from the existing regulations, which include opportunities for site-specific designation, as the regulatory scope for regulating storm water from construction sites, *i.e.*, that the Agency not automatically regulate storm water discharges from sites less than 5 acres. Several commenters wanted construction requirements to be applied to sites smaller than 1 acre, while some commenters suggested alternative thresholds of 2 or 3 acres. The rest of the commenters supported the 1 acre threshold. None of the commenters presented any data or rationales to support a specific size threshold.

EPA examined alternative size thresholds, including 0.5 acre, 1 acre, 2 acres and 5 acres. EPA had difficulty evaluating the alternative size thresholds because, while directly proportional to the size of the disturbed site, the water quality threat posed by discharges from construction sites of differing sizes varies nationwide, depending on the local climatological, geological, geographical, and hydrological influences. In order to ensure improvements in water quality nationwide, however, today's rule does not allow various permitting authorities to establish different size thresholds except based on the waiver and designation provisions of the rule. EPA believes that the water quality impact from small construction sites is as high as or higher than the impact from larger sites on a per acre basis. By selecting the 1 acre size threshold and coupling it with waivers and additional designations, EPA is seeking to standardize improvement of water quality on a national basis while providing permitting authorities with the opportunity to designate those unregulated activities causing water quality impairments regardless of site size, as well as to waive requirements when information demonstrates that regulation is unnecessary.

EPA recognizes that the size criterion alone may not be the most ideal predictor of the need for regulation, but effective protection of water quality depends as much on simplicity in implementation as it does on the scientific information underlying the regulatory criteria. The default size criterion of 1 acre will ensure protection against adverse water quality impacts from storm water from small construction sites while not overburdening the resources of permitting authorities and the construction industry to implement the program to protect water quality in the first place.

One commenter stated a need to clarify whether routine road maintenance is considered construction activity for the purpose of today's rule. The NPDES general permit for discharges from construction sites larger than 5 acres defined ''commencement of construction'' as the *initial* disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (63 FR 7913). For construction sites disturbing less than 5 acres, EPA does not consider construction activity to include *routine* maintenance performed to maintain the *original* line and grade, hydraulic capacity, or original purpose of the facility.

Two commenters believed that the Multi-Sector General Permit for storm water discharges from industrial activities (MSGP) (60 FR 50804) already applies to storm water discharges from construction activities at oil and gas exploration and production sites and asked for a clarification on this issue. Commenters also requested a single general permit to authorize both industrial storm water discharges and construction site discharges which occur at the same industrial site.

Currently, when construction activity disturbing more than 5 acres occurs on an industrial site covered by the MSGP, authorization under a separate NPDES construction permit is needed because the MSGP does not include the ''construction'' industrial sector. While the MSGP does address sediment and erosion control, it is not as specific as the NPDES general permit for storm water discharges from construction activities disturbing more than 5 acres. Though permitting authorities could conceivably develop a single general permit to authorize storm water discharges associated with construction activity at these industrial facilities, the commenter's request is not addressed by today's rulemaking. When today's rule is implemented through general permits (to be issued later), the permitting authority will have discretion whether or not to incorporate the permit requirements for both the industrial storm water discharges and construction site storm water discharges into a single general permit. This type of request should be addressed to the permitting authority.

One commenter suggested that discharges from small construction sites should be regulated through a ''self-implementing rule'' approach. While today's rule is not a self-implementing rule, it does add § 122.28(b)(2)(v), which

gives the permitting authority the discretion to authorize a construction general permit for sites less than 5 acres without submitting a notice of intent. Such non-registration general permits function similarly to self-implementing rules, but are, in fact, permits. Today's rule will be implemented through NPDES permits rather than self-implementing regulations to capitalize on the compliance, tracking, enforcement, and public participation associated with NPDES permits (see discussion in section II.C).

Other commenters believed that only the permitting authority should regulate construction site storm water discharges (under a NPDES permit) and that a small MS4 operator's regulation of storm water discharges associated with construction (under the small MS4 NPDES storm water program) is redundant. EPA disagrees that control measure implementation by the NPDES authority and the small MS4 operator is redundant. To the extent the two efforts overlap, today's rule provides for consolidation and coordination of substantive requirements via incorporation by reference permitting. Small MS4s operators may choose to impose more prescriptive requirements than an NPDES permitting authority based on localized water quality needs. In those cases, EPA intends that the substantive requirements from the small MS4 program should apply as the NPDES permit requirements for the construction site discharger. In cases where a small MS4 program does not prioritize and focus on storm water from construction sites (beyond the small MS4 minimum control measure in today's rule, which does not require the small MS4 operator to control construction site discharges in a manner as prescriptive as is expected for discharges regulated under NPDES permits), the Agency intends that the NPDES general permit will provide the substantive standards applicable to the construction site discharge. EPA does anticipate, however, that implementation of MS4 programs to address construction site runoff within their jurisdiction will enhance overall NPDES compliance by construction site dischargers. EPA also notes that under § 122.35(b), the permitting authority may recognize its own program to control storm water discharges from construction sites in lieu of requiring such a program in an MS4's NPDES permit, provided that the permitting authority's program satisfies the requirements of § 122.34(b)(4), including, for example, procedures for site plan reviews and consideration of information submitted by the public on individual construction sites in each jurisdiction required to be covered by the program.

b. Waivers

Under § 122.26(b)(15)(i) of today's rule, NPDES permitting authorities may waive today's requirement for construction site operators to obtain a permit in two circumstances. The first waiver is intended to apply where little or no rainfall is expected during the period of construction. The second waiver may be granted when a TMDL or equivalent analysis indicates that controls on construction site discharges are not needed to protect water quality.

The first waiver is based on ''low predicted rainfall erosivity'' which can be found using tables of rainfall-runoff erosivity (R) values published for each region in the U.S. R factors are published in the U.S. Department of Agriculture (USDA) Agricultural Handbook 703 (Renard, K.G., Foster, G.R., Weesies, G.A., McCool, D.K., and D.C. Yoder. 1997. *Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE).* U.S. Department of Agriculture Handbook 703). The R factor varies based on the time during the year when construction activity occurs, where in the country it occurs, and how long the construction activity lasts. The permitting authority may determine, using Handbook 703, which times of year, if any, the waiver opportunity is available for construction activity. EPA will provide assistance either through computer programs or the World Wide Web on how to determine whether this waiver applies for a particular geographic area and time period. Application of this waiver for regulatory purposes will be determined by the authorized NPDES authority. This waiver is discussed further in the following section titled Rainfall-Erosivity Waiver.

The second waiver is based on a consideration of ambient water quality. This waiver is available after a State or EPA develops and implements TMDLs for the pollutant(s) of concern from storm water discharges associated with construction activity. This waiver is also available for sites discharging to non-impaired waters that do not require TMDLs, when an equivalent analysis has determined allocations for small construction sites for the pollutant(s) of concern or determined that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The Agency envisions an equivalent analysis that would demonstrate that water quality is *not* threatened by storm water discharges from small construction activity. This waiver is discussed further below in the sections titled TMDL Waiver and Water Quality Issues.

The proposed rule included a waiver based on ''low predicted soil loss.'' This waiver provision would have been applicable on a case-by-case basis where the annual soil loss rate for the period of construction for a site, using the Revised Universal Soil Loss Equation (RUSLE), would be less than 2 tons/acre/year. The annual soil loss rate of less than 2 tons/acre/year would be calculated through the use of the RUSLE equation, assuming the constants of no ground cover and no runoff controls in place.

Several commenters found the low soil loss waiver too complex and impractical, and stated that expertise is not available at the local level to prepare and evaluate eligibility for the waiver. Another commenter questioned whether two tons/acre/year was an appropriate threshold for predicting adverse water quality impacts. Two other commenters said that RUSLE was never intended to predict off-site impacts and is not an indicator of potential harm to water quality. EPA agrees with the commenters on the difficulty associated with determining and implementing this waiver. Most construction site operators are not familiar with the RUSLE program, and the potential burden on the permitting authority, construction industry, USDA's Natural Resources Conservation Service and conservation districts probably would have been significant. The Agency has not included this waiver in the final rule.

Two commenters asked that EPA allow States the flexibility to develop their own waiver criteria but did not suggest how the Agency (or affected stakeholders) could evaluate the acceptability of alternative State waiver criteria. Therefore, the final rule does not provide for any such alternative waivers. If a State does seek to develop alternate waiver criteria, then EPA procedures afford the opportunity for subsequent actions, for example, under the Project XL Program in EPA's Office of Reinvention, which seeks cleaner, smarter, and cheaper solutions to environmental problems. Many commenters suggested that EPA extend these waivers to existing industrial storm water regulations for construction activity greater than 5 acres. These construction site discharges are

regulated as industrial storm water discharges under CWA 402(p)(2) and are not eligible for such water quality-based waivers.

Two commenters were concerned that waivers would create a potential for significant degradation of small streams. EPA disagrees. If small streams are threatened, the permitting authority would choose not to provide any waivers. In addition, permitting authorities may protect small streams by designating discharges from small construction activity based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the U.S.

Two commenters asked that the waiver options be eliminated. They felt it would create a gross inequity within the construction community if some projects will not be subject to the requirements of today's rule. While the comments may be valid, EPA disagrees that waivers should be disallowed on this basis. Construction site discharges that qualify for a waiver from permitting requirements are not expected to present a threat to water quality, which is the basis for designation and regulation under today's rule.

A number of commenters suggested additional waivers in cases where new development will result in no additional adverse impacts to water quality as compared to the existing development it replaces. EPA believes these waivers are either unworkable or unnecessary. It would be very difficult for most construction operators to determine, as well as for other stakeholders to verify, on a site-by-site basis, that there is no potential for adverse impact to water quality compared to the replaced development.

Other commenters proposed waivers in cases where a local erosion and sediment control program covers the project or a separate waiver for small linear utility projects. Instead of waivers, today's rule addresses the first suggestion through the qualifying program provision described in the section titled Cross-Referencing State/Local Erosion and Sediment Control Programs below. Today's rule provides waivers for small linear projects in so far as they satisfy conditions for low rainfall erosivity. (See § 122.26(b)(15)(i)(A).)

Other commenters suggested waivers based on distance to water body, existence of vegetated buffer around water body, slope of disturbed land, or if discharging to very large bodies of water. As a result of public outreach, EPA believes that these proposed waivers would be generally unworkable for construction site dischargers and permitting authorities because of the difficulty in applying them to all small sites.

One commenter mentioned that waivers for the R factor (rainfall-erosivity) and soil loss are effluent standards that have not been developed in accordance with sections 301 and 304 of the CWA. EPA disagrees that these sections are relevant to the designation of sources in today's rule. The waiver provisions in this section of the rule are jurisdictional because they affect the scope of the universe of entities subject to the NPDES program. Therefore, the waiver provisions are not themselves substantive control standards implemented through NPDES permits, and thus, not subject to the statutory criteria in sections 301 and 304.

Another commenter stated that waivers would allow exemptions to the technology based requirements and would thus be inconsistent with the two-fold approach of the CWA (a technology based minimum and a water quality based overlay). EPA acknowledges that the CWA does not generally provide for waivers for the Act's technology-based requirements. The waiver provisions do not create exemptions from technology-based standards that apply to NPDES dischargers; they provide exemption from the underlying requirement for an NPDES permit in the first place. Protection of water quality is the reason these smaller sites are designated for regulation under NPDES. The Act's two fold approach imposes more stringent water quality based effluent limitations when technology-based limitations applicable to regulated dischargers are insufficient to meet water quality standards. Under today's rule, water quality protection is the basis for determining which of the unregulated sources should be regulated at all. Thus, today's rule is entirely consistent with the Act's two fold approach.

i. Rainfall-Erosivity Waiver. The rainfall-erosivity waiver under § 122.26(b)(15)(i)(A) is intended to exempt the requirements for a permit when and where negligible rainfall/runoff-erosivity is expected. In the development of the Universal Soil Loss Equation, analysis of data indicated that when factors other than rainfall are held constant, soil loss is directly proportional to a rainfall factor composed of total storm kinetic energy times the maximum 30 minute intensity. The average annual sum of the storm energy and intensity values for an area comprise the R factor—the rainfall erosivity index. A detailed explanation of the R factor can be found in *Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)* (USDA, 1997).

This waiver is time-sensitive and is dependent on when during the year a construction activity takes place, how long it lasts, and the expected rainfall and intensity during that time. R factors vary based on location. EPA anticipates that this waiver opportunity responds to concerns about the requirement for a permit when it is not expected to rain, especially in the arid areas of the U.S. Under today's rule, the permitting authority could waive the requirements for a permit for time periods when the rainfall-erosivity factor (''R'' in RUSLE) is less than *five* during the period of construction. For the purposes of calculating this waiver, the period of construction activity starts at the time of initial disturbance and ends with the time of final stabilization. The operator must submit a written certification to the Director in order to apply for such a waiver. EPA believes that those areas receiving negligible rainfall during certain times of the year are unlikely to have storm events causing discharges that could adversely impact receiving streams. Consequently, BMPs would not be necessary on those smaller sites. This waiver is most applicable to projects of short duration and to the arid regions of the country where the occurrence of rainfall follows a cyclic pattern—between no rain and extremely heavy rain. EPA review of rainfall records for these areas indicates that, during periods of the year when the number of events and quantity of rain are low, storm water discharges from the smaller construction sites regulated under today's rule should be minimal.

Some commenters supported the use of the R factor as a waiver, while others felt that a waiver based on rainfall statistics ignores the fact that it may rain on any given day and it is the cumulative effect of wet weather discharges which cause water quality impairments. A commenter also asked what happens in ''El Nino'' years when significantly more rainfall than normal occurs. Another commenter also expressed concern that this waiver was not based on a measured water quality impact, but instead on an indicator of potential impact. In response to the previous comments, EPA notes that, under CWA 402(p)(6), sources are designated on their *potential* for adverse impact. Designation under the section is prospective, not retrospective or remedial only. For that reason, the waivers under today's rule also operate prospectively. EPA wanted to waive requirements for sites with little

potential to impair water quality, and the R factor is the most straightforward way to do this. The permitting authority, if electing to use waivers, could always suspend the use of waivers in certain areas or during certain times. In addition, the permitting authority may choose to use a lower R factor threshold than the one set by EPA. Application of this waiver is at the discretion of the permitting authority, subject only to the limitation that R factors cannot exceed 5.

One commenter expressed the need for EPA to provide a justification for the threshold value used for the R factor. None of the commenters included any data to show that EPA's proposed R factor of 2 was either too high or too low. EPA is using the R factor as an indicator of the potential to impact water quality. In an effort to determine which R threshold should be used, EPA conducted additional analysis of the rainfall/runoff erosivity factor for 134 sites across the country. For an R factor threshold of 5, approximately 12% of sites would be waived if the project period lasted 6 months, 27% for 3 months, 47% for 1 month, and 60% of sites would be waived if the project lasted for only 15 days. None of the 134 sites would be waived if the project lasted an entire year. For an R factor threshold of 2, approximately 9% of sites would be waived if the project period lasted 6 months, 15% for 3 months, 31% for 1 month, and 43% for 15 days. For an R factor threshold of 10, approximately 22% of sites would be waived if the project period lasted 6 months, 37% for 3 months, 60% for 1 month, and 78% for 15 days. EPA believes that an R factor of 5 is an adequate threshold to waive requirements for sites because they would not reasonably be expected to impair water quality.

EPA will develop, as part of the tool box described in section II.A.5, guidance materials and computer or web-accessible programs to assist permitting authorities and construction site discharges in determining if any resulting storm water discharges from specific projects are eligible for this waiver.

ii. Water Quality Waiver. The water quality waiver under § 122.26(b)(15)(i)(B) is available where storm water controls are not needed based on a comprehensive, location-specific evaluation of water quality needs. The waiver is available based on either an EPA-approved ''total maximum daily load'' (TMDL) under section 303(d) of the CWA that addresses the pollutant(s) of concern or, for sites discharging to non-impaired waters that do not require TMDLs, an equivalent analysis that has either determined allocations for small construction sites for the pollutant(s) of concern or determined that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutants of concern that must be addressed include sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the NPDES permitting authority that the construction activity will take place, and storm water discharges will occur, within the applicable drainage area evaluated in the TMDLs or equivalent analyses.

Today's rule modifies the approach in the proposed rule. EPA proposed to allow a waiver of permit requirements for small construction if storm water controls were determined to be unnecessary based on ''wasteload allocations that are part of 'total maximum daily loads' (TMDLs) that address the pollutants of concern,'' or ''a comprehensive watershed plan, implemented for the water body, that includes the equivalents of TMDLs, and addresses the pollutants of concern.''

Commenters asked for clarification of the terms ''comprehensive watershed plans'' and ''equivalent of TMDLs.'' EPA intended that both terms would include a comprehensive analysis that determines that controls on small construction sites are not needed based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. Today's rule makes this clarification.

One commenter pointed out that there are no water quality standards for suspended solids, the major pollutant expected in discharges from construction activity. The commenter asserted that no waiver would ever be available. Another commenter noted that there are no sediment criteria developed for streams, also making this waiver useless. EPA notes that a number of States and Tribes have water quality standards that address TSS, which are narrative in form, and that may serve as a basis for water quality-based effluent limits. As efforts to identify impairments and improve water quality progress, some States may yet develop water quality standards for suspended solids. Although several TMDLs for sediment and related parameters have been established, EPA does recognize that currently it is extremely difficult to develop TMDLs for sediment. EPA is partially addressing this concern by clarifying in today's rule that the waivers may be based on a TMDL or equivalent analyses for sediment or one of the various pollutant parameters that are a proxy for sediment. These include TSS, turbidity and siltation.

Other commenters noted that this waiver was unattainable if a TMDL or equivalent analysis must be available for every pollutant that could possibly be present in any amount in discharges from small construction sites regardless of whether the pollutant is causing water quality impairment. Commenters asked that EPA identify what constitutes the ''pollutants of concern'' for which a TMDL or its equivalent must be developed. EPA has revised the proposed rule in response to these concerns.

In order for discharges from construction sites under five acres to qualify for the water quality waiver of today's rule, the construction site operator must demonstrate that storm water controls are not necessary for sediment or a parameter that addresses sediment (such as TSS, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Even if the water body is not currently impaired for sediment, today's rule requires an analysis of the potential impacts of sediment because the storm water discharges from the construction activity will be a new source of loading to the water body that could constitute a new impairment. Because the water body will not necessarily have been included on a ''303(d) list'' and a TMDL will not necessarily be required, the rule continues to allow an analysis that is the equivalent of a TMDL. The designation of storm water discharges from small construction activity for regulation in today's rule is intended to control pollutants other than sediment. This waiver provision requires a TMDL or equivalent analysis for a pollutant other than gross particulates (*i.e.,* sediment and other particulate-focused pollutant parameters) only if the receiving water is currently impaired for that pollutant.

One commenter expressed the concern that construction operators will not know if they are in a watershed covered by a TMDL. To the extent this is an operator's concern, he or she could contact their NPDES permitting

authority before applying for permit coverage to determine if receiving water is subject to a TMDL. Alternatively, the permitting authority could identify the TMDL (or equivalent analysis) areas in the general permit or another operator-accessible information source.

Another commenter expressed the concern that a TMDL waiver is likely to be ineffective because the TMDL list is submitted only once every 2 years. By the time a water is listed, the activity may have been completed and stabilized. The commenter argued that, if a watershed is impaired due to sediment from construction, then storm water controls will still be needed, because small construction can only be waived when it is not identified as a source of impairment. In response, EPA notes that an analysis that is the equivalent of a TMDL (specifically, equivalent to the component of a TMDL that comprehensively analyses existing ambient conditions against the applicable water quality standards) may also provide a basis for waiver from the default 1 acre designation. Also, even if a water has been identified as impaired for sediment, it is possible that a site or category of sites may receive an allocation that is sufficiently high enough to allow discharges without storm water controls.

c. Permit Process and Administration

The operator of the construction site, as with any operator of a point source discharge, is responsible for obtaining coverage under a NPDES permit as required by § 122.21(b). The ''operator'' of the construction site, as explained in the current NPDES construction general permit, is typically the party or parties that either individually or collectively meet the following two criteria: (1) Operational control over the site specifications, including the ability to make modifications in the specifications; and (2) day-to-day operational control of those activities at the site necessary to ensure compliance with permit conditions (63 FR 7859). If more than one party meets these criteria, then each party involved would typically be a co-permittee with any other operators. The operator could be the owner, the developer, the general contractor, or individual contractor. When responsibility for operational control is shared, all operators must apply.

In today's rule, EPA is not requiring an NOI for NPDES general permits for storm water discharges from construction activities regulated by § 122.26(b)(15) if the NPDES permitting authority finds that the use of NOIs would be inappropriate (see § 122.28(b)(2)(v)). Under this approach, the NPDES permitting authority will have the discretion to decide whether or not to require NOIs for discharges from construction activity less than 5 acres. Compared to the existing storm water regulation, the permitting authority thus has increased flexibility in program implementation. EPA does recommend the use of NOIs, however because NOIs track permit coverage and provide a useful information source to prioritize inspections or enforcement. Requiring an NOI allows for greater accountability by, and tracking of, dischargers. This simple permit application and reporting mechanism also allows for better outreach to the regulated community, uses an existing and familiar mechanism, and is consistent with the existing requirements for storm water discharges from larger construction activities. Today's rule does not amend the requirement for NOIs in general permits for storm water discharges from construction activity disturbing 5 acres for more. See § 122.28(b)(2)(v).

EPA expects that the vast majority of discharges of storm water associated with small construction activity identified in § 122.26(b)(15) will be regulated through general permits. In the event that an NPDES permitting authority decides to issue an individual construction permit, however, individual application requirements for these construction site discharges are found at § 122.26(c)(1)(ii). For any discharges of storm water associated with small construction activity identified in § 122.26(b)(15) that are not authorized by a general permit, a permit application made pursuant to § 122.26(c) must be submitted to the Director by 3 years and 90 days after publication of the final rule.

Some commenters expressed concern that linear construction projects (*e.g.,* roads, highways, pipelines) that cross several jurisdictions will have to comply with multiple sets of requirements from various jurisdictions, including multiple local governments and States. EPA is limited in its options to address these concerns because the Agency cannot issue NPDES permits in States authorized to implement the NPDES program nor preempt other more stringent local and State requirements. EPA believes, however, that the option for incorporating by reference the State, Tribal or local requirements (see discussion in Section II.I.2.d., Cross-Referencing State/Local Erosion and Sediment Control Programs) should limit the administrative burden on the operator responsible for discharges from linear construction projects. If the operator were to implement the most comprehensive of the various requirements for the whole project, it could avoid confusion due to differing requirements for different sections of the project. In addition, linear utility projects, which usually have a shorter project period, are more likely to be eligible for the rainfall erosivity waiver.

One commenter stated there was no reason to delay the application period for regulated storm water discharges from small construction activities. The commenter requested that the newly regulated construction site discharges should be required to seek permit coverage within 90 days, as opposed to 3 years, of the effective date of the rule. The Agency does not accept this request. EPA anticipates that NPDES permitting authorities will need one to two years to develop adequate legal authority to implement a program to address this new category of discharges, as well as to develop and issue general permits. Moreover, to ensure effective implementation to protect water quality, regulatory authorities will need additional time to inform small construction site operators of requirements and provide guidance and training on these requirements.

Finally, EPA received a comment requesting that the three year file retention requirement be deleted for discharges from small construction sites. While EPA recognizes that the three year record retention schedule may be unnecessary for certain construction projects, the Agency has determined it is necessary to retain files after the completion of the project to ensure permit compliance, including applicable construction site stabilization enabling permit termination for such sites.

d. Cross-Referencing State, Tribal or Local Erosion and Sediment Control Programs

In developing the NPDES permit requirements for construction sites less than 5 acres, members of the Storm Water Phase II FACA Subcommittee asked EPA to try to minimize redundancy in the construction permit requirements. In response, today's rule at § 122.44(s) provides for incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the NPDES permit authorizing storm water discharges from construction sites (described under §§ 122.26(b)(15) and (b)(14)(x)). The incorporation by reference approach applies not only to the newly regulated storm water discharges (from construction activity disturbing between 1 and 5 acres, including designated sites, but

excluding waived sites) but also to discharges from construction activity disturbing 5 or more acres already covered by the existing storm water regulations. For this latter category of discharges from construction activity disturbing 5 or more acres, the incorporation by reference approach requires that the pollutant control requirements from the incorporated program also satisfy the statutory standard for limitations representing application of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT).

For permits issued for discharges from small construction activity defined under § 122.26(b)(15), a qualifying State, Tribal, or local erosion and sediment control program is one that includes the program elements described under § 122.44(s)(1). These elements include requirements for construction site operators to implement appropriate erosion and sediment control BMPs, requirements to control waste, a requirement to develop a storm water pollution prevention plan, and requirements to submit a site plan for review. A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges. The construction site's permit would require it to follow the requirements of the qualifying local program rather than require it to follow two different sets of requirements. If a partially-qualifying program does not have all of the elements described under § 122.44(s)(1), then the NPDES permitting authority may still incorporate language in the small construction site discharge's permit that requires the construction site operator to follow the program, but the construction site discharge permit also must incorporate the missing required elements in order to satisfy CWA requirements.

The term ''local'' refers to the geographic area of applicability, not the form of government that develops and administers the program. Thus, a qualifying federal erosion and control program, such as certain programs developed and administered by the federal Bureau of Land Management, could be a qualifying local program.

As a result of this provision, local requirements will, in effect, provide the substantive construction site erosion and sediment control requirements for the NPDES permit authorization. Therefore, by following one set of erosion and sediment control requirements, construction site operators satisfy both local and NPDES permit requirements without duplicative effort. At the same time, noncompliance with the referenced local requirements will be considered noncompliance with the NPDES permit which is federally enforceable. The NPDES permitting authority will, of course, retain the discretion to decide whether to include the alternative requirements in the general permit. EPA believes that this approach will best balance the need for consideration of specific local requirements and local implementation with the need for federal and citizen oversight, and will extend supplemental NPDES requirements to control storm water discharges from construction sites.

EPA developed the ''incorporation by reference'' approach based on implementation efforts designed by the State of Michigan. Michigan relies on localities to develop substantive controls for storm water discharges associated with construction activities on a localized basis. Localities, however, are not required to do so. In areas where the local authority does not choose to participate, the State administers the sedimentation and erosion control requirements. The State agency, as the NPDES permitting authority, receives an NOI (termed ''notice of coverage'' by Michigan) under the general permit and tracks and exercises oversight, as appropriate, over the activity causing the storm water discharge. Michigan's goal under these procedures is to utilize the existing erosion and sediment control program infrastructure authorized under State law for storm water discharge regulation. (See U.S. Environmental Protection Agency, Office of Water. January 7, 1994. Memo: From Michael B. Cook, Director OWEC, to Water Management Division Directors, Regarding the ''Approach Taken by Michigan to Regulate Storm Water Discharges from Construction Activities.'')

Most commenters supported the general concept of incorporating by reference qualifying programs. Two commenters expressed concern that different local construction requirements will create an impossible regulatory scheme for builders who work in different localities. EPA believes that allowing States to incorporate qualifying programs by reference will minimize the differences for builders who work in different areas of the State. These differences already exist, however, not only for erosion and sediment controls, but also other aspects of construction. In any event, the criteria for qualification for localized programs should provide a certain degree of standardization for various localities' requirements. EPA expects that the new rule for construction and post-construction BMPs being developed under CWA section 304(m) will also encourage standardization of local requirements. (See discussion of this new rulemaking in section II.D.1, Federal Role of this preamble).

Two commenters requested that an ''incorporation by reference'' should include permission, in writing, from the qualifying local program administrator because of a perceived extra burden on the referenced program. Any program requirements incorporated by reference in NPDES permits should already apply to construction site dischargers in the applicable area and therefore should not add any additional burden to the referenced program. EPA has left to the discretion of the permitting authority the decision on whether to seek permission from the qualifying program before cross-referencing it in an NPDES permit.

One commenter stated that a qualifying local program should require a SWPPP. The proposed rule defined the qualifying local program as a program the meets the minimum program requirements established in the proposed construction minimum control measure for small MS4s. To ensure consistency in the controls for storm water discharges between the larger, already regulated construction sites and the discharges from smaller sites that will be regulated as a result of today's rule, EPA has made a change to define a qualifying local program as one that includes the elements described in § 122.44(s)(1). Section 122.44(s)(1) requires the development and implementation of a storm water pollution prevention plan as a criterion for qualification of local programs for incorporation by reference. As noted above, if a qualifying program does not include all the elements in § 122.44(s)(1) then the permitting authority will need to specify the missing elements in order to rely on the incorporation by reference approach.

One commenter asked what happens in regard to the use of qualifying programs when a construction site operator is also the qualifying local program operator. The provision for incorporation by reference applies in this situation also. The local program operator will be required to comply with requirements it has established for others.

e. Alternative Approaches

EPA received a number of comments on alternative permitting approaches. Several commenters supported regulating discharges only from those construction sites within urbanized areas. Other commenters opposed this approach. EPA chose to address storm water discharges from construction sites located both within and outside urbanized areas because of the potential for adverse water quality impact from storm water discharges from smaller sites in all areas. Regulating only those sites within urbanized areas would have excluded a large number of potential contributors to water quality impairment and would not address large areas of new development occurring on the outer fringes of urbanized areas. In fact, designating only small construction discharges within urbanized areas might create a perverse incentive for building only outside urbanized areas. Such an incentive would be inconsistent with the Agency's intention behind designating to protect water quality. The Agency intends that designation to protect water quality in today's rule should be both remedial and preventive.

A number of commenters encouraged EPA to cover municipal construction activities under the small MS4 general permit, instead of issuing a separate NPDES construction permit to these municipal construction projects. Similarly, a number of commenters supported EPA giving industrial facilities the option of having storm water from construction activities on the site covered by the industrial storm water permit. Several other commenters found that combining multiple permit types under one general permit introduced a degree of complexity which was confusing to permittees. Permitting authorities have the option of combining MS4 and construction permits or industrial and construction permits, however, specific requirements for each would still need to be included in the permit issued. EPA agrees that this would probably result in a more complex and confusing permit compared to the existing component permits.

Several commenters supported an alternative for regulated small MS4s where a local qualified program alone, without an NPDES permit, is sufficient to enforce compliance with construction site discharge requirements. On the other hand, one commenter stated that linking the local construction erosion and sediment control program to the existing NPDES program for storm water from larger construction has driven improvements in many local programs. Another commenter stated that the potential fines under the NPDES program will encourage compliance and will be much stronger than any fines a local program may have. EPA agrees that the NPDES program is the best approach to address water quality impacts from construction sites and provides benefits such as accountability and federal enforcement.

A number of commenters supported issuing one permit for each construction company, instead of a permit for each individual construction activity (also requested for storm water discharges from the larger, already regulated construction sites). Other commenters found that a 'licensing' program for construction site operators would have many problems, including identifying who to permit and tracking information on active sites. EPA is regulating only the storm water discharges associated with construction activity from small sites, not the construction activity itself. Separate NPDES permits (either individual or general permit coverage) for construction site discharges avoid potential problems in tracking sites and operator accountability. Section 122.28(b)(2)(v) gives permitting authorities the option to issue a general permit without requiring an NOI. If an NOI is not required for each activity, permitting authorities could pursue other options such as a company-wide NOI, license instead of an NOI, or another mechanism.

2. Other Sources

In the *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program*, Report to Congress, March 1995, (''Report'') submitted by EPA pursuant to CWA section 402(p)(5), EPA examined the remaining unregulated point sources of storm water for the potential to adversely affect water quality. Due to very limited national data on which to estimate pollutant loadings on the basis of discharge categories, the discussion of the extent of unregulated storm water discharges is limited to an analysis of the number and geographic distribution of the unregulated storm water discharges. Therefore, EPA is not designating any additional unregulated point sources of storm water on a nationwide, categorical basis. Instead, the remainder of the sources will be regulated based on case-by-case post-promulgation designations by the NPDES permitting authority.

EPA did, however, evaluate a variety of categories of discharges for potential designation in the Report. EPA's efforts to identify sources and categories of unregulated storm water discharges for potential designation for regulation in today's rule started with an examination of approximately 7.7 million commercial, retail, industrial, and institutional facilities identified as ''unregulated.'' In general, the distribution of these facilities follows the distribution of population, with a large percentage of facilities concentrated within urbanized areas (see page 4-35 of the Report). This examination resulted in identification of two general classes of facilities with the potential for discharging pollutants to waters of the United States through storm water point sources.

The first group (Group A) included sources that are very similar, or identical, to regulated ''storm water discharges associated with industrial activity'' but that were not included in the existing storm water regulations because EPA used SIC codes in defining the universe of regulated industrial activities. By relying on SIC codes, a classification system created to identify industries rather than environmental impacts from these industries discharges, some types of storm water discharges that might otherwise be considered ''industrial'' were not included in the existing NPDES storm water program. The second general class of facilities (Group B) was identified on the basis of potential for activities and pollutants that could contribute to storm water contamination.

EPA estimates that Group A has approximately 100,000 facilities. Discharges from facilities in this group, which may be of high priority due to their similarity to regulated storm water discharges from industrial facilities, include, for example, auxiliary facilities or secondary activities (*e.g.,* maintenance of construction equipment and vehicles, local trucking for an unregulated facility such as a grocery store) and facilities intentionally omitted from existing storm water regulations (*e.g.,* publicly owned treatment works with a design flow of less than 1 million gallons per day, landfills that have not received industrial waste).

Group B consists of nearly one million facilities. EPA organized Group B sources into 18 sectors for the purposes of the Report. The automobile service sector (*e.g.,* gas/service stations, general automobile repair, new and used car dealerships, car and truck rental) makes up more than one-third of the total number of facilities identified in all 18 sectors.

EPA conducted a geographical analysis of the industrial and commercial facilities in Groups A and

B. The geographical analysis shows that the majority are located in urbanized areas (see Section 4.2.2, Geographic Extent of Facilities, in the Report). In general, about 61 percent of Group A facilities and 56 percent of Group B facilities are located in urbanized areas. The analysis also showed that nearly twice as many industrial facilities are found in all urbanized areas as are found in large and medium municipalities alone. Notable exceptions to this generalization included lawn/garden establishments, small unregulated animal feedlots, wholesale livestock, farm and garden machinery repair, bulk petroleum wholesale, farm supplies, lumber and building materials, agricultural chemical dealers, and petroleum pipelines, which can frequently be located in smaller municipalities or rural areas.

In identifying potential categories of sources for designation in today's notice, EPA considered designation of discharges from Group A and Group B facilities. EPA applied three criteria to each potential category in both groups to determine the need for designation: (1) The likelihood for exposure of pollutant sources included in that category, (2) whether such sources were adequately addressed by other environmental programs, and (3) whether sufficient data were available at this time on which to make a determination of potential adverse water quality impacts for the category of sources. As discussed previously, EPA searched for applicable nationwide data on the water quality impacts of such categories of facilities.

By application of the first criterion, the likelihood for exposure, EPA considered the nature of potential pollutant sources in exposed portions of such sites. As precipitation contacts industrial materials or activities, the resultant runoff is likely to mobilize and become contaminated by pollutants. As the size of these exposed areas increases, EPA expects a proportional increase in the pollutant loadings leaving the site. If EPA concluded that a category of sources has a high potential for exposure of raw materials, intermediate products, final products, waste materials, byproducts, industrial machinery, or industrial activity to rainfall, the Agency rated that category of sources as having ''high'' potential for adverse water quality impact. EPA's application of the first criterion showed that a number of Group A and B sources have a high likelihood of exposure of pollutants.

Through application of the second criterion, EPA assessed the likelihood that pollutant sources are regulated in a comprehensive fashion under other environmental protection programs, such as programs under the Resource Conservation and Recovery Act (RCRA) or the Occupational Health and Safety Act (OSHA). If EPA concluded that the category of sources was sufficiently addressed under another program, the Agency rated that source category as having ''low'' potential for adverse water quality impact. Application of the second criterion showed that some categories were likely to be adequately addressed by other programs.

After application of the third criterion, availability of nationwide data on the various storm water discharge categories, EPA concluded that available data would not support any such nationwide designations. While such data could exist on a regional or local basis, EPA believes that permitting authorities should have flexibility to regulate only those categories of sources contributing to localized water quality impairments.

EPA received comments requesting designation of additional industrial, commercial and retail sources (*e.g.* industrial activity ''look-alikes'', roads, commercial facilities and institutions, and vehicle maintenance facilities) in the final rule, because the commenters believe that the data exist to support national designation of some of these sources. Other comments were received opposing designation of any additional sources. Today's rule does not designate any additional industrial or commercial category of sources either because EPA currently lacks information indicating a consistent potential for adverse water quality impact or because of EPA's belief that the likelihood of adverse impacts on water quality is low, with some possible exceptions on a more local basis. Since the time the Agency submitted the Report, EPA has continued to seek additional data and has requested available data from the FACA members. If sufficient regional or nationwide data become available in the future, the permitting authority could at that time designate a category of sources or individual sources on a case-by-case basis. Therefore, today's rule encourages control of storm water discharges from Groups A and B through self-initiated, voluntary BMPs, unless the discharge (or category of discharges) is designated for permitting by the permitting authority. See discussion in section I.D., EPA's Reports to Congress.

3. ISTEA Sources

Provisions within the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 temporarily exempted storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people (except for airports, power plants, and uncontrolled sanitary landfills) from the need to apply for or obtain a storm water discharge permit (section 1068(c) of ISTEA). Congress extended the NPDES permitting moratorium for these facilities to allow small municipalities additional time to comply with NPDES requirements for certain sources of industrial storm water. The August 7, 1995 storm water final rule (60 FR 40230) further extended this moratorium until August 7, 2001. However, today's rule changes this deadline so that previously exempted industrial facilities owned or operated by municipalities serving populations less than 100,000 people, must now submit an application for a permit within 3 years and 90 days from date of publication of today's rule.

EPA received comments recommending that permit requirements for municipally owned or operated industrial storm water discharges, including those previously exempt under ISTEA, be included in a single NPDES permit for all MS4 storm water discharges. The existing NPDES regulations already provide permitting authorities the ability to issue a single ''combination'' permit for MS4 discharges. However, if the permitting authorities chose to issue this type of permit, they must make sure that in doing so, they are not creating a double standard for industrial facilities covered under the combination permit versus those covered under separate general or individual permits. In order to avoid this double standard, combination permits would have to contain requirements that are the same or very similar to the requirements found in separate MS4 and industrial permits, *i.e.,* the minimum measures and other necessary requirements of an MS4 permit, and the SWPPP, monitoring and reporting requirements, and other necessary requirements of an industrial permit. If such a combined MS4 general permit were issued, the regulations require that each discharger submit NOIs for their respective discharges, except for discharges from small construction activities. Flexibility exists in developing a combination NOI which could reduce the need to submit duplicative information, *e.g.* owner/operator name and address. The combination NOI would still need to require specific information for each separate municipally owned or operated industrial location, including

construction projects disturbing 5 or more acres. The regulations at § 122.28(b)(2)(ii) list the necessary contents of an NOI, which require: the facility name, facility address, type of facility or discharge and receiving stream for each industrial discharge location. When viewed in its entirety, a combination permit, which by necessity would need to contain all elements of otherwise separate industrial and MS4 permit requirements, and require NOI information for each separate industrial activity, may have few advantages when compared to obtaining separate MS4 and industrial general permit coverage.

In order to allow the permitting authority to issue a single storm water permit for the MS4 and all municipally owned or operated industrial facilities, including those previously exempt under ISTEA, today's rule requires applications for ISTEA sources within 3 yrs and 90 days from date of publication of today's rule. The permitting authority has the ultimate decision to determine whether or not a single all-encompassing MS4 permit is appropriate.

4. Residual Designation Authority

The NPDES permitting authority's existing designation authority, as well as the petition provisions are being retained. Today's rule contains two provisions related to designation authority at §§ 122.26(a)(9)(i)(C) and (D). Subsection (C) adds designation authority where storm water controls are needed for the discharge based upon wasteload allocations that are part of TMDLs that address the pollutant(s) of concern. EPA intends that the NPDES permitting authority have discretion in the matter of designations based on TMDLs under subsection (C). Subsection (D) carries forward residual designation authority under former § 122.26(g), and has been modified to provide clarification on categorical designation. Under today's rule, EPA and authorized States continue to exercise the authority to designate remaining unregulated discharges composed entirely of storm water for regulation on a case-by-case basis (including § 123.35). Individual sources are subject to regulation if EPA or the State, as the case may be, determines that the storm water discharge from the source contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This standard is based on the text of section CWA 402(p). In today's rule, EPA believes, as Congress did in drafting section CWA 402(p)(2)(E), that individual instances of storm water discharge might warrant special regulatory attention, but do not fall neatly into a discrete, predetermined category. Today's rule preserves the regulatory authority to subsequently address a source (or category of sources) of storm water discharges of concern on a localized or regional basis. For example, as States and EPA implement TMDLs, permitting authorities may need to designate some point source discharges of storm water on a categorical basis either locally or regionally in order to assure progress toward compliance with water quality standards in the watershed.

EPA received comments asking that § 122.26(a)(9)(i)(D) as proposed be modified to include specific language clarifying the permitting authority's ability to designate additional sources on a categorical basis as explained in the preamble to the proposed rule. One comment requested that the designation language include ''categories of sources on a Statewide basis.'' EPA agrees that the intent of the language may not have been clear regarding categorical designation. Today's rule modifies subsection (D) to clarify that the designation authority can be applied within different geographic areas to any single discharge (i.e., a specific facility), or category of discharges that are contributing to a violation of a water quality standard or are significant contributors of pollutants to waters of the United States. The added term ''within a geographic area'' allows ''State-wide'' or ''watershed-wide'' designation within the meaning of the terms.

One commenter questioned the Agency's legal authority to provide for such residual designation authority. The stakeholder argued that the lapse of the October 1, 1994, permitting moratorium under CWA section 402(p)(1) eliminated the significance of the CWA section 402(p)(2) exceptions to the moratorium, including the exception for discharges of storm water determined to be contributing to a violation of a water quality standard or a significant contributor of pollutants under CWA section 402(p)(2)(E). The stakeholder further argued that EPA's authority to designate sources for regulation under CWA section 402(p)(6) is limited to storm water discharges other than those described under CWA section 402(p)(2). Because CWA section 402(p)(2)(E) describes individually designated discharges, the stakeholder concluded that regulations under CWA section 402(p)(6) cannot provide for post-promulgation designation of individual sources. EPA disagrees.

First, as explained previously, EPA anticipates that NPDES permitting authorities may yet determine that individual unregulated point sources of storm water discharges require regulation on a case-by-case basis. This conclusion is consistent with the Congress' recognition of the potential need for such designation under the first phase of storm water regulation as described in CWA section 402(p)(2)(E). Under CWA section 402(p)(2)(E), Congress recognized the need for both EPA and the State to retain authority to regulate unregulated point sources of storm water under the NPDES permit program. Second, to the extent that CWA section 402(p)(6) requires designation of a ''category'' of sources, the permitting authority may designate such (as yet unidentified) sources as a category that should be regulated to protect water quality. Though such sources may exist and discharge today, if neither EPA nor the State/Tribal NPDES permitting authority has designated the source for regulation under CWA section 402(p)(2)(E) to date, then CWA section 402(p)(6) provides the authority to designate such sources.

The Agency can designate a category of ''not yet identified'' sources to be regulated, based on local concerns, even if data do not exist to support nationwide regulation of such sources. EPA does not interpret the language in CWA section 402(p) to preclude States from exercising designation authority under these provisions because such designation (and subsequent regulation of designated sources) is within the ''scope'' of the NPDES program.

EPA also believes that sources regulated pursuant to a State designation are part of (and regulated under) a federally approved State NPDES program, and thus subject to enforcement under CWA sections 309 and 505. Under existing NPDES State program regulations, State programs that are ''greater in scope of coverage'' are not part of the federally-approved program. By contrast, any such State regulation of sources in this ''reserved category'' will be within the scope of the federal program because today's rule recognizes the need for such post promulgation designations of unregulated point sources of storm water. Such regulation will be ''more stringent'' than the federal program rather than ''greater in scope of coverage'' (40 CFR 123.1(h)).

EPA does not interpret the congressional direction in CWA section 402(p)(6) to preclude regulation of point sources of storm water that should be regulated to protect water quality. Under CWA section 510, Congress expressly recognized and preserved the authority of States to adopt and enforce

more stringent regulation of point sources, as well as any requirement respecting the control or abatement of pollution. Section 510 applies, ''except as expressly provided'' in the CWA. CWA section 502(14) does expressly provide affirmative limitations on the regulation of certain pollutant sources through the point source control program, the NPDES permitting program. Section 502(14) excludes agricultural storm water and return flows from irrigated agriculture from the definition of point source, and section 402(l) limits applicability of the section 402 permit program for return flows from irrigated agriculture, as well as for storm water runoff from certain oil, gas, and mining operations. Unlike sections 502(14) and 402(l), EPA does not interpret CWA section 402(p)(6) as an express provision limiting the authority to designate point sources of storm water for regulation on a case-by-case basis after the promulgation of final regulations. Any source of storm water discharge is encouraged to assess its potential for storm water contamination and take preventive measures against contamination. Such proactive actions could result in the avoidance of future regulation.

One comment was received requesting clarification of the term ''non-municipal'' in § 122.26(a)(9)(ii). The commenter is concerned that the term ''non-municipal,'' in this context, implies that municipally owned or operated facilities cannot be designated. The term ''non-municipal'' in this context refers to the universe of unregulated industrial and commercial facilities that could potentially be designated according to § 122.26(a)(9)(i) authority. There is no exemption for municipally owned or operated facilities under these designation provisions.

Finally, EPA received comments and evaluated the proposal under which operators of regulated small, medium, and large MS4s would be responsible for controlling discharges from industrial and other facilities into their systems in lieu of requiring NPDES permit coverage for such facilities. EPA did not adopt this framework due to concerns with administrative and technical burden on the MS4 operators, as well as concerns about such an intergovernmental mandate.

J. Conditional Exclusion for ''No Exposure'' of Industrial Activities and Materials to Storm Water

1. Background

In 1992, the Ninth Circuit court remanded to EPA for further rulemaking, a portion of the definition of ''storm water discharge associated with industrial activity'' that excluded the category of industrial activity identified as ''light industry'' when industrial materials and/or activities were not exposed to storm water. See *NRDC* v. *EPA,* 966 F.2d 1292, 1305 (9th Cir. 1992). Today's final rule responds to that remand. In the 1990 storm water regulations, EPA excluded the light industry category from the requirement for an NPDES permit if the industrial materials and/or activities were not ''exposed'' to storm water (see § 122.26(b)(14)). The Agency had reasoned that most of the activity at these types of facilities takes place indoors and that emissions from stacks, use of unhoused manufacturing equipment, outside material storage or disposal, and generation of large amounts of dust or particles would be atypical (55 FR 48008, November 16, 1990).

The Ninth Circuit determined that the exemption was arbitrary and capricious for two reasons. First, the court found that EPA had not established a record to support its assumption that light industry that was not exposed to storm water was not ''associated with industrial activity,'' particularly when other types of industrial activity not exposed to storm water remained ''associated with industrial activity.'' The court specifically found that ''[t]o exempt these industries from the normal permitting process based on an unsubstantiated assumption about this group of facilities is arbitrary and capricious.'' Second, the court concluded that the exemption impermissibly ''altered the statutory scheme'' for permitting because the exemption relied on the unverified judgment of the light industrial facility operator to determine non-applicability of the permit application requirements. In other words, the court was critical that the operator would determine for itself that there was ''no exposure'' and then simply not apply for a permit without any further action. Without a basis for ensuring the effective operation of the permitting scheme—either that facilities would self-report actual exposure or that EPA would be required to inspect and monitor such facilities—the court vacated and remanded the rule to EPA for further rulemaking.

One of the major concerns expressed by the FACA Committee, was that EPA streamline and reinvent certain troublesome or problematic aspects of the existing permitting program for storm water discharges. One area identified was the mandatory applicability of the permitting program to all industrial facilities, even those ''light industrial'' activities that are of very low risk or of no risk to storm water contamination. Such dischargers may not have any industrial sources of storm water contamination on the plant site, yet they are still required to apply for an NPDES storm water permit and meet all permitting requirements. Examples of such facilities are a soap manufacturing plant (SIC Code 28) or hazardous waste treatment and disposal facility, where all industrial activities, even loading docks, are inside a building or under a roof.

Although they did not provide a written report, the FACA Committee members advised EPA that the existing storm water program should be revised to allow such facilities to seek an exclusion from the NPDES storm water permitting requirements. The Committee agreed that such an exclusion should also provide a strong incentive for other industrial facilities that conduct industrial activities outdoors to move the activities under cover or into buildings to prevent contamination of rainfall and storm water runoff. The committee believed that such a ''no exposure'' permit exclusion could be a valuable incentive for storm water pollution prevention.

In today's final rule, the Agency responds to both of the bases for the court's remand. The exclusion from permitting based on ''no exposure'' applies to all industrial categories listed in the existing storm water regulations except construction. The court's opinion rejected EPA's distinction between light industry and other industry, but it did not preclude an interpretation that treats all ''non-exposed'' industrial facilities in the same fashion. Presuming that an industrial facility adequately prevents exposure of industrial materials and activities to storm water, today's rule treats discharges from ''non-exposed'' industrial facilities in a manner similar to the way Congress intended for discharges from administrative buildings and parking lots. Specifically, permits will not be required for storm water discharges from these facilities on a categorical basis.

To assure that discharges from industrial facilities really are similar to discharges from administrative buildings and parking lots, and to respond to the second basis for the court's remand, the permitting exclusion is ''conditional''. The person responsible for a point source discharge from a ''no exposure'' industrial source must meet the conditions of the exclusion, and complete, sign and submit the certification to the permitting authority for tracking and

accountability purposes. EPA believes today's rule, therefore, is fully consistent with the direction provided by the court.

EPA relied upon the ''no exposure'' concept discussed by the FACA Committee in developing the ''no exposure'' provisions of today's rule. EPA is deleting the sentence regarding ''no exposure'' for the facilities in § 122.26(b)(14)(xi) and adding a new § 122.26(g) titled ''Conditional Exclusion for No Exposure of Industrial Activities to Storm Water.'' The ''no exposure'' provision will make storm water discharges from all classes of industrial facilities eligible for exclusion, except storm water discharges from regulated construction activities. Regulated construction activities cannot claim ''no exposure'' because the main pollutants of concern (*e.g.,* sediment) generally cannot entirely be sheltered from storm water.

Today's rule represents a significant expansion in the scope of the ''no exposure'' provision originally promulgated in the 1990 rule, which was only for storm water discharges from light industry. The intent of today's ''no exposure'' provision is to provide a simplified method for complying with the CWA to all industrial facilities that are entirely indoors. This includes facilities that are located within a large office building, or at which the only items permanently exposed to precipitation are roofs, parking lots, vegetated areas, and other non-industrial areas or activities.

EPA received several comments related to storm water runoff from parking lots, roof tops, lawns, and other non-industrial areas of an industrial facility. Storm water discharges from these areas, which may contain pollutants or which may result in additional storm water flows, are not directly regulated under the existing storm water permitting program because they are not ''storm water discharges associated with industrial activity''. Many comments on this issue supported maintaining the exclusion from the existing regulations for storm water permitting for discharges from administrative buildings, parking lots, and other non-industrial areas. Other comments opposed allowing the continued exclusion for discharges from non-industrial areas of the site because discharges from these areas are potentially a significant cause of receiving water impairment. These comments urged that such discharges should not be excluded from NPDES permit coverage. Today's rule does not require permit coverage for discharges from a facility's exposed areas that are separate from industrial activities such as runoff from office buildings and accompanying parking lots, lawns and other non-industrial areas. This approach is consistent with the existing storm water rules which were based on Congress's intent to exclude non-industrial areas such as ''parking lots and administrative and employee buildings.'' 133 Cong. Rec. 985 (1987). EPA also lacks data indicating that discharges from these areas at an industrial facility cause significant receiving water impairments. Therefore, the non-industrial areas at a facility do not need to be assessed as part of the ''no exposure'' certification.

EPA received comments related to industrial facilities that achieve ''no exposure'' by constructing large amounts of impervious surfaces, such as roofs, where previously there were pervious or porous surfaces into which storm water could infiltrate. Some commenters made the point that large amounts of impervious area may cause a significant increase in storm water volume flowing off the industrial facility, and thus may cause adverse receiving water impacts simply due to the increased quantity of storm water flow. Some commenters said that storm water discharges from impervious areas at an industrial facility are generally more frequent, and often larger, than discharges from the pre-existing natural surfaces. They believe that these discharges will contain pollutants typical of commercial areas and roads and are an equal threat to direct human uses of the water and can cause equal damage to aquatic life and its habitat. Other commenters believe that if Congress or EPA addresses the issue of flow, it should be addressed on a broader scale than merely through the ''no exposure'' exclusion, and that EPA has no authority under any existing legal framework to regulate flow directly. Some commenters stated that developing federal parameters for the control of water quantity, *i.e.* flow, would result in federal intrusion into land use planning, an authority that they claim is solely within the purview of State governments and their political subdivisions.

EPA is not attempting to regulate flow via the ''no exposure'' provisions. EPA does agree, however, that increases in impervious surfaces can result in increased runoff volumes from the site which in turn may increase pollutant loading. In addition, the Agency notes that in some States water quality standards include water quality criteria for flow or turbidity. Therefore, in order to provide a minimal amount of information on possible impacts from increased pollutant loading and runoff volume, EPA's ''no exposure'' certification form (see Appendix 4) asks the discharger to indicate if they have paved or roofed over a formerly exposed, pervious area in order to qualify for the ''no exposure'' exclusion. If the answer is yes, the discharger must indicate, by choosing from three possible responses, approximately how much impervious area was created to achieve ''no exposure''. The choices are: (1) less than 1 acre, (2) 1 to 5 acres, and (3) more than 5 acres. This requirement provides additional information that will aid in determining if discharges from the facility are causing adverse receiving water impacts. EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges, following construction of large amounts of impervious surfaces, must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that dischargers consider these factors when making modifications to their site in order to qualify for the ''no exposure'' exclusion.

2. Today's Rule

In order to claim relief under the ''no exposure'' provision, the discharger of an otherwise regulated facility must submit a no exposure certification that incorporates the questions of § 122.26(g)(4)(iii) to the NPDES permitting authority once every 5 years. This provision applies across all categories of industrial activity covered by the existing program, except discharges from construction activities.

In addition to submitting a ''no exposure'' certification every 5 years, the facility must allow the NPDES permitting authority or operator of an MS4 (where there is a storm water discharge to the MS4) to inspect the facility and to make such inspection reports publicly available upon request. Also, upon request, the facility must submit a copy of the ''no exposure'' certification to the operator of the MS4 into which the facility discharges (if applicable). All ''no exposure'' certifications must be signed in accordance with the signatory requirements of § 122.22. The ''no exposure'' certification is non-transferable. In the event that the facility operator changes, the new discharger must submit a new ''no exposure'' certification.

Members of the FACA Committee urged that EPA not allow dischargers certifying ''no exposure'' to take actions to qualify for this provision that result in a net environmental detriment. In developing a regulatory implementation mechanism, however, EPA found that the phrase ''no net environmental detriment,'' was too imprecise to use within this context. Therefore, today's rule addresses this issue by requiring information that should help the permitting authority to determine whether actions taken to qualify for the exclusion interfere with the attainment or maintenance of water quality standards, including designated uses. Permitting authorities will be able, where necessary, to make a determination by evaluating the activities that changed at the industrial site to achieve ''no exposure'', and assess whether these changes cause an adverse impact on, or have the reasonable potential to cause an instream excursion of, water quality standards, including designated uses. EPA anticipates that many efforts to achieve ''no exposure'' will employ simple good housekeeping and contaminant cleanup activities. Other efforts may involve moving materials and industrial activities indoors into existing buildings or structures.

In very limited cases, industrial operators may make major changes at a site to achieve ''no exposure''. These efforts may include constructing a new building or cover to eliminate exposure or constructing structures to prevent run-on and storm water contact with industrial materials or activities. Where major changes to achieve ''no exposure'' increase the impervious area of the site, the facility operator must provide this information on the ''no exposure'' certification form as discussed above. Using this and other available data and information, permitting authorities should be able to assess whether any major change has resulted in increased pollutant concentrations or loadings, toxicity of the storm water runoff, or a change in natural hydrological patterns that would interfere with the attainment and maintenance of water quality standards, including designated uses or appropriate narrative, chemical, biological, or habitat criteria where such State or Tribal water quality standards exist. In these instances, the facility operator and their NPDES permitting authority should take appropriate actions to ensure that attainment or maintenance of water quality standards can be achieved. The NPDES permitting authority should decide if the facility must obtain coverage under an individual or general permit to ensure that appropriate actions are taken to address adverse water quality impacts.

While the intent of today's ''no exposure'' provision is to reduce the regulatory burdens on industrial facilities and government agencies, the FACA Committee suggested that the NPDES permitting authority consider a compliance assessment program to ensure that facilities that have availed themselves of this ''no exposure'' option meet the applicable requirements. Inspections could be conducted at the discretion of the NPDES authority and be coordinated with other facility inspections. EPA expects, however, that the permitting authority will conduct inspections when it becomes aware of potential water quality impacts possibly caused by the facility's storm water discharges or when requested to do so by adversely affected members of the public. The intent of this provision is that the 5 year ''no exposure'' certification be fully available to, and enforceable by, appropriate federal and State authorities under the CWA. Private citizens can enforce against facilities for discharges of storm water that are inconsistent with a ''no exposure'' certification if storm water discharges from such facilities are not otherwise permitted and in compliance with applicable requirements.

EPA received comments from owners, operators and representatives of Phase I facilities classified as ''light industry'' as defined by the regulations at § 122.26(b)(14)(xi). The comments recommended maintaining the approach of the existing regulations which does not require the discharger to submit any supporting documentation to the permitting authority in order to claim the ''no exposure'' exclusion from permitting. As discussed previously, the ''no exposure'' concept was developed in response to the Ninth Circuit court's remand of part of the existing rules back to EPA. The court found that EPA cannot rely on the ''unverified judgment'' of the facility. The comments opposing documentation did not address the ''unverified judgment'' concern.

Today's rule is a ''conditional'' exclusion from permitting which requires all categories, including the ''light industrial'' facilities that have no exposure of materials to storm water, to submit a certification to the permitting authority. Upon receipt of a complete certification, the permitting authority can review the information, or call, or inspect the facility if there are doubts about the facility's ''no exposure'' claim. Also, if the facility discharges into an MS4, the operator of the MS4 can request a copy of the certification, and can inspect the facility. The public can request a copy of the certification and/or inspection reports. In adopting these conditional ''no exposure'' provisions, the Agency addressed the Ninth Circuit court's ruling regarding the discharger's unverified judgment.

EPA received one comment requesting clarification on whether the anti-backsliding provisions in the regulations at § 122.44(l) apply to industrial facilities that are currently covered under an NPDES storm water permit, and whether such facilities could qualify for the ''no exposure'' exclusion under today's rule. The anti-backsliding provisions will not prevent most industrial facilities that can certify ''no exposure'' under today's rule from qualifying for an exclusion from permitting. The anti-backsliding provisions contain 5 exceptions that allow permits to be renewed, reissued or modified with less stringent conditions. One exception at § 122.44(l)(2)(A) allows less stringent conditions if ''material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation.'' Section 122.44(l)(B)(1) also allows less stringent requirements if ''information is available which was not available at the time of permit issuance and which would have justified the application of less stringent effluent limitations at the time of permit issuance.'' Facility's operators who certify ''no exposure'' and submit the required information once every 5 years will have provided the permitting authority ''information that was not available at the time of permit issuance.'' Also, some facilities may, in order to achieve ''no exposure'', make ''material and substantial alterations or additions to the permitted facility.'' Therefore, most facilities covered under existing NPDES general permits for storm water (e.g., EPA's Multi-Sector General Permit) will be eligible for the conditional ''no exposure'' exclusion from permitting without concern about the anti-backsliding provisions. Such dischargers will have met one or both of the anti-backsliding exceptions detailed above. Facilities that are covered under individual permits containing numeric limitations for storm water should consult with their permitting authority to determine whether the anti-backsliding provisions will prevent them from qualifying for the exclusion from permitting (for that discharge point) based on a certification of ''no exposure''.

EPA received several comments regarding the timing of when the ''no exposure'' certification should be submitted. The proposed rule said that the ''no exposure'' certification notice must be submitted ''at the beginning of each permit term or prior to commencing discharges during a permit term.'' Some commenters interpreted this statement to mean that existing facilities can only submit the certification at the time a permit is being issued or renewed. EPA intended the phrase ''at the beginning of each permit term'' to mean ''once every 5 years'' and today's rule reflects this clarification. EPA envisions that the NPDES storm water program will be implemented primarily through general permits which are issued for a 5 year term. Likewise the ''no exposure'' certification term is 5 years. The NPDES permitting authority will maintain a simple registration list that should impose only a minor administrative burden on the permitting authority. The registration list will allow for tracking of industrial facilities claiming the exclusion. This change allows a facility to submit a ''no exposure'' certification at any time during the term of the permit, provided that a new certification is submitted every 5 years from the time it is first submitted (assuming that the facility maintains a ''no exposure'' status). Once a discharger has established that the facility meets the definition of ''no exposure'', and submits the necessary ''no exposure'' certification, the discharger must maintain their ''no exposure'' status. Failure to maintain ''no exposure'' at their facility could result in the unauthorized discharge of pollutants to waters of the United States and enforcement for violation of the CWA. Where a discharger believes that exposure could occur in the future due to some anticipated change at the facility, the discharger should submit an application and obtain coverage under an NPDES permit prior to such discharge to avoid penalties.

Where EPA is the permitting authority, dischargers may submit a ''no exposure'' certification at any time after the effective date of today's rule. Where EPA is not the permitting authority, dischargers may not be able to submit the certification until the non-federal permitting authority completes any necessary statutory or regulatory changes to adopt this ''no exposure'' provision. EPA recommends that the discharger contact the permitting authority for guidance on when the ''no exposure'' certification should be submitted.

EPA received comments on the proposed rule requirement that the discharger ''must comply immediately with all the requirements of the storm water program including applying for and obtaining coverage under an NPDES permit,'' if changes occur at the facility which cause exposure of industrial activities or materials to storm water. The comments expressed the difficultly of immediate compliance. EPA expects that most facility changes can be anticipated, therefore dischargers should apply for and obtain NPDES permit coverage in advance of changes that result in exposure to industrial activities or materials. Permitting authorities may grant additional time, on a case-by-case basis, for preparation and implementation of a storm water pollution prevention plan.

Finally, today's rule at § 122.26(g)(4) includes the information which must be included on the ''no exposure'' certification. Authorized States, Tribes or U.S. Territories may develop their own form which includes this required information, at a minimum. EPA adopted the requirements (with modification) from the draft ''No Exposure Certification Form'' published as an appendix to the proposed rule. Modifications were made to the draft form to address comments received and to streamline the required information. EPA included these certification requirements in today's rule in order to preserve its integrity. Dischargers in areas where EPA is the permitting authority should use the ''No Exposure Certification'' form included in Appendix 4.

3. Definition of ''No Exposure''

For purposes of this section, ''no exposure'' means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. However, storm resistant shelter is not required for: (1) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak; (2) adequately maintained vehicles used in material handling; and (3) final products, other than products that would be mobilized in storm water discharge (e.g., rock salt). Each of these three exceptions to the no exposure definition are discussed in more detail below.

EPA intends the term ''storm resistant shelter'' to include completely roofed and walled buildings or structures, as well as structures with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of storm water. While the Agency intends that this provision promote permanent ''no exposure'', EPA understands that certain vehicles could pass between buildings and, during passage, be exposed to rain and snow. Adequately maintained vehicles such as trucks, automobiles, forklifts, or other such general purpose vehicles at the industrial site that are not industrial machinery, and that are not leaking contaminants or are not otherwise a source of industrial pollutants, could be exposed to precipitation or runoff. Such activities alone does not prevent a discharger from being able to certify no exposure under this provision. Similarly, trucks or other vehicles awaiting maintenance at vehicle maintenance facilities, as defined at § 122.26(b)(14)(viii), that are not leaking contaminants or are not otherwise a source of industrial pollutants, are not considered exposed.

In addition, EPA recognizes that there are circumstances where permanent ''no exposure'' of industrial activities or materials is not possible. Under such conditions, materials and activities may be sheltered with temporary covers, such as tarps, between periods of permanent enclosure. The final rule does not specify every such situation. EPA intends that permitting authorities will address this issue on a case-by-case basis. Permitting authorities can determine the circumstances under which temporary structures will or will not meet the requirements of this section. Until permitting authorities specifically determine otherwise, EPA recommends application of the ''no exposure'' exclusion for temporary sheltering of industrial materials or activities only during facility renovation or construction, provided that the temporary shelter achieves the intent of this section. Moreover, ''exposure'' that results from a leak in protective covering would only be considered ''exposure'' if not corrected prior to the next storm water discharge event. EPA received one comment requesting that this allowance for temporary shelter be limited to facility renovation or construction directly related to the industrial activity requiring temporary shelter, and be scheduled to minimize the use of temporary shelter. Another comment suggested placing time limits

on the use of temporary shelter. The commenter did not recommend a specific time period, rather the comment said that renovation in some instances may take years, and that EPA should not allow temporary shelter over prolonged periods. EPA agrees that the use of temporary shelter must be related to the renovation or construction at the site, and be scheduled or designed to minimize the use of temporary shelter. Further, EPA agrees that the use of temporary shelter should be limited in duration, but does not intend to define ''temporary'' or ''prolonged period''.

Many final products are intended for outdoor use and pose little risk of storm water contamination, such as new cars. Therefore, final products, except those that can be mobilized in storm water discharge, can be ''exposed'' and still allow the discharge to certify ''no exposure''. EPA intends the term ''final products'' to mean those products that are not used in producing another product. Any product that can be used to make another product is considered an ''intermediate product.'' For example, a facility that makes horse trailers can store the finished trailers outdoors as a final product. The storage of those final products does not prevent eligibility to claim ''no exposure''. However, any facility that makes parts for the horse trailers (e.g., metal tubing, sheet metal, paint) is not eligible for the ''no exposure'' exclusion from permitting if those ''intermediate products'' are stored outdoors (i.e., ''exposed'').

EPA received comments related to materials in drums, barrels, tanks and similar containers. Some comments objected to the language in the preamble to the proposed rule that would have recommended that the ''exposure'' determination for drums and barrels be based on the ''potential to leak.'' Those comments said that all drums and barrels have the potential to leak, thereby making certification impossible. They recommended allowing outdoor storage of drums and barrels except for those that ''are leaking'' at the time of certification. Other comments suggested allowing drums and barrels to be stored outside only if the drums and barrels: are empty; have secondary containment; or there is a spill contingency plan in place. Opposing comments suggested that allowing outdoor exposure of drums and barrels, based on existing integrity and condition, is inconsistent with the ''however packaged'' proposed rule language, and also would not satisfy the Ninth Circuit remand. The comments point out that the former rule was invalidated by the court in part because it relied on the ''unverified judgment'' of the light industrial facility operator to determine the non-applicability of the permit requirements, and that allowing the facility operator to determine the condition of their drums and barrels would result in the same flaw.

In response, EPA believes that drums and barrels that are stored outdoors pose little risk of storm water contamination unless they are open, deteriorated or leaking. The Agency has modified today's rule accordingly. EPA intends the term ''open'' to mean any container that is not tightly sealed and ''sealed'' to mean banded or otherwise secured and without operational taps or valves. Drums, barrels, tanks, and similar containers may only be *stored* outdoors under this conditional exclusion. The addition of material to or withdrawing of material from these containers while outside is deemed ''exposure''. Moving the containers while outside does not create ''exposure'' provided that the containers are not open, deteriorated or leaking. In order to complete the ''no exposure'' certification, a facility operator must inspect all drums, barrels, tanks or other containers stored outside to ensure that they are not open, deteriorated, or leaking. EPA recommends that the discharger designate someone at the facility to conduct frequent inspections to verify that the drums, barrels, tanks or other containers remain in a condition such that they are not open, deteriorated or leaking. Drums, barrels, tanks or other containers stored outside that have valves which are used to put material in or take material out of the container, and that have dripped or may drip, are considered to be ''leaking'' and must be under a storm resistant shelter in order to qualify for the no exposure exclusion. Likewise, leaking pipes containing contaminants exposed to storm water are deemed ''exposed.'' If at any time drums, barrels, tanks or similar containers are opened, deteriorated or leaking, the discharger should take immediate actions to close or replace the container. Any resulting unpermitted discharge would violate the CWA. The Director, the operator of the MS4, or the municipality may inspect the facility to verify that all of the applicable areas meet the ''no exposure'' conditions as specified in the rule language. In requiring submission of the conditional ''no exposure'' certification and allowing the permitting authority and the operator of the MS4 to inspect the facility, today's rule does not rely on the unverified judgment of the facility to determine that the no exposure provision is being met.

EPA received several comments related to trash dumpsters that are located outside. The preamble to the proposed rule listed dumpsters in the same grouping as drums and barrels, which based exposure on the ''potential to leak''. Today's rule distinguishes between dumpsters and drums/barrels. In the Phase I Question and Answer document (volume 1, question 52) the Agency noted that a covered dumpster containing waste material that is kept outside is not considered ''exposed'' as long as ''the container is completely covered and nothing can drain out holes in the bottom, or is lost in loading onto a garbage truck.'' EPA affirms this approach today. Industrial refuse and industrial trash that is left uncovered is deemed ''exposed.''

For purposes of this provision, particulate matter emissions from roof stacks/vents that are regulated and in compliance under other environmental protection programs, such as air quality control programs, and that do not cause storm water contamination, are considered ''not exposed.'' EPA received comments on the phrase in the draft ''no exposure'' certification form that asked whether ''particulate emissions from roof stacks/vents not otherwise regulated, and in quantities detectable in the storm water outflow,'' are exposed to precipitation. One comment expressed concern that the phrase ''in quantities detectable in the storm water outflow'' implies that the facility must conduct monitoring prior to completing the checklist, and must continue to monitor after receiving the no exposure exclusion, in order to be able to verify compliance with the no exposure provision. Another comment said that current measurement technology allows detection of pollutants at levels that may not cause environmental harm. EPA does not intend to require monitoring of runoff from facilities with roof stacks/vents prior to or after completing and submitting the no exposure certification. EPA has thus replaced the phrase ''in quantities detectable'' with ''evident'' to convey the message that emissions from some roof stacks/vents have the potential to contaminate storm water discharges in quantities that are considered significant or that cause or contribute to a water quality standards violation. In those instances where the permitting authority determines that particulate emissions from facility roof stacks/vents are a significant contributor of pollutants or contributing to water quality violations, the permitting authority may require the discharger to apply for and obtain coverage under a

permit. Visible deposits of residuals (*e.g.*, particulate matter) near roof or side vents are considered ''exposed''. Likewise, visible ''track out'' (*i.e.*, pollutants carried on the tires of vehicles) or windblown raw materials are deemed ''exposed.''

EPA received a comment requesting an allowance under the ''no exposure'' provision for industrial facilities with several outfalls at a site where some, but not all of the outfalls drain non-exposed areas. The commenter provided an example of an industrial facility that has 5 outfalls draining different areas of the site, where two of those outfalls drain areas where industrial activities or materials are not exposed to storm water. The comment requested that the facility in this example be allowed to submit a ''no exposure'' certification in order to be relieved of permitting obligations for discharges from those two outfalls.

EPA agrees, but the comment would be implemented on an outfall-by-outfall basis in the permitting process, not through the ''no exposure'' exclusion. The ''no exposure'' provision was developed to allow exclusion from permitting of discharges from entire industrial facilities (except construction), based on a claim of ''no exposure'' for all areas of the facility where industrial materials or activities occur. Where exposure to industrial materials or activities exist at some but not all areas of the facility, the ''no exposure'' exclusion from permitting is not allowed because permit coverage is still required for storm water discharges from the exposed areas. Relief from permit requirements for outfalls draining non-exposed areas should be addressed through the permit process, in coordination with the permitting authority. Most NPDES general permits for storm water discharge provide enough flexibility to allow minimal or no requirements for non-exposed areas at industrial facilities. If the permitting authority determines that additional flexibility is needed for this scenario, the permits could be modified as necessary.

K. Public Involvement/Public Role

The Phase II FACA Subcommittee discussed the appropriate role of the public in successful implementation of a municipal storm water program. EPA believes that an educated and actively involved public is essential to a successful municipal storm water program. An educated public increases program compliance from residents and businesses as they realize their individual and collective responsibility for protecting water resources (*e.g.,* the residents and businesses could be subject to a local ordinance that prohibits dumping used oil down storm sewers). Finally, the program is also more likely to receive public support and participation when the public is actively involved from the program's inception and allowed to participate in the decision making process.

In a time of limited staff and financial resources, public volunteers offer diverse backgrounds and expertise that may be used to plan, develop, and implement a program that is tailored to local needs (*e.g.,* participate in public meetings and other opportunities for input, perform lawful volunteer monitoring, assist in program coordination with other preexisting and related programs, aid in the development and distribution of educational materials, and provide public training activities). The public's participation is also useful in the areas of information dissemination/education and reporting of violators, where large numbers of community members can be more effective than a few regulators.

The public can also petition the NPDES permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. In evaluating such a petition, the NPDES permitting authority is encouraged to consider the set of designation criteria developed for the evaluation of small MS4s located outside of an urbanized area in places with a population of at least 10,000 and a population density of 1,000 or more. Furthermore, any person can protect water bodies by taking civil action under section 505 of the CWA against any person who is alleged to be in violation of an effluent standard or permit condition. If civil action is taken, EPA encourages citizen plaintiffs to resolve any disagreements or concerns directly with the parties involved, either informally or through any available alternative dispute resolution process.

EPA recognizes that public involvement and participation pose challenges. It requires a substantial initial investment of staff and financial resources, which could be very limited. Even with this investment, the public might not be interested in participating. In addition, public participation could slow down the decision making process. However, the benefits are numerous.

EPA encourages members of the public to contact the NPDES permitting authority or local MS4s operator for information on the municipal storm water program and ways to participate. Such information may also be available from local environmental, nonprofit and industry groups.

Some commenters stressed the need to suggest to the public that they have a responsibility to fund the municipal storm water program. While EPA believes it is important that the program be adequately funded, today's rule does not address appropriate mechanisms or levels for such funding.

EPA received comments expressing concern that considerable public involvement requirements could result in increased litigation. EPA is not convinced there is a correlation between meaningful public education programs and any increased probability of litigation.

Finally, EPA received comments stating that the Agency should not en courage volunteer monitoring unless proper procedures are followed. EPA agrees. EPA encourages only lawful monitoring, *i.e.*, obtaining the necessary approval if there is any question about lawful access to sites. Moreover, as a matter of good practice and to enhance the validity and usefulness of the results, any party, public or private, conducting water quality monitoring is encouraged to use appropriate quality control procedures and approved sampling and analytic methods.

L. Water Quality Issues

1. Water Quality Based Effluent Limits

In addition to technology based requirements, all point source discharges of industrial storm water are subject to more stringent NPDES permitting requirements when necessary to meet water quality standards. CWA sections 402(p)(3)(A) and 301(b)(1)(C). For municipal separate storm sewers, EPA or the State may determine that other permit provisions (*e.g.* one of the minimum measures) are appropriate to protect water quality and, for discharges to impaired waters, to achieve reasonable further progress toward attainment of water quality standards pending implementation of a TMDL. CWA section 402(p)(3)(B)(iii). See *Defenders of Wildlife, et al. Browner,* No. 98–71080 (9th cir., August 11, 1999). Discharges of storm water also must comply with applicable antidegradation policies and implementation methods to maintain and protect water quality. 40 CFR 131.12. Section 122.34(a) emphasizes this point by specifically noting that a storm water management program designed to reduce the discharge of pollutants from the storm sewer system ''to the maximum extent practicable'' is also designed to protect water quality.

Permits issued to non-municipal sources of storm water must include water quality-based effluent limits where necessary to meet water quality standards.

Commenters challenged EPA's interpretation of the CWA as requiring water quality-based effluent limits for MS4s when necessary to protect water quality. Commenters asserted that CWA 402(p)(3)(B), which addresses permit requirements for municipal discharges, limits the scope of municipal program requirements to an effective prohibition on non-storm water discharges to a separate storm sewer and to controls which reduce pollutants to the ''maximum extent practicable, including management practices, control techniques and system design and engineering methods.'' They asserted that the final rule should clarify that neither numeric nor narrative water quality-based limits are appropriate or authorized for MS4s.

EPA disagrees that section 402(p)(3) divests permitting authorities of the tools necessary to issue permits to meet water quality standards. Section 402(p)(3)(B)(iii) specifically preserves the authority for EPA or the State to include other provisions determined appropriate to reduce pollutants in order to protect water quality. *Defenders of Wildlife,* slip op. at 11688. Small MS4s regulated under today's rule are designated under CWA 402(p)(6) ''to protect water quality.''

Commenters argued that water quality standards, particularly numeric criteria, were not designed to address storm water discharges. The episodic nature and magnitude of storm water events, they argue, make it impossible to apply the ''end of pipe'' compliance assessment approach, for example, in the development of water quality based effluent limits.

EPA's disagrees with the commenters arguments about the inability of water quality criteria to address high flow conditions. Today's final rule does, however, address the concern that numeric effluent limits will necessitate end of pipe treatment and the need to provide a workable alternative.

Today's rule was developed under the approach outlined in the Interim Permitting Policy for Water Quality-Based Effluent Limitations in Storm Water Permits, issued on August 1, 1996. 61 FR 43761 (November 26, 1996) (the ''Interim Permitting Policy''). EPA intends to issue NPDES permits consistent with the Interim Permitting Policy, which provides as follows:

In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for NPDES storm water permits, EPA is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

''The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate. This interim permitting approach is not intended to affect those storm water permits that already include appropriately derived numeric water quality-based effluent limitations. Since the interim permitting approach only addresses water quality-based effluent limitations, it also does not affect technology-based effluent limitations, such as those based on effluent limitations guidelines or developed using best professional judgment, that are incorporated into storm water permits.

''Each storm water permit should include a coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations of subsequent permits. Such a monitoring program may include ambient monitoring, receiving water assessment, discharge monitoring (as needed), or a combination of monitoring procedures designed to gather necessary information.

''This interim permitting approach applies only to EPA; however, EPA also encourages authorized States and Tribes to adopt similar policies for storm water permits. This interim permitting approach provides time, where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality. This interim permitting approach may be modified as a result of the ongoing Urban Wet Weather Flows Federal Advisory Committee policy dialogue on this subject.''

One commenter challenged the Interim Permitting Policy on a procedural basis, arguing that it was published without opportunity for public notice and comment. In response, EPA notes that the Policy was included verbatim and made available for public comment in the proposal to today's final rule. Prior to that proposal, the Agency defended the application of the Policy on a case-by-case basis in individual permit proceedings. Moreover, the essential elements of the Policy—that narrative effluent limitations are the most appropriate form of effluent limitations for storm water dischargers from municipal sources—was inherent in § 122.34(a) of the proposed rule, and was the subject of extensive public comment. In any event, the Policy does not constitute a binding obligation. It is policy, not regulation.

Consistent with the recognition of data needs underlying the Policy, EPA will evaluate the small MS4 storm water regulations after the second round of permit issuance. Section 122.34(e)(2) of today's rule expressly provides that for the interim ten-year period, ''EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.'' This approach addresses the concern for protecting water resources from the threat posed by storm water discharges with the important qualification that there must be adequate information on the watershed or a specific site as a basis for requiring tailored storm water controls beyond the minimum control measures. As indicated, the Interim Permitting Policy has several important limitations—it does not apply to technology-based controls or to sources that already have numeric end of pipe effluent limitations. EPA encourages authorized States and Tribes to adopt policies similar to the Interim Permitting Policy when developing storm water discharge programs. For a discussion of appropriate monitoring activities, see Section H.3.d., Evaluation and Assessment.

Where a water quality analysis indicates there is a need and basis for deriving water quality-based effluent limits in NPDES permits for storm water discharges regulated under today's rule, EPA believes that most of these cases would be satisfied by narrative effluent

limitations that require the implementation of BMPs. NPDES permit limits will in most cases continue to be based on the specific approach outlined in today's rule for the implementation of BMPs as the most appropriate form of effluent limitation to satisfy technology and water quality-based requirements. See § 122.34(a). For storm water management plans with existing BMPs, this may require further tailoring of BMPs to address the pollutant(s) of concern, the nature of the discharge and the receiving water. If the permitting authority determines that, through implementation of appropriate BMPs required by the NPDES storm water permit, the discharge has the necessary controls to provide for attainment of water quality standards, additional controls are not needed in the permit. Conversely, if a discharger (MS4, industrial or construction) fails to adopt and implement adequate BMPs, the permittee and/or the permitting authority should consider a different mix of BMPs or more specific conditions to ensure water quality protection.

Some commenters observed that there was no evidence from the experience of storm water dischargers regulated under the existing NPDES storm water program, or from studies or reports that allegedly support EPA's position, that implementation of BMPs to satisfy the six minimum control measures would meet applicable water quality standards for a regulated small MS4. In response, EPA acknowledges that the six minimum measures are intended to implement the statutory requirement to control discharges to the maximum extent practicable, and they may not result in the attainment of water quality standards in all cases. The control measures do, however, focus on and address well-documented threats to water quality associated with storm water discharges. Based on the collective expertise of the FACA Subcommittee, EPA believes that implementation of the six minimum measures will, for most regulated small MS4s, be adequate to protect water quality, and for other regulated small MS4s will substantially reduce the adverse impacts of their discharges on water quality.

Some commenters asserted that analyses of existing water quality criteria suggest that numeric criteria for aquatic life may be overprotective if applied to storm water discharges. These comments maintained that an approach that prohibits exceedance of applicable water quality criteria is unworkable. Various commenters recommended wet weather specific criteria, variances to the criteria during wet weather events, and seasonal designated uses. Other commenters noted that water quality-based effluent limits in NPDES permits have traditionally been developed based on dry weather flow conditions (*e.g.*, assuming critical low-flow conditions in the receiving water to ensure protection of aquatic life and human health). Wet weather discharges, however, typically occur under high-flow conditions in the receiving water. Assumptions regarding mass balance equations and size of mixing zones may also not be pertinent during wet weather.

EPA acknowledges the need to devise a regulatory program that is both flexible enough to accommodate the episodic nature, variability and volume of wet weather discharges and prescriptive enough to ensure protection of the water resource. EPA believes that wet weather discharges can be adequately addressed in the existing regulations through refining designated uses and assigning criteria that are tailored to the level of water quality protection described by the refined designated use.

EPA believes that lack of precision in assigning designated uses and corresponding criteria by States and Tribes, in many cases may result in application of water quality criteria that may not appropriately match the intended condition of the water body. States and Tribes have frequently designated uses without regard to site-specific wet weather conditions. Because certain uses (swimming, for example) might not exist during high-intensity storm events or in the winter, States may factor such climatic conditions and seasonal uses into their use designations with appropriate analyses. This would acknowledge that a lower level of control, at lower compliance cost, would be appropriate to protect that use. Before modifying any designated use, however, States would need to evaluate the effect of less stringent water quality criteria on protecting other uses, including any threatened or endangered species, drinking water supplies and downstream uses. EPA will further evaluate these issues in the context of the Water Quality Standards Regulation, Advance Notice of Proposed Rule Making (ANPRM), 63 FR, 36742, July 7, 1998.

One of the major themes presented by EPA in the ANPRM is that refinement in use designations and tailoring of water quality criteria to match refined use designations is an important future direction of the water quality standards program. In assigning criteria to protect general use classifications, a State or Tribe must ensure that the criteria are sufficiently protective to safeguard the full range of waters of the State, *i.e.*, criteria would be based on the most sensitive use. This approach has been disputed, especially for aquatic life uses, where evidence suggests that the general use criteria will require controls more stringent than needed to protect the existing or potential aquatic life community for a specific water body. EPA recognizes that there is a growing need to more precisely tailor use descriptions and criteria to match site-specific conditions, ensuring that uses and criteria provide an appropriate level of protection, which, to the extent possible, are not overprotective. EPA is engaged in an ongoing evaluation of its regulations in this area through the ANPRM effort. At the same time, EPA continues to encourage States and Tribes to review the applicability of the designated uses and associated criteria using existing provisions in the water quality standards regulation.

2. Total Maximum Daily Loads and Analysis To Determine the Need for Water Quality-Based Limitations

The development and implementation of total maximum daily loads (TMDLs) provide a link between water quality standards and effluent limitations. CWA section 303(d) requires States to develop TMDLs to provide more stringent water quality-based controls when technology-based controls are inadequate to achieve applicable water quality standards. A TMDL is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources, with consideration for natural background conditions. A TMDL quantifies the maximum allowable loading of a pollutant to a water body and allocates this maximum load to contributing point and nonpoint sources so that water quality criteria will not be exceeded and designated uses will be protected. A TMDL also includes a margin of safety to account for uncertainty about the relationship between pollutant loads and water quality.

Today's final rule refers to TMDLs in several provisions. For the purpose of today's rule, EPA relies on the component of the TMDL that evaluates existing conditions and allocates loads. For discharges to waters that are not impaired and for which a TMDL has not been developed, today's rule also refers to an ''equivalent analysis.'' The discussion that follows uses the term ''TMDL'' for both.

Under revised § 122.26(a)(9)(i)(C), the permitting authority may designate

storm water discharges that require NPDES permits based on TMDLs that address the pollutants of concern. For storm water discharges associated with small construction activity, § 122.26(b)(15)(i)(B) provides a waiver provision where it may be determined that storm water controls are not needed based on TMDLs that address sediment and any other pollutants of concern. The NPDES permitting authority may waive requirements under the program for certain small MS4s within urbanized areas serving less than 1,000 persons provided that, if the small MS4 discharges any pollutant that has been identified as a cause of impairment of a water body into which it discharges, the discharge is in compliance with a wasteload allocation in a TMDL for the pollutant of concern. The permitting authority may also waive requirements for MS4s in urbanized areas serving between 1,000 and 10,000 persons, if the permitting authority determines that storm water controls are not needed, as provided in § 123.35(d)(2). See § 122.32(c).

Under CWA section 303(d), States identify which of their water bodies need TMDLs and rank them in order of priority. Generally, once a TMDL has been completed for one or more pollutants in a water body, a wasteload allocation for each point source discharging the pollutant(s) is implemented as an enforceable condition in the NPDES permit. Regulated small MS4s are essentially like other point source discharges for purposes of the TMDL process.

A TMDL and the resulting wasteload allocations for pollutant(s) of concern in a water body may not be available because the water body is not on the State's 303(d) list, the TMDL has not yet been completed, or the TMDL did not include specific pollutants of concern. In these cases, the permitting authority must determine whether point sources discharge pollutant(s) in amounts that cause, have the reasonable potential to cause, or contribute to excursions above State water quality standards, including narrative water quality criteria. This so-called ''reasonable potential'' analysis is intended to determine whether and for what pollutants water quality based effluent limits are required. The analysis is, in effect, a substitute for a similar determination that would be made as part of a TMDL, where necessary. When ''reasonable potential'' exists, regulations at § 122.44(d) require a water quality-based effluent limit for the pollutant(s) of concern in NPDES permits. The water quality-based effluent limits may be narrative requirements to implement BMPs or, where necessary, may be numeric pollutant effluent limitations.

Commenters, generally from the regulated community, objected that, due to references to the need to develop a program ''to protect water quality'' and to additional NPDES permit requirements beyond the minimum control measures based on TMDLs or their equivalent, regulated small MS4s will be subject to uncertain permit limitations beyond the six minimum control measures. Commenters also asserted that through the imposition of a wasteload allocation under a TMDL in impaired water bodies, there is a likelihood that unattainable, yet enforceable narrative and numeric standards will be imposed on regulated small MS4s.

As is discussed in the preceding section, NPDES permits must include any more stringent limitations when necessary to meet water quality standards. However, even if a regulated small MS4 is subject to water quality based effluent limits, such limits may be in the form of narrative effluent limitations that require the implementation of BMPs. As discussed earlier, EPA has adopted the Interim Permitting Policy and incorporated it in the development of today's rule to recognize the appropriateness of BMP-based limits developed on a case-by-case basis.

EPA formed a Federal Advisory Committee to provide advice to EPA on identifying water quality-limited water bodies, establishing TMDLs for them as appropriate, and developing appropriate watershed protection programs for these impaired waters in accordance with CWA section 303(d). Operating under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT), the committee produced its *Report of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program* (July 1998). EPA recently published a proposed rule to implement the Report's recommendations (64 FR 46012, August 23, 1999).

3. Anti-Backsliding

In general, the term ''anti-backsliding'' refers to statutory provisions at CWA sections 303(d)(4) and 402(o) and regulatory provisions at 40 CFR 122.44(l). These provisions prohibit the renewal, reissuance, or modification of an existing NPDES permit that contain effluent limits, permit terms, limitations and conditions, or standards that are less stringent than those established in the previous permit. There are also exceptions to this prohibition known as ''antibacksliding exceptions.''

The issue of backsliding from prior permit limits, standards, or conditions is not expected to initially apply to most storm water dischargers designated under today's proposal because they generally have not been previously authorized by an NPDES permit. However, the backsliding prohibition would apply if a storm water discharge was previously covered under another NPDES permit. Also, the backsliding prohibition could apply when an NPDES storm water permit is reissued, renewed, or modified. In most cases, however, EPA does not believe that these provisions would restrict revisions to storm water NPDES permits.

One commenter questioned whether, if BMPs implemented by a regulated small MS4 operator fail to produce results in removal of pollutants and the permittee attempts to substitute a more effective BMP, the small MS4 operator could be accused of violating the anti-backsliding provisions and also be exposed to citizen lawsuits. In response, EPA notes that in such circumstances the MS4's permit has not changed and, therefore, the prohibition against backsliding is not applicable. Further, any change in the mix of BMPs that was intended to be more effective at controlling pollutants would not be considered backsliding, even if it did not include all of the previously implemented BMPs.

4. Water Quality-Based Waivers and Designations

Several sections of today's final rule refer to water quality standards in identifying those storm water discharges that are and are not required to be permitted under today's rule. As noted in § 122.30 of today's rule, CWA section 402(p)(6) requires the designation of municipal storm water sources that need to be regulated to protect water quality and the establishment of a comprehensive storm water program to regulate these sources. Requirements applicable to certain municipal sources may be waived based on the absence of demonstrable water quality impacts. Section 122.32(c). The section 402(p)(6) mandate to protect water quality also provides the basis for regulating discharges associated with small construction. See also § 122.26(b)(15)(i). Further, today's rule carries forward the existing authority for the permitting authority to designate sources of storm water discharges based upon water quality considerations. Section 122.26(a)(9)(i)(C) and (D).

As is discussed above in sections II.H.2.e (for small MS4s) and II.I.1.b.ii

(for small construction), the requirements of today's rule may be waived based on wasteload allocations that are part of ''total maximum daily loads'' (TMDLs) that address the pollutants of concern or, in the case of small construction and municipalities serving between 1,000 and 10,000 persons, the equivalents of TMDLs. One commenter stated that waivers would allow exemptions to the technology based requirements and would thus be inconsistent with the two-fold approach of the CWA (a technology based minimum and a water quality based overlay). EPA acknowledges that waivers are not allowed for other technology-based requirements under the CWA. A more flexible approach is allowed, however, for sources designated for regulation under 402(p)(6) to protect water quality. For such sources EPA may allow a waiver where it is demonstrated that an individual source does not present the threat to water quality that was the basis for EPA's designation.

III. Cost-Benefit Analysis

EPA has determined that the range of the rule's benefits exceeds the range of regulatory costs. The estimated rule costs range from $847.6 million to $981.3 million annually with corresponding estimated monetized annual benefits which range from $671.5 million to $1.628 billion, expected to exceed costs.

The rule's cost and benefit estimates are based on an annual comparison of costs and benefits for a representative year (1998) in which the rule is implemented. This differs from the approach used for the proposed rule which projected cost and benefits over three permit terms. EPA has chosen to use the current approach because it determined that the ratio of annual benefits and costs would not change significantly over time. Moreover, because there is not an initial outlay of capital costs with benefits accruing in the future (*i.e.*, benefits and costs are almost immediately at a steady state), it is not necessary to discount costs in order to account for a time differential.

EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements imposed by the rule. The Agency used two approaches, a national water quality model and national water quality assessment, to estimate the potential benefits of the rule. Both approaches show that the benefits are likely to exceed costs.

These estimates, including descriptions of the methodology and assumptions used, are described in detail in the *Economic Analysis of the Final Phase II Rule,* which is included in the record of this rule making. Exhibit 3 summarizes costs and benefits associated with the basic elements of today's rule.

EXHIBIT 3.—COMPARISON OF ANNUAL COMPLIANCE COST AND BENEFIT ESTIMATES [1]

Monetized benefits	National water quality model (millions of 1998 dollars)	National water quality assessment (millions of 1998 dollars)
Municipal Minimum Measures	.....	$131.0–$410.2
Controls for Construction Sites	.....	$540.5–$686.0
Total Annual Benefits	$1,628.5	$671.5–$1,096.2

Costs	Millions of 1998 dollars [2]
Municipal Minimum Measures	$297.3
Controls/Waivers for Construction Sites	$545.0–$678.7
Federal/State Administrative Costs	$5.3
Total Annual Costs	$847.6–$981.31

[1] National level benefits are not inclusive of all categories of benefits that can be expected to result from the regulation.
[2] Total may not add due to rounding.

A. Costs

1. Municipal Costs

Initially, to determine municipal costs for the proposed rule, EPA used anticipated expenditure data included in permit applications from a sample of 21 Phase I MS4s. Certain commenters criticized the Agency for using anticipated expenditures because they could be significantly different from the actual expenditures. These commenters suggested that the Agency use the actual cost incurred by the Phase I MS4s. Other comments stated that because the Phase I MS4s, in general, are large municipalities, they may not be representative of the Phase II MS4s for estimating regulatory costs. Finally, one commenter noted that the sample of 21 municipalities used to project cost was relatively small.

To address the concerns of the commenters, EPA utilized a National Association of Flood and Stormwater Management Agencies (NAFSMA) survey of the Phase II community to obtain incremental cost estimates for Phase II municipalities. Using the list of potential Phase II designees published in the **Federal Register** (63 FR 1616), NAFSMA contacted more than 1,600 jurisdictions. The goal of the survey was to solicit information from those communities about the proposed Phase II NPDES storm water program. Several of the survey questions corresponded directly to the minimum measures required by the Phase II rule. One hundred twenty-one surveys were returned to NAFSMA and were used to develop municipal costs.

Using the NAFSMA information, EPA estimated average annual per household program costs for automatically designated municipalities. EPA also estimated an average annual per household administrative cost for municipalities to address application, record keeping, and reporting requirements of the Rule. The total average per household cost of the rule is expected to $9.16 per household.

To determine potential national level costs for municipalities, EPA multiplied the number of households (32.5 million) by the per household cost ($9.16). EPA estimates the annual cost of the Phase II municipal program at $298 million.

As an alternative method, and point of comparison, to the NAFSMA-based approach, EPA reviewed actual expenditures reported from 35 Phase I MS4s. The Agency targeted these 35 Phase I MS4s because they had participated in the NPDES program for

nearly one permit term, were smaller in size and had detailed data reflecting their actual program implementation costs. Of the 35 MS4s, appropriate cost data was only available for 26 of those MS4s. EPA analyzed the expenditure data and identified the relevant expenditures, excluding costs presented in the annual reports unrelated to the requirements of the Rule. The cost range and annual per household program costs of $9.08 are similar to those found using the NAFSMA survey data.

2. Construction Costs

In order to estimate the rule's construction-related cost on a national level (the soil and erosion controls (SEC) requirements of the rule and the potential impacts of the post-construction municipal measure on construction), EPA estimated a per site cost for sites of one, three, and five acres and multiplied these costs by the total number of estimated Phase II construction starts across these size categories.

To estimate the percentage of starts subject to the soil and erosion control requirements between 1 and 5 acres, with respect to each category of building permits (residential, commercial, *etc.*), EPA initially used data from Prince George's County (PGC), Maryland, and applied these percentages to national totals. In the proposal, EPA recognized that the PGC data may not be representative of the entire country and requested data that could be used to develop better estimates of the number of construction sites between 1 and 5 acres. EPA did not receive any substantiated national data from commenters.

In view of the unavailability of national data from commenters, EPA made extensive efforts to collect construction site data around the country. The Agency contacted more than 75 municipalities. EPA determined that 14 of the contacted municipalities had useable construction site data. Using data from these 14 municipalities, EPA developed an estimate of the percentage of construction starts on one to five acres. EPA then multiplied this percentage by the number of building permits issued nationwide to determine the total number of construction starts occurring on one to five acres. Finally, to isolate the number of construction starts incrementally regulated by Phase II, EPA subtracted the number of activities regulated under equivalent programs (*e.g.*, areas covered by the Coastal Zone Act Reauthorization Amendments of 1990, and areas covered by equivalent State level soil and erosion control requirements). Ultimately, EPA estimated that 110,223 construction starts would be incrementally covered by the rule annually.

EPA then used standard cost estimates from *Building Construction Cost Data* and *Site Work Landscape Cost Data* (R.S. Means, 1997a and 1997b) to estimate construction BMP costs for 27 model sites in a variety of typical site conditions across the United States. The model sites included three different site sizes (one, three and five acres), three slope variations (3%, 7%, and 12%), and three soil erosivity conditions (low, medium, and high). EPA chose BMP combinations appropriate to the model site conditions. Based on the assumption that any combination of site factors is equally likely to occur in a given site, EPA developed average cost of sediment and erosion control for all model sites. EPA estimated that, on average, BMPs for a 1 acre site will cost $1,206, for a 3 acre site $4,598 and for a 5 acre site $8,709.

EPA then estimated administrative costs per construction site for the following elements required under the rule: Submittal of a notice of intent for permit coverage; notification to municipalities; development of a storm water pollution prevention plan; record retention; and submittal of a notice of termination. EPA estimated the average total administrative cost per site to be $937.

EPA also considered the cost implications of NPDES permit authorities waiving the applicability of requirements to storm water discharges from small construction sites based on two different criteria involving water quality impact and low rainfall. EPA received comments stating that a waiver would require a significant investment in training or acquisition of a consultant. Based on comments received, EPA eliminated one of the waiver conditions involving low soil loss threshold because it necessitated use of the Revised Universal Soil Loss Equation which could require extensive technical expertise.

Based on the opinions of construction industry experts, EPA estimates that 15 percent of the construction sites that would otherwise be covered by today's rule will be eligible to receive waivers. Therefore, the Agency has excluded 15 percent of the construction sites when deriving costs of sediment and erosion control. The average cost for sites to qualify for the waiver is expected to be $34 per site. The construction cost analysis for the proposed rule did not include any costs for the preparation and submission of waiver applications because EPA believed those costs would be negligible. However, in response to public comments, EPA has estimated these potential costs.

EPA has also estimated the potential costs for construction site operators to implement the post-construction minimum measure. These are costs that may be incurred by construction site operators if the MS4 chooses to meet the post-construction minimum measure by requiring on-site structural, site-by-site control of post-construction runoff. Municipalities may select from an array of structural and non-structural options in implementing this measure, so the potential costs to construction operators is uncertain. Nonetheless, EPA developed average annual BMP costs for sites of one, three, five and seven acres. EPA's analysis accounted for varying levels of imperviousness that characterize residential, commercial, and institutional land uses. Nationwide, these costs are expected to range from $44 million to $178 million annually.

Finally, to establish national incremental annual costs for Phase II construction starts, EPA multiplied the total costs of compliance for the chosen site size categories by the total number of Phase II construction starts and added post-construction costs. EPA estimates the annual compliance cost to range from $545 million to $678.7 million.

B. Quantitative Benefits

In the Economic Analysis for the proposed rule, a ''top-down'' approach was used to estimate economic benefits. Under this approach, the combined economic benefits for wet weather programs were estimated first, and then were divided among various water programs on the basis of expert opinion. As a result, the benefits estimates for an individual program were rather uncertain. Moreover, this approach was inconsistent with the approach used to estimate the cost of the proposed storm water rule, which was developed using municipal-based and cost-based data to develop ''bottom-up'' costs. Therefore, EPA decided to use a ''bottom-up'' approach for estimating benefits of the Phase II rule. To adequately reflect the quantifiable benefits of the rule, EPA used two different methods: (1) National Water Quality Model and (2) National Water Quality Assessment.

To monetize benefits in both approaches, the Agency applied Carson and Mitchell's (1993) estimates of household willingness-to-pay (WTP) for water quality improvement to estimates of waters impaired by storm water discharges. Carson and Mitchell's 1993 study reports the results of their 1983 national survey of WTP for incremental

improvements in fresh water quality. Carson and Mitchell estimate the WTP for three minimum levels of fresh water quality: boatable, fishable, and sizable. EPA adjusted the WTP amounts to account for inflation, growth in real per capita income, and increased attitudes towards pollution control. The adjusted WTP amounts for improvements in fresh water quality are $210 for boatable, $158 for fishable, and $177 for sizable. A brief summary of the national water quality model and national water quality assessment approaches follow.

1. National Water Quality Model

One approach EPA used to estimate the benefits of the Phase II municipal and construction site controls was the National Water Pollution Control Assessment Model (NWPCAM). NWPCAM estimates benefits of the storm water program at the national level, including the impact on small streams. This model estimates water quality and the resultant use support for the 632,000 miles of rivers and streams in the USEPA Reach File Version 1 (RF1), which covers the continental United States. The model analyzes water quality changes by stream reach. The parameters modeled in the NWPCAM are biological oxygen demand (BOD), total suspended solids (TSS), dissolved oxygen (DO), and fecal coliforms (FC).

The model projects changes in water quality due to the Phase II municipal and construction site controls. To calculate the economic benefits of change in water quality, the number of households in the proximity of the stream reach are determined, by overlaying the model results on the 1990 Census of Populated Places and Minor Civil Divisions, and updating the population to 1998. Economic benefits are calculated using the Carson and Mitchell WTP values. The benefits are separately estimated for local and non-local waters on the basis of WTP values and proximity to water quality changes.

The value of the change in use support for local waters is greater than the value of the non-local waters because of the opportunity to use local waters by the local population. This model assumes that if improvement occurs in waters that are not close to population centers the economic value is lower. Therefore, benefits are estimated for local and non-local waters separately. This assumption is based on Carson and Mitchell's survey which asked respondents to apportion each of their stated WTP values between achieving the water quality goals in their own State and achieving those goals in the nation as a whole. On average, respondents allocated 67% of their values to achieving in-State water quality goals and the remainder to the nation as a whole. Carson and Mitchell argue that for valuing local water quality changes 67% is a reasonable upper bound for the local multiplier and 33% for the non-local water quality changes. For the purposes of this analysis, the locality is defined as urban sites and associated populations linked into the NWPCAM framework. Using this methodology, the total monetized benefits of Phase II control of urban and construction site runoff is estimated to be $1.628 billion per year. The local and non-local benefits due to Phase II controls are presented in Exhibit 4.

EXHIBIT 4.—LOCAL AND NON-LOCAL BENEFITS ESTIMATES DUE TO PHASE II CONTROLS NATIONAL WATER QUALITY MODEL ESTIMATE

Use support	Local benefits ($million/yr)	Non-local benefits [1] ($million/yr)	Total benefits ($million/yr)
Swimming, Fishing, and Boating	306.20	60.60	366.80
Fishing and Boating	395.10	51.90	447.00
Boating	700.10	114.60	814.70
Total	1401.40	227.10	1628.50

[1] To estimate non-local willingness to pay per household, the 33% of willingness is multiplied by the fraction of previously impaired national waters (in each use category) that attain the beneficial use as a result of the Phase II rule. To estimate the aggregate non-local benefits, non-local willingness to pay is multiplied with the total number of households in the US.

While the numbers of miles that are estimated to change their use support are small, the benefits estimates are quite significant. This is because urban runoff and, to a large extent, construction activity occurs where the people actually reside and the water quality changes mostly occur close to these population centers. NWPCAM indicates that changes in pollution loads have the most effect immediately downstream of pollution changes. As a result, the aggregate WTP is large because large numbers of households in these population centers are associated with the local waters that reflect improvement in designated use support.

2. National Water Quality Assessment

EPA also estimated benefits of the Phase II Storm Water program using the 1998 National Water Quality Inventory (305(b)) Report to Congress, rather than the NWPCAM as a basis for estimating impairment addressed by the rule. The Water Quality Assessment method separately estimates benefits associated with improvements to fresh water, marine water and construction site controls, and then aggregates these separate categories into an estimate of total annual benefits.

a. Municipal Measures

i. Fresh Waters Benefits

In order to develop estimates for the potential value of the municipal measures (except storm water runoff controls for construction sites), EPA applied Carson & Mitchell WTP values to estimated existing and projected future fresh water impairment. Carson & Mitchell did not evaluate marine waters, so only fresh water values were available from their research. Even though the Carson and Mitchell estimates apply to all fresh water, it is not clear how these values would be apportioned among rivers, lakes, and the Great Lakes. The 305(b) data indicate that lakes are the most impaired by urban runoff/storm sewers, followed closely by the Great Lakes, and then rivers. Therefore, EPA applied the WTP values to the categories separately and assumed that the higher resulting value for lakes represents the high end of the range (*i.e.*, assuming that lake impairment is more indicative of national fresh water impairment) and that the lower resulting value for impaired rivers represents the low end of a value range for all fresh waters (*i.e.*, assuming that river impairment is more indicative of national fresh water impairment). In addition, EPA estimated that the post-construction runoff

requirements of the municipal program might result in benefits of at least $16.8 million annually from avoided future runoff. The post-construction estimate significantly underestimates potential program benefits because it does not account for avoided hydrologic changes and resulting water quality impairment associated with increases in imperviousness from development and redevelopment. Summing the benefits across the water quality use support levels yields an estimate of benefits ranging from approximately $121.9 million to $378.2 million per year.

ii. Marine Waters Benefits

In addition to the fresh water benefits captured by the Carson and Mitchell study, EPA anticipates benefits as a result of improvements to marine waters. Sufficient methods have not been developed to quantify national-level benefits for commercial or recreational fishing. EPA used beach closure data and visitation estimates from its Beach Watch Program to estimate potential reductions in marine swimming visits due to storm water runoff contamination events in 1997. The estimated 86,100 trips that did not occur because of beach closures in coastal Phase II communities is a lower bound because it represents only those beaches that report both closures and visitation data. EPA estimates potential swimming benefits from the rule to be at least $2.1 million annually.

EPA developed an analysis of potential benefits associated with avoided health impacts from exposure to contaminants in storm sewer effluent. Based on a study of incremental illnesses found among people who swam within one yard of storm drains in Santa Monica Bay, EPA estimated a range of incremental illnesses (Haile *et al.*, 1996). Depending on assumptions made about number of exposures to contaminants and contaminant concentrations, benefits ranged from $7.0 million to $29.9 million annually.

b. Construction Benefits

The major pollutant resulting from construction activities is sediment. However, in addition to sediment, construction activities also yield pollutants such as pesticides, petroleum products, and solvents. Because circumstances will vary considerably from site to site, data is not available with which to develop estimates of benefits for each site and aggregate to obtain a national-level estimate.

In the proposed rule, EPA estimated the combined benefits of all wet weather programs, and then used expert opinions to allocate them to different individual programs. To eliminate the possible overlap between the benefits of the soil and erosion control requirements, municipal measures, and other wet weather storm water programs, EPA chose to use an approach in today's final rule that directly estimates the benefits of soil and erosion requirements.

A survey of North Carolina residents (Paterson *et al.*, 1993) indicated that households are willing to pay for erosion and sediment controls similar to those in today's rule. Based on income and other indicators, the values derived from the study are expected to be similar to values held in the rest of the country. Using the mean value of the willingness to pay of $25 per household, EPA projects annual benefits of the soil and erosion requirements to range from $540.5–$686 million.

c. Summary of Benefits From the National Water Quality Assessment

Total benefits from municipal measures and construction site controls are expected to range from $671.5 million to $1.1 billion per year, including benefits of approximately $13.7 million per year associated with small stream improvements. A summary of the potential benefits is presented in Exhibit 5.

As shown in Exhibit 5, it was not possible to monetize all categories of benefits using the WTP estimates. In particular, benefits for improving marine water quality such as fishing and passive use benefits are not included in the values used to estimate the potential benefits of the municipal minimum measures (excluding construction sites controls), and they are not estimated separately, because information is not currently available.

EXHIBIT 5.—POTENTIAL ANNUAL BENEFITS OF THE PHASE II STORM WATER RULE NATIONAL WATER QUALITY ASSESSMENT ESTIMATE

Benefit category	Annual WTP
Municipal Minimum Measures [1]	
Fresh Water Use and Passive Use [2]	$121.9–$378.2
Marine Recreational Swimming	$2.1
Human Health (Marine Waters)	$7.0–$29.9
Other Marine Use and Passive Use	(+)
Erosion and Sediment Controls for Construction Sites	
Fresh Water and Marine Use and Passive Use [3]	$540.5–$686
Total Phase II Program	
Total Use & Passive Use (Fresh Water and Marine)	>$671.5–>$1,096.2

+= positive benefits expected but not monetized.

[1] Includes water quality benefit of municipal programs, based on 80% effectiveness of municipal programs.

[2] Based on research by Carson and Mitchell (1993). Fresh water value only. Does not include commercial fishery, navigation, or diversionary (*e.g.* municipal drinking water cost savings or risk reductions) benefits. May not fully capture human health risk reduction or ecological values.

[3] Based on research by Paterson *et al.* (1993). Although the survey's description of the benefits of reducing soil erosion from construction sites included reduced dredging, avoided flooding, and water storage capacity benefits, these benefit categories may not be fully incorporated in the WTP values. Small streams may account for over 2% of total benefits.

C. Qualitative Benefits

There are additional benefits to storm water control that cannot be quantified or monetized. Thus, the current estimate of monetized benefits may understate the true value of storm water controls because it omits many ways in which society is likely to benefit from reduced storm water pollution, such as improved

aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits.

A benefit that EPA did not monetize completely is the flood control benefits attributable to municipal storm water controls reducing downstream flooding, although flood control benefits associated with sediment and erosion control are already reflected to some extent in the construction benefits. Similarly, the Agency could not value the benefits from increased property value due to storm water controls reflected in the rule, even though a commenter suggested inclusion of these benefits in the estimates.

Moreover, while a number of commenters requested that EPA include ecological benefits, the Agency was not able to fully monetize these benefits. Urbanization usually increases the amount of sediment, nutrients, metals and other pollutants associated with land disturbance and development. Development usually not only results in a dramatic increase in the volume of water runoff, but also in a substantial decrease in that water's quality due to stream scour, runoff and dispersion of toxic pollutants, and oversiltation. These kinds of secondary benefits could not be fully reflected in the monetized benefits. EPA was able to only monetize the aquatic life support benefits for waters assumed to be impaired. Thus, only the aquatic life support benefits attributable to municipal controls, reflected through human satisfaction, are taken into account.

Reduced nutrient level is another benefit of the storm water control which is not fully captured by the economic analysis. High nutrient levels often lead to eutrophication of the aquatic system. The quality change in ecological sources as the result of storm water controls to reduce pollutants is not fully reflected in the present benefits.

D. National Economic Impact

Finally, the Agency determined that the rule will have minimal impacts on the economy or employment. This is because the final rule regulates small MS4s and construction sites under 5 acres, not the typical industrial plants or other non-construction activities that could directly impact production and thus those sectors of the economy.

Discussions with representatives within the construction industry indicate that construction costs will likely be passed on to buyers, thus not seriously affecting the housing industry directly. One commenter argued that the rule will have a negative employment effect because the builders will build fewer homes requiring less building materials as a result of the declining demand induced by the cost of the soil and erosion controls. EPA disagrees with this argument because the cost of the controls, as the percentage of the price of a median home, is negligible and will be passed on to final buyers.

Flexibility within the rule allows MS4s to tailor the storm water program requirements to their needs and financial position, minimizing impacts. For sedimentation and erosion controls on construction sites, the rule contemplates application of commonly used BMPs to reduce costs for the construction industry. Thus, the rule attempts to use existing practices to prevent pollution, which should minimize impacts on States, Tribes, municipalities and the construction industry.

Thus, EPA concludes that the effect of the rule, if any, on the national economy will be minimal. The benefits of today's rule more than offset any cost impacts on the national economy.

IV. Regulatory Requirements

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved some of the information collection requirements contained in this final rule (*i.e.* those found in 40 CFR 122.26(g) and 123.35(b)) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0211.

The burden and costs described below are for the information collection, reporting, and record keeping requirements for the three year period beginning with the effective date of today's rule. Additional information collection requirements for regulated small MS4s and small construction sites will occur after this initial three year period and will be counted in a subsequent information collection requirement. The total burden of the information collection requirements for the first three years of this rule is estimated at 56,369 hours with a corresponding cost of $2,151,305 million annually. This burden and cost is for industrial facilities to complete and submit the no exposure certification, for NPDES-authorized States to process and review the no exposure certification, and for the NPDES-authorized States to develop designation criteria and assess additional MS4s outside of urbanized areas. Compliance with the applicable information collection requirements imposed under this rule are mandatory, pursuant to CWA section 402.

Exhibit 6 presents average annual burden and cost estimates for Phase II respondents for the first three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways for complying with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EXHIBIT 6.—AVERAGE ANNUAL BURDEN AND COST ESTIMATES FOR PHASE II RESPONDENTS

Information collection activity	A Respondents per year (projected) [1]	B Burden hours per respondent per year (predicted)	(A)×(B)=C Annual respondent burden hours (projected)	D Respondent labor cost ($/hr) (1998 $)	(C)×(D)=E Annual Cost ($) (projected)
Ind. No Expos. Facilities:[2]					
No Expos. Certification	36,377	1.0	36,377	44.35	1,613,320
Annual Subtotal			36,377		1,613,320
NPDES-Authorized States:[3]					
Designation of Addit. MS4s [4]	15	332.8	4,892	26.91	131,644

EXHIBIT 6.—AVERAGE ANNUAL BURDEN AND COST ESTIMATES FOR PHASE II RESPONDENTS—Continued

Information collection activity	A Respondents per year (projected) [1]	B Burden hours per respondent per year (predicted)	(A)×(B)=C Annual respondent burden hours (projected)	D Respondent labor cost ($/hr) (1998 $)	(C)×(D)=E Annual Cost ($) (projected)
No Exp. Cert. Proc. & Rev	30,200	0.5	15,100	26.91	406,341
Annual Subtotal			19,992		537,985
Annual Totals			56,369		2,151,305

Notes:

[1] Source: U.S. EPA, Office of Wastewater Management. Economic Analysis for the Storm Water Phase II Rule.

[2] The total number of potential no exposure respondents was divided by 5 to estimate an annual total. It was assumed that the annual number of respondents for the no exposure certification would be spread over the five year period the exclusion applies.

[3] The number of respondents in each category represents only those respondents located within the 44 NPDES-authorized States and Territories. The burden and cost estimates provided in this section are for the NPDES-authorized States in their role as the permitting authority for municipal designations and industrial no exposure.

[4] The number of respondents for this activity, 15, represents the number of NPDES-authorized States and Territories that must develop designation criteria and assess small MS4s located outside of an urbanized area for possible Phase II coverage divided by the three year ICR period.

Given the requirements of today's regulation, EPA believes there will be no capital startup and no operation and maintenance costs associated with information collection requirements of the rule.

The government burden associated with today's rule will impact State, Tribal, and Territorial governments (NPDES-authorized governmental entities) that have storm water program authority, as well as the federal government (*i.e.*, EPA), where it is the NPDES permitting authority. As of March 1999, 43 States and the Virgin Islands had NPDES authority.

The annual burden imposed upon authorized governmental entities (delegated States and the Virgin Islands) and the federal government for the next three years is estimated to be 19,992 hours ($537,985) and 4,087 hours ($115,948) respectively, for a total of 24,079 hours ($653,933). This estimate is based on the average time that governments will expend to carry out the following activities: designate additional MS4s (332.8 hours) and process and review ''no exposure'' certificates from industrial dischargers (0.5 hour).

Under the existing rule, storm water discharges from light industrial activities identified under § 122.26(b)(14)(xi) were exempted from the permit application requirements if they were not exposed to storm water. Today's rule expands the applicability of the ''no exposure'' exclusion to include all industrial activity regulated under § 122.26(b)(14) (except category (x), construction). The ''no exposure'' provision is applied through the use of a written certification process, thus representing a slight reporting burden increase for ''light'' industries with ''no exposure'.

In addition to the information collection, reporting, and record keeping burden for the next three years, today's rule contains information collection requirements that will not begin until three years or more from the effective date of today's rule. These information collection requirements were not included in the information collection request approved by OMB. EPA will submit these burden estimates for OMB approval when it submits ICR 2040–0211 to OMB for renewal in three years. The rule burdens for regulated small MS4s and small construction sites that will be included in the ICR renewal fall into three areas: application for an NPDES permit or submittal of waiver information, record keeping of storm water management activities, and submittal of reports to the permitting authority. There will also be an additional burden for the permitting authority to review this information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the first three years of information requirements contained in this final rule.

B. Executive Order 12866

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a

written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

EPA has determined that today's rule contains a Federal mandate that may result in expenditures of $100 million or more in any one year for both State, local, and tribal governments, in the aggregate, and the private sector. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

1. Summary of UMRA Section 202 Written Statement

EPA promulgates today's storm water regulation pursuant to the specific mandate of Clean Water Act section 402(p)(6), as well as sections 301, 308, 402, and 501. (33 U.S.C. sections 1342(p)(6), 1311, 1318, 1342, 1361.) Section 402(p)(6) of the CWA requires that EPA designate sources to be regulated to protect water quality and establish a comprehensive program to regulate those sources.

In the *Economic Analysis of the Final Phase II Rule* (EA), EPA describes the qualitative and monetized benefits associated with today's rule and then compares the monetized benefits with the estimated costs for the rule. EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements imposed by the rule. These estimates, including descriptions of the methodology and assumptions used, are described in detail in the EA. The Agency used two approaches, a national water quality model and national water quality assessment, to estimate the potential benefits of the rule. Both approaches show that the benefits are likely to exceed costs. Exhibit 3 in section III of this preamble summarizes the costs and benefits associated with the basic elements of today's rule.

There are additional benefits to storm water control that cannot be quantified or monetized. Thus, the current estimate of monetized benefits may understate the true value of storm water controls because it omits many ways by which society is likely to benefit from reduced storm water pollution, such as improved aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits.

Several commenters asserted that today's rule is an unfunded mandate and that, without funding, the monitoring of the already existing pollution control programs would suffer. In section II.D.3 of the preamble, EPA lists some of the programs that EPA anticipates may provide funds to help develop and, in limited circumstances, implement storm water management programs.

In the EA, EPA reviewed the expected effect of today's rule on the national economy. The Agency determined that the rule will have minimal impacts on the economy or employment. This is because the final rule regulates small MS4s and construction sites under 5 acres, not the typical industrial plants or other non-construction activities that could directly impact production and thus those sectors of the economy.

Discussions with representatives within the construction industry indicate that construction costs will likely be passed on to buyers, thus not seriously affecting the housing industry directly. Flexibility within the rule allows MS4s to tailor the storm water program requirements to their needs and financial position, minimizing impacts. For sedimentation and erosion controls on construction sites, the rule contemplates application of commonly used BMPs to reduce costs for the construction industry. Thus, the rule attempts to use existing practices to prevent pollution, which should minimize impacts on States, Tribes, municipalities and the construction industry.

Thus, EPA concludes that the effect of the rule, if any, on the national economy would be minimal. The benefits of today's rule more than offset any cost impacts on the national economy.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, ''Enhancing the Intergovernmental Partnership,'' EPA consulted with the governmental entities affected by this rule.

First, EPA provided States, Tribal and local governments with the opportunity to comment on draft alternative approaches for the proposed rule through publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24 percent from State or Federal agencies. These comments were the genesis of many of the provisions in the today's rule, including reliance on the NPDES program framework (including general permits), providing State and local governments flexibility in selecting additional sources requiring regulation, and focusing on high priority polluters. These comments helped to focus on pollution prevention, watershed-based concerns and BMPs. They also led to certain exemptions for facilities that do not pollute national waters.

In early 1993, EPA, in conjunction with the Rensselaerville Institute, held public and expert meetings to assist in developing and analyzing options for identifying unregulated storm water sources and possible controls. These meetings provided participants an additional opportunity to provide input into the CWA section 402(p)(6) program development process. The final rule addresses several of the key concerns identified in these groups, including provisions that provide flexibility to the States to select sources to be controlled and types of permits to be issued, and flexibility to MS4s in selecting BMPs.

EPA also conducted outreach with representatives of small entities, including small government representatives, in conjunction with the convening of a Small Business Advocacy Review Panel under SBREFA which is discussed in section IV.E. of the preamble.

In addition, EPA established the Urban Wet Weather Flows Advisory Committee under the Federal Advisory Committee Act (FACA). The Urban Wet Weather Flows Advisory Committee, in turn established the Storm Water Phase II Subcommittee. Consistent with FACA, the membership of the Committee and the Storm Water Phase II Subcommittee was balanced among EPA's various outside stakeholder interests, including representatives from State governments, municipal governments (both elected officials and appointed officials) and Tribal governments, as well as industrial and commercial sectors, agriculture, environmental and public interest groups.

In general, municipal and Tribal government representatives supported the NPDES approach in today's rule for the following reasons: It will be uniformly applied on a nationwide basis; it provides flexibility to allow incorporation of State and local programs; it resolves the problem of donut holes that cause water quality impacts in urbanized areas; and it allows co-permitting of small regulated

MS4s with those regulated under the existing storm water program.

In contrast, State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives pointed out that there are a variety of State programs—not based on the CWA—implementing effective storm water controls, and that EPA should provide incentives for their implementation and improvement in performance. EPA continues to believe that an NPDES approach is the best approach in order to adequately protect water quality. However, EPA has worked with States on an alternative approach that provides flexibility within the NPDES framework. The final rule allows States with a watershed permitting approach to phase in permit coverage for MS4s in jurisdictions with a population less than 10,000 and provides two waivers from coverage for small MS4s. This issue is discussed in section II.C of the preamble, Program Framework: NPDES Approach.

Some municipal governments objected that the rule's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties according to the ''minimum measures'' for municipal storm water management programs. EPA disagrees that today's rule is inconsistent with Tenth Amendment principles. Permits issued under today's rule will not compel political subdivisions of States to regulate in their sovereign capacities, but rather to effectively control discharges out of their storm sewer systems in their owner/operator capacities. For MS4s that do not accept this ''default'' minimum measures-based approach (to control discharges out of the storm sewer system by exercising local powers to control discharges into the storm sewer system), today's rule allows for alternative permits through individual permit applications. EPA made revisions to the rule to allow regulated small MS4s to opt out of the minimum measures approach and instead apply for an individual permit. This issue is discussed in section II.H.3.c.iii of the preamble, Alternative Permit Option/ Tenth Amendment.

2. Selection of the Least Costly, Most Cost-Effective or Least Burdensome Alternative That Achieves the Objectives of the Statute

Today's rule evolved over time and incorporated aspects of alternatives that responded to concerns presented by the various stakeholders. A primary characteristic of today's rule is the flexibility it offers both the permitting authority and the regulated sources (small MS4s and small construction sites), by the use of general permits, implementation of BMPs suited to specific locations, and allowing MS4s to develop their own program goals.

In the administrative record supporting the proposed rule, EPA estimated ranges of costs associated with six different options, including a no action option, the proposed option, and four other options that considered various combinations of the following: Covering all the unregulated construction sites below 5 acres, all small MS4s, certain industrial and commercial activities, and all point sources. EPA developed detailed cost estimates for the incremental requirements imposed under the final regulation, and for each of the alternatives, and applied these estimates to the remaining unregulated point sources of storm water. The Agency compared the estimated annual range of costs imposed under today's rule and other major options considered. The range of values for each option included the costs for compliance, including paperwork requirements for the operators of small construction sites, industrial facilities, and MS4s and administrative costs for State and Federal NPDES permitting authorities.

Today's rule reflects the least costly option that achieves the objectives of the statute, thus meeting the requirements of section 205. EPA did not consider ''no regulation'' to be an ''option'' because it would not achieve the objectives of CWA section 402(p)(6). A portion of currently unregulated point sources of storm water need to reduce pollutants to protect water quality.

Today's rule is estimated to range in cost from $847.6 million to $981.3 million annually, although the cost estimate for the proposed rule was reported as a range of $138 to $869 million annually. That range reflected a unit cost range for the municipal minimum measures and a cost range per construction site for soil erosion control. EPA has since revised its cost analysis to allow it to report the current estimate, which is toward the high end of the original cost range. The four other regulatory options considered at proposal involved higher regulatory costs and, therefore, were not selected. These four options and their estimated costs are as follows:

(1) An option based on the August 7, 1995 direct final rule was estimated to cost between $2.2 billion and $78.9 billion per year.

(2) A ''Plan B'' option was estimated to cost between $0.6 billion and $3.2 billion per year.

(3) An option based on the September 30, 1996 draft proposed rule was estimated to cost between $0.2 billion and $3.7 billion per year.

(4) An option based on the February 13, 1997 draft proposed rule, was estimated to cost between $0.2 billion and $3.5 billion.

There are three reasons why the costs for these four options exceeded the estimated cost range for the proposed rule. The first two options regulated substantially more municipal governments. The first, third, and fourth options required industrial facilities to apply for permits. Finally, the first three options applied permit requirements to construction sites below 1 acre. Consequently, these options would be more costly than today's rule even with the revised analysis methods used to estimate costs.

3. Effects on Small Governments

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although today's rule expands the NPDES program (with modifications) to certain MS4s serving populations below 100,000 and although many MS4s are owned by small governments, EPA does not believe today's rule significantly or uniquely affects small governments. As explained in section IV.E. of the preamble, EPA today certifies that the rule will not have a significant impact on small governmental jurisdictions. In addition, the rule will not have a unique impact on small governments because the rule will affect small governments in

to the same extent as (or to a lesser extent than) larger governments that are already covered by the existing storm water rules. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

Notwithstanding this finding, in developing today's rule, EPA provided notice of the requirements to potentially affected small governments; enabled officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals; and informed, educated and advised small governments on compliance with the requirements.

Concerning notice, EPA provided States, local, and Tribal governments with the opportunity to comment on alternative approaches for an early draft of the proposed rule by publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24 percent from State or Federal agencies.

The Agency also provided, through the SBREFA panel process and the FACA process, the opportunity for elected officials of small governments (and their representatives) to meaningfully participate in the development of the rule. Through such participation and exchange, EPA not only notified potentially affected small governments of requirements of the developing rule, but also allowed officials of affected small governments to have meaningful and timely input into the development of regulatory proposals.

In addition to involving municipalities in the development of the rule, EPA also continues to inform, educate, and advise small governments on compliance with the requirements of today's rule. For example, EPA supported 10 workshops, presented by the American Public Works Association from September 1998 through May 1999, designed to educate local governments on the implementation of the rule. The workshop curriculum included information on a variety of key issues such as anticipated regulatory requirements, agency reporting, best management practices, construction site controls, post construction management for new and redeveloped sites, public education and public involvement strategies, detection and control of illicit discharges, and good housekeeping practices. Moreover, EPA has prepared a series of fact sheets, available on the EPA website at www.epa.gov/owm/sw/toolbox, that explains the rule in detail.

Finally, to assist small governments in implementing the Phase II program, EPA is committed to the following: (1) developing a tool box of implementation strategies; (2) providing written technical assistance, including guidance on developing BMPs and measurable goals; and (3) compiling a comprehensive evaluation of the NPDES municipal storm water Phase II program over the next 13 years.

D. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. For final rules subject to Executive Order 13132, EPA also must submit to OMB a statement from the agency's Federalism Official certifying that EPA has fulfilled the Executive Order's requirements.

EPA has concluded that this final rule may have federalism implications. As discussed above in section IV.C., the rule contains a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, of $100 million or more in any one year. Accordingly, the rule may have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Moreover, the rule will impose substantial direct compliance costs on State or local governments. Accordingly, EPA provides the following FSIS under section 6(b) of Executive Order 13132.

1. Description of the Extent of the Agency's Prior Consultation with State and Local Governments

Although this rule was proposed long before the November 2, 1999 effective date of Executive Order 13132, EPA consulted extensively with affected State and local governments pursuant to the intergovernmental consultation provisions of Executive Order 12875, ''Enhancing the Intergovernmental Partnership'' (now revoked by Executive Order 13132) and section 204 of UMRA.

First, EPA provided State and local governments the opportunity to comment on draft alternative approaches for the proposed rule through publishing a notice requesting information and public comment in the **Federal Register** on September 9, 1992 (57 FR 41344). This notice presented a full range of regulatory alternatives. At that time, EPA received more than 130 comments, including approximately 43 percent from municipalities and 24 percent from State or Federal agencies. These comments were the genesis of many of the provisions in the today's rule, including reliance on the NPDES program framework (including general permits), providing State and local governments flexibility in selecting additional sources requiring regulation, and focusing on high priority polluters. These comments helped to focus on pollution prevention, watershed-based concerns and BMPs. They also led to certain exemptions for facilities that do not pollute national waters.

In early 1993, EPA, in conjunction with the Rensselaerville Institute, held public and expert meetings to assist in developing and analyzing options for identifying unregulated storm water sources and possible controls. These meetings provided participants an additional opportunity to provide input into the CWA section 402(p)(6) program

development process. The final rule addresses several of the key concerns identified in these groups, including provisions that provide flexibility to the States to select sources to be controlled and types of permits to be issued, and flexibility to MS4s in selecting BMPs.

EPA also conducted outreach with representatives of small entities, including small governments, in conjunction with the convening of a Small Business Advocacy Review Panel under SBREFA which is discussed in section III.F. of the preamble.

In addition, EPA established the Urban Wet Weather Flows Advisory Committee (FACA), which in turn established the Storm Water Phase II Subcommittee. Consistent with the Federal Advisory Committee Act, the membership of the Committee and the Storm Water Phase II Subcommittee was balanced among EPA's various outside stakeholder interests, including representatives from State governments, municipal governments (both elected officials and appointed officials) and Tribal governments, as well as industrial and commercial sectors, agriculture, environmental and public interest groups.

2. Summary of Nature of State and Local Government Concerns, and Statement of the Extent to Which Those Concerns Have Been Met

In general, municipal government representatives supported the NPDES approach in today's rule for the following reasons: it will be uniformly applied on a nationwide basis; it provides flexibility to allow incorporation of State and local programs; it resolves the problem of donut holes that cause water quality impacts in urbanized areas; and it allows co-permitting of small regulated MS4s with those regulated under the existing storm water program.

In contrast, State representatives sought alternative approaches for State implementation of the storm water program for Phase II sources. State representatives asserted that a non-NPDES alternative approach best facilitated watershed management and avoided duplication and overlapping regulations. These representatives pointed out that there are a variety of State programs—not based on the CWA—implementing effective storm water controls, and that EPA should provide incentives for their implementation and improvement in performance. EPA continues to believe that an NPDES approach is the best approach in order to adequately protect water quality. However, EPA has worked with States on an alternative approach that provides flexibility within the NPDES framework. The final rule allows States with a watershed permitting approach to phase in permit coverage for MS4s in jurisdictions with a population less than 10,000 and provides two waivers from coverage for small MS4s. This issue is discussed in section II.C of the preamble, Program Framework: NPDES Approach.

Some municipal governments objected that the rule's minimum measures for small MS4s violate the Tenth Amendment insofar as they require the operators of MS4s to regulate third parties according to the ''minimum measures'' for municipal storm water management programs. EPA disagrees that today's rule is inconsistent with Tenth Amendment principles. Permits issued under today's rule will not compel political subdivisions of States to regulate in their sovereign capacities, but rather to effectively control discharges out of their storm sewer systems in their owner/operator capacities. For MS4s that do not accept this ''default'' minimum measures-based approach (to control discharges out of the storm sewer system by exercising local powers to control discharges into the storm sewer system), today's rule allows for alternative permits through individual permit applications. EPA made revisions to the rule to allow regulated small MS4s to opt out of the minimum measures approach and instead apply for an individual permit. This issue is discussed in section II.H.3.c.iii of the preamble, Alternative Permit Option/ Tenth Amendment.

3. Summary of the Agency's Position Supporting the Need To Issue the Regulation

As discussed more fully in section I.B. above, today's rule is needed because uncontrolled storm water discharges from areas of urban development and construction activity have been shown to have negative impacts on receiving waters by changing the physical, biological, and chemical composition of the water, resulting in an unhealthy environment for aquatic organisms, wildlife, and people. As discussed in section II.C., the NPDES approach in today's rule is needed to ensure uniform application on a nationwide basis, to provide flexibility to allow incorporation of State and local programs, to resolve the problem of donut holes that cause water quality impacts in urbanized areas, and to allow co-permitting of small regulated MS4s with those regulated under the existing storm water program.

The draft final rule was transmitted to OMB on July 6, 1999. Because transmittal occurred before the November 2, 1999 effective date of Executive Order 13132, certification under section 8 of the Executive Order is not required.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) a building contractor (SIC 15) with up to $17.0 million in annual revenue; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA compared annual compliance costs with annual government revenues obtained from the 1992 Census of Governments, using state-specific estimates of annual revenue per capita for municipalities in three population size categories (fewer than 10,000, 10,000–25,000, and 25,000–50,000).

In order to estimate the annual compliance cost for small governmental jurisdictions, EPA used the mean variable municipal cost of $8.93 per household as calculated in a 1998 study of 121 municipalities conducted by the national Association of Flood and Stormwater Management Agencies (NAFSMA). In addition, EPA used the estimated fixed administrative costs of $1,545 per municipality for reporting,

recordkeeping, and application requirements for today's rule.

In evaluating the economic impact of this rule on small governmental jurisdictions, EPA determined that compliance costs represent more than 1 percent of estimated revenues for only 10 percent of small governments and more than 3 percent of the revenue for 0.7 percent of these entities. In both absolute and relative terms, EPA does not consider this a significant economic impact on a substantial number of small entities.

EPA normally uses the ''sales test'' for determining the economic impact on small businesses. Under a sales test, annual compliance costs are compared with the small business's total annual sales. However, the direct application of the sales test is not suitable in this case, because of the uncertainty associated with estimating the number of units an ''average'' developer/contractor develops or builds in a typical year. For this rule, EPA has approximated the sales test by estimating compliance costs for three sizes of construction sites and comparing them with a representative sale price for three building categories. Although EPA's analysis is not exactly a ''sales test,'' it is similar to the sales test, producing comparable results.

For small building contractors, EPA estimated administrative compliance costs of $870 per site for applying for coverage, reporting, record keeping, monitoring and preparing a storm water pollution prevention plan. EPA estimated compliance costs for installing soil and erosion controls as ranging from $1,206 to $8,709 per site. EPA compliance cost estimates are based on 27 theoretical model construction sites designed to mimic the mostly likely used best management practices around the country.

In evaluating the economic impact on small building contractors, EPA divided the revised compliance costs per construction start by the appropriate homes-to-site ratio for each of the three sizes of construction sites. The average compliance cost per home ranges from approximately $450 to $650. EPA concluded that compliance costs are roughly 0.22 to 0.43 percent of both the mean, $181,300, and median, $151,000, sale price of a home.

The absence of data to specifically assess annual compliance costs for building contractors as a percentage of annual sales (i.e., a very direct estimate of the impact on potentially affected small businesses) led EPA to perform additional market analysis to examine the ability of potentially affected firms to pass along regulatory costs to buyers for single-family homes constructed subject to today's rule. If the small building contractors covered by the rule are able to pass on the costs of compliance, either completely or partially, to their purchasers, then the rule's impact on these small business entities is significantly reduced. The market analysis shows that demand for homes is not overly sensitive to small changes in price, therefore builders should be able to pass on at least a significant fraction of the compliance costs to buyers.

EPA also assessed the effect of the building contractors' costs on average monthly mortgage rates and on the demand for new homes. Based on that screening analysis, EPA concludes that the costs to building contractors, and the potential changes in housing prices and monthly mortgage payments for single-family home buyers, are not expected to have a significant impact on the market for single-family houses. In both absolute and relative terms, EPA does not consider this a significant economic impact on a substantial number of small entities.

EPA also certified this rule at proposal. Even though the Agency was not required to, we convened a Small Business Advocacy Review Panel (''Panel'') in June 1997. A number of small entity representatives had already been actively involved with EPA through the FACA process, and were, therefore, broadly knowledgeable about the development of the proposed and final rules. Prior to convening the Panel, EPA consulted with the Small Business Administration to identify a group of small entity representatives to advise the Panel. The Agency distributed a briefing package describing its preliminary analysis under the RFA to the small entity representatives (as well as to representatives from OMB and SBA) and conducted two telephone conference calls and an all-day meeting at EPA Headquarters in May of 1997 with small entity representatives. With this preliminary work complete, in June 1997, EPA formally convened the SBREFA Panel, comprising representatives from OMB, SBA, EPA's Office of Water and EPA's Small Business Advocacy Chair. The Panel received written comments from small entity representatives based on their involvement in the earlier meetings, and invited additional comments.

Consistent with requirements of the RFA, the Panel evaluated the assembled materials and small-entity comments on issues related to: (1) a description and the number of small entities that would be regulated; (2) a description of the projected record keeping, reporting and other compliance requirements applicable to small entities; (3) identification of other Federal rules that may duplicate, overlap, or conflict with the proposal to the final rule; and (4) regulatory alternatives that would minimize any significant economic impact of the rule on small entities while accomplishing the stated objectives of the CWA section 402(p)(6).

On August 7, 1997, the Panel provided a Final Report (hereinafter, ''Report'') to the EPA Administrator. A copy of the Report is included in the docket for the rule. The Panel acknowledged and commended EPA's efforts to work with stakeholders, including small entities, through the FACA process. The SBREFA Panel stated that, because of EPA's extensive outreach and responsiveness in addressing stakeholder concerns, commenters during the SBREFA process raised fewer concerns than might otherwise have been expected. Based on the advice and recommendations of the Panel, today's rule includes a number of provisions designed to minimize any significant impact on small entities. (See Appendix 5).

F. National Technology Transfer And Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not mandate the use of any particular technical standards, although in designing appropriate BMPs regulated small MS4s and small construction sites are encouraged to use any voluntary consensus standards that may be applicable and appropriate. Because no specific technical standards are included in the rule, section 12(d) of the NTTAA is not applicable.

G. Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically

significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it does not concern an environmental health or safety risk that may have a disproportionate effect on children. The rule expands the scope of the existing NPDES permitting program to require small municipalities and small construction sites to regulate their storm water discharges. The rule does not itself, however, establish standards or criteria that would be included in permits for those sources. Such standards or criteria will be developed through other actions, for example, in the establishment of water quality standards or subsequently in the issuance of permits themselves. As such, today's action does not concern an environmental health or safety risk that may have a disproportionate effect on children. To the extent it does address a risk that may have a disproportionate effect on children, expanding the scope of the permitting program will have a corresponding disproportionate benefit to children to protect them from such risk.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Even though the Agency is not required to address Tribes under the Regulatory Flexibility Act, EPA used the same revenue test that was used for municipalities to assess the impact of the rule on communities of Tribal governments and determine that they will not be significantly affected. In addition, the rule will not have a unique impact on the communities of Tribal governments because small municipal governments are also covered by this rule and larger municipal governments are already covered by the existing storm water rules. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 7, 2000.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous materials, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 29, 1999.

Carol M. Browner,

Administrator.

Appendices to the Preamble

APPENDIX 1 TO PREAMBLE—FEDERALLY-RECOGNIZED AMERICAN INDIAN AREAS LOCATED FULLY OR PARTIALLY IN BUREAU OF THE CENSUS URBANIZED AREAS

[Based on 1990 Census data]

State	American Indian Area	Urbanized Area
AZ	Pascua Yacqui Reservation (pt.): Pascua Yacqui Tribe of Arizona	Tucson, AZ (Phase I).
AZ	Salt River Reservation (pt.): Salt River Pima-Maricopa Indian Community of the Salt River Reservation, California.	Phoenix, AZ (Phase I).
AZ	San Xavier Reservation (pt.): Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation).	Tucson, AZ (Phase I).
CA	Augustine Reservation: Augustine Band of Cahuilla Mission of Indians of the Augustine Reservation, CA.	Indio-Coachella, CA (Phase I).
CA	Cabazon Reservation: Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, CA.	Indio-Coachella, CA (Phase I).

APPENDIX 1 TO PREAMBLE—FEDERALLY-RECOGNIZED AMERICAN INDIAN AREAS LOCATED FULLY OR PARTIALLY IN BUREAU OF THE CENSUS URBANIZED AREAS—Continued

[Based on 1990 Census data]

State	American Indian Area	Urbanized Area
CA	Fort Yuma (Quechan) (pt.): Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona.	Yuma, AZ–CA.
CA	Redding Rancheria: Redding Rancheria of California	Redding, CA.
FL	Hollywood Reservation: Seminole Tribe	Fort Lauderdale, FL (Phase I).
FL	Seminole Trust Lands: Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations.	Fort Lauderdale, FL (Phase I).
ID	Fort Hall Reservation and Trust Lands: Shosone-Bannock Tribes of the Fort Hall Reservation of Idaho.	Pocatello, ID.
ME	Penobscot Reservation and Trust Lands (pt.): Penobscot Tribe of Maine	Bangor, ME.
MN	Shakopee Community: Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake).	Minneapolis-St. Paul, MN (Phase I).
NM	Sandia Pueblo (pt.): Pueblo of Sandia, New Mexico	Albuquerque, NM (Phase I).
NV	Las Vegas Colony: Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.	Las Vegas, NV (Phase I).
NV	Reno-Sparks Colony: Reno-Sparks Indian Colony, Nevada	Reno, NV (Phase I).
OK	Osage Reservation (pt.): Osage Nation of Oklahoma	Tulsa, OK (Phase I).
OK	Absentee Shawnee-Citizens Band of Potawatomi TJSA (pt.): Absentee-Shawnee Tribe of Indians of Oklahoma; Citizen Potawatomi Nation, Oklahoma.	Oklahoma City, OK (Phase I).
OK	Cherokee TJSA 9 (pt.): Cherokee Nation of Oklahoma; United Keetoowah Band of Cherokee Indians of Oklahoma.	Ft. Smith, AR–OK; Tulsa, OK (Phase I).
OK	Cheyenne-Arapaho TJSA (pt.): Cheyenne-Arapaho Tribes of Oklahoma	Oklahoma City, OK (Phase I).
OK	Choctaw TJSA (pt.): Choctaw Nation of Oklahoma	Ft. Smith, AR–OK (Phase I).
OK	Creek TJSA (pt.): Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma; Kialegee Tribal Town of the Creek Indian Nation of Oklahoma; Muscogee (Creek) Nation of Oklahoma; Thlopthlocco Tribal Town of the Creek Nation of Oklahoma.	Tulsa, OK (Phase I).
OK	Kiowa-Comanche-Apache-Ft. Sill Apache: Apache Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma.	Lawton, OK.
TX	Ysleta del Sur Reservation: Ysleta Del Sur Pueblo of Texas	El Paso, TX–NM (Phase I).
WA	Muckleshoot Reservation and Trust Lands (pt.): Muckleshoot Indian Tribe of the Muckleshoot Reservation.	Seattle, WA (Phase I).
WA	Puyallup Reservation and Trust Lands (pt.): Puyallup Tribe of the Puyallup Reservation, WA.	Tacoma, WA (Phase I).
WA	Yakima Reservation (pt.): Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, WA.	Yakima, WA.
WI	Oneida (West) (pt.): Oneida Tribe of Wisconsin	Green Bay, WI.

Please Note

''(pt.)'' indicates that the American Indian Area (AIA) listed is only partially located within the referenced urbanized area.

The first line under ''American Indian Area'' is the name of the federally-recognized reservation/colony/rancheria or trust land as it appears in the Bureau of the Census data. After this first line, the names of the tribes included in the AIA are listed as they appear in the Bureau of Indian Affairs' list of Federally Recognized Indian Tribes. [**Federal Register**: Nov. 13, 1996, Vol. 66, No. 220, pgs. 58211–58216]

''TJSAs'' are Tribal Jurisdiction Statistical Areas in Oklahoma that are defined in conjunction with the federally-recognized tribes in Oklahoma who have definite land areas under their jurisdiction, but do not have reservation status.

''(Phase I)'' indicates that the referenced urbanized area includes a medium or large MS4 currently regulated under the existing NPDES storm water program (i.e., Phase I). Any Tribally operated MS4 within these such urban areas would not automatically have been covered under Phase I, however.

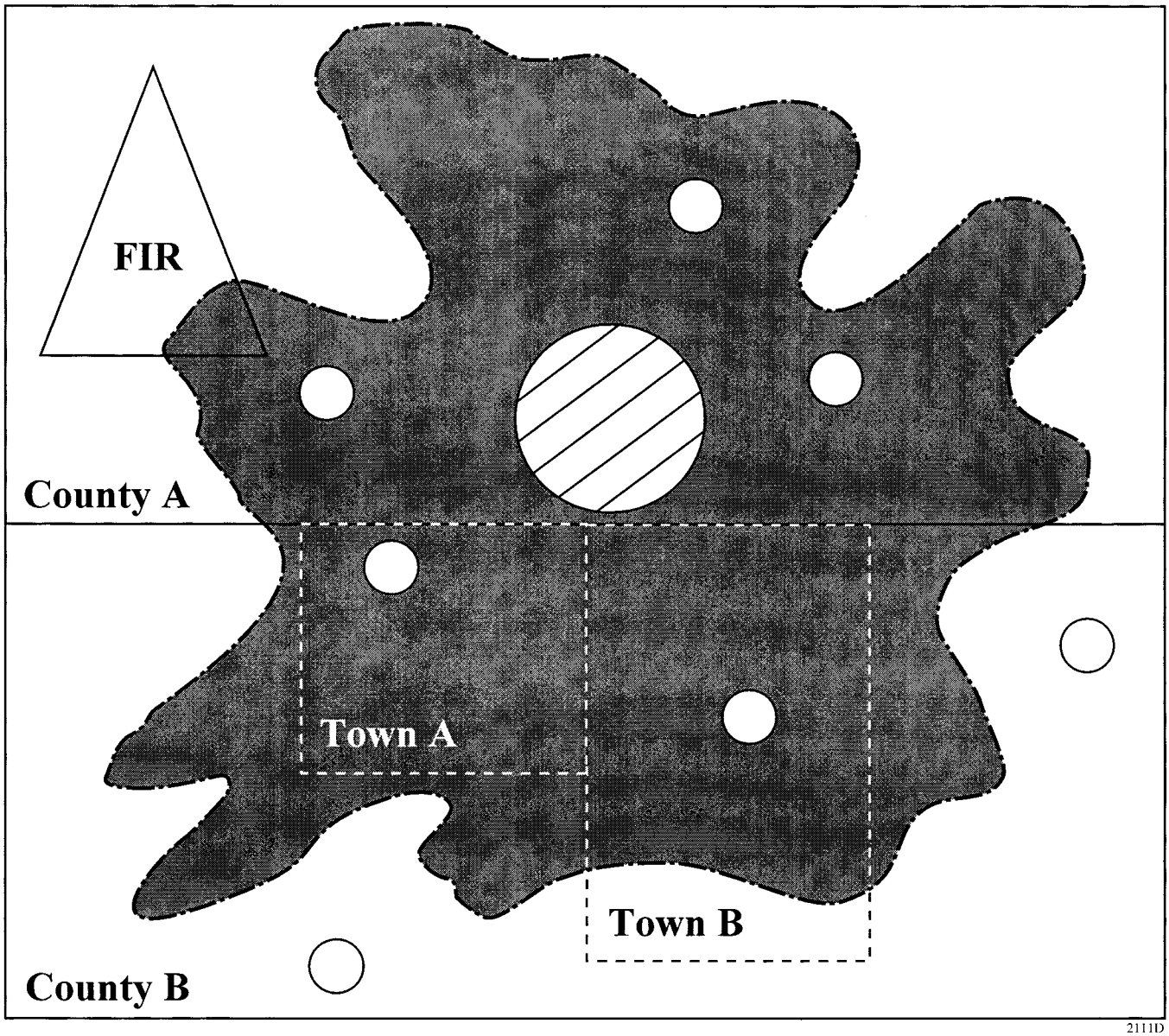
Sources

Michael Ratcliffe, Geographic Concepts Division, Bureau of the Census, U.S. Department of Commerce.

1990 Census of Population and Housing, Summary Population and Housing Characteristics, United States. Tables 9 & 10. [1990 CPH–1–1]. Bureau of the Census, U.S. Department of Commerce.

BILLING CODE 6560–50–P

APPENDIX 2 TO PREAMBLE—URBANIZED AREA ILLUSTRATION



Central Place

Incorporated Place

Federal Indian Reservation (FIR)

Unincorporated "Urbanized Area" Portion of a Town (MCD) or County

Urbanized Area

Town or Township as a functioning Minor Civil Division (MCD). An MCD is the primary subdivision of a County.

County

BILLING CODE 6560–50–C

Appendix 3 to the Preamble—Urbanized Areas of the United States and Puerto Rico

(Source: 1990 Census of Population and Housing, U.S. Bureau of the Census—This list is subject to change with the Decennial Census)

Alabama

Anniston
Auburn-Opelika
Birmingham
Columbus, GA–AL
Decatur
Dothan
Florence
Gadsden
Huntsville
Mobile
Montgomery
Tuscaloosa

Alaska

Anchorage

Arizona

Phoenix
Tucson
Yuma, AZ–CA

Arkansas

Fayetteville-Springdale
Fort Smith, AR–OK
Little Rock-North Little Rock
Memphis, TN–AR–MS
Pine Bluff
Texarkana, AR–TX

California

Antioch-Pittsburgh
Bakersfield
Chico
Davis
Fairfield
Fresno
Hemet-San Jacinto
Hesperia-Apple Valley-Victorville
Indio-Coachella
Lancaster-Palmdale
Lodi
Lompoc
Los Angeles
Merced
Modesto
Napa
Oxnard-Ventura
Palm Springs
Redding
Riverside-San Bernardino
Sacramento
Salinas
San Diego
San Francisco-Oakland
San Jose
San Luis Obispo
Santa Barbara
Santa Cruz
Santa Maria
Santa Rosa
Seaside-Monterey
Simi Valley
Stockton
Vacaville
Visalia
Watsonville
Yuba City
Yuma

Colorado

Boulder
Colorado Springs
Denver
Fort Collins
Grand Junction
Greeley
Longmont
Pueblo

Connecticut

Bridgeport-Milford
Bristol
Danbury, CT–NY
Hartford-Middletown
New Britain
New Haven-Meriden
New London-Norwich
Norwalk
Springfield, MA–CT
Stamford, CT–NY
Waterbury
Worcester, MA–CT

Delaware

Dover
Wilmington, DE–NJ–MD–PA

District of Columbia

Washington, DC–MD–VA

Florida

Daytona Beach
Deltona
Fort Lauderdale-Hollywood-Pompano Beach
Fort Myers-Cape Coral
Fort Pierce
Fort Walton Beach
Gainesville
Jacksonville
Kissimmee
Lakeland
Melbourne-Palm Bay
Miami-Hialeah
Naples
Ocala
Orlando
Panama City
Pensacola
Punta Gorda
Sarasota-Bradenton
Spring Hill
Stuart
Tallahassee
Tampa-St. Petersburg-Clearwater
Titusville
Vero Beach
West Palm Beach-Boca Raton-Delray Beach
Winter Haven

Georgia

Albany
Athens
Atlanta
Augusta
Brunswick
Chattanooga
Columbus
Macon
Rome
Savannah
Warner Robins

Hawaii

Honolulu
Kailua

Idaho

Boise City
Idaho Falls
Pocatello

Illinois

Alton
Aurora
Beloit, WI–IL
Bloomington-Normal
Champaign-Urbana
Chicago, IL-Northwestern IN
Crystal Lake
Davenport-Rock Island-Moline, IA–IL
Decatur
Dubuque
Elgin
Joliet
Kankakee
Peoria
Rockford
Round Lake Beach-McHenry, IL–WI
St. Louis, MO–IL
Springfield

Indiana

Anderson
Bloomington
Chicago, IL-Northwestern IN
Elkhart-Goshen
Evansville, IN–KY
Fort Wayne
Indianapolis
Kokomo
Lafayette-West Lafayette
Louisville, KY–IN
Muncie
South Bend-Mishawaka, IN–MI
Terre Haute

Iowa

Cedar Rapids
Davenport-Rock Island-Moline, IA–IL
Des Moines
Dubuque, IA–IL–WI
Iowa City
Omaha, NE–IA
Sioux City, IA–NE–SD
Waterloo-Cedar Falls

Kansas

Kansas City, MO–KS
Lawrence
St. Joseph, MO–KS
Topeka
Wichita

Kentucky

Cincinnati, OH–KY
Clarksville, TN–KY
Evansville, IN–KY
Huntington-Ashland, WV–KY–OH
Lexington-Fayette
Louisville, KY–IN
Owensboro

Louisiana

Alexandria
Baton Rouge
Houma
Lafayette
Lake Charles
Monroe
New Orleans
Shreveport

Slidell

Maine

Bangor
Lewiston-Auburn
Portland
Portsmouth-Dover-Rochester, NH–ME

Maryland

Annapolis
Baltimore
Cumberland
Frederick
Hagerstown, MD–PA–WV
Washington, DC–MD–VA
Wilmington, DE–NJ–MD–PA

Massachusetts

Boston
Brockton
Fall River, MA–RI
Fitchburg-Leominster
Hyannis
Lawrence-Haverhill, MA–NH
Lowell, MA–NH
New Bedford
Pittsfield
Providence-Pawtucket, RI–MA
Springfield, MA–CT
Taunton
Worcester, MA–CT

Michigan

Ann Arbor
Battle Creek
Bay City
Benton Harbor
Detroit
Flint
Grand Rapids
Holland
Jackson
Kalamazoo
Lansing-East Lansing
Muskegon
Port Huron
Saginaw
South Bend-Mishawaka, IN–MI
Toledo, OH–MI

Minnesota

Duluth, MN–WI
Fargo-Moorhead, ND–MN
Grand Forks, ND–MN
La Crosse, WI–MN
Minneapolis-St.Paul
Rochester
St. Cloud

Mississippi

Biloxi-Gulfport
Hattiesburg
Jackson
Memphis, TN–AR–MS
Pascagoula

Missouri

Columbia
Joplin
Kansas City, MO–KS
St. Joseph, MO–KS
St. Louis, MO–IL
Springfield

Montana

Billings
Great Falls
Missoula

Nebraska

Lincoln
Omaha, NE–IA
Sioux City, IA–NE–SD

Nevada

Las Vegas
Reno

New Hampshire

Lawrence-Haverhill, MA–NH
Lowell, MA–NH
Manchester
Nashua
Portsmouth-Dover-Rochester, NH–ME

New Jersey

Allentown-Bethlehem-Easton, PA–NJ
Atlantic City
New York, NY-Northeastern NJ
Philadelphia, PA–NJ
Trenton, NJ–PA
Vineland-Millville
Wilmington, DE–NJ–MD–PA

New Mexico

Albuquerque
El Paso
Las Cruces
Santa Fe

New York

Albany-Schenectady-Troy
Binghamton
Buffalo-Niagara Falls
Danbury, CT–NY
Elmira
Glens Falls
Ithaca
Newburgh
New York, NY–Northeastern NJ
Poughkeepsie
Rochester
Stamford, CT–NY
Syracuse
Utica-Rome

North Carolina

Asheville
Burlington
Charlotte
Durham
Fayetteville
Gastonia
Goldsboro
Greensboro
Greenville
Hickory
High Point
Jacksonville
Kannapolis
Raleigh
Rocky Mount
Wilmington
Winston-Salem

North Dakota

Bismark
Fargo-Moorhead, ND–MN
Grand Forks, ND–MN

Ohio

Akron
Canton
Cincinnati, OH–KY
Cleveland
Columbus
Dayton
Hamilton
Huntington-Ashland, WV–KY–OH
Lima
Lorain-Elyria
Mansfield
Middletown
Newark
Parkersburg, WV–OH
Sharon, PA–OH
Springfield
Steubenville-Weirton, OH–WV–PA
Toledo, OH–MI
Wheeling, WV–OH
Youngstown-Warren

Oklahoma

Fort Smith, AR–OK
Lawton
Oklahoma City
Tulsa

Oregon

Eugene-Springfield
Longview
Medford
Portland-Vancouver, OR–WA
Salem

Pennsylvania

Allentown-Bethlehem-Easton, PA–NJ
Altoona
Erie
Hagerstown, MD–PA–WV
Harrisburg
Johnstown
Lancaster
Monessen
Philadelphia, PA–NJ
Pittsburgh
Pottstown
Reading
Scranton-Wilkes-Barre
Sharon, PA–OH
State College
Steubenville-Weirton, OH–WV–PA
Trenton, NJ–PA
Williamsport
Wilmington, DE–NJ–MD–PA
York

Rhode Island

Fall River, MA–RI
Newport
Providence-Pawtucket, RI–MA

South Carolina

Anderson
Augusta, GA–SC
Charleston
Columbia
Florence
Greenville
Myrtle Beach
Rock Hill
Spartanburg
Sumter

South Dakota

Rapid City
Sioux City, IA–NE–SD
Sioux Falls

Tennessee

Bristol, TN-Bristol, VA

Chattanooga, TN–GA
Clarksville, TN–KY
Jackson
Johnson City
Kingsport, TN–VA
Knoxville
Memphis, TN–AR–MS
Nashville

Texas

Abilene
Amarillo
Austin
Beaumont
Brownsville
Bryan-College Station
Corpus Christi
Dallas-Fort Worth
Denton
El Paso, TX–NM
Galveston
Harlingen
Houston
Killeen
Laredo
Lewisville
Longview
Lubbock
McAllen-Edinburg-Mission
Midland
Odessa
Port Arthur
San Angelo
San Antonio
Sherman-Denison
Temple
Texarkana, TX-Texarkana, AR
Texas City
Tyler
Victoria
Waco
Wichita Falls

Utah

Logan
Ogden
Provo-Orem
Salt Lake City

Vermont

Burlington

Virginia

Bristol, TN-Bristol, VA
Charlottesville
Danville
Fredericksburg
Kingsport, TN–VA
Lynchburg
Norfolk-Virginia Beach-Newport News
Petersburg
Richmond
Roanoke
Washington, DC–MD–VA

Washington

Bellingham
Bremerton
Longview, WA–OR
Olympia
Portland-Vancouver, OR–WA
Richland-Kennewick-Pasco
Seattle
Spokane
Tacoma
Yakima

West Virginia

Charleston
Cumberland, MD–WV
Hagerstown, MD–PA–WV
Huntington-Ashland, WV–KY–OH
Parkersburg, WV–OH
Steubenville-Weirton, OH–WV–PA
Wheeling, WV–OH

Wisconsin

Appleton-Neenah
Beloit, WI–IL
Duluth, MN–WI
Eau Claire
Green Bay
Janesville
Kenosha
La Crosse, WI–MN
Madison
Milwaukee
Oshkosh
Racine
Round Lake Beach-McHenry, IL–WI
Sheboygan
Wausau

Wyoming

Casper
Cheyenne

Puerto Rico

Aquadilla
Arecibo
Caguas
Cayey
Humacao
Mayaguez
Ponce
San Juan
Vega Baja-Manati

BILLING CODE 6560–50–P

Appendix 4 to the Preamble—No Exposure Certification Form

NPDES FORM 3510-11

EPA

United States Environmental Protection Agency
Washington, DC 20460

Form Approved
OMB No. 2040-0211

NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Submission of this No Exposure Certification constitutes notice that the entity identified in Section A does not require permit authorization for its storm water discharges associated with industrial activity in the State identified in Section B under EPA's Storm Water Multi-Sector General Permit due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. A storm resistant shelter is not required for the following industrial materials and activities:

- drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in storm water discharges (e.g., rock salt).

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the no exposure exclusion.

By signing and submitting this No Exposure Certification form, the entity in Section A is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g).

ALL INFORMATION MUST BE PROVIDED ON THIS FORM.

Detailed instructions for completing this form and obtaining the no exposure exclusion are provided on pages 3 and 4.

A. Facility Operator Information

1. Name: _____ 2. Phone: _____
3. Mailing Address: a. Street: _____
   b. City: _____ c. State: ____ d. Zip Code: _____

B. Facility/Site Location Information

1. Facility Name: _____
2. a. Street Address: _____
   b. City: _____ c. County: _____
   d. State: ____ e. Zip Code: _____
3. Is the facility located on Indian Lands? Yes ☐ No ☐
4. Is this a Federal facility? Yes ☐ No ☐
5. a. Latitude: ____ ° ____ ' ____ " b. Longitude: ____ ° ____ ' ____ "
6. a. Was the facility or site previously covered under an NPDES storm water permit? Yes ☐ No ☐
   b. If yes, enter NPDES permit number: _____
7. SIC/Activity Codes: Primary: ____ Secondary (if applicable): ____
8. Total size of site associated with industrial activity: _____ acres
9. a. Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the no exposure exclusion? Yes ☐ No ☐
   b. If yes, please indicate approximately how much area was paved or roofed over. Completing this question does not disqualify you for the no exposure exclusion. However, your permitting authority may use this information in considering whether storm water discharges from your site are likely to have an adverse impact on water quality, in which case you could be required to obtain permit coverage.

   Less than one acre ☐ One to five acres ☐ More than five acres ☐

NPDES FORM 3510-11

EPA

NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Form Approved OMB No. 2040-0211

C. Exposure Checklist

Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future? (Please check either "Yes" or "No" in the appropriate box.) **If you answer "Yes" to any of these questions (1) through (11), you are not eligible for the no exposure exclusion.**

	Yes	No
1. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water	☐	☐
2. Materials or residuals on the ground or in storm water inlets from spills/leaks	☐	☐
3. Materials or products from past industrial activity	☐	☐
4. Material handling equipment (except adequately maintained vehicles)	☐	☐
5. Materials or products during loading/unloading or transporting activities	☐	☐
6. Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to storm water does not result in the discharge of pollutants)	☐	☐
7. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers	☐	☐
8. Materials or products handled/stored on roads or railways owned or maintained by the discharger	☐	☐
9. Waste material (except waste in covered, non-leaking containers [e.g., dumpsters])	☐	☐
10. Application or disposal of process wastewater (unless otherwise permitted)	☐	☐
11. Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the storm water outflow	☐	☐

D. Certification Statement

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting.

I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: _____

Print Title: _____

Signature: _____

Date: _____

NPDES FORM 3510-11

EPA

Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Form Approved OMB No. 2040-0211

Who May File a No Exposure Certification

Federal law at 40 CFR Part 122.26 prohibits point source discharges of storm water associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is not required for discharges of storm water associated with industrial activities identified at 40 CFR 122.26(b)(14)(i)-(ix) and (xi) if the discharger can certify that a condition of "no exposure" exists at the industrial facility or site.

Storm water discharges from construction activities identified in 40 CFR 122.26(b)(14)(x) and (b)(15) are not eligible for the no exposure exclusion.

Obtaining and Maintaining the No Exposure Exclusion

This form is used to certify that a condition of no exposure exists at the industrial facility or site described herein. This certification is only applicable in jurisdictions where EPA is the NPDES permitting authority and must be re-submitted at least once every five years.

The industrial facility operator must maintain a condition of no exposure at its facility or site in order for the no exposure exclusion to remain applicable. If conditions change resulting in the exposure of materials and activities to storm water, the facility operator must obtain coverage under an NPDES storm water permit immediately.

Where to File the No Exposure Certification Form

Mail the completed no exposure certification form to:

Storm Water No Exposure Certification (4203)
USEPA
401 M Street, SW
Washington, D.C. 20460

Completing the Form

You must type or print, using uppercase letters, in appropriate areas only. Enter only one character per space (i.e., between the marks). Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words. One form must be completed for each facility or site for which you are seeking to certify a condition of no exposure. Additional guidance on completing this form can be accessed through EPA's web site at www.epa.gov/owm/sw. Please make sure you have addressed all applicable questions and have made a photocopy for your records before sending the completed form to the above address.

Section A. Facility Operator Information

1. Provide the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this certification. The name of the operator may or may not be the same as the name of the facility. The operator is the legal entity that controls the facility's operation, rather than the plant or site manager.

2. Provide the telephone number of the facility operator.

3. Provide the mailing address of the operator (P.O. Box numbers may be used). Include the city, state, and zip code. All correspondence will be sent to this address.

Section B. Facility/Site Location Information

1. Enter the official or legal name of the facility or site.

2. Enter the complete street address (if no street address exists, provide a geographic description [e.g., Intersection of Routes 9 and 55]), city, county, state, and zip code. Do not use a P.O. Box number.

3. Indicate whether the facility is located on Indian Lands.

4. Indicate whether the industrial facility is operated by a department or agency of the Federal Government (see also Section 313 of the Clean Water Act).

5. Enter the latitude and longitude of the approximate center of the facility or site in degrees/minutes/seconds. Latitude and longitude can be obtained from United States Geological Survey (USGS) quadrangle or topographic maps, by calling 1-(888) ASK-USGS, or by accessing EPA's web site at http://www.epa.gov/owm/sw/industry/index.htm and selecting Latitude and Longitude Finders under the Resources/Permit section.

   Latitude and longitude for a facility in decimal form must be converted to degrees (°), minutes (′), and seconds (″) for proper entry on the certification form. To convert decimal latitude or longitude to degrees/minutes/seconds, follow the steps in the following example.

   Example: Convert decimal latitude 45.1234567 to degrees (°), minutes (′), and seconds (″).

   a) The numbers to the left of the decimal point are the degrees: 45°.

   b) To obtain minutes, multiply the first four numbers to the right of the decimal point by 0.006: 1234 x 0.006 = 7.404.

   c) The numbers to the left of the decimal point in the result obtained in (b) are the minutes: 7′.

   d) To obtain seconds, multiply the remaining three numbers to the right of the decimal from the result obtained in (b) by 0.06: 404 x 0.06 = 24.24. Since the numbers to the right of the decimal point are not used, the result is 24″.

   e) The conversion for 45.1234567 = 45° 7′ 24″.

6. Indicate whether the facility was previously covered under an NPDES storm water permit. If so, include the permit number.

7. Enter the 4-digit SIC code which identifies the facility's primary activity, and second 4-digit SIC code identifying the facility's secondary activity, if applicable. SIC codes can be obtained from the Standard Industrial Classification Manual, 1987.

8. Enter the total size of the site associated with industrial activity in acres. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example.

   Example: Convert 54,450 ft^2 to acres

   Divide 54,450 ft^2 by 43,560 square feet per acre:
   54,450 ft^2 ÷ 43,560 ft^2/acre = 1.25 acres.

9. Check "Yes" or "No" as appropriate to indicate whether you have paved or roofed over a formerly exposed, pervious area (i.e., lawn, meadow, dirt or gravel road/parking lot) in order to qualify for no exposure. If yes, also indicate approximately how much area was paved or roofed over and is now impervious area.

NPDES FORM 3510-11

EPA

Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

Form Approved OMB No. 2040-0211

Section C. Exposure Checklist

Check "Yes" or "No" as appropriate to describe the exposure conditions at your facility. If you answer "Yes" to **ANY** of the questions (1) through (11) in this section, a potential for exposure exists at your site and you cannot certify to a condition of no exposure. You must obtain (or already have) coverage under an NPDES storm water permit. After obtaining permit coverage, you can institute modifications to eliminate the potential for a discharge of storm water exposed to industrial activity, and then certify to a condition of no exposure.

Section D. Certification Statement

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means:

(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 1.0 hour per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), USEPA, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed No Exposure Certification form to this address.

EPA Form 3510-11 (10-99)

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BILLING CODE 6560–50–C

Appendix 5 to Preamble—Regulatory Flexibility for Small Entities

A. Regulatory Flexibility for Small Municipal Storm Sewer Systems (MS4s)

Different Compliance, Reporting, or Timetables That Are Responsive to Resources of Small Entities

NPDES permitting authorities can issue general permits instead of requiring individual permits. This flexibility avoids the high application costs and administrative burden associated with individual permits.

NPDES permitting authorities can specify a time period of up to five years for small MS4s to fully develop and implement their program

Analytic monitoring is not required.

After the first permit term and subsequent permit terms, submittal of a summary report is only required in years two and four (Phase I municipalities are currently required to submit a detailed report each year).

A brief reporting format is encouraged to facilitate compiling and analyzing data from submitted reports. EPA intends to develop a model form for this purpose.

NPDES Permitting Authorities can 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.

Clarifying, Consolidating, or Simplifying Compliance and Reporting Requirements

The rule avoids duplication in permit requirements by allowing NPDES permitting authorities to include permit conditions that direct an MS4 to follow the requirements of a qualifying local program rather than the requirements of a minimum measure. Compliance with these programs is considered compliance with the NPDES general permit.

The rule allows NPDES permitting authorities to recognize existing responsibilities among different municipal entities to satisfy obligations for the minimum control measures.

A further alternative allows a small MS4 to satisfy its NPDES permit obligations if another governmental entity is already implementing a minimum control measure in the jurisdiction of the small MS4. The following conditions must be met:

1. The other entity is implementing the control measure,

2. The particular control measure (or component thereof) is at least as stringent as the corrersponding NPDES permit requirement, and

3. The other entity agrees to implement the control measure on your behalf.

The rule allows a covered small MS4 to "piggy-back" on to the storm water management program of an adjoining Phase I MS4. A small MS4 is waived from the application requirements of § 122.26(d)(1)(iii), (iv) and (d)(2)(iii) [discharge characterization] and may satisfy the requirements of § 122.26(d)(1)(v) and (d)(2)(iv) [identifying a management plan] by referencing the adjoining Phase I MS4's storm water management plan.

The rule accommodates the use of the watershed approach through NPDES general permits that could be issued on a watershed basis. The small MS4 can develop measures that are tailored to meet their watershed requirements. The small MS4's storm water management program can tie into watershed-wide plans.

Performance Rather Than Design Standards for Small Entities

Small governmental jurisdictions whose MS4s are covered by this rule are allowed to choose the best management practices (BMPs) to be implemented and the measurable goals for each of the minimum control measures:

1. Public education and outreach on storm water impacts

2. Public Involvement/Participation

3. Illicit discharge detection and elimination

4. Construction site storm water runoff control

5. Post-construction storm water management in new development and redevelopment

6. Pollution prevention/good housekeeping for municipal operations

EPA will provide guidance and recommend, but not mandate, certain BMPs for some of the minimum control measures listed above. States can provide guidance to supplement or supplant EPA guidance.

Small MS4s can identify the measurable goals for each of the minimum control measures listed above. In their reports to the NPDES permitting authority, the small MS4s must evaluate their progress towards achievement of their identified measurable goals.

Waivers for Small Entities From Coverage

The rule allows permitting authorities to waive from coverage MS4s operated by small governmental jurisdictions located within an urbanized area and serving a population less than 1,000 people where the permitting authority has determined the MS4 is not contributing substantially to the pollutant loadings of an interconnected MS4 and, if the MS4 discharges pollutants that have been identified as a cause of impairment in the receiving water of the MS4 then the permitting authority has determined that storm water controls are not needed based on a TMDL that addresses the pollutants of concern.

The rule allows the permitting authority to waive from coverage MS4s serving a population under 10,000 where the permitting authority has evaluated all waters that receive a discharge from the MS4 and the permitting authority has determined that storm water controls are not needed based on a TMDL that addresses the pollutants of concern and future discharges do not have the potential to result in exceedances of water quality standards.

B. Regulatory Flexibility for Small Construction Activities

Different Compliance, Reporting, or Timetables That Are Responsive to Resources of Small Entities

The rule gives NPDES permitting authorities discretion not to require the submittal of a notice of intent (NOI) for coverage under a NPDES general permit, thereby reducing administrative and financial burden. All construction sites disturbing greater than 5 acres must submit an NOI.

Clarifying, Consolidating, or Simplifying Compliance and Reporting Requirements

The rule avoids duplication by allowing the NPDES permitting authority to incorporate by reference State, Tribal, or local programs under a NPDES general permit. Compliance with these programs is considered compliance with the NPDES general permit.

Performance Rather Than Design Standards for Small Entities

The operator of a covered construction activity selects and implement the BMPs most appropriate for the construction site based on the operator's storm water pollution prevention plan.

Waivers for Small Entities From Coverage

Waivers could be granted based on the use of a rainfall erosivity factor or a comprehensive analysis of water quality impacts.

(A) *Low rainfall waiver:* When the rainfall erosivity factor (''R'' from Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity, a permit is not required.

(B) *Determination based on Water Quality Analysis:* The NPDES permitting authority can waive from coverage construction activities disturbing from 1 acre up to 5 acres of land where storm water controls are not needed based on:

1. A TMDL approved or established by EPA that addresses the pollutants of concern, or

2. For non-impaired waters, an equivalent analysis that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.

C. Regulatory Flexibility for Industrial/ Commercial Facilities

Waivers for Small Entities From Coverage

The rule provides a ''no-exposure'' waiver provision for Phase I industrial/commercial facilities. Qualifying facilities seeking this provision simply need to complete a self-certification form indicating that no industrial materials or activities are exposed to rain, snow, snow melt and/or runoff.

Appendix 6 of Preamble—Governmental Entities Located Fully or Partially Within an Urbanized Area

(This is a reference list only, *not* a list of all operators of small MS4s subject to §§ 122.32–122.36. For example, a listed governmental entity is only regulated if it operates a small MS4 within an ''urbanized area'' boundary as determined by the Bureau of the Census. Furthermore, entities such as military bases, large hospitals, prison complexes, universities, sewer districts, and highway departments that operate a small MS4 within an urbanized area are also subject to the permitting regulations but are not individually listed here. See § 122.26(b)(16) for the definition of a small MS4 and § 122.32(a) for the definition of a regulated small MS4.)

(Source: 1990 Census of Population and Housing, U.S. Bureau of the Census. This list is subject to change with the Decennial Census)

AL Anniston city
AL Attalla city
AL Auburn city
AL Autauga County
AL Blue Mountain town
AL Calhoun County
AL Colbert County
AL Dale County
AL Decatur city
AL Dothan city
AL Elmore County
AL Etowah County
AL Flint City town
AL Florence city
AL Gadsden city
AL Glencoe city
AL Grimes town
AL Hartselle city
AL Hobson City town
AL Hokes Bluff city
AL Houston County
AL Kinsey town
AL Lauderdale County
AL Lee County
AL Limestone County
AL Madison County
AL Midland City town
AL Montgomery County
AL Morgan County
AL Muscle Shoals city
AL Napier Field town
AL Northport city
AL Opelika city
AL Oxford city
AL Phenix City city
AL Prattville city
AL Priceville town
AL Rainbow City city
AL Russell County
AL Sheffield city
AL Southside city
AL Sylvan Springs town
AL Talladega County
AL Tuscaloosa city
AL Tuscaloosa County
AL Tuscumbia city
AL Weaver city
AR Alexander town
AR Barling city
AR Benton County
AR Cammack Village city
AR Crawford County
AR Crittenden County
AR Farmington city
AR Fayetteville city
AR Fort Smith city
AR Greenland town
AR Jacksonville city
AR Jefferson County
AR Johnson city
AR Marion city
AR Miller County
AR North Little Rock city
AR Pine Bluff city
AR Pulaski County
AR Saline County
AR Sebastian County
AR Shannon Hills city
AR Sherwood city
AR Springdale city
AR Sunset town
AR Texarkana city
AR Van Buren city
AR Washington County
AR West Memphis city
AR White Hall city
AZ Apache Junction city
AZ Chandler city
AZ El Mirage town
AZ Gilbert town
AZ Guadalupe town
AZ Maricopa County
AZ Oro Valley town
AZ Paradise Valley town
AZ Peoria city
AZ Pinal County

AZ South Tucson city
AZ Surprise town
AZ Tolleson city
AZ Youngtown town
AZ Yuma city
AZ Yuma County
CA Apple Valley town
CA Belvedere city
CA Benicia city
CA Brentwood city
CA Butte County
CA Capitola city
CA Carmel-by-the-Sea city
CA Carpinteria city
CA Ceres city
CA Chico city
CA Compton city
CA Corte Madera town
CA Cotati city
CA Davis city
CA Del Rey Oaks city
CA Fairfax town
CA Hesperia city
CA Imperial County
CA Lakewood city
CA Lancaster city
CA Larkspur city
CA Lodi city
CA Lompoc city
CA Marin County
CA Marina city
CA Marysville city
CA Merced city
CA Merced County
CA Mill Valley city
CA Monterey city
CA Monterey County
CA Morgan Hill city
CA Napa city
CA Napa County
CA Novato city
CA Pacific Grove city
CA Palm Desert city
CA Palmdale city
CA Piedmont city
CA Placer County
CA Redding city
CA Rocklin city
CA Rohnert Park city
CA Roseville city
CA Ross town
CA San Anselmo town
CA San Buenaventura (Ventura) city
CA San Francisco city
CA San Joaquin County
CA San Luis Obispo city
CA San Luis Obispo County
CA San Rafael city
CA Sand City city
CA Santa Barbara city
CA Santa Barbara County
CA Santa Cruz city
CA Santa Cruz County
CA Santa Maria city
CA Sausalito city
CA Scotts Valley city
CA Seaside city
CA Shasta County
CA Solano County
CA Sonoma County
CA Stanislaus County
CA Suisun City city
CA Sutter County
CA Tiburon town
CA Tulare County
CA Vacaville city
CA Victorville city
CA Villa Park city
CA Visalia city
CA Watsonville city
CA West Sacramento city
CA Yolo County
CA Yuba City city
CA Yuba County
CO Adams County
CO Arvada city
CO Boulder city
CO Boulder County
CO Bow Mar town
CO Broomfield city
CO Cherry Hills Village city
CO Columbine Valley town
CO Commerce City city
CO Douglas County
CO Edgewater city
CO El Paso County
CO Englewood city
CO Evans city
CO Federal Heights city
CO Fort Collins city
CO Fountain city
CO Garden City town
CO Glendale city
CO Golden city
CO Grand Junction city
CO Greeley city
CO Greenwood Village city
CO Jefferson County
CO La Salle town
CO Lakeside town
CO Larimer County
CO Littleton city
CO Longmont city
CO Manitou Springs city
CO Mesa County
CO Mountain View town
CO Northglenn city
CO Pueblo city
CO Pueblo County
CO Sheridan city
CO Thornton city
CO Weld County
CO Westminster city
CO Wheat Ridge city
CT Ansonia city
CT Avon town
CT Beacon Falls town
CT Berlin town
CT Bethel town
CT Bloomfield town
CT Bozrah town
CT Branford town
CT Bridgeport city
CT Bristol city
CT Brookfield town
CT Burlington town
CT Cheshire town
CT Cromwell town
CT Danbury city
CT Darien town
CT Derby city
CT Durham town
CT East Granby town
CT East Hartford town
CT East Haven town
CT East Lyme town
CT East Windsor town
CT Easton town
CT Ellington town
CT Enfield town
CT Fairfield County
CT Fairfield town
CT Farmington town
CT Franklin town
CT Glastonbury town
CT Greenwich town
CT Groton city
CT Groton town
CT Guilford town
CT Hamden town
CT Hartford city
CT Hartford County
CT Ledyard town
CT Lisbon town
CT Litchfield County
CT Manchester town
CT Meriden city
CT Middlebury town
CT Middlefield town
CT Middlesex County
CT Middletown city
CT Milford city (remainder)
CT Monroe town
CT Montville town
CT Naugatuck borough
CT New Britain city
CT New Canaan town
CT New Fairfield town
CT New Haven city
CT New Haven County
CT New London city
CT New London County
CT New Milford town
CT Newington town
CT Newtown town
CT North Branford town
CT North Haven town
CT Norwalk city
CT Norwich city
CT Orange town
CT Oxford town
CT Plainville town
CT Plymouth town
CT Portland town
CT Preston town
CT Prospect town
CT Rocky Hill town
CT Seymour town
CT Shelton city
CT Sherman town
CT Somers town
CT South Windsor town
CT Southington town
CT Sprague town
CT Stonington town
CT Stratford town
CT Suffield town
CT Thomaston town
CT Thompson town
CT Tolland County
CT Tolland town
CT Trumbull town
CT Vernon town
CT Wallingford town
CT Waterbury city
CT Waterford town
CT Watertown town
CT West Hartford town
CT West Haven city
CT Weston town
CT Westport town
CT Wethersfield town
CT Wilton town
CT Windham County
CT Windsor Locks town
CT Windsor town
CT Wolcott town
CT Woodbridge town

CT Woodmont borough
DE Camden town
DE Dover city
DE Kent County
DE Newark city
DE Wyoming town
FL Alachua County
FL Baldwin town
FL Bay County
FL Belleair Shore town
FL Biscayne Park village
FL Brevard County
FL Callaway city
FL Cape Canaveral city
FL Cedar Grove town
FL Charlotte County
FL Cinco Bayou town
FL Clay County
FL Cocoa Beach city
FL Cocoa city
FL Collier County
FL Daytona Beach city
FL Daytona Beach Shores city
FL Destin city
FL Edgewater city
FL El Portal village
FL Florida City city
FL Fort Pierce city
FL Fort Walton Beach city
FL Gainesville city
FL Gulf Breeze city
FL Hernando County
FL Hillsboro Beach town
FL Holly Hill city
FL Indialantic town
FL Indian Harbour Beach city
FL Indian River County
FL Indian River Shores town
FL Indian Shores town
FL Kissimmee city
FL Lazy Lake village
FL Lynn Haven city
FL Malabar town
FL Marion County
FL Martin County
FL Mary Esther city
FL Melbourne Beach town
FL Melbourne city
FL Melbourne Village town
FL Naples city
FL New Smyrna Beach city
FL Niceville city
FL Ocala city
FL Ocean Breeze Park town
FL Okaloosa County
FL Orange Park town
FL Ormond Beach city
FL Osceola County
FL Palm Bay city
FL Panama City city
FL Parker city
FL Ponce Inlet town
FL Port Orange city
FL Port St. Lucie city
FL Punta Gorda city
FL Rockledge city
FL Santa Rosa County
FL Satellite Beach city
FL Sewall's Point town
FL Shalimar town
FL South Daytona city
FL Springfield city
FL St. Johns County
FL St. Lucie County
FL St. Lucie village
FL Stuart city
FL Sweetwater city
FL Titusville city
FL Valparaiso city
FL Vero Beach city
FL Virginia Gardens village
FL Volusia County
FL Walton County
FL Weeki Wachee city
FL West Melbourne city
FL Windermere town
GA Albany city
GA Athens city
GA Bartow County
GA Brunswick city
GA Catoosa County
GA Centerville city
GA Chattahoochee County
GA Cherokee County
GA Chickamauga city
GA Clarke County
GA Columbia County
GA Conyers city
GA Dade County
GA Dougherty County
GA Douglas County
GA Douglasville city
GA Fayette County
GA Floyd County
GA Fort Oglethorpe city
GA Glynn County
GA Grovetown city
GA Henry County
GA Houston County
GA Jones County
GA Lee County
GA Lookout Mountain city
GA Mountain Park city
GA Oconee County
GA Payne city
GA Rockdale County
GA Rome city
GA Rossville city
GA Stockbridge city
GA Vernonburg town
GA Walker County
GA Warner Robins city
GA Winterville city
GA Woodstock city
IA Altoona city
IA Asbury city
IA Bettendorf city
IA Black Hawk County
IA Buffalo city
IA Carter Lake city
IA Cedar Falls city
IA Clive city
IA Coralville city
IA Council Bluffs city
IA Dallas County
IA Dubuque city
IA Dubuque County
IA Elk Run Heights city
IA Evansdale city
IA Hiawatha city
IA Iowa City city
IA Johnson County
IA Johnston city
IA Le Claire city
IA Linn County
IA Marion city
IA Norwalk city
IA Panorama Park city
IA Pleasant Hill city
IA Polk County
IA Pottawattamie County
IA Raymond city
IA Riverdale city
IA Robins city
IA Scott County
IA Sergeant Bluff city
IA Sioux City city
IA University Heights city
IA Urbandale city
IA Warren County
IA Waterloo city
IA West Des Moines city
IA Windsor Heights city
IA Woodbury County
ID Ada County
ID Ammon city
ID Bannock County
ID Bonneville County
ID Chubbuck city
ID Idaho Falls city
ID Iona city
ID Pocatello city
ID Power County
IL Addison township
IL Addison village
IL Algonquin township
IL Algonquin village
IL Alorton village
IL Alsip village
IL Alton city
IL Antioch township
IL Antioch village
IL Arlington Heights village
IL Aroma Park village
IL Aroma township
IL Aurora city
IL Aurora township
IL Avon township
IL Ball township
IL Bannockburn village
IL Barrington township
IL Barrington village
IL Bartlett village
IL Bartonville village
IL Batavia city
IL Batavia township
IL Beach Park village
IL Bedford Park village
IL Belleville city
IL Bellevue village
IL Bellwood village
IL Bensenville village
IL Benton township
IL Berkeley village
IL Berwyn city
IL Bethalto village
IL Blackhawk township
IL Bloom township
IL Bloomingdale township
IL Bloomingdale village
IL Bloomington city
IL Bloomington township
IL Blue Island city
IL Bolingbrook village
IL Bourbonnais township
IL Bourbonnais village
IL Bowling township
IL Bradley village
IL Bremen township
IL Bridgeview village
IL Bristol township
IL Broadview village
IL Brookfield village
IL Brooklyn village
IL Buffalo Grove village
IL Burbank city
IL Burnham village
IL Burr Ridge village

IL Burritt township
IL Burton township
IL Cahokia village
IL Calumet City city
IL Calumet Park village
IL Calumet township
IL Canteen township
IL Capital township
IL Carbon Cliff village
IL Carol Stream village
IL Carpentersville Village
IL Cary village
IL Caseyville township
IL Caseyville village
IL Centreville city
IL Centreville township
IL Champaign city
IL Champaign County
IL Champaign township
IL Channahon township
IL Cherry Valley township
IL Cherry Valley village
IL Chicago city
IL Chicago Heights city
IL Chicago Ridge village
IL Chouteau township
IL Cicero town
IL Cincinnati township
IL Clarendon Hills village
IL Coal Valley township
IL Coal Valley village
IL Collinsville city
IL Collinsville township
IL Colona township
IL Colona village
IL Columbia city
IL Country Club Hills city
IL Countryside city
IL Crest Hill city
IL Crestwood village
IL Crete township
IL Crete village
IL Creve Coeur village
IL Crystal Lake city
IL Cuba township
IL Curran township
IL Darien city
IL Decatur city
IL Decatur township
IL Deer Park village
IL Deerfield township
IL Deerfield village
IL Des Plaines city
IL Dixmoor village
IL Dolton village
IL Dorr township
IL Downers Grove township
IL Downers Grove village
IL Dry Grove township
IL Du Page township
IL Dundee township
IL Dunleith township
IL Dupo village
IL East Alton village
IL East Dubuque city
IL East Dundee village
IL East Hazel Crest village
IL East Moline city
IL East Peoria city
IL East St. Louis city
IL Edwardsville city
IL Edwardsville township
IL Ela township
IL Elgin city
IL Elgin township
IL Elk Grove township
IL Elk Grove Village village
IL Elm Grove township
IL Elmhurst city
IL Elmwood Park village
IL Evanston city
IL Evergreen Park village
IL Fairmont City village
IL Fairview Heights city
IL Flossmoor village
IL Fondulac township
IL Ford Heights village
IL Forest Park village
IL Forest View village
IL Forsyth village
IL Fort Russell township
IL Foster township
IL Fox Lake village
IL Fox River Grove village
IL Frankfort township
IL Frankfort village
IL Franklin Park village
IL Fremont township
IL Gardner township
IL Geneva city
IL Geneva township
IL Gilberts village
IL Glen Carbon village
IL Glen Ellyn village
IL Glencoe village
IL Glendale Heights village
IL Glenview village
IL Glenwood village
IL Godfrey township
IL Golf village
IL Grafton township
IL Grandview village
IL Granite City city
IL Grant township
IL Grayslake village
IL Green Oaks village
IL Green Rock city
IL Groveland township
IL Gurnee village
IL Hainesville village
IL Hampton township
IL Hampton village
IL Hanna township
IL Hanover Park village
IL Hanover township
IL Harlem township
IL Harristown township
IL Harristown village
IL Hartford village
IL Harvey city
IL Harwood Heights village
IL Hawthorn Woods village
IL Hazel Crest village
IL Henry County
IL Hensley township
IL Hickory Hills city
IL Hickory Point township
IL Highland Park city
IL Highwood city
IL Hillside village
IL Hinsdale village
IL Hodgkins village
IL Hoffman Estates village
IL Hollis township
IL Homer township
IL Hometown city
IL Homewood village
IL Indian Creek village
IL Indian Head Park village
IL Inverness village
IL Itasca village
IL Jarvis township
IL Jerome village
IL Jo Daviess County
IL Joliet city
IL Joliet township
IL Justice village
IL Kane County
IL Kankakee city
IL Kankakee County
IL Kankakee township
IL Kendall County
IL Kenilworth village
IL Kickapoo township
IL Kildeer village
IL La Grange Park village
IL La Grange village
IL Lake Barrington village
IL Lake Bluff village
IL Lake Forest city
IL Lake in the Hills village
IL Lake Villa township
IL Lake Villa village
IL Lake Zurich village
IL Lakemoor village
IL Lakewood village
IL Lansing village
IL Leland Grove city
IL Lemont township
IL Leyden township
IL Libertyville township
IL Libertyville village
IL Limestone township
IL Lincolnshire village
IL Lincolnwood village
IL Lindenhurst village
IL Lisle township
IL Lisle village
IL Lockport city
IL Lockport township
IL Lombard village
IL Long Creek township
IL Long Grove village
IL Loves Park city
IL Lynwood village
IL Lyons township
IL Lyons village
IL Machesney Park village
IL Macon County
IL Madison city
IL Madison County
IL Maine township
IL Markham city
IL Marquette Heights city
IL Maryville village
IL Matteson village
IL Maywood village
IL McCook village
IL McCullom Lake village
IL McHenry city
IL McHenry County
IL McHenry township
IL McLean County
IL Medina township
IL Melrose Park village
IL Merrionette Park village
IL Midlothian village
IL Milan village
IL Milton township
IL Moline city
IL Moline township
IL Monee township
IL Monroe County
IL Montgomery village
IL Moro township
IL Morton Grove village
IL Morton township
IL Morton village

IL Mount Prospect village
IL Mount Zion township
IL Mount Zion village
IL Mundelein village
IL Nameoki township
IL Naperville city
IL Naperville township
IL National City village
IL New Lenox township
IL New Lenox village
IL New Millford village
IL New Trier township
IL Newport township
IL Niles township
IL Niles village
IL Normal town
IL Normal township
IL Norridge village
IL North Aurora village
IL North Barrington village
IL North Chicago city
IL North Pekin village
IL North Riverside village
IL Northbrook village
IL Northfield township
IL Northfield village
IL Northlake city
IL Norwood Park township
IL Norwood village
IL Nunda township
IL Oak Brook village
IL Oak Forest city
IL Oak Grove village
IL Oak Lawn village
IL Oak Park village
IL Oakbrook Terrace city
IL Oakley township
IL Oakwood Hills village
IL O'Fallon city
IL O'Fallon township
IL Olympia Fields village
IL Orland Hills village
IL Orland Park village
IL Orland township
IL Oswego township
IL Oswego village
IL Otto township
IL Owen township
IL Palatine township
IL Palatine village
IL Palos Heights city
IL Palos Hills city
IL Palos Park village
IL Palos township
IL Park City city
IL Park Forest village
IL Park Ridge city
IL Pekin city
IL Pekin township
IL Peoria city
IL Peoria County
IL Peoria Heights village
IL Phoenix village
IL Pin Oak township
IL Plainfield township
IL Plainfield village
IL Pontoon Beach village
IL Posen village
IL Precinct 10
IL Prospect Heights city
IL Proviso township
IL Rich township
IL Richton Park village
IL Richwoods township
IL River Forest village
IL River Grove village
IL Riverdale village
IL Riverside township
IL Riverside village
IL Riverwoods village
IL Robbins village
IL Rochester township
IL Rock Island city
IL Rock Island County
IL Rock Island township
IL Rockdale village
IL Rockford township
IL Rockton township
IL Rockton village
IL Rolling Meadows city
IL Romeoville village
IL Roscoe township
IL Roscoe village
IL Roselle village
IL Rosemont village
IL Round Lake Beach village
IL Round Lake Heights village
IL Round Lake Park village
IL Round Lake village
IL Roxana village
IL Rutland township
IL Sangamon County
IL Sauget village
IL Sauk Village village
IL Savoy village
IL Schaumburg township
IL Schaumburg village
IL Schiller Park village
IL Shields township
IL Shiloh Valley township
IL Shiloh village
IL Shorewood village
IL Silvis city
IL Skokie village
IL Sleepy Hollow village
IL Somer township
IL South Beloit city
IL South Chicago Heights village
IL South Elgin village
IL South Holland village
IL South Moline township
IL South Rock Island township
IL South Roxana village
IL South Wheatland township
IL Southern View village
IL Spring Bay township
IL Springfield city
IL Springfield township
IL St. Charles city
IL St. Charles township
IL St. Clair County
IL St. Clair township
IL Steger village
IL Stickney township
IL Stickney village
IL Stites township
IL Stone Park village
IL Stookey township
IL Streamwood village
IL Sugar Grove township
IL Sugar Loaf township
IL Summit village
IL Sunnyside village
IL Swansea village
IL Tazewell County
IL Thornton township
IL Thornton village
IL Tinley Park village
IL Tolono township
IL Tower Lakes village
IL Tremont township
IL Troy city
IL Troy township
IL University Park village
IL Urbana city
IL Urbana township
IL Venice city
IL Venice township
IL Vernon Hills village
IL Vernon township
IL Villa Park village
IL Warren township
IL Warrenville city
IL Washington city
IL Washington Park village
IL Washington township
IL Wauconda township
IL Waukegan city
IL Waukegan township
IL Wayne township
IL West Chicago city
IL West Deerfield township
IL West Dundee village
IL West Peoria township
IL Westchester village
IL Western Springs village
IL Westmont village
IL Wheatland township
IL Wheaton city
IL Wheeling township
IL Wheeling village
IL Whitmore township
IL Will County
IL Willow Springs village
IL Willowbrook village
IL Wilmette village
IL Winfield township
IL Winfield village
IL Winnebago County
IL Winnetka village
IL Winthrop Harbor village
IL Wood Dale city
IL Wood River city
IL Wood River township
IL Woodford County
IL Woodridge village
IL Woodside township
IL Worth township
IL Worth village
IL York township
IL Zion city
IN Aboite township
IN Adams township
IN Allen County
IN Anderson city
IN Anderson township
IN Baugo township
IN Beech Grove city
IN Bloomington city
IN Bloomington township
IN Boone County
IN Buck Creek township
IN Calumet township
IN Carmel city
IN Castleton town
IN Cedar Creek township
IN Center township
IN Centre township
IN Chesterfield town
IN Chesterton town
IN Clark County
IN Clarksville town
IN Clay township
IN Clermont town
IN Cleveland township
IN Concord township
IN Country Club Heights town

IN Crown Point city
IN Crows Nest town
IN Cumberland town
IN Daleville town
IN Delaware County
IN Delaware township
IN Dyer town
IN Eagle township
IN East Chicago city
IN Edgewood town
IN Elkhart city
IN Elkhart County
IN Elkhart township
IN Evansville city
IN Fairfield township
IN Fall Creek township
IN Fishers town
IN Floyd County
IN Fort Wayne city
IN Franklin township
IN Gary city
IN German township
IN Goshen city
IN Greenwood city
IN Griffith town
IN Hamilton County
IN Hamilton township
IN Hammond city
IN Hancock County
IN Hanover township
IN Harris township
IN Harrison township
IN Hendricks County
IN Highland town
IN Hobart city
IN Hobart township
IN Homecroft town
IN Honey Creek township
IN Howard County
IN Howard township
IN Indian Village town
IN Jackson township
IN Jefferson township
IN Jeffersonville city
IN Jeffersonville township
IN Johnson County
IN Knight township
IN Kokomo city
IN Lafayette city
IN Lafayette township
IN Lake County
IN Lake Station city
IN Lawrence city
IN Lawrence township
IN Liberty township
IN Lincoln township
IN Lost Creek township
IN Madison County
IN Meridian Hills town
IN Merrillville town
IN Mishawaka city
IN Monroe County
IN Mount Pleasant township
IN Muncie city
IN Munster town
IN New Albany city
IN New Albany township
IN New Chicago town
IN New Haven city
IN New Whiteland town
IN Newburgh town
IN North Crows Nest town
IN North township
IN Ogden Dunes town
IN Ohio township
IN Osceola town
IN Osolo township
IN Otter Creek township
IN Penn township
IN Perry township
IN Pigeon township
IN Pike township
IN Pleasant township
IN Portage city
IN Portage township
IN Porter County
IN Porter town
IN Richland township
IN Riley township
IN River Forest town
IN Rocky Ripple town
IN Roseland town
IN Ross township
IN Salem township
IN Schererville town
IN Seelyville town
IN Sellersburg town
IN Selma town
IN Silver Creek township
IN South Bend city
IN Southport city
IN Speedway town
IN Spring Hill town
IN St. John town
IN St. John township
IN St. Joseph County
IN St. Joseph township
IN Sugar Creek township
IN Taylor township
IN Terre Haute city
IN Tippecanoe County
IN Tippecanoe township
IN Union township
IN Utica township
IN Van Buren township
IN Vanderburgh County
IN Vigo County
IN Wabash township
IN Warren Park town
IN Warren township
IN Warrick County
IN Washington township
IN Wayne township
IN Wea township
IN West Lafayette city
IN West Terre Haute town
IN Westchester township
IN Westfield town
IN White River township
IN Whiteland town
IN Whiting city
IN Williams Creek town
IN Woodlawn Heights town
IN Wynnedale town
IN Yorktown town
IN Zionsville town
KS Attica township
KS Bel Aire city
KS Countryside city
KS Delano township
KS Doniphan County
KS Douglas County
KS Eastborough city
KS Elwood city
KS Fairway city
KS Gypsum township
KS Haysville city
KS Johnson County
KS Kechi city
KS Kechi township
KS Lake Quivira city
KS Lawrence city
KS Leawood city
KS Lenexa city
KS Merriam city
KS Minneha township
KS Mission city
KS Mission Hills city
KS Mission township
KS Mission Woods city
KS Monticello township
KS Ohio township
KS Olathe city
KS Olathe township
KS Park City city
KS Park township
KS Prairie Village city
KS Riverside township
KS Roeland Park city
KS Salem township
KS Sedgwick County
KS Shawnee city
KS Shawnee County
KS Shawnee township
KS Soldier township
KS Tecumseh township
KS Topeka township
KS Waco township
KS Wakarusa township
KS Washington township
KS Westwood city
KS Westwood Hills city
KS Williamsport township
KS Wyandotte County
KY Alexandria city
KY Ashland city
KY Bellefonte city
KY Bellevue city
KY Boone County
KY Boyd County
KY Bromley city
KY Bullitt County
KY Campbell County
KY Catlettsburg city
KY Christian County
KY Covington city
KY Crescent Park city
KY Crescent Springs city
KY Crestview city
KY Crestview Hills city
KY Daviess County
KY Dayton city
KY Edgewood city
KY Elsmere city
KY Erlanger city
KY Fairview city
KY Flatwoods city
KY Florence city
KY Forest Hills city
KY Fort Mitchell city
KY Fort Thomas city
KY Fort Wright city
KY Fox Chase city
KY Greenup County
KY Hebron Estates city
KY Henderson city
KY Henderson County
KY Highland Heights city
KY Hillview city
KY Hunters Hollow city
KY Independence city
KY Jessamine County
KY Kenton County
KY Kenton Vale city
KY Lakeside Park city
KY Latonia Lakes city
KY Ludlow city
KY Melbourne city

KY Newport city
KY Oak Grove city
KY Owensboro city
KY Park Hills city
KY Pioneer Village city
KY Raceland city
KY Russell city
KY Silver Grove city
KY Southgate city
KY Taylor Mill city
KY Villa Hills city
KY Wilder city
KY Woodlawn city
KY Wurtland city
LA Alexandria city
LA Baker city
LA Ball town
LA Bossier City city
LA Bossier Parish
LA Broussard town
LA Caddo Parish
LA Calcasieu Parish
LA Carencro city
LA Denham Springs city
LA Houma city
LA Lafayette city
LA Lafayette Parish
LA Lafourche Parish
LA Lake Charles city
LA Livingston Parish
LA Monroe city
LA Ouachita Parish
LA Pineville city
LA Plaquemines Parish
LA Port Allen city
LA Rapides Parish
LA Richwood town
LA Scott town
LA Slidell city
LA St. Bernard Parish
LA St. Charles Parish
LA St. Tammany Parish
LA Sulphur city
LA Terrebonne Parish
LA West Baton Rouge Parish
LA West Monroe city
LA Westlake city
LA Zachary city
MA Abington town
MA Acton town
MA Acushnet town
MA Agawam town
MA Amesbury town
MA Andover town
MA Arlington town
MA Ashland town
MA Attleboro city
MA Auburn town
MA Avon town
MA Barnstable County
MA Barnstable town
MA Bedford town
MA Bellingham town
MA Belmont town
MA Berkshire County
MA Beverly city
MA Billerica town
MA Blackstone town
MA Boxborough town
MA Boylston town
MA Braintree town
MA Bridgewater town
MA Bristol County
MA Brockton city
MA Brookline town
MA Burlington town
MA Cambridge city
MA Canton town
MA Charlton town
MA Chelmsford town
MA Chelsea city
MA Chicopee city
MA Cohasset town
MA Concord town
MA Dalton town
MA Danvers town
MA Dartmouth town
MA Dedham town
MA Dennis town
MA Dighton town
MA Dover town
MA Dracut town
MA Dudley town
MA East Bridgewater town
MA East Longmeadow town
MA Easthampton town
MA Easton town
MA Essex County
MA Essex town
MA Everett city
MA Fairhaven town
MA Fall River city
MA Fitchburg city
MA Foxborough town
MA Framingham town
MA Franklin town
MA Freetown town
MA Georgetown town
MA Gloucester city
MA Grafton town
MA Granby town
MA Groton town
MA Groveland town
MA Hadley town
MA Halifax town
MA Hamilton town
MA Hampden County
MA Hampden town
MA Hampshire County
MA Hanover town
MA Hanson town
MA Haverhill city
MA Hingham town
MA Hinsdale town
MA Holbrook town
MA Holden town
MA Holliston town
MA Holyoke city
MA Hudson town
MA Hull town
MA Lanesborough town
MA Lawrence city
MA Leicester town
MA Leominster city
MA Lexington town
MA Lincoln town
MA Littleton town
MA Longmeadow town
MA Lowell city
MA Ludlow town
MA Lunenburg town
MA Lynn city
MA Lynnfield town
MA Malden city
MA Manchester town
MA Mansfield town
MA Marblehead town
MA Marlborough city
MA Mashpee town
MA Maynard town
MA Medfield town
MA Medford city
MA Medway town
MA Melrose city
MA Merrimac town
MA Methuen town
MA Middlesex County
MA Middleton town
MA Millbury town
MA Millis town
MA Millville town
MA Milton town
MA Nahant town
MA Natick town
MA Needham town
MA New Bedford city
MA Newton city
MA Norfolk town
MA North Andover town
MA North Attleborough town
MA North Reading town
MA Northampton city
MA Northborough town
MA Northbridge town
MA Norton town
MA Norwell town
MA Norwood town
MA Oxford town
MA Paxton town
MA Peabody city
MA Pembroke town
MA Pittsfield city
MA Plainville town
MA Plymouth County
MA Quincy city
MA Randolph town
MA Raynham town
MA Reading town
MA Rehoboth town
MA Revere city
MA Rockland town
MA Rockport town
MA Salem city
MA Sandwich town
MA Saugus town
MA Scituate town
MA Seekonk town
MA Sharon town
MA Shrewsbury town
MA Somerset town
MA Somerville city
MA South Hadley town
MA Southampton town
MA Southborough town
MA Southwick town
MA Springfield city
MA Stoneham town
MA Stoughton town
MA Stow town
MA Sudbury town
MA Sutton town
MA Swampscott town
MA Swansea town
MA Taunton city
MA Tewksbury town
MA Tyngsborough town
MA Uxbridge town
MA Wakefield town
MA Walpole town
MA Waltham city
MA Watertown town
MA Wayland town
MA Webster town
MA Wellesley town
MA Wenham town
MA West Boylston town
MA West Bridgewater town
MA West Springfield town

MA Westborough town
MA Westfield city
MA Westford town
MA Westminster town
MA Weston town
MA Westport town
MA Westwood town
MA Weymouth town
MA Whitman town
MA Wilbraham town
MA Williamsburg town
MA Wilmington town
MA Winchester town
MA Winthrop town
MA Woburn city
MA Worcester County
MA Wrentham town
MA Yarmouth town
MD Allegany County
MD Annapolis city
MD Bel Air town
MD Berwyn Heights town
MD Bladensburg town
MD Bowie city
MD Brentwood town
MD Brookeville town
MD Capitol Heights town
MD Cecil County
MD Cheverly town
MD Chevy Chase Section Five village
MD Chevy Chase Section Three village
MD Chevy Chase town
MD Chevy Chase Village town
MD College Park city
MD Colmar Manor town
MD Cottage City town
MD Cumberland city
MD District Heights city
MD Edmonston town
MD Elkton town
MD Fairmount Heights town
MD Forest Heights town
MD Frederick city
MD Frostburg city
MD Funkstown town
MD Gaithersburg city
MD Garrett Park town
MD Glen Echo town
MD Glenarden town
MD Greenbelt city
MD Hagerstown city
MD Highland Beach town
MD Hyattsville city
MD Kensington town
MD Landover Hills town
MD Laurel city
MD Martin's Additions village
MD Morningside town
MD Mount Rainier city
MD New Carrollton city
MD North Brentwood town
MD Riverdale town
MD Rockville city
MD Seat Pleasant city
MD Smithsburg town
MD Somerset town
MD Takoma Park city
MD University Park town
MD Walkersville town
MD Washington Grove town
MD Williamsport town
ME Androscoggin County
ME Auburn city
ME Bangor city
ME Berwick town
ME Brewer city
ME Cape Elizabeth town
ME Cumberland County
ME Eliot town
ME Falmouth town
ME Gorham town
ME Kittery town
ME Lebanon town
ME Lewiston city
ME Lisbon town
ME Old Town city
ME Orono town
ME Penobscot County
ME Penobscot Indian Island Reservation
ME Portland city
ME Sabattus town
ME Scarborough town
ME South Berwick town
ME South Portland city
ME Veazie town
ME Westbrook city
ME York County
MI Ada township
MI Allegan County
MI Allen Park city
MI Alpine township
MI Ann Arbor township
MI Auburn Hills city
MI Bangor township
MI Bath township
MI Battle Creek city
MI Bay City city
MI Bay County
MI Bedford township
MI Belleville city
MI Benton Charter township
MI Benton Harbor city
MI Berkley city
MI Berlin township
MI Berrien County
MI Beverly Hills village
MI Bingham Farms village
MI Birmingham city
MI Blackman township
MI Bloomfield Hills city
MI Bloomfield township
MI Bridgeport township
MI Brownstown township
MI Buena Vista Charter township
MI Burtchville township
MI Burton city
MI Byron township
MI Calhoun County
MI Canton township
MI Carrollton township
MI Cascade township
MI Cass County
MI Center Line city
MI Chesterfield township
MI Clarkston village
MI Clawson city
MI Clay township
MI Clayton township
MI Clinton County
MI Clinton township
MI Clio city
MI Clyde township
MI Commerce township
MI Comstock township
MI Cooper township
MI Dalton township
MI Davison city
MI Davison township
MI De Witt township
MI Dearborn city
MI Dearborn Heights city
MI Delhi Charter township
MI Delta township
MI Detroit city
MI East China township
MI East Detroit city
MI East Grand Rapids city
MI East Lansing city
MI Eaton County
MI Ecorse city
MI Emmett township
MI Erie township
MI Essexville city
MI Farmington city
MI Farmington Hills city
MI Ferndale city
MI Fillmore township
MI Flat Rock city
MI Flint township
MI Flushing city
MI Flushing township
MI Fort Gratiot township
MI Frankenlust township
MI Franklin village
MI Fraser city
MI Fruitport township
MI Gaines township
MI Garden City city
MI Genesee County
MI Genesee township
MI Georgetown township
MI Gibraltar city
MI Grand Blanc city
MI Grand Blanc township
MI Grand Rapids Charter township
MI Grandville city
MI Grosse Ile township
MI Grosse Pointe city
MI Grosse Pointe Farms city
MI Grosse Pointe Park city
MI Grosse Pointe Shores village
MI Grosse Pointe Woods city
MI Hampton township
MI Hamtramck city
MI Harper Woods city
MI Harrison township
MI Hazel Park city
MI Highland Park city
MI Highland township
MI Holland city
MI Holland township
MI Howard township
MI Hudsonville city
MI Huntington Woods city
MI Huron township
MI Independence township
MI Ingham County
MI Inkster city
MI Ira township
MI Jackson city
MI Jackson County
MI James township
MI Kalamazoo city
MI Kalamazoo County
MI Kalamazoo township
MI Keego Harbor city
MI Kent County
MI Kentwood city
MI Kimball township
MI Kochville township
MI Lake Angelus city
MI Laketon township
MI Laketown township
MI Lansing city
MI Lansing township
MI Lathrup Village city
MI Leoni township
MI Lincoln Park city

MI Lincoln township
MI Livonia city
MI Macomb County
MI Macomb township
MI Madison Heights city
MI Marysville city
MI Melvindale city
MI Meridian township
MI Milford township
MI Milton township
MI Monitor township
MI Monroe County
MI Mount Clemens city
MI Mount Morris city
MI Mount Morris township
MI Mundy township
MI Muskegon city
MI Muskegon County
MI Muskegon Heights city
MI Muskegon township
MI New Baltimore city
MI Niles city
MI Niles township
MI North Muskegon city
MI Northville city
MI Northville township
MI Norton Shores city
MI Novi city
MI Novi township
MI Oak Park city
MI Oakland Charter township
MI Oakland County
MI Orchard Lake Village city
MI Orion township
MI Oshtemo township
MI Ottawa County
MI Parchment city
MI Park township
MI Pavilion township
MI Pennfield township
MI Pittsfield township
MI Plainfield township
MI Pleasant Ridge city
MI Plymouth city
MI Plymouth township
MI Pontiac city
MI Port Huron city
MI Port Huron township
MI Portage city
MI Portsmouth township
MI Redford township
MI Richfield township
MI River Rouge city
MI Riverview city
MI Rochester city
MI Rochester Hills city
MI Rockwood city
MI Romulus city
MI Roosevelt Park city
MI Roseville city
MI Ross township
MI Royal Oak city
MI Royal Oak township
MI Saginaw city
MI Saginaw County
MI Saginaw township
MI Schoolcraft township
MI Scio township
MI Shelby township
MI Shoreham village
MI Sodus township
MI South Rockwood village
MI Southfield city
MI Southfield township
MI Southgate city
MI Spaulding township
MI Spring Arbor township
MI Springfield city
MI Springfield township
MI St. Clair city
MI St. Clair County
MI St. Clair Shores city
MI St. Clair township
MI St. Joseph Charter township
MI St. Joseph city
MI Stevensville village
MI Sullivan township
MI Summit township
MI Sumpter township
MI Superior township
MI Swartz Creek city
MI Sylvan Lake city
MI Taylor city
MI Texas township
MI Thetford township
MI Thomas township
MI Trenton city
MI Troy city
MI Utica city
MI Van Buren township
MI Vienna township
MI Walker city
MI Walled Lake city
MI Washington township
MI Washtenaw County
MI Waterford township
MI Wayne city
MI West Bloomfield township
MI Westland city
MI White Lake township
MI Whiteford township
MI Williamstown township
MI Wixom city
MI Wolverine Lake village
MI Woodhaven city
MI Wyandotte city
MI Wyoming city
MI Ypsilanti city
MI Ypsilanti township
MI Zeeland city
MI Zilwaukee city
MN Andover city
MN Anoka city
MN Anoka County
MN Apple Valley city
MN Arden Hills city
MN Benton County
MN Birchwood Village city
MN Blaine city
MN Bloomington city
MN Brooklyn Center city
MN Brooklyn Park city
MN Burnsville city
MN Carver County
MN Cascade township
MN Champlin city
MN Chanhassen city
MN Circle Pines city
MN Clay County
MN Coon Rapids city
MN Cottage Grove city
MN Credit River township
MN Crystal city
MN Dakota County
MN Dayton city
MN Deephaven city
MN Dilworth city
MN Duluth city
MN Eagan city
MN East Grand Forks city
MN Eden Prairie city
MN Excelsior city
MN Falcon Heights city
MN Farmington city
MN Fort Snelling unorg.
MN Fridley city
MN Gem Lake city
MN Golden Valley city
MN Grant township
MN Greenwood city
MN Ham Lake city
MN Haven township
MN Hennepin County
MN Hermantown city
MN Hilltop city
MN Hopkins city
MN Houston County
MN Inver Grove Heights city
MN La Crescent city
MN La Crescent township
MN Lake Elmo city
MN Lakeville city
MN Landfall city
MN Lauderdale city
MN Le Sauk township
MN Lexington city
MN Lilydale city
MN Lino Lakes city
MN Little Canada city
MN Long Lake city
MN Loretto city
MN Mahtomedi city
MN Maple Grove city
MN Maple Plain city
MN Maplewood city
MN Marion township
MN Medicine Lake city
MN Medina city
MN Mendota city
MN Mendota Heights city
MN Midway township
MN Minden township
MN Minnetonka Beach city
MN Minnetonka city
MN Minnetrista city
MN Moorhead city
MN Moorhead township
MN Mound city
MN Mounds View city
MN New Brighton city
MN New Hope city
MN Newport city
MN North Oaks city
MN North St. Paul city
MN Oakdale city
MN Oakport township
MN Olmsted County
MN Orono city
MN Osseo city
MN Plymouth city
MN Polk County
MN Prior Lake city
MN Proctor city
MN Ramsey city
MN Robbinsdale city
MN Rochester city
MN Rochester township
MN Rosemount city
MN Roseville city
MN Sartell city
MN Sauk Rapids city
MN Sauk Rapids township
MN Savage city
MN Scott County
MN Sherburne County
MN Shoreview city
MN Shorewood city
MN South St. Paul city

MN Spring Lake Park city
MN Spring Park city
MN St. Anthony city
MN St. Cloud city
MN St. Cloud township
MN St. Louis County
MN St. Paul Park city
MN Stearns County
MN Sunfish Lake city
MN Tonka Bay city
MN Vadnais Heights city
MN Victoria city
MN Waite Park city
MN Washington County
MN Wayzata city
MN West St. Paul city
MN White Bear Lake city
MN White Bear township
MN Willernie city
MN Woodbury city
MN Woodland city
MN Wright County
MO Airport Drive village
MO Airport township
MO Andrew County
MO Arnold city
MO Avondale city
MO Ballwin city
MO Battlefield town
MO Bella Villa city
MO Bellefontaine Neighbors city
MO Bellerive village
MO Bel-Nor village
MO Bel-Ridge village
MO Belton city
MO Berkeley city
MO Beverly Hills city
MO Big Creek township
MO Birmingham village
MO Black Jack city
MO Blanchette township
MO Blue Springs city
MO Blue township
MO Bonhomme township
MO Boone County
MO Boone township
MO Breckenridge Hills village
MO Brentwood city
MO Bridgeton city
MO Brooking township
MO Buchanan County
MO Calverton Park village
MO Campbell No. 1 township
MO Campbell No. 2 township
MO Carl Junction city
MO Carroll township
MO Carterville city
MO Cass County
MO Cedar township
MO Center township
MO Charlack city
MO Chesterfield city
MO Chouteau township
MO Christian County
MO Clarkson Valley city
MO Clay County
MO Clay township
MO Claycomd village
MO Clayton city
MO Clayton township
MO Cliff Village village
MO Columbia city
MO Columbia township
MO Concord township
MO Cool Valley city
MO Cottleville town
MO Cottleville township
MO Country Club Hills city
MO Country Club village
MO Country Life Acres village
MO Crestwood city
MO Creve Coeur city
MO Creve Coeur township
MO Crystal Lake Park city
MO Dardenne township
MO Dellwood city
MO Dennis Acres village
MO Des Peres city
MO Duquesne village
MO Edmundson village
MO Ellisville city
MO Fenton city
MO Ferguson city
MO Ferguson township
MO Flordell Hills city
MO Florissant city
MO Florissant township
MO Fox township
MO Friedens township
MO Frontenac city
MO Galena township
MO Gallatin township
MO Gladstone city
MO Glen Echo Park village
MO Glenaire village
MO Glendale city
MO Grandview city
MO Grantwood Village town
MO Gravois township
MO Greendale city
MO Greene County
MO Hadley township
MO Hanley Hills village
MO Harvester township
MO Hazelwood city
MO High Ridge township
MO Hillsdale village
MO Houston Lake city
MO Huntleigh city
MO Imperial township
MO Iron Gates village
MO Jackson County
MO Jasper County
MO Jefferson County
MO Jefferson township
MO Jennings city
MO Joplin city
MO Joplin township
MO Kickapoo township
MO Kimmswick city
MO Kinloch city
MO Kirkwood city
MO Ladue city
MO Lake St. Louis city
MO Lake Tapawingo city
MO Lake Waukomis city
MO Lakeshire city
MO Leawood village
MO Lee's Summit city
MO Lemay township
MO Lewis and Clark township
MO Liberty city
MO Liberty township
MO Mac Kenzie village
MO Manchester city
MO Maplewood city
MO Marlborough village
MO Maryland Heights city
MO May township
MO Meramec township
MO Midland township
MO Mineral township
MO Missouri River township
MO Missouri township
MO Moline Acres city
MO Mount Pleasant township
MO Newton County
MO Normandy city
MO Normandy township
MO North Campbell No. 1 township
MO North Campbell No. 2 township
MO North Campbell No. 3 township
MO North Kansas City city
MO North View township
MO Northmoor city
MO Northwest township
MO Northwoods city
MO Norwood Court town
MO Oakland city
MO Oakland Park village
MO Oaks village
MO Oakview village
MO Oakwood Park village
MO Oakwood village
MO O'Fallon city
MO O'Fallon township
MO Olivette city
MO Overland city
MO Pagedale city
MO Parkdale town
MO Parkville city
MO Pasadena Hills city
MO Pasadena Park village
MO Pettis township
MO Pine Lawn city
MO Platte County
MO Platte township
MO Platte Woods city
MO Pleasant Valley city
MO Prairie township
MO Queeny township
MO Randolph village
MO Raymore city
MO Raymore township
MO Raytown city
MO Redings Mill village
MO Richmond Heights city
MO Rivers township
MO Riverside city
MO Riverview village
MO Rock Hill city
MO Rock township
MO Rocky Fork township
MO Saginaw village
MO Shoal Creek Drive village
MO Shoal Creek township
MO Shrewsbury city
MO Silver Creek village
MO Sioux township
MO Sni-A-Bar township
MO Spanish Lake township
MO Spencer Creek township
MO St. Ann city
MO St. Charles city
MO St. Ferdinand township
MO St. George city
MO St. John city
MO St. Joseph city
MO St. Louis city
MO St. Peters city
MO St. Peters township
MO Sugar Creek city
MO Sunset Hills city
MO Sycamore Hills village
MO Town and Country city
MO Twin Groves township
MO Twin Oaks village
MO Unity Village village

MO University City city
MO Uplands Park village
MO Valley Park city
MO Velda Village city
MO Velda Village Hills village
MO Vinita Park city
MO Vinita Terrace village
MO Warson Woods city
MO Washington township
MO Wayne township
MO Weatherby Lake city
MO Webb City city
MO Webster Groves city
MO Wellston city
MO Wentzville township
MO Westwood village
MO Wilbur Park village
MO Wilson township
MO Winchester city
MO Windsor township
MO Woodson Terrace city
MO Zumbehl township
MS Bay St. Louis city
MS Biloxi city
MS Brandon city
MS Clinton city
MS DeSoto County
MS D'Iberville city
MS Flowood town
MS Forrest County
MS Gautier city
MS Gulfport city
MS Hancock County
MS Harrison County
MS Hattiesburg city
MS Hinds County
MS Horn Lake city
MS Jackson County
MS Lamar County
MS Long Beach city
MS Madison city
MS Madison County
MS Moss Point city
MS Ocean Springs city
MS Pascagoula city
MS Pass Christian city
MS Pearl city
MS Petal city
MS Rankin County
MS Richland city
MS Ridgeland city
MS Southaven city
MS Waveland city
MT Billings city
MT Cascade County
MT Great Falls city
MT Missoula city
MT Missoula County
MT Yellowstone County
NC Alamance County
NC Apex town
NC Archdale city
NC Asheville city
NC Belmont city
NC Belville town
NC Bessemer City city
NC Biltmore Forest town
NC Black Mountain town
NC Brookford town
NC Brunswick County
NC Buncombe County
NC Burke County
NC Burlington city
NC Cabarrus County
NC Carrboro town
NC Cary town
NC Catawba County
NC Chapel Hill town
NC China Grove town
NC Clemmons village
NC Concord city
NC Conover city
NC Cramerton town
NC Dallas town
NC Davidson County
NC Durham County
NC Edgecombe County
NC Elon College town
NC Fletcher town
NC Forsyth County
NC Garner town
NC Gaston County
NC Gastonia city
NC Gibsonville town
NC Goldsboro city
NC Graham city
NC Greenville city
NC Guilford County
NC Harnett County
NC Haw River town
NC Henderson County
NC Hickory city
NC High Point city
NC Hildebran town
NC Hope Mills town
NC Indian Trail town
NC Jacksonville city
NC Jamestown town
NC Kannapolis city
NC Landis town
NC Leland town
NC Long View town
NC Lowell city
NC Matthews town
NC McAdenville town
NC Mebane city
NC Mecklenburg County
NC Mint Hill town
NC Montreat town
NC Mount Holly city
NC Nash County
NC New Hanover County
NC Newton city
NC Onslow County
NC Orange County
NC Pineville town
NC Pitt County
NC Randolph County
NC Ranlo town
NC Rocky Mount city
NC Rowan County
NC Rural Hall town
NC Spring Lake town
NC Stallings town
NC Thomasville city
NC Union County
NC Wake County
NC Walkertown town
NC Wayne County
NC Weaverville town
NC Wilmington city
NC Winterville town
NC Woodfin town
NC Wrightsville Beach town
ND Barnes township
ND Bismarck city
ND Bismarck unorg.
ND Burleigh County
ND Captain's Landing township
ND Cass County
ND Fargo city
ND Grand Forks city
ND Grand Forks County
ND Grand Forks township
ND Hay Creek township
ND Lincoln city
ND Mandan city
ND Mandan unorg.
ND Morton County
ND Reed township
ND West Fargo city
NE Bellevue city
NE Bellevue No. 2 precinct
NE Benson precinct
NE Boys Town village
NE Chicago precinct
NE Covington precinct
NE Dakota County
NE Douglas County
NE Douglas precinct
NE Florence precinct
NE Garfield precinct
NE Gilmore No. 1 precinct
NE Gilmore No. 2 precinct
NE Gilmore No. 3 precinct
NE Grant precinct
NE Highland No. 1 precinct
NE Highland No. 2 precinct
NE Jefferson precinct
NE La Platte precinct
NE La Vista city
NE Lancaster County
NE Lancaster precinct
NE McArdle precinct
NE Millard precinct
NE Papillion city
NE Papillion No. 2 precinct
NE Pawnee precinct
NE Ralston city
NE Richland No. 1 precinct
NE Richland No. 2 precinct
NE Richland No. 3 precinct
NE Sarpy County
NE South Sioux City city
NE Union precinct
NE Yankee Hill precinct
NH Amherst town
NH Auburn town
NH Bedford town
NH Dover city
NH Durham town
NH Goffstown town
NH Hillsborough County
NH Hollis town
NH Hooksett town
NH Hudson town
NH Litchfield town
NH Londonderry town
NH Madbury town
NH Manchester city
NH Merrimack County
NH Merrimack town
NH Nashua city
NH New Castle town
NH Newington town
NH Pelham town
NH Plaistow town
NH Portsmouth city
NH Rochester city
NH Rockingham County
NH Rollinsford town
NH Rye town
NH Salem town
NH Somersworth city
NH Strafford County
NH Windham town
NJ Aberdeen township
NJ Absecon city

NJ Allendale borough
NJ Allenhurst borough
NJ Alpha borough
NJ Alpine borough
NJ Asbury Park city
NJ Atlantic City city
NJ Atlantic County
NJ Atlantic Highlands borough
NJ Audubon borough
NJ Audubon Park borough
NJ Avon-by-the-Sea borough
NJ Barrington borough
NJ Bay Head borough
NJ Bayonne city
NJ Beachwood borough
NJ Bedminster township
NJ Belleville township
NJ Bellmawr borough
NJ Belmar borough
NJ Bergenfield borough
NJ Berkeley Heights township
NJ Berkeley township
NJ Berlin borough
NJ Berlin township
NJ Bernards township
NJ Bernardsville borough
NJ Beverly city
NJ Bloomfield township
NJ Bloomingdale borough
NJ Bogota borough
NJ Boonton town
NJ Boonton township
NJ Bordentown city
NJ Bordentown township
NJ Bound Brook borough
NJ Bradley Beach borough
NJ Branchburg township
NJ Brick township
NJ Bridgewater township
NJ Brielle borough
NJ Brigantine city
NJ Brooklawn borough
NJ Buena borough
NJ Buena Vista township
NJ Burlington city
NJ Burlington County
NJ Burlington township
NJ Butler borough
NJ Byram township
NJ Caldwell Borough township
NJ Camden city
NJ Cape May County
NJ Carlstadt borough
NJ Carneys Point township
NJ Carteret borough
NJ Cedar Grove township
NJ Chatham borough
NJ Chatham township
NJ Cherry Hill township
NJ Chesilhurst borough
NJ Chester township
NJ Chesterfield township
NJ Cinnaminson township
NJ City of Orange township
NJ Clark township
NJ Clayton borough
NJ Clementon borough
NJ Cliffside Park borough
NJ Clifton city
NJ Closter borough
NJ Collingswood borough
NJ Colts Neck township
NJ Commercial township
NJ Cranford township
NJ Cresskill borough
NJ Cumberland County
NJ Deal borough
NJ Delanco township
NJ Delran township
NJ Demarest borough
NJ Denville township
NJ Deptford township
NJ Dover town
NJ Dover township
NJ Dumont borough
NJ Dunellen borough
NJ East Brunswick township
NJ East Greenwich township
NJ East Hanover township
NJ East Newark borough
NJ East Orange city
NJ East Rutherford borough
NJ Eastampton township
NJ Eatontown borough
NJ Edgewater borough
NJ Edgewater Park township
NJ Edison township
NJ Egg Harbor township
NJ Elizabeth city
NJ Elk township
NJ Elmwood Park borough
NJ Emerson borough
NJ Englewood city
NJ Englewood Cliffs borough
NJ Englishtown borough
NJ Essex Fells township
NJ Evesham township
NJ Ewing township
NJ Fair Haven borough
NJ Fair Lawn borough
NJ Fairfield township
NJ Fairview borough
NJ Fanwood borough
NJ Fieldsboro borough
NJ Florence township
NJ Florham Park borough
NJ Fort Lee borough
NJ Franklin Lakes borough
NJ Franklin township
NJ Freehold borough
NJ Freehold township
NJ Galloway township
NJ Garfield city
NJ Garwood borough
NJ Gibbsboro borough
NJ Glassboro borough
NJ Glen Ridge Borough township
NJ Glen Rock borough
NJ Gloucester City city
NJ Gloucester County
NJ Gloucester township
NJ Green Brook township
NJ Greenwich township
NJ Guttenberg town
NJ Hackensack city
NJ Haddon Heights borough
NJ Haddon township
NJ Haddonfield borough
NJ Hainesport township
NJ Haledon borough
NJ Hamilton township
NJ Hanover township
NJ Harding township
NJ Harrington Park borough
NJ Harrison town
NJ Hasbrouck Heights borough
NJ Haworth borough
NJ Hawthorne borough
NJ Hazlet township
NJ Helmetta borough
NJ Highland Park borough
NJ Highlands borough
NJ Hillsborough township
NJ Hillsdale borough
NJ Hillside township
NJ Hi-Nella borough
NJ Hoboken city
NJ Ho-Ho-Kus borough
NJ Holmdel township
NJ Hopatcong borough
NJ Hopewell township
NJ Howell township
NJ Hunterdon County
NJ Interlaken borough
NJ Irvington township
NJ Island Heights borough
NJ Jackson township
NJ Jamesburg borough
NJ Jefferson township
NJ Jersey City city
NJ Keansburg borough
NJ Kearny town
NJ Kenilworth borough
NJ Keyport borough
NJ Kinnelon borough
NJ Lakehurst borough
NJ Lakewood township
NJ Laurel Springs borough
NJ Lavallette borough
NJ Lawnside borough
NJ Lawrence township
NJ Leonia borough
NJ Lincoln Park borough
NJ Linden city
NJ Lindenwold borough
NJ Linwood city
NJ Little Falls township
NJ Little Ferry borough
NJ Little Silver borough
NJ Livingston township
NJ Loch Arbour village
NJ Lodi borough
NJ Long Branch city
NJ Longport borough
NJ Lopatcong township
NJ Lumberton township
NJ Lyndhurst township
NJ Madison borough
NJ Magnolia borough
NJ Mahwah township
NJ Manalapan township
NJ Manasquan borough
NJ Manchester township
NJ Mantoloking borough
NJ Mantua township
NJ Manville borough
NJ Maple Shade township
NJ Maplewood township
NJ Margate City city
NJ Marlboro township
NJ Matawan borough
NJ Maywood borough
NJ Medford Lakes borough
NJ Medford township
NJ Mendham borough
NJ Mendham township
NJ Mercer County
NJ Merchantville borough
NJ Metuchen borough
NJ Middlesex borough
NJ Middlesex County
NJ Middletown township
NJ Midland Park borough
NJ Millburn township
NJ Millstone borough
NJ Milltown borough
NJ Millville city
NJ Mine Hill township

NJ Monmouth Beach borough
NJ Monmouth County
NJ Monroe township
NJ Montclair township
NJ Montvale borough
NJ Montville township
NJ Moonachie borough
NJ Moorestown township
NJ Morris County
NJ Morris Plains borough
NJ Morris township
NJ Morristown town
NJ Mount Arlington borough
NJ Mount Ephraim borough
NJ Mount Holly township
NJ Mount Laurel township
NJ Mount Olive township
NJ Mountain Lakes borough
NJ Mountainside borough
NJ National Park borough
NJ Neptune City borough
NJ Neptune township
NJ Netcong borough
NJ New Brunswick city
NJ New Milford borough
NJ New Providence borough
NJ Newark city
NJ Newfield borough
NJ North Arlington borough
NJ North Bergen township
NJ North Brunswick township
NJ North Caldwell township
NJ North Haledon borough
NJ North Plainfield borough
NJ Northfield city
NJ Northvale borough
NJ Norwood borough
NJ Nutley township
NJ Oakland borough
NJ Oaklyn borough
NJ Ocean City city
NJ Ocean County
NJ Ocean Gate borough
NJ Ocean township
NJ Oceanport borough
NJ Old Bridge township
NJ Old Tappan borough
NJ Oradell borough
NJ Palisades Park borough
NJ Palmyra borough
NJ Paramus borough
NJ Park Ridge borough
NJ Parsippany-Troy Hills township
NJ Passaic city
NJ Passaic County
NJ Passaic township
NJ Paterson city
NJ Paulsboro borough
NJ Pennington borough
NJ Penns Grove borough
NJ Pennsauken township
NJ Pennsville township
NJ Pequannock township
NJ Perth Amboy city
NJ Phillipsburg town
NJ Pine Beach borough
NJ Pine Hill borough
NJ Pine Valley borough
NJ Piscataway township
NJ Pitman borough
NJ Pittsgrove township
NJ Plainfield city
NJ Pleasantville city
NJ Pohatcong township
NJ Point Pleasant Beach borough
NJ Point Pleasant borough
NJ Pompton Lakes borough
NJ Prospect Park borough
NJ Rahway city
NJ Ramsey borough
NJ Randolph township
NJ Raritan borough
NJ Readington township
NJ Red Bank borough
NJ Ridgefield borough
NJ Ridgefield Park village
NJ Ridgewood village
NJ Ringwood borough
NJ River Edge borough
NJ River Vale township
NJ Riverdale borough
NJ Riverside township
NJ Riverton borough
NJ Rochelle Park township
NJ Rockaway borough
NJ Rockaway township
NJ Rockleigh borough
NJ Roseland borough
NJ Roselle borough
NJ Roselle Park borough
NJ Roxbury township
NJ Rumson borough
NJ Runnemede borough
NJ Rutherford borough
NJ Saddle Brook township
NJ Saddle River borough
NJ Salem County
NJ Sayreville borough
NJ Scotch Plains township
NJ Sea Bright borough
NJ Sea Girt borough
NJ Seaside Heights borough
NJ Seaside Park borough
NJ Secaucus town
NJ Shamong township
NJ Shrewsbury borough
NJ Shrewsbury township
NJ Somerdale borough
NJ Somers Point city
NJ Somerset County
NJ Somerville borough
NJ South Amboy city
NJ South Belmar borough
NJ South Bound Brook borough
NJ South Brunswick township
NJ South Hackensack township
NJ South Orange Village township
NJ South Plainfield borough
NJ South River borough
NJ South Toms River borough
NJ Spotswood borough
NJ Spring Lake borough
NJ Spring Lake Heights borough
NJ Springfield township
NJ Stanhope borough
NJ Stratford borough
NJ Summit city
NJ Sussex County
NJ Tabernacle township
NJ Tavistock borough
NJ Teaneck township
NJ Tenafly borough
NJ Teterboro borough
NJ Tinton Falls borough
NJ Totowa borough
NJ Trenton city
NJ Union Beach borough
NJ Union City city
NJ Union township
NJ Upper Saddle River borough
NJ Upper township
NJ Ventnor City city
NJ Verona township
NJ Victory Gardens borough
NJ Vineland city
NJ Voorhees township
NJ Waldwick borough
NJ Wall township
NJ Wallington borough
NJ Wanaque borough
NJ Warren County
NJ Warren township
NJ Washington township
NJ Watchung borough
NJ Waterford township
NJ Wayne township
NJ Weehawken township
NJ Wenonah borough
NJ West Caldwell township
NJ West Deptford township
NJ West Long Branch borough
NJ West New York town
NJ West Orange township
NJ West Paterson borough
NJ Westampton township
NJ Westfield town
NJ Westville borough
NJ Westwood borough
NJ Wharton borough
NJ Willingboro township
NJ Winfield township
NJ Winslow township
NJ Woodbridge township
NJ Woodbury city
NJ Woodbury Heights borough
NJ Woodcliff Lake borough
NJ Woodlynne borough
NJ Wood-Ridge borough
NJ Wyckoff township
NM Bernalillo County
NM Corrales village
NM Dona Ana County
NM Las Cruces city
NM Los Ranchos de Albuquerque village
NM Mesilla town
NM Rio Rancho city
NM Sandoval County
NM Santa Fe city
NM Santa Fe County
NM Sunland Park city
NY Albany city
NY Albany County
NY Amherst town
NY Amityville village
NY Ardsley village
NY Ashland town
NY Atlantic Beach village
NY Babylon town
NY Babylon village
NY Baldwinsville village
NY Ballston town
NY Barker town
NY Baxter Estates village
NY Bayville village
NY Beacon city
NY Bedford town
NY Belle Terre village
NY Bellerose village
NY Bellport village
NY Bethlehem town
NY Big Flats town
NY Binghamton city
NY Binghamton town
NY Blasdell village
NY Boston town
NY Briarcliff Manor village
NY Brighton town
NY Brightwaters village

NY Bronxville village
NY Brookhaven town
NY Brookville village
NY Broome County
NY Brunswick town
NY Buchanan village
NY Buffalo city
NY Camillus town
NY Camillus village
NY Carmel town
NY Cayuga Heights village
NY Cedarhurst village
NY Charlton town
NY Cheektowaga town
NY Chemung County
NY Chenango town
NY Chestnut Ridge village
NY Chili town
NY Cicero town
NY Clarence town
NY Clarkstown town
NY Clay town
NY Clayville village
NY Clifton Park town
NY Clinton village
NY Cohoes city
NY Colonie town
NY Colonie village
NY Conklin town
NY Cornwall on Hudson village
NY Cornwall town
NY Cortlandt town
NY Croton-on-Hudson village
NY De Witt town
NY Deerfield town
NY Depew village
NY Dickinson town
NY Dobbs Ferry village
NY Dryden town
NY Dutchess County
NY East Fishkill town
NY East Greenbush town
NY East Hills village
NY East Rochester village
NY East Rockaway village
NY East Syracuse village
NY East Williston village
NY Eastchester town
NY Elma town
NY Elmira city
NY Elmira Heights village
NY Elmira town
NY Elmsford village
NY Endicott village
NY Erie County
NY Evans town
NY Fairport village
NY Farmingdale village
NY Fayetteville village
NY Fenton town
NY Fishkill town
NY Fishkill village
NY Floral Park village
NY Flower Hill village
NY Floyd town
NY Fort Edward town
NY Fort Edward village
NY Frankfort town
NY Freeport village
NY Garden City village
NY Gates town
NY Geddes town
NY Glen Cove city
NY Glens Falls city
NY Glenville town
NY Grand Island town
NY Grand View-on-Hudson village
NY Great Neck Estates village
NY Great Neck Plaza village
NY Great Neck village
NY Greece town
NY Green Island village
NY Greenburgh town
NY Guilderland town
NY Halfmoon town
NY Hamburg town
NY Hamburg village
NY Harrison village
NY Hastings-on-Hudson village
NY Haverstraw town
NY Haverstraw village
NY Hempstead town
NY Hempstead village
NY Henrietta town
NY Herkimer County
NY Hewlett Bay Park village
NY Hewlett Harbor village
NY Hewlett Neck village
NY Hillburn village
NY Horseheads town
NY Horseheads village
NY Hudson Falls village
NY Huntington Bay village
NY Huntington town
NY Hyde Park town
NY Irondequoit town
NY Irvington village
NY Island Park village
NY Islandia village
NY Islip town
NY Ithaca city
NY Ithaca town
NY Johnson City village
NY Kenmore village
NY Kensington village
NY Kent town
NY Kings Point village
NY Kingsbury town
NY Kirkland town
NY Kirkwood town
NY La Grange town
NY Lackawanna city
NY LaFayette town
NY Lake Grove village
NY Lake Success village
NY Lancaster town
NY Lancaster village
NY Lansing town
NY Lansing village
NY Larchmont village
NY Lattingtown village
NY Lawrence village
NY Lee town
NY Lewiston town
NY Lewiston village
NY Lindenhurst village
NY Liverpool village
NY Lloyd Harbor village
NY Lloyd town
NY Long Beach city
NY Lynbrook village
NY Lysander town
NY Malta town
NY Malverne village
NY Mamaroneck town
NY Mamaroneck village
NY Manlius town
NY Manlius village
NY Manorhaven village
NY Marcy town
NY Massapequa Park village
NY Matinecock village
NY Menands village
NY Mill Neck village
NY Mineola village
NY Minoa village
NY Monroe County
NY Montebello village
NY Montgomery town
NY Moreau town
NY Mount Kisco village
NY Mount Pleasant town
NY Mount Vernon city
NY Munsey Park village
NY Muttontown village
NY New Castle town
NY New Hartford town
NY New Hartford village
NY New Hempstead village
NY New Hyde Park village
NY New Rochelle city
NY New Square village
NY New Windsor town
NY New York Mills village
NY Newburgh city
NY Newburgh town
NY Niagara County
NY Niagara Falls city
NY Niagara town
NY Niskayuna town
NY North Castle town
NY North Greenbush town
NY North Hempstead town
NY North Hills village
NY North Syracuse village
NY North Tarrytown village
NY North Tonawanda city
NY Northport village
NY Nyack village
NY Ogden town
NY Old Brookville village
NY Old Westbury village
NY Oneida County
NY Onondaga County
NY Onondaga town
NY Orange County
NY Orangetown town
NY Orchard Park town
NY Orchard Park village
NY Oriskany village
NY Ossining town
NY Ossining village
NY Oswego County
NY Owego town
NY Oyster Bay town
NY Paris town
NY Patchogue village
NY Patterson town
NY Peekskill city
NY Pelham Manor village
NY Pelham town
NY Pelham village
NY Pendleton town
NY Penfield town
NY Perinton town
NY Philipstown town
NY Phoenix village
NY Piermont village
NY Pittsford town
NY Pittsford village
NY Plandome Heights village
NY Plandome Manor village
NY Plandome village
NY Pleasant Valley town
NY Pleasantville village
NY Poestenkill town
NY Pomona village
NY Poospatuck Reservation

NY Poquott village
NY Port Chester village
NY Port Dickinson village
NY Port Jefferson village
NY Port Washington North village
NY Poughkeepsie city
NY Poughkeepsie town
NY Pound Ridge town
NY Putnam County
NY Putnam Valley town
NY Queensbury town
NY Ramapo town
NY Rensselaer city
NY Rensselaer County
NY Riverhead town
NY Rochester city
NY Rockville Centre village
NY Rome city
NY Roslyn Estates village
NY Roslyn Harbor village
NY Roslyn village
NY Rotterdam town
NY Russell Gardens village
NY Rye Brook village
NY Rye city
NY Rye town
NY Saddle Rock village
NY Salina town
NY Sands Point village
NY Saratoga County
NY Scarsdale town
NY Scarsdale village
NY Schaghticoke town
NY Schenectady city
NY Schenectady County
NY Schodack town
NY Schroeppel town
NY Schuyler town
NY Scotia village
NY Sea Cliff village
NY Shoreham village
NY Sloan village
NY Sloatsburg village
NY Smithtown town
NY Solvay village
NY Somers town
NY South Floral Park village
NY South Glens Falls village
NY South Nyack village
NY Southampton town
NY Southport town
NY Spencerport village
NY Spring Valley village
NY Stewart Manor village
NY Stony Point town
NY Suffern village
NY Suffolk County
NY Syracuse city
NY Tarrytown village
NY Thomaston village
NY Tioga County
NY Tompkins County
NY Tonawanda city
NY Tonawanda town
NY Troy city
NY Tuckahoe village
NY Ulster County
NY Union town
NY Upper Brookville village
NY Upper Nyack village
NY Utica city
NY Valley Stream village
NY Van Buren town
NY Vestal town
NY Veteran town
NY Village of the Branch village
NY Wappinger town
NY Wappingers Falls village
NY Warren County
NY Washington County
NY Waterford town
NY Waterford village
NY Watervliet city
NY Webster town
NY Webster village
NY Wesley Hills village
NY West Haverstraw village
NY West Seneca town
NY Westbury village
NY Westchester County
NY Western town
NY Wheatfield town
NY White Plains city
NY Whitesboro village
NY Whitestown town
NY Williamsville village
NY Williston Park village
NY Woodsburgh village
NY Yonkers city
NY Yorktown town
NY Yorkville village
OH Addyston village
OH Allen County
OH Allen township
OH Amberley village
OH Amelia village
OH American township
OH Amherst city
OH Amherst township
OH Anderson township
OH Arlington Heights village
OH Auglaize County
OH Aurora city
OH Austintown township
OH Avon city
OH Avon Lake city
OH Bainbridge township
OH Barberton city
OH Batavia township
OH Bath township
OH Bay Village city
OH Beachwood city
OH Beaver township
OH Beavercreek city
OH Beavercreek township
OH Bedford city
OH Bedford Heights city
OH Bellaire city
OH Bellbrook city
OH Belmont County
OH Belpre city
OH Belpre township
OH Bentleyville village
OH Berea city
OH Bethel township
OH Bexley city
OH Blendon township
OH Blue Ash city
OH Boardman township
OH Brady Lake village
OH Bratenahl village
OH Brecksville city
OH Brice village
OH Bridgeport village
OH Brilliant village
OH Brimfield township
OH Broadview Heights city
OH Brook Park city
OH Brookfield township
OH Brooklyn city
OH Brooklyn Heights village
OH Brookside village
OH Brown township
OH Brownhelm township
OH Brunswick city
OH Brunswick Hills township
OH Butler County
OH Butler township
OH Campbell city
OH Canfield city
OH Canfield township
OH Canton city
OH Canton township
OH Carlisle township
OH Carlisle village
OH Centerville city
OH Chagrin Falls township
OH Chagrin Falls village
OH Champion township
OH Chesapeake village
OH Cheviot city
OH Chippewa township
OH Cincinnati city
OH Clark County
OH Clear Creek township
OH Clermont County
OH Cleveland city
OH Cleveland Heights city
OH Cleves village
OH Clinton township
OH Coal Grove village
OH Coitsville township
OH Colerain township
OH Columbia township
OH Concord township
OH Copley township
OH Coventry township
OH Cridersville village
OH Cross Creek township
OH Cuyahoga County
OH Cuyahoga Falls city
OH Cuyahoga Heights village
OH Deer Park city
OH Deerfield township
OH Delaware County
OH Delhi township
OH Doylestown village
OH Dublin city
OH Duchouquet township
OH East Cleveland city
OH Eastlake city
OH Eaton township
OH Elmwood Place village
OH Elyria city
OH Elyria township
OH Englewood city
OH Erie County
OH Etna township
OH Euclid city
OH Evendale village
OH Fairborn city
OH Fairfax village
OH Fairfield city
OH Fairfield County
OH Fairfield township
OH Fairlawn city
OH Fairport Harbor village
OH Fairview Park city
OH Fayette township
OH Forest Park city
OH Fort Shawnee village
OH Franklin city
OH Franklin County
OH Franklin township
OH Gahanna city
OH Garfield Heights city
OH Geauga County
OH Genoa township

OH German township
OH Girard city
OH Glendale village
OH Glenwillow village
OH Golf Manor village
OH Goshen township
OH Grand River village
OH Grandview Heights city
OH Green township
OH Green village
OH Greene County
OH Greenhills village
OH Grove City city
OH Groveport village
OH Hamilton city
OH Hamilton County
OH Hamilton township
OH Hanging Rock village
OH Hanover township
OH Harbor View village
OH Harrison township
OH Hartville village
OH Heath city
OH Highland Heights city
OH Hilliard city
OH Hills and Dales village
OH Hinckley township
OH Holland village
OH Howland township
OH Hubbard city
OH Hubbard township
OH Huber Heights city
OH Hudson township
OH Hudson village
OH Independence city
OH Ironton city
OH Island Creek township
OH Jackson township
OH Jefferson County
OH Jefferson township
OH Jerome township
OH Kent city
OH Kettering city
OH Kirtland city
OH Lake County
OH Lake township
OH Lakeline village
OH Lakemore village
OH Lakewood city
OH Lawrence County
OH Lawrence township
OH Lemon township
OH Lexington village
OH Liberty township
OH Licking County
OH Licking township
OH Lima city
OH Lima township
OH Lincoln Heights city
OH Linndale village
OH Lockland village
OH Lorain city
OH Lorain County
OH Louisville city
OH Loveland city
OH Lowellville village
OH Lucas County
OH Lyndhurst city
OH Macedonia city
OH Mad River township
OH Madeira city
OH Madison township
OH Mahoning County
OH Maineville village
OH Mansfield city
OH Maple Heights city
OH Marble Cliff village
OH Mariemont village
OH Martins Ferry city
OH Mason city
OH Massillon city
OH Maumee city
OH Mayfield Heights city
OH Mayfield village
OH McDonald village
OH Mead township
OH Medina County
OH Mentor city
OH Mentor-on-the-Lake city
OH Meyers Lake village
OH Miami County
OH Miami township
OH Miamisburg city
OH Middleburg Heights city
OH Middletown city
OH Mifflin township
OH Milford city
OH Millbury village
OH Millville village
OH Minerva Park village
OH Mingo Junction city
OH Mogadore village
OH Monclova township
OH Monroe township
OH Monroe village
OH Montgomery city
OH Montgomery County
OH Moorefield township
OH Moraine city
OH Moreland Hills village
OH Mount Healthy city
OH Munroe Falls village
OH New Miami village
OH New Middletown village
OH New Rome village
OH Newark city
OH Newark township
OH Newburgh Heights village
OH Newton township
OH Newtown village
OH Niles city
OH Nimishillen township
OH North Bend village
OH North Canton city
OH North College Hill city
OH North Olmsted city
OH North Randall village
OH North Ridgeville city
OH North Royalton city
OH Northfield Center township
OH Northfield village
OH Northwood city
OH Norton city
OH Norwich township
OH Norwood city
OH Oakwood city
OH Oakwood village
OH Obetz village
OH Ohio township
OH Olmsted Falls city
OH Olmsted township
OH Ontario village
OH Orange township
OH Orange village
OH Oregon city
OH Ottawa County
OH Ottawa Hills village
OH Painesville city
OH Painesville township
OH Palmyra township
OH Parma city
OH Parma Heights city
OH Pease township
OH Pepper Pike city
OH Perry township
OH Perrysburg city
OH Perrysburg city
OH Perrysburg township
OH Pierce township
OH Plain township
OH Pleasant township
OH Poland township
OH Poland village
OH Portage County
OH Powell village
OH Prairie township
OH Proctorville village
OH Pultney township
OH Randolph township
OH Ravenna city
OH Ravenna township
OH Reading city
OH Reminderville village
OH Reynoldsburg city
OH Richfield township
OH Richfield village
OH Richland County
OH Richmond Heights city
OH Riveredge township
OH Riverlea village
OH Riverside village
OH Rocky River city
OH Rome township
OH Ross township
OH Rossford city
OH Russell township
OH Russia township
OH Sagamore Hills township
OH Seven Hills city
OH Shadyside village
OH Shaker Heights city
OH Sharon township
OH Sharonville city
OH Shawnee Hills village
OH Shawnee township
OH Sheffield Lake city
OH Sheffield township
OH Sheffield village
OH Silver Lake village
OH Silverton city
OH Solon city
OH South Amherst village
OH South Euclid city
OH South Point village
OH South Russell village
OH Springboro city
OH Springdale city
OH Springfield city
OH Springfield township
OH St. Bernard city
OH St. Clair township
OH Stark County
OH Steubenville city
OH Steubenville township
OH Stow city
OH Strongsville city
OH Struthers city
OH Suffield township
OH Sugar Bush Knolls village
OH Sugar Creek township
OH Summit County
OH Sycamore township
OH Sylvania city
OH Sylvania township
OH Symmes township
OH Tallmadge city
OH Terrace Park village
OH The Village of Indian Hill city

OH Timberlake village
OH Trenton city
OH Trotwood city
OH Troy township
OH Trumbull County
OH Truro township
OH Turtle Creek township
OH Tuscarawas township
OH Twinsburg city
OH Twinsburg township
OH Union city
OH Union County
OH Union township
OH University Heights city
OH Upper Arlington city
OH Upper township
OH Urbancrest village
OH Valley View village
OH Valleyview village
OH Vandalia city
OH Vermilion city
OH Vermilion township
OH Violet township
OH Wadsworth city
OH Wadsworth township
OH Waite Hill village
OH Walbridge village
OH Walton Hills village
OH Warren city
OH Warren County
OH Warren township
OH Warrensville Heights city
OH Warrensville township
OH Washington County
OH Washington township
OH Wayne County
OH Wayne township
OH Weathersfield township
OH Wells township
OH West Carrollton City city
OH West Milton village
OH Westerville city
OH Westlake city
OH Whitehall city
OH Whitewater township
OH Wickliffe city
OH Willoughby city
OH Willoughby Hills city
OH Willowick city
OH Wintersville village
OH Wood County
OH Woodlawn village
OH Woodmere village
OH Worthington city
OH Wyoming city
OH Youngstown city
OK Arkoma town
OK Bethany city
OK Bixby city
OK Broken Arrow city
OK Canadian County
OK Catoosa city
OK Choctaw city
OK Cleveland County
OK Comanche County
OK Creek County
OK Del City city
OK Edmond city
OK Forest Park town
OK Hall Park town
OK Harrah town
OK Jenks city
OK Jones town
OK Lake Aluma town
OK Lawton city
OK Le Flore County
OK Logan County
OK Midwest City city
OK Moffett town
OK Moore city
OK Mustang city
OK Nichols Hills city
OK Nicoma Park city
OK Norman city
OK Oklahoma County
OK Osage County
OK Pottawatomie County
OK Rogers County
OK Sand Springs city
OK Sequoyah County
OK Smith Village town
OK Spencer city
OK The Village city
OK Tulsa County
OK Valley Brook town
OK Wagoner County
OK Warr Acres city
OK Woodlawn Park town
OK Yukon city
OR Central Point city
OR Columbia County
OR Durham city
OR Jackson County
OR Keizer city
OR King City city
OR Lane County
OR Marion County
OR Maywood Park city
OR Medford city
OR Phoenix city
OR Polk County
OR Rainier city
OR Springfield city
OR Troutdale city
OR Tualatin city
OR Wood Village city
PA Abington township
PA Adamsburg borough
PA Alburtis borough
PA Aldan borough
PA Aleppo township
PA Aliquippa city
PA Allegheny County
PA Allegheny township
PA Allen township
PA Allenport borough
PA Alsace township
PA Altoona city
PA Ambler borough
PA Ambridge borough
PA Amwell township
PA Antis township
PA Antrim township
PA Archbald borough
PA Arnold city
PA Ashley borough
PA Aspinwall borough
PA Aston township
PA Avalon borough
PA Avoca borough
PA Baden borough
PA Baldwin borough
PA Baldwin township
PA Beaver borough
PA Beaver County
PA Beaver Falls city
PA Bell Acres borough
PA Belle Vernon borough
PA Bellevue borough
PA Ben Avon borough
PA Ben Avon Heights borough
PA Bensalem township
PA Berks County
PA Bern township
PA Bethel Park borough
PA Bethel township
PA Bethlehem city
PA Bethlehem township
PA Big Beaver borough
PA Birdsboro borough
PA Birmingham township
PA Blair County
PA Blair township
PA Blakely borough
PA Blawnox borough
PA Boyertown borough
PA Brackenridge borough
PA Braddock borough
PA Braddock Hills borough
PA Bradfordwoods borough
PA Brentwood borough
PA Bridgeport borough
PA Bridgeville borough
PA Bridgewater borough
PA Brighton township
PA Bristol borough
PA Bristol township
PA Brookhaven borough
PA Brownstown borough
PA Brownsville borough
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PA Bryn Athyn borough
PA Buckingham township
PA Bucks County
PA California borough
PA Caln township
PA Cambria County
PA Camp Hill borough
PA Canonsburg borough
PA Canton township
PA Carbondale city
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PA Carnegie borough
PA Carroll township
PA Castle Shannon borough
PA Catasauqua borough
PA Cecil township
PA Center township
PA Centre County
PA Chalfant borough
PA Chalfont borough
PA Charleroi borough
PA Charlestown township
PA Chartiers township
PA Cheltenham township
PA Chester city
PA Chester County
PA Chester Heights borough
PA Chester township
PA Cheswick borough
PA Chippewa township
PA Churchill borough
PA Clairton city
PA Clarks Green borough
PA Clarks Summit borough
PA Clifton Heights borough
PA Coal Center borough
PA Coatesville city
PA Colebrookdale township
PA College township
PA Collegeville borough
PA Collier township
PA Collingdale borough
PA Columbia borough
PA Colwyn borough
PA Concord township
PA Conemaugh township
PA Conestoga township

PA Conewago township
PA Conshohocken borough
PA Conway borough
PA Coplay borough
PA Coraopolis borough
PA Courtdale borough
PA Crafton borough
PA Crescent township
PA Cumberland County
PA Cumru township
PA Daisytown borough
PA Dale borough
PA Dallas borough
PA Dallas township
PA Dallastown borough
PA Darby borough
PA Darby township
PA Daugherty township
PA Dauphin County
PA Delaware County
PA Delmont borough
PA Derry township
PA Dickson City borough
PA Donora borough
PA Dormont borough
PA Douglass township
PA Dover borough
PA Dover township
PA Downingtown borough
PA Doylestown borough
PA Doylestown township
PA Dravosburg borough
PA Duboistown borough
PA Duncansville borough
PA Dunlevy borough
PA Dunmore borough
PA Dupont borough
PA Duquesne city
PA Duryea borough
PA East Allen township
PA East Bradford township
PA East Brandywine township
PA East Caln township
PA East Conemaugh borough
PA East Coventry township
PA East Deer township
PA East Fallowfield township
PA East Goshen township
PA East Hempfield township
PA East Lampeter township
PA East Lansdowne borough
PA East McKeesport borough
PA East Norriton township
PA East Pennsboro township
PA East Petersburg borough
PA East Pikeland township
PA East Pittsburgh borough
PA East Rochester borough
PA East Taylor township
PA East Vincent township
PA East Washington borough
PA East Whiteland township
PA Easton city
PA Easttown township
PA Eastvale borough
PA Economy borough
PA Eddystone borough
PA Edgewood borough
PA Edgeworth borough
PA Edgmont township
PA Edwardsville borough
PA Elco borough
PA Elizabeth borough
PA Elizabeth township
PA Ellport borough
PA Ellwood City borough
PA Emmaus borough
PA Emsworth borough
PA Erie city
PA Erie County
PA Etna borough
PA Exeter borough
PA Exeter township
PA Export borough
PA Fairfield township
PA Fairview township
PA Fallowfield township
PA Falls township
PA Fallston borough
PA Farrell city
PA Fayette City borough
PA Fayette County
PA Fell township
PA Ferguson township
PA Ferndale borough
PA Findlay township
PA Finleyville borough
PA Folcroft borough
PA Forest Hills borough
PA Forks township
PA Forty Fort borough
PA Forward township
PA Fountain Hill borough
PA Fox Chapel borough
PA Franconia township
PA Franklin borough
PA Franklin County
PA Franklin Park borough
PA Franklin township
PA Frankstown township
PA Frazer township
PA Freedom borough
PA Freemansburg borough
PA Geistown borough
PA Glassport borough
PA Glendon borough
PA Glenfield borough
PA Glenolden borough
PA Green Tree borough
PA Greensburg city
PA Hallam borough
PA Hampden township
PA Hampton township
PA Hanover township
PA Harborcreek township
PA Harmar township
PA Harmony township
PA Harris township
PA Harrisburg city
PA Harrison township
PA Harveys Lake borough
PA Hatboro borough
PA Hatfield borough
PA Hatfield township
PA Haverford township
PA Haysville borough
PA Heidelberg borough
PA Hellam township
PA Hellertown borough
PA Hempfield township
PA Hepburn township
PA Hermitage city
PA Highspire borough
PA Hilltown township
PA Hollidaysburg borough
PA Homestead borough
PA Homewood borough
PA Hopewell township
PA Horsham township
PA Houston borough
PA Hughestown borough
PA Hulmeville borough
PA Hummelstown borough
PA Hunker borough
PA Indiana township
PA Ingram borough
PA Irwin borough
PA Ivyland borough
PA Jackson township
PA Jacobus borough
PA Jeannette city
PA Jefferson borough
PA Jenkins township
PA Jenkintown borough
PA Jermyn borough
PA Jessup borough
PA Johnstown city
PA Juniata township
PA Kenhorst borough
PA Kennedy township
PA Kilbuck township
PA Kingston borough
PA Kingston township
PA Koppel borough
PA Lackawanna County
PA Laflin borough
PA Lancaster city
PA Lancaster County
PA Lancaster township
PA Langhorne borough
PA Langhorne Manor borough
PA Lansdale borough
PA Lansdowne borough
PA Larksville borough
PA Laurel Run borough
PA Laureldale borough
PA Lawrence County
PA Lawrence Park township
PA Lebanon County
PA Leesport borough
PA Leet township
PA Leetsdale borough
PA Lehigh County
PA Lehman township
PA Lemoyne borough
PA Liberty borough
PA Limerick township
PA Lincoln borough
PA Lititz borough
PA Logan township
PA Loganville borough
PA London Britain township
PA Londonderry township
PA Lorain borough
PA Lower Allen township
PA Lower Alsace township
PA Lower Burrell city
PA Lower Chichester township
PA Lower Frederick township
PA Lower Gwynedd township
PA Lower Heidelberg township
PA Lower Macungie township
PA Lower Makefield township
PA Lower Merion township
PA Lower Moreland township
PA Lower Nazareth township
PA Lower Paxton township
PA Lower Pottsgrove township
PA Lower Providence township
PA Lower Salford township
PA Lower Saucon township
PA Lower Southampton township
PA Lower Swatara township
PA Lower Yoder township
PA Loyalsock township
PA Luzerne borough
PA Luzerne County
PA Luzerne township

PA Lycoming County
PA Lycoming township
PA Macungie borough
PA Madison borough
PA Maidencreek township
PA Malvern borough
PA Manchester township
PA Manheim township
PA Manor borough
PA Manor township
PA Marcus Hook borough
PA Marple township
PA Marshall township
PA Marysville borough
PA Mayfield borough
PA McCandless township
PA McKean township
PA McKees Rocks borough
PA McKeesport city
PA Mechanicsburg borough
PA Media borough
PA Mercer County
PA Middle Taylor township
PA Middletown borough
PA Middletown township
PA Millbourne borough
PA Millcreek township
PA Millersville borough
PA Millvale borough
PA Modena borough
PA Mohnton borough
PA Monaca borough
PA Monessen city
PA Monongahela city
PA Monroe township
PA Montgomery County
PA Montgomery township
PA Montoursville borough
PA Moon township
PA Moosic borough
PA Morrisville borough
PA Morton borough
PA Mount Lebanon township
PA Mount Oliver borough
PA Mount Penn borough
PA Mountville borough
PA Muhlenberg township
PA Munhall borough
PA Municipality of Monroeville borough
PA Municipality of Murrysville borough
PA Nanticoke city
PA Narberth borough
PA Nether Providence township
PA Neville township
PA New Brighton borough
PA New Britain borough
PA New Britain township
PA New Cumberland borough
PA New Eagle borough
PA New Galilee borough
PA New Garden township
PA New Hanover township
PA New Kensington city
PA New Sewickley township
PA New Stanton borough
PA Newell borough
PA Newport township
PA Newton township
PA Newtown borough
PA Newtown township
PA Norristown borough
PA North Belle Vernon borough
PA North Braddock borough
PA North Catasauqua borough
PA North Charleroi borough
PA North Coventry township
PA North Franklin township
PA North Huntingdon township
PA North Irwin borough
PA North Londonderry township
PA North Sewickley township
PA North Strabane township
PA North Versailles township
PA North Wales borough
PA North Whitehall township
PA North York borough
PA Northampton borough
PA Northampton County
PA Northampton township
PA Norwood borough
PA Oakmont borough
PA O'Hara township
PA Ohio township
PA Old Forge borough
PA Old Lycoming township
PA Olyphant borough
PA Ontelaunee township
PA Osborne borough
PA Paint borough
PA Paint township
PA Palmer township
PA Palmyra borough
PA Parkside borough
PA Patterson Heights borough
PA Patterson township
PA Patton township
PA Paxtang borough
PA Penbrook borough
PA Penn borough
PA Penn Hills township
PA Penn township
PA Penndel borough
PA Pennsbury Village borough
PA Pequea township
PA Perkiomen township
PA Perry County
PA Perry township
PA Peters township
PA Phoenixville borough
PA Pine township
PA Pitcairn borough
PA Pittsburgh city
PA Pittston city
PA Pittston township
PA Plains township
PA Pleasant Hills borough
PA Plum borough
PA Plymouth borough
PA Plymouth township
PA Port Vue borough
PA Potter township
PA Pottstown borough
PA Pringle borough
PA Prospect Park borough
PA Pulaski township
PA Radnor township
PA Rankin borough
PA Ransom township
PA Reading city
PA Red Lion borough
PA Reserve township
PA Richland township
PA Ridley Park borough
PA Ridley township
PA Robinson township
PA Rochester borough
PA Rochester township
PA Rockledge borough
PA Roscoe borough
PA Rose Valley borough
PA Ross township
PA Rosslyn Farms borough
PA Rostraver township
PA Royalton borough
PA Royersford borough
PA Rutledge borough
PA Salem township
PA Salisbury township
PA Scalp Level borough
PA Schuylkill township
PA Schwenksville borough
PA Scott township
PA Scranton city
PA Sewickley borough
PA Sewickley Heights borough
PA Sewickley Hills borough
PA Sewickley township
PA Shaler township
PA Sharon city
PA Sharon Hill borough
PA Sharpsburg borough
PA Sharpsville borough
PA Shenango township
PA Shillington borough
PA Shiremanstown borough
PA Silver Spring township
PA Sinking Spring borough
PA Skippack township
PA Somerset County
PA Souderton borough
PA South Abington township
PA South Coatesville borough
PA South Fayette township
PA South Greensburg borough
PA South Hanover township
PA South Heidelberg township
PA South Heights borough
PA South Huntingdon township
PA South Park township
PA South Pymatuning township
PA South Strabane township
PA South Whitehall township
PA South Williamsport borough
PA Southmont borough
PA Southwest Greensburg borough
PA Speers borough
PA Spring City borough
PA Spring Garden township
PA Spring township
PA Springdale borough
PA Springdale township
PA Springettsbury township
PA Springfield township
PA St. Lawrence borough
PA State College borough
PA Steelton borough
PA Stockdale borough
PA Stonycreek township
PA Stowe township
PA Sugar Notch borough
PA Summit township
PA Susquehanna township
PA Sutersville borough
PA Swarthmore borough
PA Swatara township
PA Swissvale borough
PA Swoyersville borough
PA Tarentum borough
PA Taylor borough
PA Telford borough
PA Temple borough
PA Thornburg borough
PA Thornbury township
PA Throop borough
PA Tinicum township
PA Towamencin township
PA Trafford borough
PA Trainer borough

PA Trappe borough
PA Tredyffrin township
PA Tullytown borough
PA Turtle Creek borough
PA Union township
PA Upland borough
PA Upper Allen township
PA Upper Chichester township
PA Upper Darby township
PA Upper Dublin township
PA Upper Gwynedd township
PA Upper Leacock township
PA Upper Macungie township
PA Upper Makefield township
PA Upper Merion township
PA Upper Milford township
PA Upper Moreland township
PA Upper Pottsgrove township
PA Upper Providence township
PA Upper Saucon township
PA Upper Southampton township
PA Upper St. Clair township
PA Upper Yoder township
PA Uwchlan township
PA Valley township
PA Vanport township
PA Verona borough
PA Versailles borough
PA Wall borough
PA Warminster township
PA Warrington township
PA Warrior Run borough
PA Warwick township
PA Washington city
PA Washington County
PA Washington township
PA Wayne township
PA Wernersville borough
PA Wesleyville borough
PA West Bradford township
PA West Brownsville borough
PA West Chester borough
PA West Conshohocken borough
PA West Deer township
PA West Earl township
PA West Easton borough
PA West Elizabeth borough
PA West Fairview borough
PA West Goshen township
PA West Hanover township
PA West Hempfield township
PA West Homestead borough
PA West Lampeter township
PA West Lawn borough
PA West Manchester township
PA West Mayfield borough
PA West Middlesex borough
PA West Mifflin borough
PA West Newton borough
PA West Norriton township
PA West Pikeland township
PA West Pittston borough
PA West Pottsgrove township
PA West Reading borough
PA West Taylor township
PA West View borough
PA West Whiteland township
PA West Wyoming borough
PA West York borough
PA Westmont borough
PA Westmoreland County
PA Westtown township
PA Wheatland borough
PA Whitaker borough
PA White Oak borough
PA White township
PA Whitehall township
PA Whitemarsh township
PA Whitpain township
PA Wilkes-Barre city
PA Wilkes-Barre township
PA Wilkins township
PA Wilkinsburg borough
PA Williams township
PA Williamsport city
PA Willistown township
PA Wilmerding borough
PA Wilson borough
PA Windber borough
PA Windsor borough
PA Windsor township
PA Worcester township
PA Wormleysburg borough
PA Wrightsville borough
PA Wyoming borough
PA Wyomissing borough
PA Wyomissing Hills borough
PA Yardley borough
PA Yatesville borough
PA Yeadon borough
PA Yoe borough
PA York city
PA York County
PA York township
PA Youngwood borough
PR Aibonita
PR Anasco
PR Aquada
PR Aquadilla
PR Aquas Buenas
PR Arecibo
PR Bayamon
PR Cabo Rojo
PR Caguas
PR Camuy
PR Canovanas
PR Catano
PR Cayey
PR Cidra
PR Dorado
PR Guaynabo
PR Gurabo
PR Hatillo
PR Hormigueros
PR Humacao
PR Juncos
PR Las Piedras
PR Loiza
PR Manati
PR Mayaguez
PR Moca
PR Naguabo
PR Naranjito
PR Penuelas
PR Ponce
PR Rio Grande
PR San German
PR San Lorenzo
PR Toa Alta
PR Toa Baja
PR Trujillo Alto
PR Vega Alta
PR Vega Baja
PR Yabucao
RI Barrington town
RI Bristol town
RI Burrillville town
RI Central Falls city
RI Coventry town
RI Cranston city
RI Cumberland town
RI East Greenwich town
RI East Providence city
RI Glocester town
RI Jamestown town
RI Johnston town
RI Lincoln town
RI Middletown town
RI Newport city
RI Newport County
RI North Kingstown town
RI North Providence town
RI North Smithfield town
RI Pawtucket city
RI Portsmouth town
RI Providence city
RI Providence County
RI Scituate town
RI Smithfield town
RI Tiverton town
RI Warren town
RI Warwick city
RI Washington County
RI West Greenwich town
RI West Warwick town
RI Woonsocket city
SC Aiken city
SC Aiken County
SC Anderson city
SC Anderson County
SC Arcadia Lakes town
SC Berkeley County
SC Burnettown town
SC Cayce city
SC Charleston city
SC Charleston County
SC City View town
SC Columbia city
SC Cowpens town
SC Darlington County
SC Dorchester County
SC Edgefield County
SC Florence city
SC Florence County
SC Folly Beach city
SC Forest Acres city
SC Fort Mill town
SC Georgetown County
SC Goose Creek city
SC Hanahan city
SC Horry County
SC Irmo town
SC Isle of Palms city
SC Lexington County
SC Lincolnville town
SC Mount Pleasant town
SC Myrtle Beach city
SC North Augusta city
SC North Charleston city
SC Pickens County
SC Pineridge town
SC Quinby town
SC Rock Hill city
SC South Congaree town
SC Spartanburg city
SC Spartanburg County
SC Springdale town
SC Sullivan's Island town
SC Summerville town
SC Sumter city
SC Sumter County
SC Surfside Beach town
SC West Columbia city
SC York County
SD Big Sioux township
SD Central Pennington unorg.
SD Lincoln County
SD Mapleton township

SD Minnehaha County
SD North Sioux City city
SD Pennington County
SD Rapid City city
SD Split Rock township
SD Union County
SD Wayne township
TN Alcoa city
TN Anderson County
TN Bartlett town
TN Belle Meade city
TN Berry Hill city
TN Blount County
TN Brentwood city
TN Bristol city
TN Carter County
TN Church Hill town
TN Clarksville city
TN Collegedale city
TN Davidson County
TN East Ridge city
TN Elizabethton city
TN Farragut town
TN Forest Hills city
TN Germantown city
TN Goodlettsville city
TN Hamilton County
TN Hawkins County
TN Hendersonville city
TN Jackson city
TN Johnson City city
TN Jonesborough town
TN Kingsport city
TN Knox County
TN Lakesite city
TN Lakewood city
TN Lookout Mountain town
TN Loudon County
TN Madison County
TN Maryville city
TN Montgomery County
TN Mount Carmel town
TN Mount Juliet city
TN Oak Hill city
TN Red Bank city
TN Ridgeside city
TN Rockford city
TN Shelby County
TN Signal Mountain town
TN Soddy-Daisy city
TN Sullivan County
TN Sumner County
TN Washington County
TN Williamson County
TN Wilson County
TX Addison city
TX Alamo city
TX Alamo Heights city
TX Allen city
TX Archer County
TX Azle city
TX Balch Springs city
TX Balcones Heights city
TX Bayou Vista village
TX Baytown city
TX Bedford city
TX Bell County
TX Bellaire city
TX Bellmead city
TX Belton city
TX Benbrook city
TX Beverly Hills city
TX Bexar County
TX Blue Mound city
TX Bowie County
TX Brazoria County
TX Brazos County
TX Brookside Village city
TX Brownsville city
TX Bryan city
TX Buckingham town
TX Bunker Hill Village city
TX Cameron County
TX Carrollton city
TX Castle Hills city
TX Cedar Hill city
TX Cedar Park city
TX Chambers County
TX Cibolo city
TX Clear Lake Shores city
TX Clint town
TX Cockrell Hill city
TX College Station city
TX Colleyville city
TX Collin County
TX Comal County
TX Combes town
TX Converse city
TX Copperas Cove city
TX Corinth town
TX Coryell County
TX Crowley city
TX Dallas County
TX Dalworthington Gardens city
TX Deer Park city
TX Denison city
TX Denton city
TX Denton County
TX DeSoto city
TX Dickinson city
TX Donna city
TX Double Oak town
TX Duncanville city
TX Ector County
TX Edgecliff village
TX Edinburg city
TX El Lago city
TX El Paso County
TX Ellis County
TX Euless city
TX Everman city
TX Farmers Branch city
TX Flower Mound town
TX Forest Hill city
TX Fort Bend County
TX Friendswood city
TX Galena Park city
TX Galveston city
TX Galveston County
TX Grand Prairie city
TX Grapevine city
TX Grayson County
TX Gregg County
TX Groves city
TX Guadalupe County
TX Haltom City city
TX Hardin County
TX Harker Heights city
TX Harlingen city
TX Harrison County
TX Hedwig Village city
TX Hewitt city
TX Hickory Creek town
TX Hidalgo County
TX Highland Park town
TX Highland Village city
TX Hill Country Village city
TX Hilshire Village city
TX Hitchcock city
TX Hollywood Park town
TX Howe town
TX Humble city
TX Hunters Creek Village city
TX Hurst city
TX Hutchins city
TX Impact town
TX Jacinto City city
TX Jefferson County
TX Jersey Village city
TX Johnson County
TX Jones County
TX Katy city
TX Kaufman County
TX Keller city
TX Kemah city
TX Kennedale city
TX Killeen city
TX Kirby city
TX Kleberg County
TX La Marque city
TX La Porte city
TX Lacy-Lakeview city
TX Lake Dallas city
TX Lake Worth city
TX Lakeside City town
TX Lakeside town
TX Lampasas County
TX Lancaster city
TX League City city
TX Leander city
TX Leon Valley city
TX Lewisville city
TX Live Oak city
TX Longview city
TX Lubbock County
TX Lumberton city
TX Martin County
TX McAllen city
TX McLennan County
TX Meadows city
TX Midland city
TX Midland County
TX Mission city
TX Missouri City city
TX Montgomery County
TX Morgan's Point city
TX Nash city
TX Nassau Bay city
TX Nederland city
TX Nolanville city
TX North Richland Hills city
TX Northcrest town
TX Nueces County
TX Odessa city
TX Olmos Park city
TX Palm Valley town
TX Palmview city
TX Pantego town
TX Parker County
TX Pearland city
TX Pflugerville city
TX Pharr city
TX Piney Point Village city
TX Port Arthur city
TX Port Neches city
TX Portland city
TX Potter County
TX Primera town
TX Randall County
TX Richardson city
TX Richland Hills city
TX River Oaks city
TX Robinson city
TX Rockwall city
TX Rockwall County
TX Rollingwood city
TX Rose Hill Acres city
TX Rowlett city

TX Sachse city
TX Saginaw city
TX San Angelo city
TX San Benito city
TX San Juan city
TX San Patricio County
TX Sansom Park city
TX Santa Fe city
TX Schertz city
TX Seabrook city
TX Seagoville city
TX Selma city
TX Shavano Park city
TX Sherman city
TX Shoreacres city
TX Smith County
TX Socorro town
TX South Houston city
TX Southside Place city
TX Spring Valley city
TX Stafford town
TX Sugar Land city
TX Sunset Valley city
TX Tarrant County
TX Taylor County
TX Taylor Lake Village city
TX Temple city
TX Terrell Hills city
TX Texarkana city
TX Texas City city
TX Tom Green County
TX Travis County
TX Tye town
TX Tyler city
TX Universal City city
TX University Park city
TX Victoria city
TX Victoria County
TX Wake Village city
TX Waller County
TX Watauga city
TX Webb County
TX Webster city
TX Weslaco city
TX West Lake Hills city
TX West University Place city
TX Westover Hills town
TX Westworth village
TX White Oak city
TX White Settlement city
TX Wichita County
TX Wichita Falls city
TX Williamson County
TX Wilmer city
TX Windcrest city
TX Woodway city
UT American Fork city
UT Bluffdale city
UT Bountiful city
UT Cache County
UT Cedar Hills town
UT Centerville city
UT Clearfield city
UT Clinton city
UT Davis County
UT Draper city
UT Farmington city
UT Farr West city
UT Fruit Heights city
UT Harrisville city
UT Highland city
UT Hyde Park city
UT Kaysville city
UT Layton city
UT Lehi city
UT Lindon city
UT Logan city
UT Mapleton city
UT Midvale city
UT Millville city
UT Murray city
UT North Logan city
UT North Ogden city
UT North Salt Lake city
UT Ogden city
UT Orem city
UT Pleasant Grove city
UT Pleasant View city
UT Providence city
UT Provo city
UT River Heights city
UT Riverdale city
UT Riverton city
UT Roy city
UT Sandy city
UT Smithfield city
UT South Jordan city
UT South Ogden city
UT South Salt Lake city
UT South Weber city
UT Springville city
UT Sunset city
UT Syracuse city
UT Uintah town
UT Utah County
UT Washington Terrace city
UT Weber County
UT West Bountiful city
UT West Jordan city
UT West Point city
UT West Valley City city
UT Woods Cross city
VA Albemarle County
VA Alexandria city
VA Amherst County
VA Bedford County
VA Botetourt County
VA Bristol city
VA Campbell County
VA Charlottesville city
VA Colonial Heights city
VA Danville city
VA Dinwiddie County
VA Fairfax city
VA Falls Church city
VA Fredericksburg city
VA Gate City town
VA Gloucester County
VA Hanover County
VA Herndon town
VA Hopewell city
VA James City County
VA Loudoun County
VA Lynchburg city
VA Manassas city
VA Manassas Park city
VA Occoquan town
VA Petersburg city
VA Pittsylvania County
VA Poquoson city
VA Prince George County
VA Richmond city
VA Roanoke city
VA Roanoke County
VA Salem city
VA Scott County
VA Spotsylvania County
VA Stafford County
VA Suffolk city
VA Vienna town
VA Vinton town
VA Washington County
VA Weber City town
VA Williamsburg city
VA York County
VT Burlington city
VT Chittenden County
VT Colchester town
VT Essex Junction village
VT Essex town
VT Shelburne town
VT South Burlington city
VT Williston town
VT Winooski city
WA Algona city
WA Auburn city
WA Beaux Arts Village town
WA Bellevue city
WA Bellingham city
WA Benton County
WA Bonney Lake city
WA Bothell city
WA Bremerton city
WA Brier city
WA Clyde Hill town
WA Cowlitz County
WA Des Moines city
WA DuPont city
WA Edmonds city
WA Everett city
WA Fife city
WA Fircrest town
WA Franklin County
WA Gig Harbor city
WA Hunts Point town
WA Issaquah city
WA Kelso city
WA Kennewick city
WA Kent city
WA Kirkland city
WA Kitsap County
WA Lacey city
WA Lake Forest Park city
WA Longview city
WA Lynnwood city
WA Marysville city
WA Medina city
WA Mercer Island city
WA Mill Creek city
WA Millwood town
WA Milton city
WA Mountlake Terrace city
WA Mukilteo city
WA Normandy Park city
WA Olympia city
WA Pacific city
WA Pasco city
WA Port Orchard city
WA Puyallup city
WA Redmond city
WA Renton city
WA Richland city
WA Ruston town
WA Selah city
WA Steilacoom town
WA Sumner city
WA Thurston County
WA Tukwila city
WA Tumwater city
WA Union Gap city
WA Vancouver city
WA West Richland city
WA Whatcom County
WA Woodway city
WA Yakima city
WA Yakima County
WA Yarrow Point town
WI Algoma town

WI Allouez village
WI Altoona city
WI Appleton city
WI Ashwaubenon village
WI Bayside village
WI Bellevue town
WI Beloit city
WI Beloit town
WI Big Bend village
WI Black Wolf town
WI Blooming Grove town
WI Brookfield city
WI Brookfield town
WI Brown County
WI Brown Deer village
WI Brunswick town
WI Buchanan town
WI Burke town
WI Butler village
WI Caledonia town
WI Calumet County
WI Campbell town
WI Cedarburg city
WI Cedarburg town
WI Chippewa County
WI Chippewa Falls city
WI Clayton town
WI Combined Locks village
WI Cudahy city
WI Dane County
WI De Pere city
WI De Pere town
WI Delafield town
WI Douglas County
WI Dunn town
WI Eagle Point town
WI Eau Claire city
WI Eau Claire County
WI Elm Grove village
WI Elmwood Park village
WI Fitchburg city
WI Fox Point village
WI Franklin city
WI Germantown town
WI Germantown village
WI Glendale city
WI Grafton town
WI Grafton village
WI Grand Chute town
WI Green Bay city
WI Greendale village
WI Greenfield city
WI Greenville town
WI Hales Corners village
WI Hallie town
WI Harmony town
WI Harrison town
WI Hobart town
WI Holmen village
WI Howard village
WI Janesville city
WI Janesville town
WI Kaukauna city
WI Kenosha city
WI Kenosha County
WI Kimberly village
WI Kohler village
WI La Crosse city
WI La Crosse County
WI La Prairie town
WI Lafayette town
WI Lannon village
WI Lima town
WI Lisbon town
WI Little Chute village
WI Madison town
WI Maple Bluff village
WI Marathon County
WI McFarland village
WI Medary town
WI Menasha city
WI Menasha town
WI Menomonee Falls village
WI Mequon city
WI Middleton city
WI Middleton town
WI Monona city
WI Mount Pleasant town
WI Muskego city
WI Neenah city
WI Neenah town
WI Nekimi town
WI New Berlin city
WI North Bay village
WI Norway town
WI Oak Creek city
WI Onalaska city
WI Onalaska town
WI Oshkosh city
WI Oshkosh town
WI Outagamie County
WI Ozaukee County
WI Pewaukee town
WI Pewaukee village
WI Pleasant Prairie town
WI Pleasant Prairie village
WI Racine city
WI Racine County
WI Rib Mountain town
WI River Hills village
WI Rock County
WI Rock town
WI Rothschild village
WI Salem town
WI Schofield city
WI Scott town
WI Sheboygan city
WI Sheboygan County
WI Sheboygan Falls city
WI Sheboygan Falls town
WI Sheboygan town
WI Shelby town
WI Shorewood Hills village
WI Shorewood village
WI Somers town
WI South Milwaukee city
WI St. Francis city
WI Stettin town
WI Sturtevant village
WI Superior city
WI Superior village
WI Sussex village
WI Thiensville village
WI Turtle town
WI Union town
WI Vandenbroek town
WI Vernon town
WI Washington County
WI Washington town
WI Waukesha city
WI Waukesha County
WI Waukesha town
WI Wausau city
WI Wauwatosa city
WI West Allis city
WI West Milwaukee village
WI Weston town
WI Westport town
WI Wheaton town
WI Whitefish Bay village
WI Wilson town
WI Wind Point village
WI Winnebago County
WV Bancroft town
WV Barboursville village
WV Belle town
WV Benwood city
WV Berkeley County
WV Bethlehem village
WV Brooke County
WV Cabell County
WV Cedar Grove town
WV Ceredo city
WV Charleston city
WV Chesapeake town
WV Clearview village
WV Dunbar city
WV East Bank town
WV Follansbee city
WV Glasgow town
WV Glen Dale city
WV Hancock County
WV Huntington city
WV Hurricane city
WV Kanawha County
WV Kenova city
WV Marmet city
WV Marshall County
WV McMechen city
WV Mineral County
WV Moundsville city
WV Nitro city
WV North Hills town
WV Ohio County
WV Parkersburg city
WV Poca town
WV Putnam County
WV Ridgeley town
WV South Charleston city
WV St. Albans city
WV Triadelphia town
WV Vienna city
WV Wayne County
WV Weirton city
WV Wheeling city
WV Wood County
WY Casper city
WY Cheyenne city
WY Evansville town
WY Laramie County
WY Mills town
WY Natrona County

Appendix 7 of Preamble—Governmental Entities (Located Outside of an Urbanized Area) That Must Be Examined By the NPDES Permitting Authority for Potential Designation Under § 123.35(b)(2)

(All listed entities have a population of at least 10,000 and a population density of at least 1,000. A listed entity would only be potentially designated if it operates a small MS4. See § 122.26(b)(16) for the definition of a small MS4.)

(This list does not include all operators of small MS4s that may be designated by the NPDES permitting authority. Operators of small MS4s in areas with populations below 10,000 and densities below 1,000 may also be designated but examination of them is not required. Also, entities such as military bases, large hospitals, prison complexes, universities, sewer districts, and highway departments that operate a small MS4 in an area listed here, or in an area otherwise designated by the NPDES permitting authority, may be designated and become subject to permitting regulations.) (Source: 1990 Census of Population and Housing, U.S. Bureau of the Census. This list is subject to change with the Decennial Census)

AL Daphne city
AL Jacksonville city
AL Selma city
AR Arkadelphia city
AR Benton city
AR Blytheville city
AR Conway city
AR El Dorado city
AR Hot Springs city
AR Magnolia city
AR Rogers city
AR Searcy city
AR Stuttgart city
AZ Douglas city
CA Arcata city
CA Arroyo Grande city
CA Atwater city
CA Auburn city
CA Banning city
CA Brawley city
CA Calexico city
CA Clearlake city
CA Corcoran city
CA Delano city
CA Desert Hot Springs city
CA Dinuba city
CA Dixon city
CA El Centro city
CA El Paso de Robles (Paso Robles) city
CA Eureka city
CA Fillmore city
CA Gilroy city
CA Grover City city
CA Hanford city
CA Hollister city
CA Lemoore city
CA Los Banos city
CA Madera city
CA Manteca city
CA Oakdale city
CA Oroville city
CA Paradise town
CA Petaluma city
CA Porterville city
CA Red Bluff city
CA Reedley city
CA Ridgecrest city
CA Sanger city
CA Santa Paula city
CA Selma city
CA South Lake Tahoe city
CA Temecula city
CA Tracy city
CA Tulare city
CA Turlock city
CA Ukiah city
CA Wasco city
CA Woodland city
CO Canon City city
CO Durango city
CO Lafayette city
CO Louisville city
CO Loveland city
CO Sterling city
FL Bartow city
FL Belle Glade city
FL De Land city
FL Eustis city
FL Haines City city
FL Key West city
FL Leesburg city
FL Palatka city
FL Plant City city
FL St. Augustine city
FL St. Cloud city
GA Americus city
GA Carrollton city
GA Cordele city
GA Dalton city
GA Dublin city
GA Griffin city
GA Hinesville city
GA Moultrie city
GA Newnan city
GA Statesboro city
GA Thomasville city
GA Tifton city
GA Valdosta city
GA Waycross city
IA Ames city
IA Ankeny city
IA Boone city
IA Burlington city
IA Fort Dodge city
IA Fort Madison city
IA Indianola city
IA Keokuk city
IA Marshalltown city
IA Mason City city
IA Muscatine city
IA Newton city
IA Oskaloosa city
IA Ottumwa city
IA Spencer city
ID Caldwell city
ID Coeur d'Alene city
ID Lewiston city
ID Moscow city
ID Nampa city
ID Rexburg city
ID Twin Falls city
IL Belvidere city
IL Canton city
IL Carbondale city
IL Centralia city
IL Charleston city
IL Danville city
IL De Kalb city
IL Dixon city
IL Effingham city
IL Freeport city
IL Galesburg city
IL Jacksonville city
IL Macomb city
IL Mattoon city
IL Mount Vernon city
IL Ottawa city
IL Pontiac city
IL Quincy city
IL Rantoul village
IL Sterling city
IL Streator city
IL Taylorville city
IL Woodstock city
IN Bedford city
IN Columbus city
IN Crawfordsville city
IN Frankfort city
IN Franklin city
IN Greenfield city
IN Huntington city
IN Jasper city
IN La Porte city
IN Lebanon city
IN Logansport city
IN Madison city
IN Marion city
IN Martinsville city
IN Michigan City city
IN New Castle city
IN Noblesville city
IN Peru city
IN Plainfield town
IN Richmond city
IN Seymour city
IN Shelbyville city
IN Valparaiso city
IN Vincennes city
IN Wabash city
IN Warsaw city
IN Washington city
KS Arkansas City city
KS Atchison city
KS Coffeyville city
KS Derby city
KS Dodge City city
KS El Dorado city
KS Emporia city
KS Garden City city
KS Great Bend city
KS Hays city
KS Hutchinson city
KS Junction City city
KS Leavenworth city
KS Liberal city
KS Manhattan city
KS McPherson city
KS Newton city
KS Ottawa city
KS Parsons city
KS Pittsburg city
KS Salina city
KS Winfield city
KY Bowling Green city
KY Danville city
KY Frankfort city
KY Georgetown city
KY Glasgow city
KY Hopkinsville city
KY Madisonville city
KY Middlesborough city
KY Murray city
KY Nicholasville city
KY Paducah city
KY Radcliff city
KY Richmond city
KY Somerset city
KY Winchester city

LA Abbeville city
LA Bastrop city
LA Bogalusa city
LA Crowley city
LA Eunice city
LA Hammond city
LA Jennings city
LA Minden city
LA Morgan City city
LA Natchitoches city
LA New Iberia city
LA Opelousas city
LA Ruston city
LA Thibodaux city
MA Amherst town
MA Clinton town
MA Milford town
MA Newburyport city
MD Aberdeen town
MD Cambridge city
MD Salisbury city
MD Westminster city
ME Waterville city
MI Adrian city
MI Albion city
MI Alpena city
MI Big Rapids city
MI Cadillac city
MI Escanaba city
MI Grand Haven city
MI Marquette city
MI Midland city
MI Monroe city
MI Mount Pleasant city
MI Owosso city
MI Sturgis city
MI Traverse City city
MN Albert Lea city
MN Austin city
MN Bemidji city
MN Brainerd city
MN Faribault city
MN Fergus Falls city
MN Hastings city
MN Hutchinson city
MN Mankato city
MN Marshall city
MN New Ulm city
MN North Mankato city
MN Northfield city
MN Owatonna city
MN Stillwater city
MN Willmar city
MN Winona city
MO Cape Girardeau city
MO Farmington city
MO Hannibal city
MO Jefferson City city
MO Kennett city
MO Kirksville city
MO Marshall city
MO Maryville city
MO Poplar Bluff city
MO Rolla city
MO Sedalia city
MO Sikeston city
MO Warrensburg city
MO Washington city
MS Brookhaven city
MS Canton city
MS Clarksdale city
MS Cleveland city
MS Columbus city
MS Greenville city
MS Greenwood city
MS Grenada city
MS Indianola city
MS Laurel city
MS McComb city
MS Meridian city
MS Natchez city
MS Starkville city
MS Vicksburg city
MS Yazoo City city
MT Bozeman city
MT Havre city
MT Helena city
MT Kalispell city
NC Albemarle city
NC Asheboro city
NC Boone town
NC Eden city
NC Elizabeth City city
NC Havelock city
NC Henderson city
NC Kernersville town
NC Kinston city
NC Laurinburg city
NC Lenoir city
NC Lexington city
NC Lumberton city
NC Monroe city
NC New Bern city
NC Reidsville city
NC Roanoke Rapids city
NC Salisbury city
NC Sanford city
NC Shelby city
NC Statesville city
NC Tarboro town
NC Wilson city
ND Dickinson city
ND Jamestown city
ND Minot city
ND Williston city
NE Beatrice city
NE Columbus city
NE Fremont city
NE Grand Island city
NE Hastings city
NE Kearney city
NE Norfolk city
NE North Platte city
NE Scottsbluff city
NJ East Windsor township
NJ Plainsboro township
NJ Bridgeton city
NJ Princeton borough
NM Alamogordo city
NM Artesia city
NM Clovis city
NM Deming city
NM Farmington city
NM Gallup city
NM Hobbs city
NM Las Vegas city
NM Portales city
NM Roswell city
NM Silver City town
NV Elko city
NY Amsterdam city
NY Auburn city
NY Batavia city
NY Canandaigua city
NY Corning city
NY Cortland city
NY Dunkirk city
NY Fredonia village
NY Fulton city
NY Geneva city
NY Gloversville city
NY Jamestown city
NY Kingston city
NY Lockport city
NY Massena village
NY Middletown city
NY Ogdensburg city
NY Olean city
NY Oneonta city
NY Oswego city
NY Plattsburgh city
NY Potsdam village
NY Watertown city
OH Alliance city
OH Ashland city
OH Ashtabula city
OH Athens city
OH Bellefontaine city
OH Bowling Green city
OH Bucyrus city
OH Cambridge city
OH Chillicothe city
OH Circleville city
OH Coshocton city
OH Defiance city
OH Delaware city
OH Dover city
OH East Liverpool city
OH Findlay city
OH Fostoria city
OH Fremont city
OH Galion city
OH Greenville city
OH Lancaster city
OH Lebanon city
OH Marietta city
OH Marion city
OH Medina city
OH Mount Vernon city
OH New Philadelphia city
OH Norwalk city
OH Oxford city
OH Piqua city
OH Portsmouth city
OH Salem city
OH Sandusky city
OH Sidney city
OH Tiffin city
OH Troy city
OH Urbana city
OH Washington city
OH Wilmington city
OH Wooster city
OH Xenia city
OH Zanesville city
OK Ada city
OK Altus city
OK Bartlesville city
OK Chickasha city
OK Claremore city
OK McAlester city
OK Miami city
OK Muskogee city
OK Okmulgee city
OK Owasso city
OK Ponca City city
OK Stillwater city
OK Tahlequah city
OK Weatherford city
OR Albany city
OR Ashland city
OR Astoria city
OR Bend city
OR City of the Dalles city
OR Coos Bay city
OR Corvallis city
OR Grants Pass city
OR Hermiston city

OR Klamath Falls city
OR La Grande city
OR Lebanon city
OR McMinnville city
OR Newberg city
OR Pendleton city
OR Roseburg city
OR Woodburn city
PA Berwick borough
PA Bloomsburg town
PA Butler city
PA Carlisle borough
PA Chambersburg borough
PA Ephrata borough
PA Hanover borough
PA Hazleton city
PA Indiana borough
PA Lebanon city
PA Meadville city
PA New Castle city
PA Oil City city
PA Pottsville city
PA Sunbury city
PA Uniontown city
PA Warren city
RI Narragansett town
SC Clemson city
SC Easley city
SC Gaffney city
SC Greenwood city
SC Newberry town
SC Orangeburg city
SD Aberdeen city
SD Brookings city
SD Huron city
SD Mitchell city
SD Vermillion city
SD Watertown city
SD Yankton city
TN Brownsville city
TN Cleveland city
TN Collierville town
TN Cookeville city
TN Dyersburg city
TN Greeneville town
TN Lawrenceburg city
TN McMinnville city
TN Millington city
TN Morristown city
TN Murfreesboro city
TN Shelbyville city
TN Springfield city
TN Union City city
TX Alice city
TX Alvin city
TX Andrews city
TX Angleton city
TX Bay City city
TX Beeville city
TX Big Spring city
TX Borger city
TX Brenham city
TX Brownwood city
TX Burkburnett city
TX Canyon city
TX Cleburne city
TX Conroe city
TX Coppell city
TX Corsicana city
TX Del Rio city
TX Dumas city
TX Eagle Pass city
TX El Campo city
TX Gainesville city
TX Gatesville city
TX Georgetown city
TX Henderson city
TX Hereford city
TX Huntsville city
TX Jacksonville city
TX Kerrville city
TX Kingsville city
TX Lake Jackson city
TX Lamesa city
TX Levelland city
TX Lufkin city
TX Mercedes city
TX Mineral Wells city
TX Mount Pleasant city
TX Nacogdoches city
TX New Braunfels city
TX Palestine city
TX Pampa city
TX Pecos city
TX Plainview city
TX Port Lavaca city
TX Robstown city
TX Rosenberg city
TX Round Rock city
TX San Marcos city
TX Seguin city
TX Snyder city
TX Stephenville city
TX Sweetwater city
TX Taylor city
TX The Colony city
TX Uvalde city
TX Vernon city
TX Vidor city
UT Brigham City city
UT Cedar City city
UT Spanish Fork city
UT Tooele city
VA Blacksburg town
VA Christiansburg town
VA Front Royal town
VA Harrisonburg city
VA Leesburg town
VA Martinsville city
VA Radford city
VA Staunton city
VA Waynesboro city
VA Winchester city
VT Rutland city
WA Aberdeen city
WA Anacortes city
WA Centralia city
WA Ellensburg city
WA Moses Lake city
WA Mount Vernon city
WA Oak Harbor city
WA Port Angeles city
WA Pullman city
WA Sunnyside city
WA Walla Walla city
WA Wenatchee city
WI Beaver Dam city
WI Fond du Lac city
WI Fort Atkinson city
WI Manitowoc city
WI Marinette city
WI Marshfield city
WI Menomonie city
WI Monroe city
WI Oconomowoc city
WI Stevens Point city
WI Sun Prairie city
WI Two Rivers city
WI Watertown city
WI West Bend city
WI Whitewater city
WI Wisconsin Rapids city
WV Beckley city
WV Bluefield city
WV Clarksburg city
WV Fairmont city
WV Martinsburg city
WV Morgantown city
WY Evanston city
WY Gillette city
WY Green River city
WY Laramie city
WY Rock Springs city
WY Sheridan city

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation						OMB control No.
*	*	*	*	*	*	*
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System						
*	*	*	*	*	*	*
122.26(g)						2040–0211
*	*	*	*	*	*	*
State Permit Requirements						
*	*	*	*	*	*	*
123.35(b)						2040–0211
*	*	*	*	*	*	*

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Revise § 122.21(c)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under § 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also paragraph (k) of this section and § 122.26(c)(1)(i)(G) and (c)(1)(ii).

* * * * *

3. Amend § 122.26 as follows:

a. Revise paragraphs (a)(9), (b)(4)(i), (b)(7)(i), (b)(14) introductory text, (b)(14)(x), (b)(14)(xi);

b. Redesignate paragraph (b)(15) as paragraph (b)(20) and add new paragraphs (b)(15) through (b)(19);

c. Revise the heading for paragraph (c), the first sentence of paragraph (c)(1) introductory text, the first sentence of paragraph (c)(1)(ii) introductory text, paragraphs (e) heading and introductory text, (e)(1), (e)(5) introductory text, and (e)(5)(i);

d. Add paragraphs (e)(8) and (e)(9); and

e. Revise paragraphs (f)(4), (f)(5), and (g).

The additions and revisions read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of ''total maximum daily loads'' (TMDLs) that address the pollutant(s) of concern; or

(D) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with §§ 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter).

(b) * * *

(4) * * *

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or

* * * * *

(7) * * *

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or

* * * * *

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance that is used for collecting and conveying storm

water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in ''industrial activity'' for purposes of paragraph (b)(14):

* * * * *

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221–25;

(15) *Storm water discharge associated with small construction activity* means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor (''R'' in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE),* pages 21–64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket , 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a ''total maximum daily load'' (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

EXHIBIT 1 TO § 122.26(B)(15).—SUMMARY OF COVERAGE OF ''STORM WATER DISCHARGES ASSOCIATED WITH SMALL CONSTRUCTION ACTIVITY'' UNDER THE NPDES STORM WATER PROGRAM

Automatic Designation: Required Nationwide Coverage.	• Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres. • Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (see § 122.26(b)(15)(i).)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator..	• Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants. (see § 122.26(b)(15)(ii).)

EXHIBIT 1 TO § 122.26(B)(15).—SUMMARY OF COVERAGE OF ''STORM WATER DISCHARGES ASSOCIATED WITH SMALL CONSTRUCTION ACTIVITY'' UNDER THE NPDES STORM WATER PROGRAM—Continued

Potential Waiver: Waiver from Requirements as Determined by the NPDES Permitting Authority..	Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five, or (2) That the activity will occur within an area where controls are not needed based on a TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern. (see § 122.26(b)(15)(i).)

(16) *Small municipal separate storm sewer system* means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, 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 CWA that discharges to waters of the United States.

(ii) Not defined as ''large'' or ''medium'' municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(17) *Small MS4* means a small municipal separate storm sewer system.

(18) *Municipal separate storm sewer system* means all separate storm sewers that are defined as ''large'' or ''medium'' or ''small'' municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) *MS4* means a municipal separate storm sewer system.

* * * * *

(c) *Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity*—(1) *Individual application.* Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. * * *

* * * * *

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. * * *

* * * * *

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under this section that does not have an effective NPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) *Storm water discharges associated with industrial activity.* (i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14)(i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (c) of this section must be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

* * * * *

(5) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter), for:

(i) A storm water discharge that the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraphs (a)(1)(v) and (b)(15)(ii) of this section);

* * * * *

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under § 122.33 must be submitted to the Director by:

(i) March 10, 2003 if designated under § 122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) (see § 122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under § 122.32(a)(2) (see § 122.33(c)(2)).

(f) * * *

(4) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(g) *Conditional exclusion for ''no exposure'' of industrial activities and materials to storm water.* Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is ''no exposure'' of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. ''No exposure'' means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste

products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) *Qualification.* To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

(ii) Complete and sign (according to § 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five years;

(iv) Allow the Director to inspect the facility to determine compliance with the ''no exposure'' conditions;

(v) Allow the Director to make any ''no exposure'' inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of ''no exposure'' to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) *Industrial materials and activities not requiring storm resistant shelter.* To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (''Sealed'' means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) *Limitations.* (i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be ''no exposure'' discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) *Certification.* The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see § 122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All ''no exposure'' certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 122.22: ''I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of ''no exposure'' and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

4. Revise § 122.28(b)(2)(v) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * *

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal

separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

* * * * *

5. Add §§ 122.30 through 122.37 to subpart B to read as follows:

§ 122.30 What are the objectives of the storm water regulations for small MS4s?

(a) Sections 122.30 through 122.37 are written in a ''readable regulation'' format that includes both rule requirements and EPA guidance that is not legally binding. EPA has clearly distinguished its recommended guidance from the rule requirements by putting the guidance in a separate paragraph headed by the word ''guidance''.

(b) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Because the storm water program is part of the National Pollutant Discharge Elimination System (NPDES) Program, you should also refer to § 122.1 which addresses the broader purpose of the NPDES program.)

(c) Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(d) EPA strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

§ 122.31 As a Tribe, what is my role under the NPDES storm water program?

As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under §§ 123.31 through 123.34 of this chapter. (If you do not have an authorized NPDES program, EPA implements the program for discharges on your reservation as well as other Indian country, generally.);

(b) Be classified as an owner of a regulated small MS4, as defined in § 122.32. (Designation of your Tribe as an owner of a small MS4 for purposes of this part is an approach that is consistent with EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small MS4, you are subject to the requirements under §§ 122.33 through 122.35. If you are not designated as a regulated small MS4, you may ask EPA to designate you as such for the purposes of this part.); or

(c) Be a discharger of storm water associated with industrial activity or small construction activity under §§ 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is generally EPA, unless you are authorized to administer the NPDES program.

§ 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?

(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and:

(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

(2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4) of this chapter, or is based upon a petition under § 122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with §§ 122.33 through 122.35.

(c) The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with § 122.33(a) if circumstances change. (See also § 123.35(b) of this chapter.)

(d) The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

(1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see § 123.35(b)(4) of this chapter); and

(2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water 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.

(e) The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

(1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

(2) For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

(3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

(4) The permitting authority has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

§ 122.33 If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?

(a) If you operate a regulated small MS4 under § 122.32, you must seek coverage under a NPDES permit issued by your NPDES permitting authority. If you are located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is your NPDES permitting authority. Otherwise, your NPDES permitting authority is the EPA Regional Office.

(b) You must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by § 122.34(d). You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit an NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2)(i) If you are seeking authorization to discharge under an individual permit and wish to implement a program under § 122.34, you must submit an application to your NPDES permitting authority that includes the information required under §§ 122.21(f) and 122.34(d), an estimate of square mileage served by your small MS4, and any additional information that your NPDES permitting authority requests. A storm sewer map that satisfies the requirement of § 122.34(b)(3)(i) will satisfy the map requirement in § 122.21(f)(7).

(ii) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under § 122.34, you will need to comply with the permit application requirements of § 122.26(d). You must submit both Parts of the application requirements in §§ 122.26(d)(1) and (2) by March 10, 2003. You do not need to submit the information required by §§ 122.26(d)(1)(ii) and (d)(2) regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(iii) If allowed by your NPDES permitting authority, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of § 122.26, rather than the requirements of § 122.34. You do not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating storm water pollutant control activities in your MS4, and detail the resources available to you to accomplish the plan.

(c) If you operate a regulated small MS4:

(1) Designated under § 122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) of this chapter.

(2) Designated under § 122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under § 122.26(d). For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the ''maximum extent practicable.'' Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) *Minimum control measures*—(1) *Public education and outreach on storm water impacts.* (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) Guidance: You may use storm water educational materials provided by your State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or

household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program.

(ii) Guidance: EPA recommends that the public be included in developing, implementing, and reviewing your storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at § 122.26(b)(2)) into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(iv) Guidance: EPA recommends that the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

(4) *Construction site storm water runoff control.* (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(iii) Guidance: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving

water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.*

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(iii) Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that you adopt a planning process that identifies the municipality's program goals (*e.g.,* minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.*

(i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance: EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d)(1) In your permit application (either a notice of intent for coverage

under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information:

(i) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;

(ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(iii) The person or persons responsible for implementing or coordinating your storm water management program.

(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

(e)(1) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

(f) You must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49, as appropriate.

(g) *Evaluation and assessment*—(1) *Evaluation.* You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

Note to Paragraph (g)(1): The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the NPDES permitting authority only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see § 122.7 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under § 122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

§ 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under § 122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by § 122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of § 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

§ 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in § 122.35(b).

§ 122.37 Will the small MS4 storm water program regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter change in the future?

EPA will evaluate the small MS4 regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

6. In § 122.44, redesignate paragraphs (k)(2) and (k)(3) as paragraphs (k)(3) and (k)(4), remove the comma at the end of newly redesignated paragraph (k)(3) and add a semicolon in its place, and add new paragraphs (k)(2) and (s) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(k) * * *

(2) Authorized under section 402(p) of CWA for the control of storm water discharges;

* * * * *

(s) *Qualifying State, Tribal, or local programs.* (1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of ''best available technology'' and ''best conventional technology'' based on the best professional judgment of the permit writer.

7. Add § 122.62(a)(14) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in § 122.34(b) when:

(i) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

* * * * *

8. Revise Appendices F, G, H, and I to Part 122 to read as follows:

APPENDIX F TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	Incorporated Place
Alabama	Birmingham.
Arizona	Phoenix.
	Tucson.
California	Long Beach.
	Los Angeles.
	Oakland.
	Sacramento.
	San Diego.
	San Francisco.
	San Jose.
Colorado	Denver.
District of Columbia	
Florida	Jacksonville.
	Miami.
	Tampa.
Georgia.	Atlanta.
Illinois	Chicago.
Indiana	Indianapolis.
Kansas	Wichita.
Kentucky	Louisville.
Louisiana	New Orleans.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Minneapolis.
	St. Paul.
Missouri	Kansas City.
	St. Louis.
Nebraska	Omaha.
New Jersey	Newark.
New Mexico	Albuquerque.
New York	Buffalo.
	Bronx Borough.
	Brooklyn Borough.
	Manhattan Borough.
	Queens Borough.
	Staten Island Borough.
North Carolina	Charlotte.
Ohio	Cincinnati.
	Cleveland.
	Columbus.
	Toledo.
Oklahoma	Oklahoma City.
	Tulsa.
Oregon	Portland.
Pennsylvania	Philadelphia.
	Pittsburgh.
Tennessee	Memphis.
	Nashville/Davidson.
Texas	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.

APPENDIX F TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated Place
Virginia	San Antonio. Norfolk. Virginia Beach.
Washington	Seattle.
Wisconsin	Milwaukee.

APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	Incorporated place
Alabama	Huntsville. Mobile. Montgomery.
Alaska	Anchorage.
Arizona	Mesa. Tempe.
Arkansas	Little Rock.
California	Anaheim. Bakersfield. Berkeley. Chula Vista. Concord. El Monte. Escondido. Fremont. Fresno. Fullerton. Garden Grove. Glendale. Hayward. Huntington Beach. Inglewood. Irvine. Modesto. Moreno Valley. Oceanside. Ontario. Orange.
Colorado	Aurora.

APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated place
	Colorado Springs. Lakewood. Pueblo.
Connecticut	Bridgeport. Hartford. New Haven. Stamford. Waterbury.
Florida	Fort Lauderdale. Hialeah. Hollywood. Orlando. St. Petersburg. Tallahassee.
Georgia	Columbus. Macon. Savannah.
Idaho	Boise City.
Illinois	Peoria. Rockford.
Indiana	Evansville. Fort Wayne. Gary. South Bend.
Iowa	Cedar Rapids. Davenport. Des Moines.
Kansas	Kansas City. Topeka.
Kentucky	Lexington-Fayette.
Louisiana	Baton Rouge. Shreveport.
Massachusetts	Springfield. Worcester.
Michigan	Ann Arbor. Flint. Grand Rapids. Lansing. Livonia. Sterling Heights. Warren.
Mississippi	Jackson.
Missouri	Independence. Springfield.
Nebraska	Lincoln.
Nevada	Las Vegas. Reno.

APPENDIX G TO PART 122.—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	Incorporated place
New Jersey	Elizabeth. Jersey City. Paterson.
New York	Albany. Rochester. Syracuse. Yonkers.
North Carolina	Durham. Greensboro. Raleigh. Winston-Salem.
Ohio	Akron. Dayton. Youngstown.
Oregon	Eugene.
Pennsylvania	Allentown. Erie.
Rhode Island	Providence.
South Carolina	Columbia.
Tennessee	Chattanooga. Knoxville.
Texas	Abilene. Amarillo. Arlington. Beaumont. Corpus Christi. Garland. Irving. Laredo. Lubbock. Mesquite. Pasadena. Plano. Waco.
Utah	Salt Lake City.
Virginia	Alexandria. Chesapeake. Hampton. Newport News. Portsmouth. Richmond. Roanoke.
Washington	Spokane. Tacoma.
Wisconsin	Madison.

APPENDIX H TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	County	Unincorporated urbanized population
California	Los Angeles	886,780
	Sacramento	594,889
	San Diego	250,414
Delaware	New Castle	296,996
Florida	Dade	1,014,504
Georgia	DeKalb	448,686
Hawaii	Honolulu [1]	114,506
Maryland	Anne Arundel	344,654
	Baltimore	627,593
	Montgomery	599,028

APPENDIX H TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS—Continued

State	County	Unincorporated urbanized population
	Prince George's	494,369
Texas	Harris	729,206
Utah	Salt Lake	270,989
Virginia	Fairfax	760,730
Washington	King	520,468

[1] County was previously listed in this appendix; however, population dropped to below 250,000 in the 1990 Census.

APPENDIX I TO PART 122.—COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000 BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF THE CENSUS

State	County	Unincorporated urbanized population
Alabama	Jefferson	78,608
Arizona	Pima	162,202
California	Alameda	115,082
	Contra Costa	131,082
	Kern	128,503
	Orange	223,081
	Riverside	166,509
	San Bernardino	162,202
Colorado	Arapahoe	103,248
Florida	Broward	142,329
	Escambia	167,463
	Hillsborough	398,593
	Lee	102,337
	Manatee	123,828
	Orange	378,611
	Palm Beach	360,553
	Pasco	148,907
	Pinellas	255,772
	Polk	121,528
	Sarasota	172,600
	Seminole	127,873
Georgia	Clayton	133,237
	Cobb	322,595
	Fulton	127,776
	Gwinnett	237,305
	Richmond	126,476
Kentucky	Jefferson	239,430
Louisiana	East Baton Rouge	102,539
	Parish	331,307
	Jefferson Parish	.....
Maryland	Howard	157,972
North Carolina	Cumberland	146,827
Nevada	Clark	327,618
Oregon	Multnomah [1]	52,923
	Washington	116,687
South Carolina	Greenville	147,464
	Richland	130,589
Virginia	Arlington	170,936
	Chesterfield	174,488
	Henrico	201,367
	Prince William	157,131
Washington	Pierce	258,530
	Snohomish	157,218

[1] County was previously listed in this appendix; however, population dropped to below 100,000 in the 1990 Census.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.25 by removing the word ''and'' at the end of paragraph (a)(37), by removing the period at the end of paragraph (a)(38) and adding a semicolon in its place, and by adding paragraphs (a)(39) through (a)(45) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(39) § 122.30 (What are the objectives of the storm water regulations for small MS4s?);

(40) § 122.31 (For Indian Tribes only) (As a Tribe, what is my role under the NPDES storm water program?);

(41) § 122.32 (As an operator of a small MS4, am I regulated under the NPDES storm water program?);

(42) § 122.33 (If I am an operator of a regulated small MS4, how do I apply for an NPDES permit? When do I have to apply?);

(43) § 122.34 (As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?);

(44) § 122.35 (As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?); and

(45) § 122.36 (As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?).

* * * * *

3. Add § 123.35 to subpart B to read as follows:

§ 123.35 As the NPDES Permitting Authority for regulated small MS4s, what is my role?

(a) You must comply with the requirements for all NPDES permitting authorities under Parts 122, 123, 124, and 125 of this chapter. (This section is meant only to supplement those requirements and discuss specific issues related to the small MS4 storm water program.)

(b) You must develop a process, as well as criteria, to designate small MS4s other than those described in § 122.32(a)(1) of this chapter, as regulated small MS4s to be covered under the NPDES storm water discharge control program. This process must include the authority to designate a small MS4 waived under paragraph (d) of this section if circumstances change. EPA may make designations under this section if a State or Tribe fails to comply with the requirements listed in this paragraph. In making designations of small MS4s, you must:

(1)(i) Develop criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(ii) Guidance: For determining other significant water quality impacts, EPA recommends a balanced consideration of the following designation criteria on a watershed or other local basis: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to waters of the United States, and ineffective protection of water quality by other programs;

(2) Apply such criteria, at a minimum, to any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000;

(3) Designate any small MS4 that meets your criteria by December 9, 2002. You may wait until December 8, 2004 to apply the designation criteria on a watershed basis if you have developed a comprehensive watershed plan. You may apply these criteria to make additional designations at any time, as appropriate; and

(4) Designate any small MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the NPDES storm water program.

(c) You must make a final determination within 180 days from receipt of a petition under § 122.26(f) of this chapter (or analogous State or Tribal law). If you do not do so within that time period, EPA may make a determination on the petition.

(d) You must issue permits consistent with §§ 122.32 through 122.35 of this chapter to all regulated small MS4s. You may waive or phase in the requirements otherwise applicable to regulated small MS4s, as defined in § 122.32(a)(1) of this chapter, under the following circumstances:

(1) You may waive permit coverage for each small MS4s in jurisdictions with a population under 1,000 within the urbanized area where all of the following criteria have been met:

(i) Its discharges are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4 (see paragraph (b)(4) of this section); and

(ii) If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which it discharges, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established ''total maximum daily load'' (TMDL) that address the pollutant(s) of concern.

(2) You may waive permit coverage for each small MS4 in jurisdictions with a population under 10,000 where all of the following criteria have been met:

(i) You have evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4 eligible for such a waiver.

(ii) For all such waters, you have determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern.

(iii) For the purpose of paragraph (d)(2)(ii) of this section, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4.

(iv) You have determined that current and future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(v) Guidance: To help determine other significant water quality impacts, EPA recommends a balanced consideration of the following criteria on a watershed or other local basis: discharge to sensitive waters, high growth or growth potential, high population or commercial density, significant contributor of pollutants to waters of the United States, and ineffective protection of water quality by other programs.

(3) You 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. Under this approach, you must develop and implement a schedule to phase in permit coverage for approximately 20 percent annually of all small MS4s that qualify for such phased-in coverage. Under this option, all regulated small MS4s are required to have coverage under an NPDES permit by no later than March 8, 2007. Your schedule for phasing in permit coverage for small MS4s must be approved by the Regional Administrator no later than December 10, 2001.

(4) If you choose to phase in permit coverage for small MS4s in jurisdictions with a population under 10,000, in accordance with paragraph (d)(3) of this section, you may also provide waivers in accordance with paragraphs (d)(1) and (d)(2) of this section pursuant to your approved schedule.

(5) If you do not have an approved schedule for phasing in permit coverage, you must make a determination whether to issue an NPDES permit or allow a waiver in accordance with paragraph (d)(1) or (d)(2) of this section, for each eligible MS4 by December 9, 2002.

(6) You must periodically review any waivers granted in accordance with paragraph (d)(2) of this section to determine whether any of the information required for granting the waiver has changed. At a minimum, you must conduct such a review once every five years. In addition, you must consider any petition to review any waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed.

(e) You must specify a time period of up to 5 years from the date of permit issuance for operators of regulated small MS4s to fully develop and implement their storm water program.

(f) You must include the requirements in §§ 122.33 through 122.35 of this chapter in any permit issued for regulated small MS4s or develop permit limits based on a permit application submitted by a regulated small MS4. (You may include conditions in a regulated small MS4 NPDES permit that direct the MS4 to follow an existing qualifying local program's requirements, as a way of complying with some or all of the requirements in § 122.34(b) of this chapter. See § 122.34(c) of this chapter. Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of § 122.34(b) of this chapter.)

(g) If you issue a general permit to authorize storm water discharges from small MS4s, you must make available a menu of BMPs to assist regulated small MS4s in the design and implementation of municipal storm water management programs to implement the minimum measures specified in § 122.34(b) of this chapter. EPA plans to develop a menu of BMPs that will apply in each State or Tribe that has not developed its own menu. Regardless of whether a menu of BMPs has been developed by EPA, EPA encourages State and Tribal permitting authorities to develop a menu of BMPs that is appropriate for local conditions. EPA also intends to provide guidance on developing BMPs and measurable goals and modify, update, and supplement such guidance based on the assessments of the NPDES MS4 storm water program and research to be conducted over the next thirteen years.

(h)(1) You must incorporate any additional measures necessary to ensure effective implementation of your State or Tribal storm water program for regulated small MS4s.

(2) Guidance: EPA recommends consideration of the following:

(i) You are encouraged to use a general permit for regulated small MS4s;

(ii) To the extent that your State or Tribe administers a dedicated funding source, you should play an active role in providing financial assistance to operators of regulated small MS4s;

(iii) You should support local programs by providing technical and programmatic assistance, conducting research projects, performing watershed monitoring, and providing adequate legal authority at the local level;

(iv) You are encouraged to coordinate and utilize the data collected under several programs including water quality management programs, TMDL programs, and water quality monitoring programs;

(v) Where appropriate, you may recognize existing responsibilities among governmental entities for the control measures in an NPDES small MS4 permit (see § 122.35(b) of this chapter); and

(vi) You are encouraged to provide a brief (e.g., two page) reporting format to facilitate compiling and analyzing data from submitted reports under § 122.34(g)(3) of this chapter. EPA intends to develop a model form for this purpose.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Revise § 124.52(c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see § 122.26(a)(1)(v), (c)(1)(v), and (a)(9)(iii) of this chapter), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

[FR Doc. 99–29181 Filed 12–7–99; 8:45 am]

BILLING CODE 6560–50–P

APPENDIX B

ADEQ GENERAL PERMIT NO. AZG2002-002, DECEMBER 19, 2002

Permit No. AZG2002-002

STATE OF ARIZONA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
PHOENIX, ARIZONA 85012-2809

ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR DISCHARGE FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) TO WATERS OF THE UNITED STATES

In compliance with the provisions of the Arizona Pollutant Discharge Elimination System program, (Arizona Revised Statutes, Title 49, Chapter 2, Article 3.1 and Arizona Administrative Code, Title 18, Chapter 9, Articles 9 and 10), this general permit authorizes discharges certified under this general permit from those locations specified throughout the state of Arizona to waters of the United States. These discharges shall be in accordance with the conditions of this general permit.

This permit only authorizes discharges from those operators of small municipal separate storm sewer systems in Arizona who submit a complete Notice of Intent in accordance with Parts III and V of this general permit and who comply with the permit requirements and conditions of Parts IV and VI. All discharges authorized by this general permit shall be consistent with the terms and conditions of this general permit.

This general permit becomes effective on December 19, 2002.

This general permit and the authorization to discharge expire at midnight, December 19, 2007.

Issued this 19th day of DEC. 2002.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Karen Smith, Director
Water Quality Division

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PART I. COVERAGE UNDER THIS GENERAL PERMIT

A. Permit Area. This permit covers the state of Arizona, except for Indian Country.

B. Eligibility.

1. This permit authorizes the discharge of stormwater from small municipal separate storm sewer systems (MS4s) provided that the permittee complies with all the requirements of this general permit and the MS4:

   a. Is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census, or

   b. Is designated for permit authorization by the Department under R-18-9-A902(D)(1), R18-9-A902(D)(2), R-18-9-A902(E), and R18-9-A905(A)(1)(f) which incorporates 40 CFR 122.32.

C. Non-Stormwater Discharges.

1. The permittee shall prohibit all types of non-stormwater discharges into its MS4 unless the discharges are authorized by a separate NPDES or AZPDES permit or not prohibited under Part I, Section C.2 or are identified by the permittee as occasional incidental non-stormwater discharges under Part V, Section B.3.a.ii.

2. The following categories of non-stormwater discharges (occurring within the jurisdiction of the permittee) are only prohibited if the discharges are identified as significant contributors of pollutants to or from the MS4. If any of the following categories of discharges are identified as a significant contributor, the permittee must address the category as an illicit discharge as specified in Part V, Section B.3:

   a. Water line flushing,

   b. Landscape irrigation,

   c. Diverted stream flows,

   d. Rising ground waters,

   e. Uncontaminated ground water infiltration,

   f. Uncontaminated pumped groundwater,

   g. Discharges from potable water sources,

   h. Foundation drains,

   i. Air conditioning condensate,

   j. Irrigation water,

   k. Springs,

   l. Water from crawl space pumps,

   m. Footing drains,

   n. Lawn watering,

o. Individual residential car washing,

p. Discharges from riparian habitats and wetlands,

q. Dechlorinated swimming pool discharges,

r. Street wash water, and

s. Discharges or flows from emergency fire fighting activities.

D. Limitations of Coverage. This general permit does not authorize:

1. Discharges mixed with sources of non-stormwater unless the non-stormwater discharges:

a. Comply with a separate NPDES or AZPDES permit, or

b. Are determined not to be a significant contributor of pollutants to waters of the United States;

2. Stormwater discharges associated with industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi);

3. Stormwater discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15);

4. Stormwater discharges currently covered under another permit;

5. Discharges to impaired waterbodies listed under section 303(d) of the Clean Water Act (CWA) if discharges from the MS4 contain, or may contain, pollutant(s) for which the waterbody is listed except:

a. If a TMDL has been established, and the stormwater management program (SWMP) is consistent with the requirements of the TMDL, including any wasteload allocation or load allocation in the TMDL. The SWMP must also identify BMPs the permittee will use to meet wasteload allocations or load allocations and include monitoring for associated pollutant(s); and

b. If a TMDL has not been established, and the SWMP includes a section describing how the program will control the discharge of 303(d) listed pollutants and ensure to the maximum extent practicable that discharges from the MS4 will not cause or contribute to exceedances of surface water quality standards. The SWMP must also identify BMPs the permittee will use to control discharges and include monitoring of their effectiveness;

6. Discharges that do not comply with Arizona's anti-degradation rule (R18-11-107). The anti-degradation rule may be obtained from the Department's Phoenix office or from the Department's Web site.

PART II. AUTHORIZATION UNDER THIS GENERAL PERMIT

A. Application for Coverage.

1. An applicant seeking authorization to discharge under this general permit shall submit to the Department a complete notice of intent (NOI), in accordance with the deadlines in Part III, Section A. The NOI must include the information and attachments required by Part III,

Section B.

If the Department notifies an applicant (either directly, by public notice, or by making information available on the Internet) of other NOI options that become available at a later date, such as electronic submission of forms or information, the applicant may take advantage of those options to satisfy the NOI submittal requirements.

2. If an operator changes or a new operator is added after an NOI has been submitted, the permittee shall submit a new or revised NOI to the Department.

3. A discharger who submits a complete NOI and meets the eligibility requirements in Part I may discharge stormwater from a small MS4 under the terms and conditions of this general permit 30 days after the date the NOI is received by the Department. For the purposes of this permit, receipt is the day the fax was sent, the day the NOI was hand-delivered to the Department, or the day the Department signed certified mail containing the NOI. Submission of the NOI demonstrates the discharger's intent to be covered by this permit; it is not a determination by the Department that the discharger has met the eligibility requirements for the permit.

4. If the Department notifies the applicant of deficiencies or inadequacies in any portion of the NOI (including the stormwater management program), the applicant must correct the deficient or inadequate portions and submit a written statement to the Department certifying that appropriate changes have been made. The certification must be submitted within the time-frame specified by the Department and must specify how the NOI has been amended to address the identified concerns.

B. Terminating Coverage.

1. A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is signed.

2. A permittee shall submit an NOT to the Department within 30 days after the permittee:

   a. Ceases discharging stormwater from the MS4,

   b. Ceases operations at the MS4, or

   c. Transfers ownership of or responsibility for the facility to another operator.

3. The NOT form can be obtained from the Department and must include the following information:

   a. Name, mailing address, and location of the MS4 for which the notification is submitted;

   b. The name, address and telephone number of the operator addressed by the NOT;

   c. The NPDES or AZPDES permit number for the MS4;

   d. An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the stormwater discharges have been eliminated; and

   e. The following certification:

I certify under penalty of law that all stormwater discharges from the identified MS4 that are authorized by an AZPDES general permit have been eliminated, or that I am no longer the operator of the MS4, or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination I am no longer authorized to discharge stormwater under this general permit, and that discharging pollutants in stormwater to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an AZPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

f. NOTs, signed in accordance with Part VI, Section L , must be sent to the Department at the following address:

Small MS4 NOT
Surface Water Permits Unit (5415 B)
Arizona Department of Environmental Quality
1110 West Washington
Phoenix, AZ 85007

PART III. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for Notification.

1. MS4s automatically designated under R18-9-A905(A)(1)(f) are required to submit an NOI and a stormwater management program or apply for an individual permit by March 10, 2003.

2. MS4s designated under R18-9-A902(D)(1), R18-9-A902(D)(2), or R18-9-A902(E) are required to submit an NOI and a stormwater management program within 180 days of notice (unless the Department provides additional time in the designation notice).

3. New MS4s and New Operators

   a. For new MS4s within urbanized areas which commence discharges subsequent to March 10, 2003, the NOI must be submitted not later than 30 days prior to commencing discharges.

   b. For new operators of an existing MS4, the NOI must be submitted not later than two days prior to taking operational control of the MS4.

4. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is granted. The Department reserves the right to take appropriate enforcement actions for any unpermitted discharges.

B. Contents of Notice of Intent. An applicant eligible for coverage under this general permit shall submit an NOI to discharge under this general permit. The NOI shall contain the following information:

1. The name, mailing address, and telephone number of the municipal entity applying;

2. An indication of whether the applicant is a federal, state, or other public entity;

3. The urbanized area or core municipality (if not located in an urbanized area) where the small MS4 is located; the county(ies) where the small MS4 is located, and the latitude and longitude of the approximate center of the small MS4;

4. The name of the major receiving water(s) and an indication of whether any of the receiving

waters are on the latest CWA section 303(d) list of impaired waters. If the small MS4 discharges to any 303(d) listed waters, include a certification that the SWMP meets the requirements of Part I, Section D.5;

5. An indication of whether all or a portion of the small MS4 is located in Indian country;

6. If the applicant is relying on another governmental entity to satisfy one or more permit obligations (see Part V, Section D), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;

7. The name and work position or title of the contact person;

8. The signature of the certifying official, signed in accordance with the signatory requirements of Part VI, Section L; and

9. A stormwater management program (SWMP), including best management practices (BMPs) that will be implemented and the measurable goals for each of the stormwater minimum control measures specified in Part V, Section B., the month and year in which the applicant will start and fully implement each of the minimum control measures or the frequency of the action, and the name of the person(s) responsible for implementing or coordinating the SWMP.

10. The following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition I certify that the permittee will comply with all terms and conditions stipulated in General Permit No. AZG2002-002 issued by the Director.

C. Where to Submit. The applicant shall submit the signed NOI to the Department at the following address:

Small MS4 NOI
Surface Water Permits Unit, 5415B
Arizona Department of Environmental Quality
1110 West Washington
Phoenix, AZ 85007

D. Co-Permittees Under a Single NOI.

Any small MS4 that meets the requirements of Part I of this general permit may choose to partner with another regulated MS4 to develop and implement a SWMP. The MS4s may also jointly submit one NOI. If responsibilities are being shared as provided in Part V, Section D , the SWMP must describe which permittees are responsible for implementing each of the minimum measures. All small MS4 permittees are subject to the provisions in Part V, Section E.

PART IV. SPECIAL CONDITIONS

Total Daily Maximum Loads (TMDLs) Allocations Established after Permit Issuance. If a TMDL is established for any waterbody into which the permittee discharges prior to the date that the permittee or applicant submits an NOI, and if that TMDL includes a wasteload allocation or load allocation for a parameter likely to be

discharged by the MS4, the permittee must meet the requirements of the TMDL and/or its associated implementation plan. If a TMDL is approved for any waterbody into which the permittee discharges afer the date that the permittee or applicant submits an NOI, the Department may require revisions to the SWMP to ensure that the wasteload allocation, load allocation and/or the TMDL's associated implementation plan will be met. Monitoring of the discharges may also be required, as appropriate, to ensure compliance with the TMDL.

PART V. STORMWATER MANAGEMENT PROGRAM (SWMP)

A. General Requirements. An applicant shall develop, and a permittee shall implement, and enforce a SWMP designed to reduce the discharge of pollutants from a small MS4 to the maximum extent practicable (MEP) to protect water quality. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions the Department determines appropriate for the control of pollutants.

1. A permittee must fully implement the SWMP, including its measurable goals, no later than December 19, 2007 (except as provided under Part V, Section A.2).

2. If a permittee is required to obtain permit coverage after March 10, 2003, the permittee shall implement the SWMP, including its measurable goals, for the period between the date of authorization to discharge and the expiration date of this permit. For example, if the permittee was authorized to discharge under this permit on March 10, 2006 the measurable goals established in the SWMP for the period between 2006 and the expiration date of this general permit must be met.

3. The SWMP shall address each of the minimum control measures of Part V, Section B and must include measurable goals, including interim milestones, for each BMP, including as appropriate, the months and years in which the MS4 will undertake the required actions and the frequency of the action. The name and title of the person or persons responsible for implementing the SWMP shall also be included.

4. The permittee shall protect water quality by ensuring, to the maximum extent practicable, that no discharge shall cause or contribute to an exceedance of applicable water quality standard. To do so, the permittee shall fully implement all SWMP and permit requirements in accordance with the established time frames.

B. Minimum control measures.

1. Public Education and Outreach on Stormwater Impacts. The permittee or applicant, as applicable, shall:

a. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of stormwater discharges on waterbodies and the steps that the public can take to reduce pollutants in stormwater runoff.;

b. Include the following information in the SWMP:

i. A description of the education program and outreach activities;

ii. A description of the methods for disseminating information;

iii. The target audiences and target pollutants and sources that the applicant will address in the program, and how they were selected;

iv. An estimation of the number of people with whom the applicant intends to communicate;

v. A list of measurable goals for the public education and outreach program;

vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals

vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the education activities.

2. Public Involvement/Participation. The permittee or applicant, as applicable, shall:

a. Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP;

b. Comply with state and local public notice requirements when implementing the public involvement/participation program.

c. Include the following information in the SWMP:

i. A description of the general plan for informing the public of involvement and participation opportunities;

ii. The types of activities for public involvement that the program will include and the target audiences;

iii. A description of the procedure for receiving and reviewing public comments;

iv. An explanation of how interested parties may access the SWMP and NOI;

v. A list of measurable goals for the public involvement/participation program;

vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals and;

vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the public involvement/participation activities.

3. Illicit Discharge Detection and Elimination. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4, except those discharges listed below:

i. Non-stormwater discharges as listed in Part I, Section C.2 ; This exception does not apply to those categories of discharge which the permittee or applicant has determined to be a significant contributor of pollutants to the small MS4; or

ii. Occasional incidental non-stormwater discharges (e.g. non-commercial or charity car washes, etc.) that the permittee does not expect (based on information available to the permittee) to be a significant contributor of pollutants to the small MS4 because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the small MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.).

b. Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

c. To the extent allowable under state or local law, effectively prohibit through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

d. Develop and implement a plan to detect, identify the source of, and address non-stormwater discharges, including illegal dumping, to the system;

e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;

f. Conduct dry weather field screening for non-stormwater flows. The screening must include qualitative field tests based on color, odor, or visually observed characteristics as indicators of discharge sources. If the qualitative field tests do not provide enough information for the permittee to determine the source of the discharge, the permittee must test the discharge, while in the field, for selected chemical parameters. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up investigation with an action to further study the source of the discharge or eliminate it.

g. Include the following information in the SWMP:

i. A description of detection methods;

ii. A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.

iii. A description of enforcement policy and jurisdiction;

iv. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.i;

v. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.ii;

vi. The methods for informing/training employees about illicit discharges;

vii. The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;

viii. A list of measurable goals for the illicit detection and elimination program;

ix. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and

x. The name(s) and title(s) of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.

4. Construction Site Stormwater Runoff Control. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for

stormwater discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites;

b. Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. This ordinance must apply, at a minimum, to those sites described in Part V, Section B.4.a.

c. Review all site plans for those sites described in Part V, Section B.4.a. for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V, Section B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and, verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;

d. Develop and implement procedures for site inspection and enforcement of control measures for those sites described in Part V, Section B.4.a.;

e. Include the following information in the SWMP:

i. A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and ensure proper management of wastes on construction sites per Part V, Section 4.b. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

ii. A description of the sanctions and enforcement mechanism(s) to ensure compliance;

iii. A description of the procedures for site inspection and enforcement of control measures, and procedures for site plan reviews;

iv. Procedures for receipt, acknowledgment and consideration of information submitted by the public,

v. A list of measurable goals for the construction site runoff control program;

vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and

vii. The name(s) and title(s) of the person(s) responsible for overseeing construction site runoff control activities.

5. Post-Construction Stormwater Management in New Development and Redevelopment. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;

b. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;

c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4;

d. Ensure adequate long-term operation and maintenance of BMPs; and

e. Include the following information in the SWMP:

i. A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community;

ii. A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

iii. A description of the procedure to ensure compliance with local requirements;

iv. A description of the education program for developers, architects and the public about project designs that minimize water quality impacts;

v. An identification of the measurable goals for the post-construction runoff control program;

vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and

vii. The name(s) and title(s) of the person(s) responsible for the development, implementation, and enforcement of post-construction stormwater management.

6. Pollution Prevention/Good Housekeeping for Municipal Operations. The permittee or applicant, as applicable, shall:

a. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance. The permittee shall address the following topics in the program:

i. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4;

ii. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand storage locations and snow disposal areas; and

iii. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris.

b. Include the following information in the SWMP:

i. A list of the municipal operations impacted by this operation and maintenance program;

ii. A description of the training program for municipal employees

iii. A list of measurable goals for the municipal pollution prevention program;

iv. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and

v. The name(s) and title(s) of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.

C. Qualifying State or Local Program. The permittee may substitute the BMPs and measurable goals of an existing stormwater pollution control program to qualify for compliance with one or more of the minimum control measures if the existing measure meets the requirements of the minimum control measure as established in Part V, Section B.

D. Sharing Responsibility. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. A permittee may rely on another entity only if:

1 The other entity, in fact, implements the control measure;

2. The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;

3. The other entity agrees to implement the control measure on the permittee's behalf. Written acceptance of this obligation is expected. The permittee shall maintain this obligation as part of the SWMP description. If the other entity agrees to report on the minimum measure, the permittee shall supply the other entity with the reporting requirements in Part V, Section G of this general permit. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component.

E. Reviewing and Updating SWMPs.

1. The permittee shall annually review the SWMP in conjunction with preparation of the annual report required under Part V, Section G.

2. The permittee may change the SWMP during the life of the permit according to the following procedures:

a. Changes adding (but not subtracting) components, controls, or requirements to the SWMP may be made at any time upon written notification to the Department;

b. Changes replacing an ineffective or infeasible management practice specifically identified in the SWMP with an alternate management practice may be made at any time, as long as the permittee submits a written analysis to the Department explaining why the management practice is ineffective or infeasible (including cost prohibitive), and why the replacement management practice is expected to achieve the goals of the management practice to be replaced;

c. Change notifications must be signed in accordance with Part VI, Section L;

3. The Department may notify a permittee that changes to the SWMP are necessary:

   a. To address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;

   b. To include more stringent requirements necessary to comply with new federal or state statutory or regulatory requirements; and

   c. If, at any time, the Department determines that the SWMP does not meet permit requirements.

4. The notification described above in Part V, Section E.3 will need to be addressed by the permittee in one of the following manners:

   a. If the Department specifies changes that are to be made to the SWMP (including changes in implementation schedules), the permittee shall, within 60 days (or a later date if provided by the Department) certify that it has made changes as required by the Department. Changes must go into effect 30 days from the date the permittee certifies that changes have been made to the SWMP.

   b. If the permittee proposes an alternative to the Department's required change (including changes in implementation schedule), the proposed alternative must be received by the Department within 60 days of notification of the required change. If the Department approves the proposed alternative, the changes to the SWMP must go into effect 30 days from the date the Department approved the proposal. If the Department does not approve the proposed alternative, the permittee must make changes to the SWMP as specified by the Department. Certification that changes have been made to the SWMP must be received within 60 days of the date the permittee received notification that the proposal had been rejected. Changes must go into effect 30 days from the date the permittee certifies that changes have been made to the SWMP.

5. Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP in all new areas added to the permittee's portion of the MS4 (or for which the permittee becomes responsible for implementation of stormwater quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

   a Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee must have a plan for implementing the SWMP in all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP must be included in the annual report.

   b. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the SWMP and not modifications to the permit.

F. Monitoring.

1. The permittee must evaluate program compliance, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been established, the permittee must monitor to determine if the stormwater controls are adequate to maintain compliance with the MS4's

wasteload allocation or load allocation. If the permittee discharges to a 303(d) listed water that contains, or may contain, pollutant(s) for which the waterbody is listed, the permittee must monitor to determine if BMPs are effective to control discharges of pollutants of concern.

2. If the permittee conducts analytical monitoring at the permitted small MS4, the permittee must comply with the following:

   a. *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

   b. *Test Procedures.* Monitoring results shall be conducted according to test procedures approved in R18-9-A905(B) or other test procedures mutually agreed upon by the Director and the permittee or applicant.

   c. *Discharge Monitoring Report*. Monitoring results must be reported on a Discharge Monitoring Report (DMR) when monitoring is performed in accordance with a TMDL requirement.

3. Records of analytical monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The names(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The name(s) of the individual(s) who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

4. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

G. Annual Reports.

1. The permittee must submit annual reports to the Department for each year of the permit term. The first report is due September 30, 2004, covering the activities of the permittee during the period beginning on the effective date of the permit for the permittee and ending June 30, 2004. Subsequent annual reports are due on September 30 of each year following 2004 during the remainder of the term of the permit and must cover the activities of the permittee for the previous year up to and including June 30. The report must include:

   a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP and protecting water quality, and the measurable goals for each of the minimum control measures,

   b. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

   c. Any changes made to the SWMP since the last annual report and a summary of the

stormwater activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

d. Proposed changes to the stormwater management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;

e. A description of BMPs to be implemented within new areas annexed over the past year that are located within the regulated boundaries of the MS4;

f. A description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and

g. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).

2. Where to Submit. Annual reports shall be signed in accordance with Part VI, Section L.2 and sent to the Department at the following address:

Arizona Department of Environmental Quality
Compliance Data Unit
1110 West Washington
Phoenix, AZ 85007

PART VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply.

1. Failure to comply with any applicable term or condition of this permit shall be a violation of this permit and shall be grounds to enforcement action, permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.

2. The issuance of this general permit does not waive any federal, state, county, or local regulations or permit requirements with which a permittee discharging under this general permit is required to comply.

B. Duty to Reapply. If a permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

C. Continuation of an Expired General Permit.

1. If the Director does not reissue this general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.

2. Any permittee granted general permit coverage before the expiration date automatically remains covered by the continued general permit until the earlier of:

a. Reissuance or replacement of the general permit, at which time the permittee shall comply with the NOI conditions of the new general permit to maintain authorization to discharge; or

b. The date the permittee has submitted a Notice of Termination; or

c. The date the Director has issued an individual permit for the discharge; or

d. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

3. Upon reissuance of a new general permit, the permittee shall file an NOI, within 60 days of the effective date of the new general permit.

D. Need to Halt or Reduce an Activity Is Not a Defense. It is not a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

E. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

F. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the conditions of the permittee's SWMP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. Permit actions.

1. This general permit may be reopened (in accordance with A.A.C. R18-9-A905(3)(a) which incorporates 40 CFR 122.41(f)) to address any changes in state or federal plans, policies, or regulations that would affect the quality requirements for the discharge.

2. This general permit may be modified by the Director before the expiration date to include discharge or receiving water limitations for toxic constituents determined to be present in significant amounts in the discharge.

3. This general permit may be modified, revoked and reissued, or terminated for cause.

4. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

H. Property Rights. The issuance of this general permit does not convey any property rights or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, Indian tribe, or local laws or regulations.

I. Duty to Provide Information. The permittee must promptly furnish the Department with the following information:

1. Upon request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit, or to determine compliance with this general permit.

2. Upon request, copies of records required by this general permit.

3. In the event that the permittee becomes aware that the permittee failed to submit any relevant facts in the NOI or submitted incorrect information in the NOI or in any other report to the Department, such facts or information.

J. Inspection and Entry. The permittee shall allow the Director or the Director's designee, upon presentation of credentials and other documents as required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this general permit;

2. Have access to and copy, at reasonable times, any records required by this general permit;

3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and

4. Sample or monitor, at reasonable times, to assure permit compliance or as otherwise authorized under A.R.S. Title 49, Chapter 2, Article 3.1, and A.A.C. Title 18, Chapter 9, Articles 9 and 10, any substances or parameters at any location.

K. Recordkeeping.

1. The permittee shall retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES or AZPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended at the request of the Department at any time.

2. The permittee shall submit its records to the Department only when specifically asked to do so. The permittee must retain the SWMP required by this permit (including a copy of the permit language) at a location accessible to the Department. The permittee must make its records, including the notice of intent (NOI) and the SWMP, available to the public.

L. Signatory Requirements. All NOIs, NOTs, reports required by the general permit, and other information requested by the Director shall be signed as follows:

1. NOIs and NOTs:

a. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official.

2. Reports and other information.

a. All reports required by this general permit and other information requested by the Department or authorized representative of the Department shall be signed by a person described in Part VI, Section L.1 or by a duly authorized representative of that person.

b. A person is a duly authorized representative only if the authorization is made in writing by a person described in Part VI, Section L.1. The authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the permittee.

3. Changes to Authorization. If the information on the NOI filed for general permit coverage is no longer accurate because a different operator has responsibility for the overall operation of the facility, a new authorization satisfying the requirement of Part VI, Section L.2.b. above must be submitted to the Department prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

4. Certification. Any person (as defined above in Part VI, Sections L.2.a and L.2.b) signing documents under this Section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

M. Reporting.

1. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

2. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements that may be necessary to comply with the permit. (In some cases, modification or revocation and reissuance is mandatory.)

3. Other information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the Director, the permittee shall promptly submit the facts or information.

N. Severability. The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of this general permit shall not be affected.

O. Requiring Coverage Under an Individual Permit.

1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:

   a. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

   b. Effluent limitation guidelines are promulgated for point sources covered by the general permit;

   c. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;

   d. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

   e. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:

      i. The location of the discharge with respect to waters of the United States,

      ii. The size of the discharge,

      iii. The quantity and nature of the pollutants discharged to waters of the United States, and

      iv. Any other relevant factor.

2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:

   a. A brief statement of the reasons for the decision,

   b. An application form,

   c. A statement setting a deadline to file the application,

   d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,

   e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and

   f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

3. The discharger shall apply for an individual permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.

4. If the permittee fails to submit the individual permit application within the time period established in Part V, Section Q.3, the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.

5. Coverage under the general permit shall continue until an individual permit is issued unless the general permit coverage is terminated under Part V, Section Q.4.

P. Request For an Individual Permit.

1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.

   a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than March 10, 2003.

   b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.

2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Q. Other Environmental Laws. No condition of this general permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations. For example, this permit does not authorize the "take" of endangered or threatened species as prohibited by section 9 of the Endangered Species Act, 16 U.S.C. 1538. Information regarding the location of endangered and threatened species and guidance on what activities constitute a "take" are available from the U.S. Fish and Wildlife Service.

PART VII. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS

Any permit noncompliance constitutes a violation and is grounds for an enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

A. Civil Penalties. A.R.S. § 49-262(C) provides that any person who violates any provision of A.R.S. Title 49, Chapter 2, Article 2, 3 or 3.1 or a rule, permit, discharge limitation or order issued or adopted under A.R.S. Title 49, Chapter 2, Article 3.1 is subject to a civil penalty not to exceed $25,000 per day per violation.

B. Criminal Penalties. Any a person who violates a condition of this general permit, or violates a provision under A.R.S. Title 49, Chapter 2, Article 3.1, or A.A.C. Title 18, Chapter 2, Articles 9 and 10 is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

PART VIII. DEFINITIONS

In addition to the definitions contained in A.R.S. 49-255 and A.A.C. R18-9-A901, all definitions contained in section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the event of a conflict, the definition found in the statute or regulation takes precedence.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

Department as used in this permit, means the Arizona Department of Environmental Quality.

Discharge when used without qualification means the discharge of a pollutant,

Discharge of a Pollutant means
1. Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or
2. Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Discharge-related activities include: activities which cause, contribute to, or result in stormwater point source pollutant discharges; and measures to control stormwater discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent stormwater pollution.

Facility means any NPDES or AZPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES or AZPDES program.

Illicit connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES or AZPDES permit (other than the NPDES or AZPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities,

Indian country means:
1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
2. All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Large or Medium Municipal Separate Storm Sewer System means all municipal separate storm sewers as defined at 40 CFR 122.26(b)(4) or (7)

MEP means maximum extent practicable, the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges. A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and other provisions that the state determines appropriate for the control of such pollutants.

Measurable goal means a quantitative measure of progress in implementing a component of a stormwater management program.

MS4 means municipal separate storm sewer system.

Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

NOI means Notice of Intent to be covered by this permit (see Part II).

NOT means Notice of Termination.

Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States,

Owner or operator means the owner or operator of any facility or activity subject to regulation under the NPDES program.

Point source means any discernible, confined, and discrete conveyance, including but not limited to,

any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant is defined at R18-9-A901(22). A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

Significant contributors of pollutants means any discharge that causes or could cause or contribute to a violation of surface water quality standards.

Small Municipal Separate Storm Sewer System all separate storm sewers that are:

1 Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, 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 CWA that discharges to waters of the United States;

2 Not defined as large or medium municipal separate storm sewer systems in accordance with this permit;

3 This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Stormwater means stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Management Program (SWMP) means a comprehensive program to manage the quality of stormwater discharged from the municipal separate storm sewer system.

Waters of the United States which is interchangeable with the term “navigable waters” means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
   a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
   b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
   c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

   Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423, which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the

purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

APPENDIX C

MARICOPA COUNTY GENERAL PERMIT NOI AND COVER LETTER SUBMITTED TO ADEQ, DECEMBER 2007

Maricopa County

Chairman Fulton Brock

Board of Supervisors
301 West Jefferson Street
10th Floor
Phoenix, AZ 85003-2143
Phone: 602-506-3571
Fax: 602-506-3328
www.maricopa.gov

December 19, 2007

Small MS4 NOI
Surface Water Permits Unit, 5415B
Arizona Department of Environmental Quality
1110 West Washington
Phoenix, AZ 85007

Re: Maricopa County's Notice of Intent for Coverage Under the Phase II General Permit for Small MS4s (AZG2002-002)

Dear Sir or Madame:

Please find enclosed Maricopa County's Notice of Intent (NOI) for coverage under Arizona's Pollutant Discharge Elimination System (AZPDES) Phase II General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (the "General Permit" for small MS4s). Also enclosed is Maricopa County's Stormwater Management Program (SWMP), originally submitted on March 10, 2003. Maricopa County will be working with ADEQ to update the SWMP, where necessary, and provide ADEQ with the updated copy when available.

As you may recall, Maricopa County submitted an individual permit application to ADEQ on March 10, 2003. It was Maricopa County's understanding that ADEQ would review the individual permit application and was, in several ADEQ responses to status inquests, informed that the application was under review. In effect, Maricopa County was relying on ADEQ's statements that the individual permit application was under review. In this vein, Maricopa County has been operating under the SWMP submitted with the March 10, 2003 individual permit application. (The SWMP attached as part of this submission is the SWMP originally filed with the individual permit application. Maricopa County will work with ADEQ to update the SWMP, if necessary, and provide an updated copy to ADEQ when it is available.)

Maricopa County first learned that ADEQ was not able to review the individual permit application due to lack of resources in June, 2006, and that, because ADEQ could not review the application, ADEQ recommended that Maricopa County seek coverage under the General Permit. In response, and in an effort to expedite ADEQ's review of the individual permit application, Maricopa County offered to pay for a consultant of ADEQ's choosing to review the application. Due to time constraints, ADEQ and Maricopa County became concerned that review of the individual permit application was no longer a viable option. Since that time, ADEQ

and Maricopa County have had several discussions concerning how to proceed forward.

Based on these discussions, both ADEQ and Maricopa County believe that the best way to move forward is to apply for coverage under the General Permit (AZPDES permit number AZG2002-002) and, within the required timeline, submit another individual permit application. Maricopa County continues to believe that some of the requirements set forth in the General Permit may not be appropriate to Maricopa County's MS4 given its somewhat unique position. Hence, Maricopa County is submitting this Notice of Intent and its Stormwater Management Program.

As always, Maricopa County looks forward to working with ADEQ in moving forward. Please give Stan Snitzer a call at (602) 506-6469 if I can be of assistance or if you have any questions.

Sincerely,

Fulton Brock
Chairman
Maricopa County Board of Supervisors
C-88-08-004-0-00

Enclosure

Cc: Mr. Patrick Cunningham, ADEQ, Deputy Director (without enclosure)
Ms. Joan Card, ADEQ, Director, Water Quality Division (without enclosure)

C-85-08-004-0-00

ALL REQUESTED INFORMATION MUST BE PROVIDED ON THIS FORM

Arizona Department of Environmental Quality
Surface Water Section / Permits Unit
1110 W. Washington, 5415A-1, Phoenix, Arizona 85007

NOTICE OF INTENT (NOI) FOR COVERAGE

under AZPDES Permit No. AZG2002-002 for
Discharges from Small MS4s to Waters of the United States

CHECK AS APPLICABLE: NEW NOI ✓ REVISED NOI ____
IF A REVISION, PROVIDE PRIOR AUTHORIZATION NO. ____

Applicant is:
____ Federal ____ State
✓ Other County

RECEIVED
DEC 19 2007
AZPDES

PERMITTEE (Agency Responsible for the Discharge)

Applicant's Name: Maricopa County Phone: (602) 506-3416
Applicant's Mailing Address: 301 W. Jefferson, 10th Floor
City: Phoenix, Arizona Zip Code: 85003

CONTACT PERSON

Name: Stan Snitzer Phone: (602) 506-6469
E-mail Address: ssnitzer@mail.maricopa.gov Fax: (602) 372-0631
Contact Person's Agency and Title: Maricopa County, Stormwater Quality Coordinator

LOCATION INFORMATION

Name of Urbanized Area where the MS4 is located: Phoenix-Mesa
Name of county(ies) where the MS4 is located: Maricopa
Provide the following information on the approximate center of the MS4:
Latitude: 33 ° 35 ' 17 " Longitude: 112 ° 08 ' 01 "
Township: 3N Range: 2E Section: 23
Is any portion of the MS4 located in Indian Country? No ✓ Yes ____ If yes, name ____
Does any portion of the MS4 service a population within Indian Country? No ✓ Yes ____
If yes, how many people within the Indian Country are served by your MS4? ____

Name(s) of neighboring Tribes/Counties/Cities/Towns (places that share borders with the permittee):

Avondale, Buckeye, Carefree	Litchfield Park, Mesa	Gila, La Paz, Pima, Pinal
Cave Creek, Chandler,	Paradise Valley, Peoria, Phoenix	Yuma and Yavapai Counties
El Mirage, Fountain Hills	Queen Creek, Scottsdale, Surprise	Fort McDowell Mohave-
Gila Bend, Gilbert, Glendale	Tempe, Tolleson, Wickenburg	Apache IC, Gila River IC and
Goodyear, Guadalupe,	Youngtown	Salt River Pima-Maricopa IC

WATERSHED INFORMATION

Name of Watershed: Middle Gila, Salt, Colorado/Lower Gila, Verde, Gila

Name of Receiving Water(s):	Is the Receiving Water a 303(d) Impaired Water?	
Gila River, Salt River	Yes ✓	No ____
Aqua Fria River, Cave Creek, New River	Yes ____	No ✓
Skunk Creek, Verde River, Hassayampa river	Yes ____	No ✓

If any of the receiving waters are 303 (d)-listed Impaired Waters, you must complete the Impaired Water Information portion of this form.

IMPAIRED WATERS INFORMATION

If you indicated that any of the receiving waters to which you discharge are listed as a 303 (d) Impaired Water, please answer the following questions.

Is there a Total Maximum Daily Load (TMDL) for the 303(d) Impaired Water?
Yes ____ Proceed to Part A No ✓ Proceed to Part B

Part A. Does the TMDL prescribe a wasteload allocation to stormwater discharge from your MS4?
Yes ____ Check the box below No ____ Proceed to Part B

____ *I certify that the SWMP identifies specific BMPs that will be used to meet wasteload allocations. I also certify that I will monitor for pollutants for which my MS4 is assigned a wasteload allocation.*

Part B. Check the box below if the MS4 has the potential to discharge the pollutants identified on the 303(d) list.

____ *I certify that the description of the SWMP addresses specific BMPs for reducing the discharge of 303(d)-listed pollutants.*

ADDITIONAL INFORMATION

This NOI must include the following attachments prepared as specified in Part III of the general permit.

✓ A description of your Stormwater Management Program.

Has another governmental entity agreed to satisfy any of your permit obligations?
Yes ____ If yes, check the boxes below No ✓

____ The agreement is explained in the description of your Stormwater Management Program.

____ Written documentation of your agreement is included as an attachment.

CERTIFICATION

This certification must be signed by the appropriate party as specified in this general permit Part VI.L.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition I certify that the permittee will comply with all terms and conditions stipulated in General Permit No. AZG2002-002 issued by the Director."

Printed Name of Applicant's Representative: FULTON BROCK Title: CHAIRMAN BOARD OF SUPERVISORS

Signature of Applicant's Representative: Fulton Brock Date: DEC 19 2007

APPENDIX D

ADEQ COMMENTS ON MARICOPA COUNTY STORMWATER MANAGEMENT PROGRAM, APRIL 11, 2008

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov

Janet Napolitano
Governor

Stephen A. Owens
Director

April 11, 2008

RECEIVED
APR 22 2008

Stan Snitzer
Stormwater Program Coordinator
1001 N. Central Ave., Suite 201
Phoenix, AZ 85004

RE: Maricopa County Stormwater Management Program

Dear Mr. Snitzer:

The Arizona Department of Environmental Quality (ADEQ) has completed its review of the Maricopa County Stormwater Management Program (SWMP). The SWMP (dated March 2003) was received by ADEQ on December 19, 2007.

It is important to note that the SWMP was originally prepared for application of an individual stormwater permit in lieu of coverage under Arizona's General Permit for Discharge from Small Municipal Separate Storm Sewer Systems to waters of the U.S. (AZG2002-002), Small MS4 General Permit. The County has since submitted a Notice of Intent to obtain coverage under the Small MS4 General Permit. Therefore, the SWMP must comply with the requirements of the Small MS4 General Permit.

Through its review, the Department identified several areas of the SWMP that do not meet the requirements of the Small MS4 General Permit. **Therefore, a revised SWMP addressing the items in this letter must be prepared and submitted to ADEQ within 30 days of receipt of this letter.**

I. BEST MANAGEMENT PRACTICES AND MEASURABLE GOALS:
Several of the "BMPs" identified in the County's SWMP are restatement of the permit requirements and do not qualify as BMPs. Best Management Practices (BMPs) are specific practices used to implement the required six Minimum Control Measures (MCMs).

The following are some MCMs and BMPs identified in your SWMP and examples of BMPs and measurable goals for satisfying the requirements of the permit. Measurable goals more fully develop the planned BMPs and include steps for implementation. Measureable Goals need to include numerics, such as a reportable quantity or frequency and timelines used to assess and track implementation of BMPs, as required by the Small MS4 General Permit, and in accordance with 40 CFR 122.34(d).

Note the following 'examples' are only examples, and Maricopa County needs to determine and propose appropriate and applicable BMPs and Measureable Goals. Note also, there are typically several BMPs needed for each Minimum Control Measure. The County must propose an appropriate number of BMPs for each of the MCMs.

MCM 1:	Public Education and Outreach -- SWMP page 4-3
SWMP BMP 1:	Develop and Maintain a Targeted Education Plan (Permit Part V.B.1.a.)
SWMP BMP 2:	Procure, Obtain and Distribute Stormwater Educational Materials to County Residents (Permit Part V.B.1.a.)
Example BMP:	Public education radio campaign on stormwater.
Measurable Goal:	The County will produce and air 30-second public service announcement on stormwater and what the public can do to prevent stormwater impacts. Radio ad will air at least once a week for the first two years of permit term. County will conduct a follow-up survey in year 3 to ascertain behavioral changes in target audiences.
MCM 2:	Public Involvement/Participation – SWMP pages 4-6 and 4-7
SWMP BMP 1:	Compliance with Public Notice Requirements (Permit Part V.B.2.b.)
SWMP BMP 3:	Public Hearing on the SWMP (Permit Part V.B.2.b.)
Example BMP:	Organize and conduct volunteer cleanup of stormwater system
Measurable Goals:	County will conduct 2 volunteer activities per year with X number of volunteers needed for each cleanup activity. X number of miles will be cleaned, and X number of storm drains and outfalls will be inspected and cleaned each year through this activity.

Other permit requirements identified in the SWMP as "BMPs" include:

Minimum Control Measure 3:

- Development of a County Regulation Prohibiting Illicit Discharges to the Stormwater System (Permit Part V.B.3.a.)
- Development of a Storm Sewer Map Showing all Outfalls (Permit Part V.B.3.b.)
- Develop and Distribute Illicit Discharge Educational Materials (Permit Part V.B.3.e.)

Minimum Control Measure 4:

- Evaluate existing County inspection programs such as dust control and drainage . . . (Permit Part V.B.4.d.)
- Development of community educational materials (Permit Part V.B.1.a.)

Minimum Control Measure 5:

- Evaluate existing County regulations to address post-construction runoff (Permit Part V.B.5.c.)
- Evaluate existing policies and procedures for plan review (Permit Part V.B.5.a.)

Minimum Control Measure 6:

- Develop and implement County pollution prevention program (Permit Part V.B.6.a.)

These other "BMPs" in the County's SWMP have the same issues—repetition of the permit language and lack of specificity.

While these Minimum Control Measures are permit requirements to be addressed in the SWMP, they are not BMPs. The County must revise the SWMP and identify and propose BMPs that specify how and what will be done to meet the permit requirements, including interim steps.

Additional examples of BMPs, measurable goals and general guidance in preparing the SWMP can be found on EPA's website: http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm.

II. GENERAL DEFICIENCIES:

A. The SWMP indicates it can be "conceptually implemented" during the next five years (page 4-1). Part V.A.1.of the MS4 General Permit required that the SWMP be fully implemented, including its measurable goals no later than December 19, 2007. However, specific dates for implementation of the identified task are to be provided in your revised SWMP. A summary of any activity Maricopa County has done to promote stormwater management and protection over the last 5 years is also requested.

B. Part V.A.3.of the MS4 General Permit requires that the SWMP include months and years in which the MS4 will undertake measurable goals, including interim milestones for each BMP. These required timeframes are not included in Maricopa County's SWMP.

C. The SWMP provided includes the name of the person(s) responsible for each BMP. Since the SWMP is dated March 2003, it may be necessary to update to the current person(s) responsible along with their current title.

D. All references that the SWMP is associated with an individual permit application should be removed and instead reference the Phase II Municipal Separate Storm Sewer System (MS4s) General Permit (AZG2002-002).

III. SPECIFIC DEFICIENCIES:

A. Public Education and Outreach on Stormwater Impacts
Include in the SWMP an estimation of the number of people with whom the applicant intends to communicate. (Part V.B.1.b.iv.)

B. Public Involvement/Participation
The SWMP indicates the stormwater management program will be included on the county's website. As of March 2008, ADEQ staff was unable to locate the SWMP, NOI and permit on the Maricopa Flood Control District of Maricopa County website. Please provide this information on the website (Part V.B.2.c.iv.).

C. Illicit Discharge Detection and Elimination
The SWMP indicates the permittee will investigate the illicit discharge within 30 days after detection. Part V.B.3.f. of the permit requires investigation within 15 days. It is important to timely respond to such discharges as they may be sporadic in nature. Please revise the SWMP to conform to the permit.

D. Construction Site Stormwater Runoff Control
The SWMP indicates the county staff will draft and finalize inspection policies and procedures. If this has been developed already, please provide a copy with your revision. The number of sites to

be inspected was not included in the SWMP. Please revise the SWMP to include more specificity on your program, including the numbers of inspections.

The County must revise its SWMP to address the deficiencies described in this letter and submit the revised document to ADEQ, Stormwater & General Permits Unit.

The revised SWMP must be signed in accordance with Part VI.L.2, and the certification statement as it appears in Part VI.L.4 of the Permit must be included in your revised SWMP. Please note, the previous SWMP provided was not signed. **The revised SWMP is due to ADEQ within 30 days of receipt of this letter.**

ADEQ greatly appreciates the work you will be doing to improve the quality of stormwater in your community. If you have questions concerning the general permit requirements or the deficiencies identified in this letter, please feel free to contact me at (602) 771-7614 or jmr@azdeq.gov.

Sincerely,

Joanie M. Rhyner

Joanie M. Rhyner
Stormwater and General Permits
Surface Water Section

Cc: Keith S. Chadwick, P.E., Maricopa County
Chris Varga, Manager, Surface Water Section, ADEQ
Chris Henninger, Manager, Stormwater and General Permits Unit, ADEQ

SWGP08:0071

APPENDIX E

MAPS OF MARICOPA COUNTY SHOWING URBANIZED AREA AND STORM SEWER SYSTEM

Unincorporated Maricopa County
2008 US Census Urban Areas

Legend

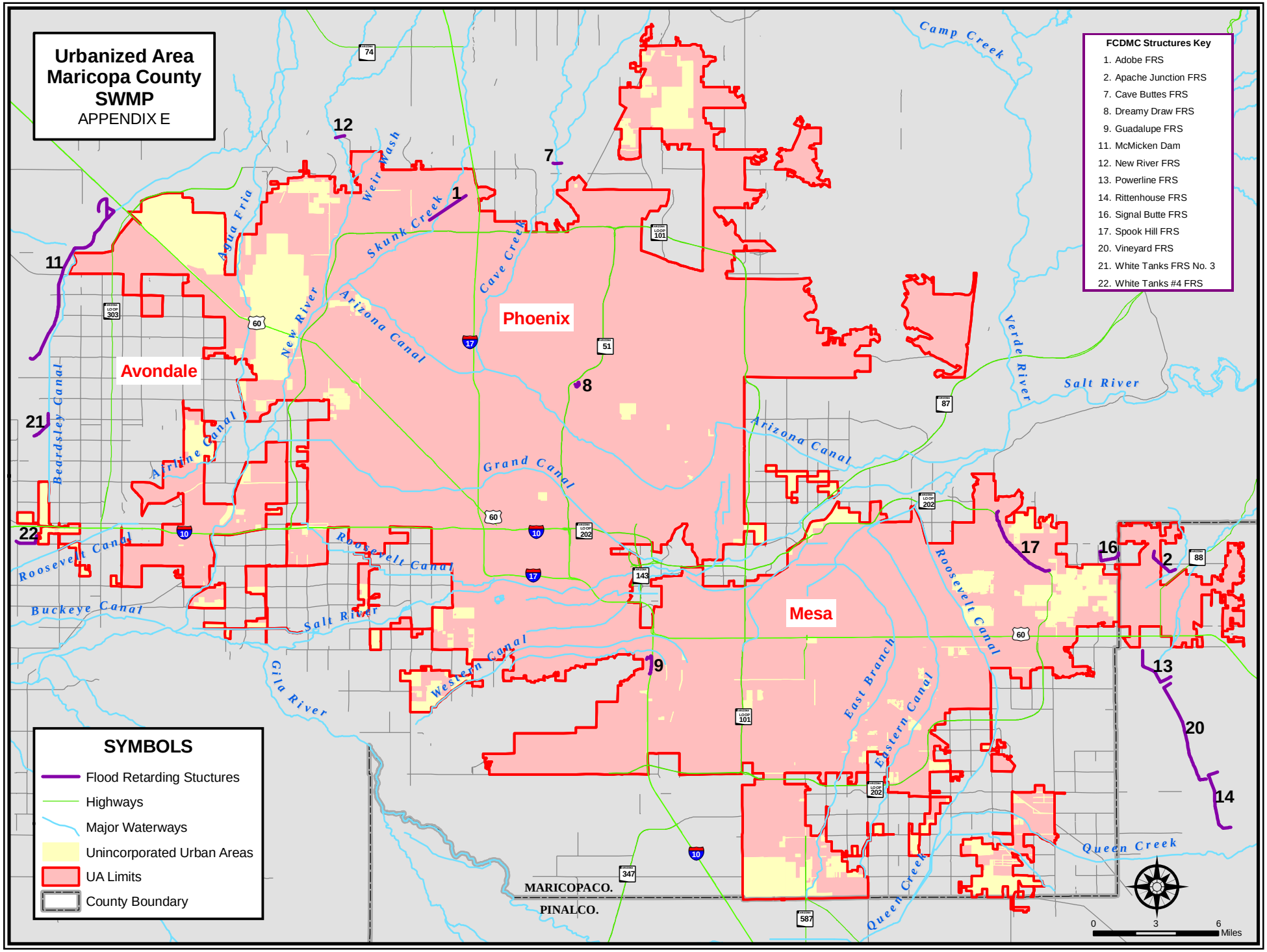
- Aterial
- Freeways
- Interstates
- Unincorporated County Urban Areas
- 2008 US Census Urban Areas
- Maricopa County

N

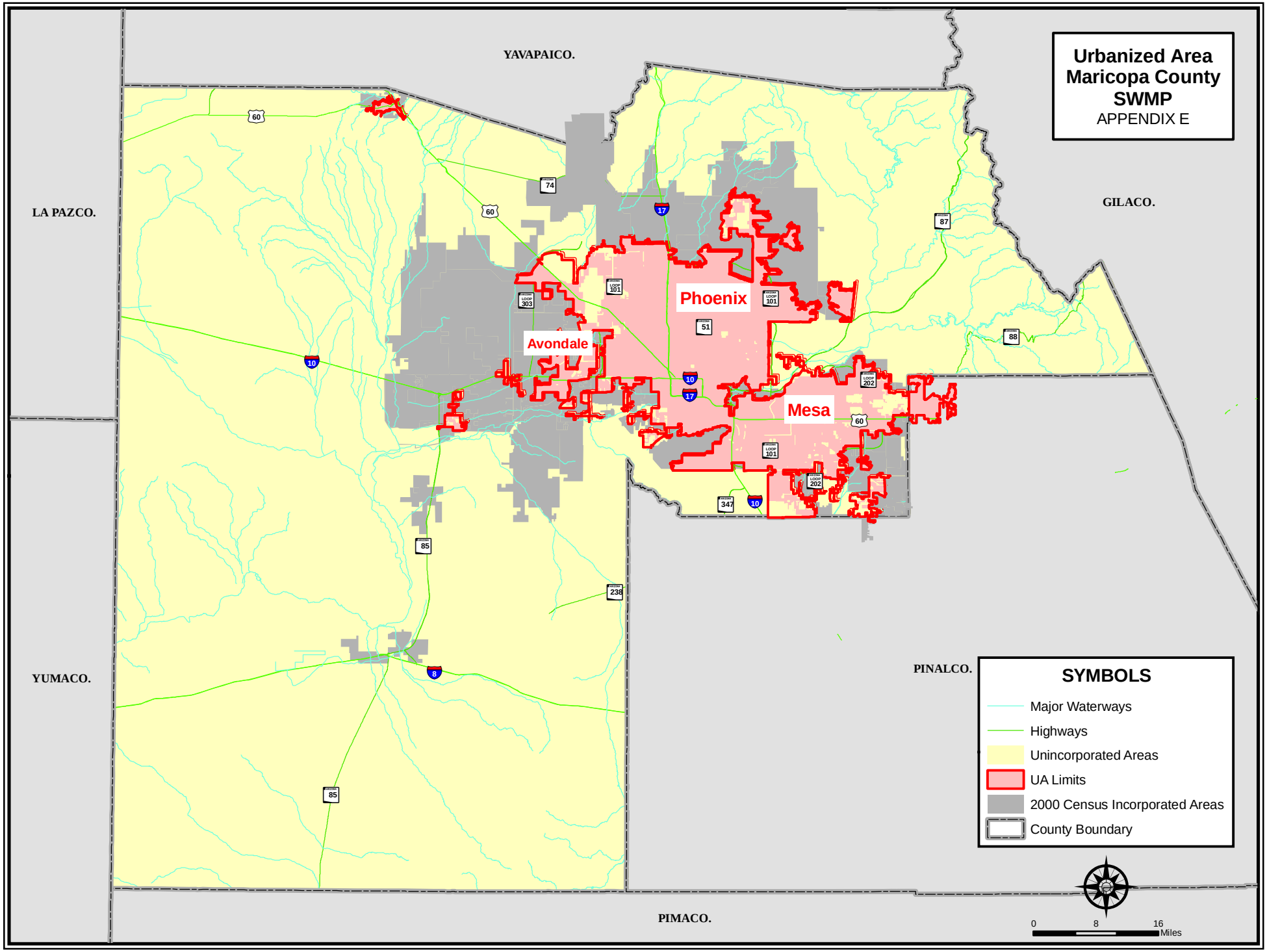
1:120,000
1 inch = 10,000 feet

Map Created: RDSA GIS 06/09/2009

0 2.5 5 10 Miles



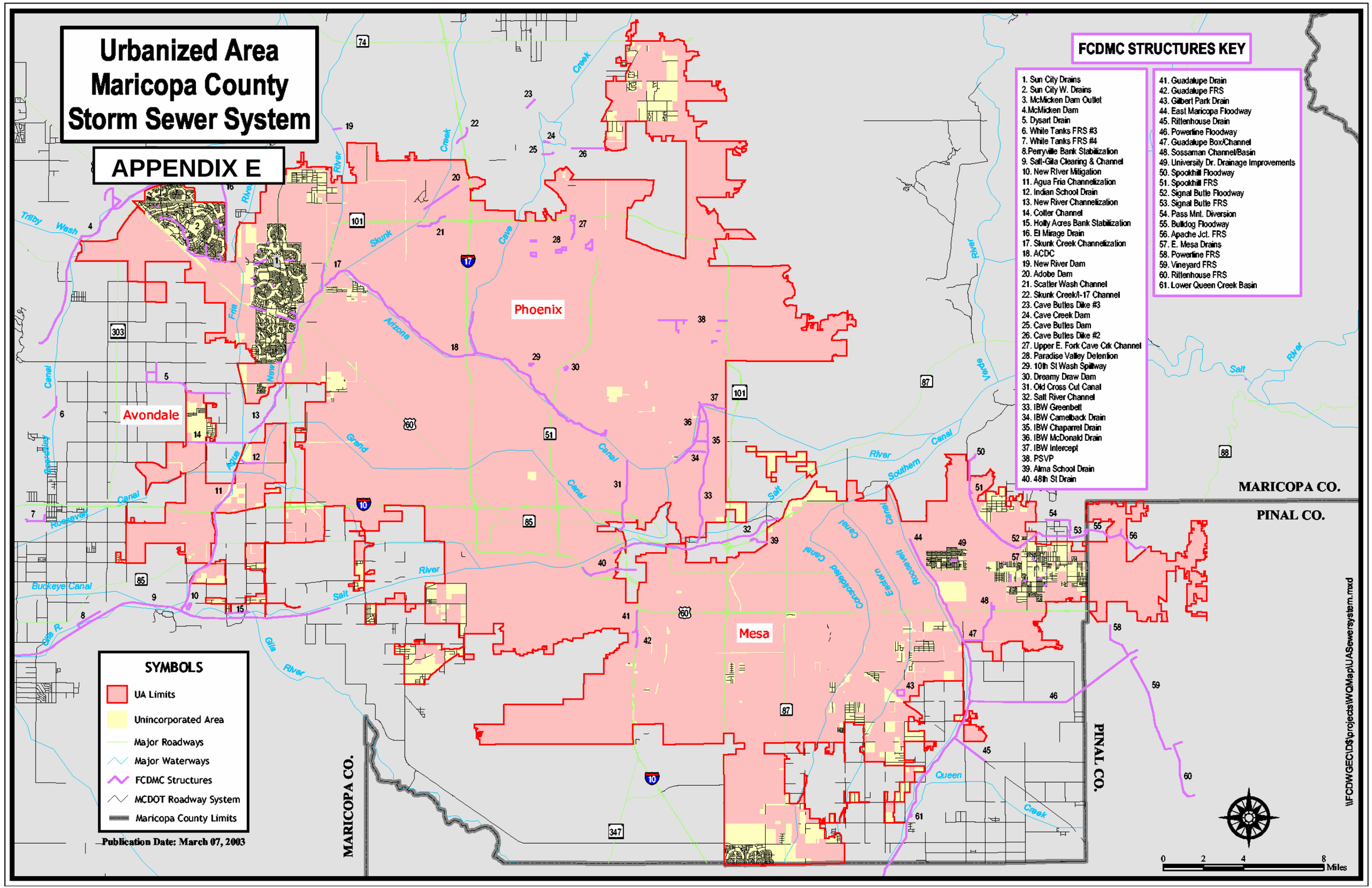
Map Document: (X:\Projects\08-115-05019\MXD\flood_structures.mxd) 11/20/2008 -- 1:28:44 PM



Map Document: (X:\Projects\08-115-05019\MXD\urban_areas.mxd) 11/20/2008 -- 1:32:06 PM

Urbanized Area Maricopa County Storm Sewer System

APPENDIX E



FCDMC STRUCTURES KEY

1. Sun City Drains
2. Sun City W. Drains
3. McMicken Dam Outlet
4. McMicken Dam
5. Dysart Drain
6. White Tanks FRS #3
7. White Tanks FRS #4
8. Perryville Bank Stabilization
9. Salt-Gila Cleaning & Channel
10. New River Mitigation
11. Agua Fria Channelization
12. Indian School Drain
13. New River Channelization
14. Cotter Channel
15. Holly Acres Bank Stabilization
16. El Mirage Drain
17. Skunk Creek Channelization
18. ACDC
19. New River Dam
20. Adobe Dam
21. Scatter Wash Channel
22. Skunk Creek/I-17 Channel
23. Cave Buttes Dike #3
24. Cave Creek Dam
25. Cave Buttes Dam
26. Cave Buttes Dike #2
27. Upper E. Fork Cave Crk Channel
28. Paradise Valley Detention
29. 10th St Wash Spillway
30. Dreamy Draw Dam
31. Old Cross Cut Canal
32. Salt River Channel
33. IBW Greenbelt
34. IBW Camelback Drain
35. IBW Chaparrel Drain
36. IBW McDonald Drain
37. IBW Intercept
38. PSVP
39. Alma School Drain
40. 48th St Drain
41. Guadalupe Drain
42. Guadalupe FRS
43. Gilbert Park Drain
44. East Maricopa Floodway
45. Rittenhouse Drain
46. Powerline Floodway
47. Guadalupe Box/Channel
48. Sossaman Channel/Basin
49. University Dr. Drainage Improvements
50. Spookhill Floodway
51. Spookhill FRS
52. Signal Butte Floodway
53. Signal Butte FRS
54. Pass Mnt. Diversion
55. Bulldog Floodway
56. Apache Jct. FRS
57. E. Mesa Drains
58. Powerline FRS
59. Vineyard FRS
60. Rittenhouse FRS
61. Lower Queen Creek Basin

SYMBOLS

- UA Limits
- Unincorporated Area
- Major Roadways
- Major Waterways
- FCDMC Structures
- MCDOT Roadway System
- Maricopa County Limits

Publication Date: March 07, 2003

APPENDIX F

MARICOPA COUNTY SMALL MS4 ANNUAL REPORT SUBMITTAL, SEPTEMBER 2008

Small MS4 Annual Report Form

SEPT. 30, 2008

Please refer to the attached instructions as you prepare your annual report.

A. General Information

Name of MS4: Maricopa County

Contact Name: Stan Snitzer

Telephone Number: 602-506-6469 Email Address: ssnitzer@mail.maricopa.gov

Annual Report Period:
- ☐ December 19, 2002 – June 30, 2004
- ☐ July 1, 2004 – June 30, 2005
- ☐ July 1, 2007 – June 30, 2008
- ☐ July 1, 2005 – June 30, 2006
- ☐ July 1, 2006 – June 30, 2007
- ☐ July 1, 2008 – June 30, 2009

B. SWMP Modifications and Additional Information. Attach a brief explanation if you check "yes" to any of the following statements.

1.	Changes have been made or are proposed to the SWMP since the last annual report, including changes in response to ADEQ's review.	YES ☐	NO ☐
2.	The MS4 has annexed lands.	YES ☐	NO ☐
3a.	The MS4 discharges directly to an impaired water.	YES ☐	NO ☐
3b.	A water within 10 miles of the MS4's jurisdiction has been identified as impaired.	YES ☐	NO ☐
4a.	The MS4 discharges directly to water for which a TMDL has been established.	YES ☐	NO ☐
4b.	A TMDL has been established for a water within 10 miles of the MS4's jurisdiction.	YES ☐	NO ☐
5.	The MS4 has conducted analytical monitoring of stormwater quality.	YES ☐	NO ☐
6.	The MS4 is relying on another government entity to satisfy some permit obligations.	YES ☐	NO ☐

C. **Stormwater Management Program Status. Provide the status of every BMP and measurable goal in your SWMP as described in the instructions.**

TABLE 1

Minimum Control Measure(s)	BMP	Measurable Goal (steps to measure progress)	New or Revised	Start Date	Implementation Status/ Frequency/ Achievement Date (completed, in progress, not started)
MCM 1: Public Education and Outreach					
	BMP 1. Develop and maintain a targeted education plan	Residents of County targeted for educational printed material and PSA's and interviews via radio cooperate with STORM organization. Approximately 2 million County residents reached with each PSA. STORM annual report for FY08 attached.	NO	2006	In progress under permit extension by ADEQ.
	BMP 2. Procure, obtain, and distribute stormwater educational materials to County residents	Procured 25,000 each printed After the Storm and the Solution to	NO	2006	In progress under permit extension by ADEQ

		Stormwater Pollution! Documents. Distributed over 6.000 of each since 2006			
	BMP 3. Stormwater page with links on County website	Established and maintain revised Stormwater web page. Place on the County Environmental Services Department's website in 2006. Revised website in 2008	NO	2003	In progress under permit extension by ADEQ
MCM 2: Public Involvement/Participation					
	BMP 1. Compliance with public notice requirements	Developed legislation to take effect on 9/26/2008 establishing public notice requirements for stormwater ordinances	NO	2007	In progress under permit extension by ADEQ
	BMP 2. Facilitate volunteer trash pickup events within Maricopa County	Distributed STORM dog liter pickup bags to new dog owners adopting via the County's facility in 2008-	NO	2007	In progress under permit extension by ADEQ

		no method of determining UA coverage established			
	BMP 3. Public hearing on the SWMP	Developed legislation to take effect on 9/26/2008 establishing public notice requirements for stormwater ordinances.	NO	2007	In progress under permit extension by ADEQ
	BMP 4. Public hearing and annual Board of Supervisors update on stormwater program	Developed legislation to take effect on 9/26/2008 establishing clear authority for county to have a stormwater program and establishing publishing requirements via the Secretary of State.	NO	2007	In progress under permit extension by ADEQ
MCM 3: Illicit Discharge Detection and Elimination					
	BMP 1. Development of a County regulation prohibiting illicit	Developed legislation to take effect on	NO	2007	In progress under permit extension by ADEQ

	discharges to the stormwater system	9/26/2008 establishing clear authority for county to have a stormwater program and establishing right of county to write stormwater ordinances. Ordinance to include enforcement coverage for illicit discharge is to be drafted in FY09			
	BMP 2. Outfall inspection program		NO		Not started
	BMP 3. Development of a storm sewer map showing all outfalls		NO		Not started
	BMP 4. Develop and distribute illicit discharge educational materials	Acquired IDDE booklet from EPA for distribution. Developed Power Point presentation and presented at department meeting in 2007	NO	2006	In progress under permit extension by ADEQ
	BMP 5. Develop and	Established	NO	2007	In progress under permit

	implement complaint receipt procedures	County Environmental Services complaint line to include stormwater complaints at (602) 506-6616			extension by ADEQ
MCM 4: Construction Site Stormwater Runoff Control					
	BMP 1. Evaluate existing County programs, policies & regulations that address stormwater runoff from construction sites and update regulations as needed	Evaluated lack of authority from state of Arizona to accomplish goals. Developed legislation to take effect on 9/26/2008 establishing clear authority for county to have a stormwater program and have specific regulations	NO	2006	In progress under permit extension by ADEQ
	BMP 2. Review and update if necessary Maricopa County construction site BMP manual	Revised Maricopa County's Drainage Policies and Design Manual to include "First	NO	2003	In progress under permit extension by ADEQ

		Flush" requirements.			
	BMP 3. Review existing County program policies and procedures for plan review	Developed legislation to take effect on 9/26/2008 establishing clear authority for county to have a stormwater program and have specific regulations to cause plan reviews	NO	2006	In progress under permit extension by ADEQ
	BMP 4. Evaluate existing County inspection programs such as dust control and drainage administration program policies and procedures for utilization/coordination with construction site inspections	Initiated evaluation of County inspection programs for utilization / coordination with construction site inspections. Timing of most inspections not found to meet pre-construction or post-construction inspection requirements. Further	NO	2006	In progress under permit extension by ADEQ

talk more about it.

		evaluation initiated.			
	BMP 5. Develop and implement complaint receipt procedures.	Established County Environmental Services complaint line to include stormwater complaints at (602) 506-6616	NO	2007	In progress under permit extension by ADEQ
	BMP 6. Development community educational materials.	Initiated research into development of development community educational materials	NO	2006	In progress under permit extension by ADEQ
MCM 5: Post-Construction Stormwater Management					
	BMP 1. Evaluate existing County regulations to address post-construction runoff	Initiated evaluation of County regulations to address post-construction runoff. Lacking sufficient regulations, developed legislation to take effect on 9/26/2008 establishing	NO	2007	In progress under permit extension by ADEQ

		clear authority for county to have a stormwater program and have specific regulations to address post-construction runoff. Work on a specific county ordinance is initiated.			
	BMP 2. Develop and adopt technical guidance materials	Initiated research into development of technical guidance materials.	NO	2006	In progress under permit extension by ADEQ
	BMP 3. Evaluate existing policies and procedures for plan review	Initiated evaluation of County regulations to address post-construction plan reviews. Developed legislation to take effect on 9/26/2008 establishing clear authority for county to have a	NO	2006	In progress under permit extension by ADEQ

		stormwater program and have specific regulations to cause plan reviews			
	BMP 4. Evaluate existing inspection and enforcement program for site development and modify as necessary to address post construction runoff controls	Initiated evaluation of County regulations to address post-construction inspection and enforcement actions. Developed legislation to take effect on 9/26/2008 establishing clear authority for county to have a stormwater program and have specific regulations to cause inspection and enforcement to address post-construction requirements.	NO	2006	In progress under permit extension by ADEQ
	BMP 5. Create and distribute educational	Initiated research into	NO	2006	In progress under permit extension by ADEQ

	materials for the development community	development of technical guidance materials.			
MCM 6: Pollution Prevention/Good Housekeeping					
	BMP 1. Evaluate street sweeping practices	Initiated research into county street sweeping practices. Researching possible use of GPS/GIS to track street sweeping in the UA.	NO	2006	In progress under permit extension by ADEQ
	BMP 2. Develop and implement County pollution prevention program	Established coordination with the County's Departments of Risk Management and Facilities Management. Initiated a plan for a risk assessment of county facilities and practices.	NO	2007	In progress under permit extension by ADEQ
	BMP 3. Development of a centralized, County-wide	Purchased educational videos covering	NO	2006	In progress under permit extension by ADEQ

	employee education and training program regarding pollution prevention	stormwater pollution prevention. Videos displayed at 4 County departments. October 2006 paystubs of more than 15,000 county employees carried message to prevent stormwater pollution. Distributed more than 2,000 stormwater program educational pamphlets at county facilities for use by County employees.			

Note: If you have developed a stormwater ordinance during the last reporting period, include a description or citation of the ordinance, or simply attach a copy of the ordinance.

D. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____ _____

Signature Date

John Power

Name (printed)

Director, Maricopa County Environmental Services Department

Title

INSTRUCTIONS

Regulated Municipal Separate Storm Sewer Systems (MS4s) must submit annual reports to Arizona Department of Environmental Quality (ADEQ) for each year of the permit term. In compliance with the MS4 General Permit, an MS4 must annually review its Stormwater Management Program (SWMP) in conjunction with the preparation of the annual report. This document is a suggested format for annual reporting.

Submit a signed copy of your annual report no later than September 30 of each year to:

Arizona Department of Environmental Quality
Surface Water Section/ Stormwater & General Permits Unit (5415A-1)
1110 West Washington Street
Phoenix, AZ 85007

A. General Information

Provide the name of the municipality or owner/operator of the storm sewer system.
Provide the name, telephone number, and email address for the stormwater program contact person.

Place a check mark in the box corresponding to the current annual report year.

B. SWMP Modifications and Additional Information

1. **Changes have been made or are proposed to the SWMP**. Modifications to the SWMP must be addressed in the annual report in accordance with Part V.E. and Part V.G. of the Permit. If ADEQ notified you during this reporting period that changes to your SWMP were necessary, you must check "yes" to this question.

   Be sure to provide the following information in the attached explanation:
   a. Describe changes made to best management practices (BMPs), measurable goals, dates, contacts, procedures or details during the last reporting period.
   b. If changes include additions or substitutions of BMPs, please indicate this. Include a written analysis explaining why the original BMP is ineffective or infeasible and why the replacement BMP is expected to achieve the goals of the original BMP.

2. **The MS4 has annexed lands**. Attach a description (or map) indicating the annexed area, the BMPs to be implemented, and any resulting updates to the SWMP.

3. **A water is listed as impaired**. ADEQ has completed Arizona's 2004 List of Impaired Waters which is significantly different from the 2002 List. Since the list has been updated, you may discover that your MS4's receiving water(s) is now

listed as impaired. Please determine if your receiving water(s) has been assessed as impaired. The 2004 List of Impaired Waters has been posted on ADEQ's web site at http://www.azdeq.gov/environ/water/assessment/assess.html

a. If your MS4 discharges directly to an impaired water, you must amend your SWMP to control the discharge of listed pollutants and ensure to the maximum extent practicable that discharges from the MS4 will not cause or contribute to exceedances of surface water quality standards. The SWMP must also identify BMPs to control discharges and include monitoring of their effectiveness (Permit Part I.D.5.b and Permit Part V.F.1). Attach a copy of this section of the SWMP to the annual report.

b. If you locate an impaired water within 10 miles of your jurisdiction, you must identify the sources of pollutants of concern to that water and evaluate the likelihood of your MS4's discharge contributing to the water's impairment. Attach a brief explanation to the annual report.

4. **A TMDL has been established**. A Total Maximum Daily Load (TMDL) is the maximum amount (load) of a water quality parameter which can be carried by a surface water, on a daily basis, without causing an exceedance of surface water quality standards. A list of the established TMDLs for impaired waters is located on ADEQ's web site at: http://www.azdeq.gov/environ/water/assessment/status.html.

   a. If your MS4 discharges directly to water for which a TMDL has been established:
      i. and the TMDL includes a wasteload allocation or load allocation for your MS4, you must amend your SWMP to describe what BMPs you will use to meet the allocation(s) and to describe the monitoring program associated with the pollutant of concern. Include a description and schedule for implementation of additional BMPs to ensure compliance with the TMDL. You must also attach to a description of the SWMP amendment to the annual report.
      ii. but the TMDL did not allocate a load or wasteload to the MS4, attach a statement stating so to your annual report.

   b. If a TMDL has been established within 10 miles of your jurisdiction and does not include an allocation for your MS4, you must evaluate the likelihood of your discharge contributing to that water's impairment. Attach a brief explanation to your annual report.

5. **The MS4 conducted analytical monitoring of stormwater quality**. Attach to the annual report any monitoring data used to evaluate the success of the SWMP to reducing pollutants to the maximum extent practicable. The summary should include a discussion of results. Data collection must follow the requirements of Permit Part V.F and Part VI.K.

6. **The MS4 is relying on another government entity to satisfy some of the permit obligations**. If you are relying on another entity to satisfy permit obligations, attach a statement to the annual report identifying the entity and the elements the entity will be implementing. A description of the agreement or written documentation of the agreement must be included in the SWMP.

C. Stormwater Management Program Status

Each MS4 is required to evaluate compliance with permit requirements and assess the appropriateness of the BMPs in reducing the discharge of pollutants to the maximum extent practicable. The purpose of the annual report is to report the status of compliance with permit conditions, specifically the implementation of selected BMPs and the progress towards achieving the measurable goals for each BMP.

Using the table format provided on page 2 and following the example on page 6 of this document, summarize the status of all BMPs specified in your SWMP, as follows:

Minimum Control Measure(s): Specify the minimum control measure (MCM) addressed by each BMP. The six MCMs are listed in Part V.B. of the permit. Some BMPs may address more than one MCM.

BMP: List ALL of the BMPs specified in your SWMP, including any new BMPs. BMPs are the specific, long-term activities and practices that will be implemented to prevent or reduce stormwater pollution from the MS4. Examples include stormwater public service announcements, MS4 outfall inspections, and construction site plan review.

Note: If you have developed a stormwater ordinance during the last reporting period, include a description or citation of the ordinance, or simply attach a copy of the ordinance.

Measurable Goals: List ALL measurable goals in your SWMP, including any new measurable goals. Measurable goals are the ongoing tasks and interim steps that demonstrate progress toward implementing a specific BMP. They are used to measure the effectiveness of your SWMP and compliance with the permit. Each BMP must include specific measurable goals. For instance, the measurable goals for the BMP "establishing a stormwater web page" might include "researching stormwater pollution prevention materials", "drafting web page text", "designing web page layout", and "distributing final draft for approval". Upon implementation, additional measurable goals that track progress of the BMP may include "annual review and update of the web page" and "tracking the number of "hits" to the web site".

New or Revised: Place an X in this column if the BMP or measurable goal is new or revised, such as replacement with another BMP, addition of a new measurable goal, or revision of a start date, etc. Briefly explain the change to the SWMP in the "Implementation Status" column.

Start Date: Specify the scheduled start date (month and year) for each measurable goal.

Implementation Status: Indicate the implementation status (such as completed, in progress, or not started) of each measurable goal as of June 30 of this reporting cycle. If an activity is completed, indicate the achievement date. If an activity is in progress, provide the expected achievement date. If an activity has not yet been started, indicate the expected achievement dates. In addition, use this column to briefly explain the frequency of on-going BMPs.

The following table is an example of the type of information to be provided in the annual report:

EXAMPLE

Minimum Control Measure(s)	BMP	Measurable Goal (steps to measure progress)	New or Revised	Start Date	Implementation Status/ Frequency/ Achievement Date (completed, in progress, not started)
Pollution Prevention/Good Housekeeping for Municipal Oper.	Train all public works and streets staff	Approx. 20 staff trained annually. Staff educated on good housekeeping/ pollution prevention and upcoming stormwater ordinance		April 2004	In progress, annual training every April.
Illicit Discharge Detection and Elimination	Perform field screening of outfalls	Completed storm sewer system map includes all outfalls and names and locations of all waters of the U.S.		January 2005	Completed June 2005.
Construction Site Control and Post-Construction Site Control	Implement stormwater ordinance for construction and post-construction runoff control	Researched other municipalities' ordinances	X	July 2004	Completed. Revised start date from March 2004 to July 2004.
Construction Site Control and Post-Construction Site Control	Implement stormwater ordinance for construction and post-construction runoff control	Integrated language from model ordinance		September 2004	Completed December 2004.
Construction Site Control and Post-Construction Site Control	Implement stormwater ordinance for construction and post-construction runoff control	Stormwater ordinance has been drafted		March 2005	In progress. Draft ordinance presented to City Council June 2005. Approval pending, expected completion date July 2005.

D. Certification

The annual report must be signed by either a principal executive officer or ranking elected official, or by a duly authorized representative (refer to Permit Part VI.L).

APPENDIX G

DRAFT EPA NPDES PHASE II STORMWATER GENERAL PERMIT

National Pollutant Discharge Elimination System
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.D of this permit, operators of small municipal separate storm sewer systems, located in an area specified in Part I.A, and who submit a Notice of Intent and a storm water management program in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on _____, 2002

This permit and the authorization to discharge expire at midnight,_____, 2007

Signed and issued this___day of _____, 2002.

Alexis Strauss
Director, Water Division
EPA, Region 9

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PART I. COVERAGE UNDER THIS GENERAL PERMIT

A. Permit Area. This permit covers the following areas:

Permit Number	Areas of Coverage
ASS040###	The Island of American Samoa
AZS040###	The State of Arizona, except Indian Country lands
AZS040##I	Indian Country lands within the State of Arizona, as well as Navajo Reservation lands in New Mexico and Utah
CAS040##I	Indian Country lands within the State of California
GUS040###	The Island of Guam
JAS040###	Johnston Atoll
MWS040###	Midway Island and Wake Island
NIS040###	Commonwealth of the Northern Mariana Islands
NVS040##I	Indian Country lands within the State of Nevada, as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah

B. Eligibility.

1. This permit authorizes the discharge of storm water from small municipal separate storm sewer systems (MS4s) provided that the permittee complies with all the requirements of this general permit and the MS4:

   a. Is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census, or

   b. Is designated for permit authorization by EPA pursuant to 40 CFR 122.32.

C. Non-Storm Water Discharges.

1. The permittee shall prohibit all types of non-storm water discharges into its MS4 unless the discharges are authorized by a separate NPDES permit or not prohibited under Part I.C.2.

2. The following categories of non-storm water discharges are only prohibited if they are identified as significant contributors of pollutants to or from the MS4. If any of the following categories of discharges are identified as a significant contributor, the permittee

must address the category as an illicit discharge as specified in Part V.B.3 of this permit:

a. Water line flushing,

b. Landscape irrigation,

c. Diverted stream flows,

d. Rising ground waters,

e. Uncontaminated ground water infiltration,

f. Uncontaminated pumped groundwater,

g. Discharges from potable water sources,

h. Foundation drains,

i. Air conditioning condensate,

j. Irrigation water,

k. Springs,

l. Water from crawl space pumps,

m. Footing drains,

n. Lawn watering,

o. Individual residential car washing,

p. Discharges from riparian habitats and wetlands,

q. Dechlorinated swimming pool discharges,

r. Street wash water, and

s. Discharges or flows from emergency fire fighting activities.

D. Limitations of Coverage. This general permit does not authorize:

1. Discharges mixed with sources of non-storm water unless the non-storm water

discharges:

a. Comply with a separate NPDES permit, or

b. Are determined not to be a significant contributor of pollutants to waters of the United States;

2. Storm water discharges associated with industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi);

3. Storm water discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15);

4. Storm water discharges currently covered under another permit;

5. Discharges or discharge-related activities (including construction of any storm water controls) that are likely to cause a "take" of threatened or endangered species; or discharges or discharge-related activities (including construction of any storm water controls) that jeopardize the continued existence of any species listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act.

Coverage under this permit is available only if the applicant meets one or more of the eligibility criteria in Parts I.D.5.a through e below for the entire term of coverage under the permit. Based upon particular concerns identified by EPA, or the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services"), EPA may direct an applicant to pursue eligibility under Criteria B in lieu of other criteria. The applicant must include a certification of eligibility and supporting documentation on the eligibility determination in the storm water management program.

a. CRITERIA A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point(s) where authorized discharges reach the receiving water; or

b. CRITERIA B: In the course of a federal action involving the MS4 (e.g., EPA processing request for an NPDES permit, issuance of a CWA section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Service(s) under section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:

i. addressed the effects of the storm water discharges, and discharge-related activities on listed species and critical habitat and

ii the consultation resulted in either a no jeopardy opinion or a written concurrence by the Service on a finding that the storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

c. CRITERIA C: The activities are authorized under section 10 of the ESA and that authorization addresses the effects of the storm water discharges, and discharge-related activities on listed species and critical habitat; or

d. CRITERIA D: The applicant has evaluated the effects of the storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat and does not have reason to believe listed species or critical habitat would be adversely affected, or

e. CRITERIA E: The storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part I.D.5.a through d which included the MS4's activities. By certifying eligibility under this Part, the applicant agrees to comply with any measures or controls upon which the other operator's certification was based;

Addendum A of this permit establishes a process that must be used to determine permit eligibility concerning this provision.

6. Discharges and discharge-related activities with adverse effects on historic properties that are listed or eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; in order to be eligible for coverage under this permit, the applicant must be in compliance with the National Historic Preservation Act. The discharges may be authorized under this permit only if:

   a. CRITERIA A: the storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or

   b. CRITERIA B: the applicant has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures the MS4 will undertake to mitigate or prevent adverse effect to the historic property.

   Addendum B of this permit provides guidance and references to assist with determining permit eligibility concerning this provision.

7. Discharges that are causing or contributing to an exceedance of applicable numeric or narrative surface water quality standards;

8. Discharges to impaired waterbodies listed under section 303(d) of the Clean Water Act (CWA) if discharges from the MS4 contain, or may contain, pollutant(s) for which the waterbody is listed except:

   a. If a TMDL has been established, and the storm water management program (SWMP) is consistent with the requirements of the TMDL, including any wasteload allocation and/or flow regime in the TMDL. The SWMP must also identify BMPs the permittee will use to meet wasteload allocations and include monitoring for associated pollutant(s); and

   b. If a TMDL has not been established, and the SWMP includes a section describing how the program will control the discharge of 303(d) listed pollutants and ensure that discharges from the MS4 will not cause or contribute to instream exceedences of surface water quality standards.

9. Discharges that do not comply with the state's or tribe's anti-degradation policy for water quality standards. State and tribal anti-degradation policies can be obtained from the appropriate state or tribal environmental office or their Internet sites.

10. Discharges to territorial seas, the contiguous zone, and the oceans unless such discharges are in compliance with the ocean discharge criteria of 40 CFR Part 125, Subpart M.

11. Discharges or storm water discharge-related activities which adversely affect essential fish habitat as defined at 50 CFR 600.10.

PART II. AUTHORIZATION UNDER THIS GENERAL PERMIT

A. Application for Coverage.

1. An applicant seeking authorization to discharge under this general permit shall submit to EPA a complete notice of intent (NOI), in accordance with the deadlines in Part III.A of this permit. The NOI must include the information and attachments required by Parts III.B and I.D.5 of this permit.

   If EPA notifies a discharger (either directly, by public notice, or by making information available on the Internet) of other NOI options that become available at a later date, such as electronic submission of forms or information, the applicant may take advantage of those options to satisfy the NOI submittal requirements.

2. If an operator changes or a new operator is added after an NOI has been submitted, the permittee shall submit a new or revised NOI to EPA.

3. A discharger who submits a complete NOI and meets the eligibility requirements in Part

I of this permit is authorized to discharge storm water from a small MS4 under the terms and conditions of this general permit 30 days after the date the NOI is postmarked. Upon review of the NOI, EPA may notify the applicant that it did not meet the eligibility requirements for coverage.

4. If EPA notifies the applicant of deficiencies or inadequacies in any portion of the NOI (including the storm water management program), the applicant must correct the deficient or inadequate portions and submit a written statement to EPA certifying that appropriate changes have been made. The certification must be submitted within the time-frame specified by EPA and must specify how the NOI has been amended to address the identified concerns.

B. Terminating Coverage.

1. A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is post-marked for delivery to EPA.

2. A permittee shall submit an NOT to EPA within 30 days after the permittee:

   a. Ceases discharging storm water from the MS4,

   b. Ceases operations at the MS4, or

   c. Transfers ownership of or responsibility for the facility to another operator.

3. The NOT may consist of a letter to EPA and must include the following information:

   a. Name, mailing address, and location of the MS4 for which the notification is submitted;

   b. The name, address and telephone number of the operator addressed by the NOT;

   c. The NPDES permit number for the MS4;

   d. An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the storm water discharges have been eliminated; and

   e. The following certification:

I certify under penalty of law that all storm water discharges from the identified MS4 that are authorized by an NPDES general permit have been eliminated, or

that I am no longer the operator of the MS4, or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water under this general permit, and that discharging pollutants in storm water to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

f. NOTs shall be submitted to the following addresses:

NOTs, signed in accordance with Part VI.H of this permit, must be sent to: Small MS4 Notice of Termination, EPA Region 9 (WTR-5), 75 Hawthorne Street, San Francisco, CA 94105 and in Arizona (non-Indian Country lands)to the Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, AZ 85007.

For Guam, NOTs must be sent to the above Region 9 address and to the Guam EPA, P.O. Box 22439-GMF, Barrigada, Guam 96921. For American Samoa, NOTs must be sent to the above Region 9 address and to the American Samoa Environmental Protection Agency, Executive Office Building, Pago Pago, AS 96799. For the Commonwealth of the Northern Mariana Islands, NOTs must be sent to the above Region 9 address and to the Commonwealth of the Northern Mariana Islands, Office of the Governor, Director, Division of Environmental Quality, P. O. Box 501304 C.K, Saipan, MP 96950.

PART III. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for Notification.

1. MS4s automatically designated under 40 CFR 122.32(a)(1) are required to submit an NOI and a description of the storm water management program or apply for an individual permit by March 10, 2003.

2. MS4s designated under 40 CFR 122.32(a)(2) are required to submit an NOI and a description of the storm water management program within 180 days of notice (unless the permitting authority provides additional time in the designation notice).

3. New MS4s and New Operators

   a. For new MS4s within urbanized areas which commence discharges subsequent to March 10, 2003, the NOI must be submitted not later than 30 days prior to commencing discharges.

b. For new operators of an existing MS4, the NOI must be submitted not later than two days prior to taking operational control of the MS4.

4. *Submitting a Late NOI*. Applicants are not prohibited from submitting an NOI after the dates provided in Part III.A.1 or 2. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

B. Contents of Notice of Intent. An applicant eligible for coverage under this general permit shall submit an NOI to discharge under this general permit. The NOI shall contain the following information:

1. The name, mailing address, and telephone number of the municipal entity applying;

2. An indication of whether the applicant is a Federal, State, Tribal or other public entity;

3. The urbanized area or core municipality (if not located in an urbanized area) where the small MS4 is located; the county(ies) where the small MS4 is located, and the latitude and longitude of the approximate center of the small MS4;

4. The name of the major receiving water(s) and an indication of whether any of the receiving waters are on the latest CWA section 303(d) list of impaired waters. If the small MS4 discharges to any 303(d) listed waters, include a certification that the SWMP meets the requirements of Part I.D.8;

5. An indication of whether all or a portion of the small MS4 is located in Indian country;

6. If the applicant is relying on another governmental entity to satisfy one or more permit obligations (see Part V.D), the identity of that entity(ies) and the element(s) the entity (ies) will be implementing;

7. The name and work position or title of the contact person;

8. The signature of the certifying official, signed in accordance with the signatory requirements of Part VI.H; and

9. A description of the storm water management program (SWMP), including best management practices (BMPs) that will be implemented and the measurable goals for each of the storm water minimum control measures specified in Part V.C of this permit, the month and year in which the applicant will start and fully implement each of the minimum control measures or the frequency of the action, the name of the person(s) responsible for implementing or coordinating the SWMP, and the supporting

documentation required by Part I.D.5.

C. Where to Submit. The applicant shall submit the signed NOI to EPA at the following address: Small MS4 Notice of Intent, EPA Region 9 (WTR-5), 75 Hawthorne Street, San Francisco, CA 94105, and in Arizona (non-Indian Country lands) to the Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, AZ 85007.

For Guam, NOIs must be sent to the above Region 9 address and to the Guam EPA, P.O. Box 22439-GMF, Barrigada, Guam 96921. For American Samoa, NOIs must be sent to the above Region 9 address and to the American Samoa Environmental Protection Agency, Executive Office Building, Pago Pago, AS 96799. For the Commonwealth of the Northern Mariana Islands, NOIs must be sent to the above Region 9 address and to the Commonwealth of the Northern Mariana Islands, Office of the Governor, Director, Division of Environmental Quality, P. O. Box 501304 C.K, Saipan, MP 96950.

D. Co-Permittees Under a Single NOI.

Any small MS4 that meets the requirements of Part I of this general permit may choose to partner with another regulated MS4 to develop and implement a SWMP. The MS4s may also jointly submit one NOI. If responsibilities are being shared as provided in Part V.D of this permit, the SWMP must describe which permittees are responsible for implementing each of the minimum measures. All small MS4 permittees are subject to the provisions in Part V.E.

PART IV. SPECIAL CONDITIONS

A. Compliance with Water Quality Standards. Discharges shall not cause or contribute to an exceedance of an applicable numeric or narrative surface water quality standard. Where a discharge is already authorized under this general permit and is later determined to cause or contribute to the violation of an applicable water quality standard, EPA will notify the permittee of the violation(s). The permittee must take all necessary actions to ensure that future discharges do not cause or contribute to a violation of a surface water quality standard and shall document these actions in the SWMP. If a violation remains or re-occurs, the coverage under this general permit may be terminated by EPA, and EPA may require an application for coverage under an alternative general permit or for an individual permit. Compliance with this requirement does not preclude any enforcement activity for the underlying violation.

B. Total Daily Maximum Loads (TMDLs) Allocations Established after Permit Issuance. If a TMDL is established for any waterbody into which the permittee discharges prior to the date that the permittee or applicant submits an NOI, and if that TMDL includes a wasteload allocation or load allocation for a parameter likely to be discharged by the MS4, the permittee must meet the requirements of the TMDL and/or its associated implementation plan. If a TMDL is approved for any waterbody into which the permittee discharges after the date that

the permittee or applicant submits an NOI, EPA may require revisions to the SWMP to ensure that the wasteload allocation, load allocation and/or the TMDL's associated implementation plan will be met. Monitoring of the discharges may also be required, as appropriate, to ensure compliance with the TMDL.

C. Endangered Species Act Requirements.

1. This permit does not authorize nor require the construction of any particular structural storm water quality control device that could adversely affect listed or proposed threatened or endangered species.

2. As described in Part I.D.5, the storm water management program must include supporting documentation on Endangered Species Act permit eligibility.

PART V. STORM WATER MANAGEMENT PROGRAM (SWMP)

A. General Requirements. An applicant shall develop, and a permittee shall implement, and enforce a SWMP designed to reduce the discharge of pollutants from a small MS4 to the maximum extent practicable (MEP), to protect water quality and to satisfy the appropriate surface water quality standards. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions EPA determines appropriate for the control of pollutants.

1. A permittee must fully implement the SWMP, including its measurable goals, no later than December 9, 2007 (except as provided under Part V.A.2 of this permit).

2. If a permittee is required to obtain permit coverage after March 10, 2003, the permittee shall implement the SWMP, including its measurable goals, for the period between the date of authorization to discharge and the expiration date of this permit. For example, if the permittee was authorized to discharge under this permit on March 10, 2006 the measurable goals established in the SWMP for the period between 2006 and the expiration date of this general permit must be met.

3. The SWMP shall address each of the minimum control measures of Part V.B. The SWMP must provide:

a. BMPs that ensure that the discharges do not cause or contribute to an exceedance of an applicable numeric or narrative water quality standard; and

b. Measurable goals, including interim milestones, for each BMP, including as appropriate, the months and years in which the MS4 will undertake the required actions and the frequency of the action.

B. Minimum control measures.

1. Public Education and Outreach on Storm water Impacts. The permittee or applicant, as applicable, shall:

   a. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of storm water discharges on waterbodies and the steps that the public can take to reduce pollutants in storm water runoff.;

   b. Include the following information in the SWMP:

      i. A description of the education program and outreach activities;

      ii. A description of the methods for disseminating information;

      iii. The target audiences and target pollutants and sources that the applicant will address in the program, and how they were selected;

      iv. An estimation of the number of people with whom the applicant intends to communicate;

      v. A list of measurable goals for the public education and outreach program;

      vi. Dates by which the permittee will achieve specific measurable goals; and

      vii. The name of the person(s) responsible for implementing and coordinating the education activities.

2. Public Involvement/Participation. The permittee or applicant, as applicable, shall:

   a. Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP;

   b. Develop and implement a process by which public comments to the plan are received and reviewed by the person(s) responsible for the SWMP;

   c. Make the SWMP and NOI available to the public and to the operator of any MS4 or Tribal authority receiving discharges from the small MS4; and

   d. Include the following information in the SWMP:

      i. A description of the general plan for informing the public of involvement and

participation opportunities;

ii. The types of activities for public involvement that the program will include and the target audiences;

iii. A description of the procedure for receiving and reviewing public comments;

iv. An explanation of how interested parties may access the NOI and the SWMP;

v. A list of measurable goals for the public involvement/participation program;

vi. Dates by which the permittee will achieve specific measurable goals;

vii. The name of the person(s) responsible for implementing and coordinating the public involvement/participation activities; and

viii How the public was involved in the development of the SWMP submitted with the NOI.

e. The permittee shall comply with State, Tribal and local public notice requirements when implementing the public involvement/participation program.

3. Illicit Discharge Detection and Elimination. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4;

b. Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

c. To the extent allowable under State, Tribal or local law, effectively prohibit through ordinance or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

d. Develop and implement a plan to detect, identify the source of, and address non-storm water discharges, including illegal dumping, to the system;

e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;

f. Address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if the small MS4 identifies them as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, spills, street wash water, and discharges from emergency fire fighting activities (however, emergency fire fighting does not include discharges from fire fighting training exercises or facilities, discharges from activities intended to prevent fires or from the testing of fire fighting equipment).

The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee shall document in the SWMP any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing significant amounts of pollutants to the MS4.

e. Conduct dry weather field screening for non-storm water flows. The screening must include field tests of selected chemical parameters as indicators of discharge sources. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up investigation with an action to further study the source of the discharge and ultimately eliminate the discharge.

g. Address on-site sewage disposal systems that flow into the storm drainage system;

h. Include the following information in the SWMP:

i. A description of detection methods;

ii. A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.

iii. A description of enforcement policy and jurisdiction;

iv. A list of the non-storm water discharges allowed in the small MS4 because they are identified as non-significant contributors of pollutants to the small MS4. This list must also identify any additional categories of discharges (besides those named in the first paragraph of Part V.B.3.f) that the MS4 intends to address as non-illicit discharges;

v. The methods for informing/training employees about illicit discharges;

vi. The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;

vii. A list of measurable goals for the illicit detection and elimination program;

viii. Dates by which the permittee will achieve specific measurable goals; and

ix. The name of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.

4. Construction Site Storm Water Runoff Control. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If EPA waives requirements for storm water discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites;

b Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Review all site plans for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V.B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and verify (in written communication with the construction site

operator) that the BMPs for the site are appropriate;

d. Develop and implement procedures for site inspection and enforcement of control measures;

e. Include the following information in the SWMP:

i. A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and waste on construction sites. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

ii. A description of the sanctions and enforcement mechanism(s) to ensure compliance;

iii. A description of the procedures for site inspection and enforcement of control measures, and procedures for site plan reviews;

iv. Procedures for receipt, acknowledgment and consideration of information submitted by the public;

v. A list of measurable goals for the construction site runoff control program;

vi. Dates by which the permittee will achieve specific measurable goals; and

vii. The name of the person(s) responsible for overseeing construction site runoff control activities.

5. Post-Construction Storm Water Management in New Development and Redevelopment. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;

b. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;

c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4;

d. Ensure adequate long-term operation and maintenance of BMPs; and

e. Include the following information in the SWMP:

i. A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community;

ii. A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

iii. A description of the procedure to ensure compliance with local requirements;

iv Education program for developers and the public about project designs that minimize water quality impacts;

v. An identification of the measurable goals for the post-construction runoff control program;

vi. Dates by which the permittee will achieve specific measurable goals; and

vii. The name of the person(s) responsible for the development, implementation, and enforcement of post-construction storm water management.

6. Pollution Prevention/Good Housekeeping for Municipal Operations. The permittee or applicant, as applicable, shall:

a. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The permittee shall address the following topics in the program:

i. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4;

ii. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage

areas, and salt and sand storage locations and snow disposal areas; and

iii. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris; and

iv. Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices;

b. Include the following information in the SWMP:

i. A list of the municipal operations impacted by this operation and maintenance program;

ii. A list of industrial facilities owned or operated by the permittee that ultimately discharge to the small MS4 and are subject to:

(1) The Multi-Sector General Permit (MSGP), or

(2) Individual NPDES permit for discharges of storm water associated with industrial activity;

iii. A map showing the industrial facilities owned and operated by the MS4;

iv. The EPA permit authorization number or a MSGP NOI form for each facility;

v. A description of the training program for municipal employees;

vi. A list of measurable goals for the municipal pollution prevention program;

vii. Dates by which the permittee will achieve specific measurable goals; and

viii. The name of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.

C. Qualifying State, Tribal or Local Program. The permittee may substitute the BMPs and measurable goals of an existing storm water pollution control program to qualify for compliance with one or more of the minimum control measures if the existing measure meets the requirements of the minimum control measure as established in Part V.B.

D. Sharing Responsibility. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. A permittee may rely

on another entity only if:

1 The other entity, in fact, implements the control measure;

2. The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;

3. The other entity agrees to implement the control measure on the permittee's behalf. Written acceptance of this obligation is expected. The permittee shall maintain this obligation as part of the SWMP description. If the other entity agrees to report on the minimum measure, the permittee shall supply the other entity with the reporting requirements in Part V.H of this general permit. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component;

E. Reviewing and Updating SWMPs.

1. The permittee shall annually review the SWMP in conjunction with preparation of the annual report required under Part V.H.

2. The permittee may change the SWMP during the life of the permit according to the following procedures:

a. Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWMP may be made at any time upon written notification to EPA;

b. Changes replacing an ineffective or infeasible management practice specifically identified in the SWMP with an alternate management practice may be requested at any time. Unless denied by EPA, changes proposed according to the criteria below are deemed approved and may be implemented 60 days after submitting the request. If the request is denied, EPA will send a written response giving a reason for the decision. Modification requests must include:

i. An analysis of why the management practice is ineffective or infeasible (including cost prohibitive),

ii. Expectations on the effectiveness of the replacement management practice, and

iii. An analysis of why the replacement management practice is expected to achieve the goals of the management practice to be replaced;

c. Change requests or notifications must be made in writing and signed in accordance

with Part VI.H;

3. EPA may notify a permittee that changes to the SWMP are necessary:

   a. To address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;

   b. To include more stringent requirements necessary to comply with new federal or state statutory or regulatory requirements;

   c. To include other conditions deemed necessary by EPA to comply with the surface water quality standards, ESA related requirements, and/or other goals and requirements of the CWA, or

   d. If, at any time, EPA determines that the SWMP does not meet permit requirements.

4. Within 30 days of receipt of notification as described in Part V.E.3 above, the permittee must make the required changes to the SWMP and submit to EPA a written statement certifying that the requested changes have been made. EPA will request changes in writing, and offer an opportunity to propose alternative program changes to meet the objective of the requested modification.

5. Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP on all new areas added to the permittee's portion of the MS4 (or for which the permittee becomes responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

   a. Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee must have a plan for implementing the SWMP on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP must be included in the annual report.

   b. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the SWMP and not modifications to the permit.

F. Monitoring

1. The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been established, the permittee must monitor to determine if the storm water controls are adequate to maintain compliance with the MS4's wasteload allocation.

2. If the permittee conducts monitoring at the permitted small MS4, the permittee must comply with the following:

   a. *Representative monitoring*. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

   b. *Test Procedures*. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136.

   c. *Discharge Monitoring Report*. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The names(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The names of the individuals who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

G. Recordkeeping

1. The permittee shall retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the permitting authority at any time.

2. The permittee shall submit its records to the permitting authority only when specifically asked to do so. The permittee must retain a description of the SWMP required by this permit (including a copy of the permit language) at a location accessible to the permitting authority. The permittee must make its records, including the notice of intent (NOI) and the description of the SWMP, available to the public if requested to do so in writing.

H. Reporting

1. The permittee must submit annual reports to EPA for each year of the permit term. The first report is due June 30, 2004, covering the activities of the permittee during the period beginning on the effective date of the permit for the permittee and ending March 10, 2004. Subsequent annual reports are due on June 30 of each year following 2004 during the remainder of the term of the permit. The report must include:

   a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measurable goals for each of the minimum control measures;

   b. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

   c A summary of the storm water activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

   d. Proposed changes to the storm water management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;

   e. Description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and

   f. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).

2. Where to Submit. Annual reports shall be submitted to EPA at the following address: Small MS4 Notice of Intent, EPA Region 9 (WTR-5), 75 Hawthorne Street, San Francisco, CA 94105, and in Arizona (non-Indian Country lands) to the Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, AZ 85007.

   For Guam, annual reports must be sent to the above Region 9 address and to the Guam

EPA, P.O. Box 22439-GMF, Barrigada, Guam 96921. For American Samoa, annual reports must be sent to the above Region 9 address and to the American Samoa Environmental Protection Agency, Executive Office Building, Pago Pago, AS 96799. For the Commonwealth of the Northern Mariana Islands, annual reports must be sent to the above Region 9 address and to the Commonwealth of the Northern Mariana Islands, Office of the Governor, Director, Division of Environmental Quality, P. O. Box 501304 C.K, Saipan, MP 96950.

VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

1. *Criminal Violations.*

a. Negligent Violations. The CWA provides that any person who *negligently* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. In the case of a second, or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

b. Knowing Violations. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second, or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or both.

c. Knowing Endangerment. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily

injury shall, upon conviction be subject to a fine not more than $250,000 or by imprisonment for not more than 15 years, or both. In the case of a second, or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than $500,000 per day of violation, or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

d. False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

2. *Civil Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

3. *Administrative Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to an administrative penalty as follows:

1. *Class I penalty.* Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

2. *Class II penalty.* Not to exceed $11,000 per day for each day during which violation continues nor shall the maximum amount exceed $137,500.

B. Duty to Reapply. If a permittee wishes to continue an activity regulated by this permit after the

expiration date of this permit, the permittee shall apply for and obtain a new permit.

C. Continuation of the Expired General Permit. If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. Issuance of an individual permit for your discharges; or

3. A formal permit decision by the permitting authority not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

E. Duty to Mitigate. The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

F. Duty to Provide Information. The permittee must furnish to the permitting authority any information that is requested to determine compliance with this permit or other information.

G. Other Information. If the permittee becomes aware that the permittee has failed to submit any relevant facts in the Notice of Intent or submitted incorrect information in the Notice of Intent or in any other report to the permitting authority, the permittee must promptly submit such facts or information.

H. Signatory Requirements. All Notices of Intent, Notices of Termination, reports, certifications, or information submitted to the permitting authority, or that this permit requires be maintained by the permittee shall be signed and certified as follows:

1. *Notices of Intent/Termination*. All Notices of Intent/Termination shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. *Reports and other information.* All reports required by the permit and other information requested by the permitting authority or authorized representative of the permitting authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. *Signed authorization*. The authorization is made in writing by a person described above and submitted to the permitting authority.

   b. *Authorization with specified responsibility*. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility for environmental matter for the regulated entity.

3. *Changes to authorization*. If an authorization is no longer accurate because a different operator has the responsibility for the overall operation of the MS4, a new authorization satisfying the requirement of VI.H.2.b above must be submitted to the permitting authority prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

4. *Certification*. Any person (as defined above in (2.a and 2.b)) signing documents under Part VI.H shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. Proper Operation and Maintenance. The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of this permit and with the conditions of the permittee's storm water management program. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed only when the operation is necessary to achieve compliance with the conditions of the permit.

K. Inspection and Entry. The permittee must allow the permitting authority or an authorized representative (including an authorized contractor acting as a representative of the Administrator) upon the presentation of credentials and other documents as may be required by law, to do any of the following:

1. Enter the premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

L. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

M. Permit Transfers. This permit is not transferable to any person except after notice to the permitting authority. The permitting authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

N. Anticipated Noncompliance. The permittee must give advance notice to the permitting authority of any planned changes in the permitted small MS4 or activity which may result in noncompliance with this permit.

O. State/Tribal Environmental Laws.

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.

P. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the

application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

Q. Procedures for Modification or Revocation Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

R. Requiring an Individual Permit or an Alternative General Permit.

1. *Request by permitting authority*. The permitting authority may require any person seeking authority under, or authorized by, this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the permitting authority to take action under this paragraph. Where the permitting authority requires the permittee to apply for an individual NPDES permit, the permitting authority will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to EPA, Region 9. The permitting authority may grant additional time to submit the application upon request of the applicant. If the permittee fails to submit in a timely manner an individual NPDES permit application as required by the permitting authority under this paragraph, then the applicability of this permit to the permittee is automatically terminated at the end of the day specified by the permitting authority for application submittal. This paragraph does not apply to any person whom the permitting authority determines was never eligible under Part I.D. The permitting authority may also notify a discharger to file for an individual permit prior to submission of an NOI.

2. *Request by permittee*. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee must submit an individual application in accordance with the requirements of 40 CFR 122.33(b)(2), with reasons supporting the request, to EPA, Region 9. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. *General permit termination*. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual

NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the permitting authority.

VII. Definitions

All definitions contained in Section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the even of a conflict, the definition found in the Statute or Regulation takes precedence.

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Control Measure" as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

"CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.

"Discharge" when used without qualification means the "discharge of a pollutant."

"Discharge-relatedactivities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

"Facility" means any NPDES "point source" or any other facility (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Illicit Connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Indian country" means:

a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
b. All dependent Indian communities within the borders of the United States whether within

the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

"Large or Medium Municipal Separate Storm Sewer System" means all municipal separate storm sewers as defined at 40 CFR 122.26(b)(4) or (7).

"MEP" means maximum extent practicable, the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges. A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and other provisions such as the Administrator or the State determines appropriate for the control of such pollutants."

"Measurable Goal" means a quantitative measure of progress in implementing a component of a storm water management program.

"MS4" means municipal separate storm sewer system.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):

a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;

b. Designed or used for collecting or conveying storm water;

c. That is not a combined sewer; and

d. That is not part of a publicly owned treatment works.

"NOI" means Notice of Intent to be covered by this permit (see Part II of this permit).

"NOT" means Notice of Termination.

"Outfall" means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

"Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

"Permitting Authority" means EPA, Region 9.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

"Significant contributors of pollutants" means any discharge that causes or could cause or contribute to a violation of surface water quality standards.

"Small Municipal Separate Storm Sewer System" all separate storm sewers that are:

1. Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, 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 CWA that discharges to waters of the United States.
2. Not defined as "large" or "medium" municipal separate storm sewer systems in accordance with this permit
3. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Management Program (SWMP)" means a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.

"Waters of the United States" - means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use,

degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

PART VIII. PERMIT CONDITIONS APPLICABLE TO SPECIFIC STATES, INDIAN COUNTRY LANDS, OR TERRITORIES

The provisions of Part VIII provide modifications or additions to the applicable conditions of Part I through VII of this permit to reflect specific additional conditions required as part of the State or Tribal CWA section 401 certification process, or Coastal Zone Management Act certification process, or as otherwise established by the permitting authority.

[Reserved for final permit decision pending completion of required State/Tribal certification process]

Addendum A - Endangered Species Guidance

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by this small MS4 general permit pose no jeopardy to endangered and threatened species and critical habitat. To ensure that those goals are met, applicants for permit coverage are required under Part I.D.5 to assess the impacts of their storm water discharges, allowable non-storm water discharges, and discharge-related activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat") by following the process listed below. EPA strongly recommends that you follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in your planning process.

You also have an independent ESA obligation to ensure that your activities do not result in any

prohibited "takes" of listed species.[1] Many of the measures required in the general permit and in these instructions to protect species may also assist you in ensuring that your activities do not result in a prohibited take of species in violation of section 9 of the ESA. If you have or plan activities in areas that harbor endangered and threatened species, you may wish to ensure that you are protected from potential takings liability under ESA section 9 by obtaining an ESA section 10 permit or, if there is a separate federal action regarding the MS4, by requesting formal consultation under ESA section 7 regarding that action. If you are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, you should confer with the appropriate Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS) (collectively the "Services") office.

B. How Does the Basic Eligibility Process Work?

In order to determine if you are eligible to use the permit, you need to go through the series of steps described below.

If you can not meet any of the eligibility criteria, you must apply for an individual permit.

C. What Are the Eligibility Criteria?

The Part I.D.5 eligibility requirement may be satisfied by documenting that one or more of the following criteria has been met, unless EPA directs an applicant to pursue eligibility under Criteria B.

Criteria A. No Listed Species or Critical Habitat Are in Proximity to Your MS4 or the Point(s) Where Authorized Discharges Reach a Water of the United States (See Part I.D.5.a).

Using the latest County Species List available from EPA and any other relevant information sources, you have determined that no listed species or critical habitat are in proximity to your MS4. Listed species and critical habitat are in proximity to an MS4 when they are:

CLocated in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water. This may also include areas where storm water from your MS4 enters groundwater that has a direct hydrological connection to a receiving water (e.g., groundwater infiltrates at your MS4 and re-emerges to enter a surface waterbody within a short period of time.)

CLocated in the immediate vicinity of, or nearby, the point of discharge into receiving waters.

CLocated in the area of an MS4 where storm water BMPs are planned or are to be constructed.

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[1]Section 9 of the ESA prohibits any person from "taking" a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a "incidental take statement" as part of undergoing ESA section 7 formal consultation; (2) where an incidental take permit is obtained under ESA section 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

Please be aware that no protection from incidental takings liability is provided under this criteria.

Criteria B. An ESA Section 7 Consultation Has Been Performed for this or a Separate Federal Action Regarding Your MS4 (See Part I.D.5.b).

A formal or informal ESA Sec. 7 consultation on this or another federal action (e.g., New Source review under NEPA, application for a dredge and fill permit under CWA Sec. 404, application for an individual NPDES permit, etc.) addressed the effects of your discharges and discharge-related activities on listed species and critical habitat. If your MS4 was the subject of a formal consultation, it must have resulted in either a "no jeopardy opinion" or a "jeopardy opinion" and you agree to implement any reasonable and prudent alternatives or other conditions upon which the consultation was based. If your MS4 was the subject of an informal consultation, it must have resulted in a written concurrence by the Service(s) on a finding that the applicant's activities are not likely to adversely affect listed species or critical habitat (for informal consultation, see 50 CFR 402.13).

If EPA or the Service(s) have particular concerns necessitating a thorough analysis by the Service(s) in addition to the applicant, then EPA may direct an applicant to pursue eligibility under this criteria.

Criteria C. An Incidental Taking Permit Under Section 10 of the ESA was Issued for Your MS4 (See Part I.D.5.c)

You have a permit under section 10 of the ESA and that authorization addresses the effects of your wastewater and storm water discharges and discharge-related activities on listed species and critical habitat. Note: You must follow FWS/NMFS procedures when applying for an ESA section 10 permit (see 50 CFR 17.22(b)(1)).

Criteria D. You Have Determined Adverse Effects Are Not Likely (See Part I.D.5.d).

You have investigated potential effects your discharges and discharges-related activities may have on listed species and critical habitat and have no reason to believe there would be adverse effects. Any terms and/or conditions to protect listed species and critical habitat you relied on in order to determine adverse effects would be unlikely must be incorporated into your Storm Water Management Program (required by the permit) and implemented in order to maintain permit eligibility.

Please be aware that no protection from incidental takings liability is provided under this criteria.

Criteria E. Your MS4 Was Covered Under the Eligibility Certification of Another Operator for the MS4 Area (See Part I.D.5.e)

Your storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part I.D.5 which covered your MS4. By certifying eligibility under Part I.D.5.c, you agree to comply with any measures or controls upon which the other operator's certification under Part I.D.5.c was based.

Please be aware that in order to meet the permit eligibility requirements by relying on another operator's certification of eligibility, the other operator's certification must apply to the location of your MS4 and must address the effects from your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat. This situation will typically occur where an ownership of an MS4 covered by this permit changes or when there are multiple operators within an industrial park or an airport. However, before you rely on another operator's certification, you should carefully review that certification along with any supporting information. You also need to confirm that no additional species have been listed or critical habitat designated in the area of your MS4 since the other operator's endangered species assessment was done. If you do not believe that the other operator's certification provides adequate coverage for your MS4, you should provide your own independent endangered species assessment and certification.

Please be aware that no protection from incidental takings liability is provided under this criteria.

D. What Procedures Do I Use To Determine if the Eligibility Criteria Can Be Satisfied?

To determine eligibility, you must assess (or have previously assessed) the potential effects of your storm water discharges, allowable non-storm water discharges and discharge-related activities on listed species and critical habitat. PRIOR to completing and submitting a Notice of Intent (NOI) form, you must follow the steps outlined below and document the results of your eligibility determination.

Step One: Are There Any Endangered Species or Critical Habitat in Your County (or Other Area) and, if so, Are They in Proximity to Your MS4 or Discharge Locations?

1-A. Check for Listed Species. Look in the latest county species list to see if any listed species are found in your county. If you are located close to the border of a county or your MS4 is located in one county and your discharge points are located in another, you must look under both counties. Since species are listed and de-listed periodically, you will need the most current list at the time you are doing your endangered species assessment. EPA's most current county-species list is on the Internet at http://www.epa.gov/owm/esalst2.htm.

=>Proceed to 1-B.

1-B. Check for Critical Habitat. Some (but not all) listed species have designated critical habitat. Exact locations of such habitat is provided in the endangered species regulations at 50 CFR part 17 and part 226. To determine if MS4 or discharge locations are within designated critical habitat, you should either:

Review those regulations (which can be found in many larger libraries); or

Contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. A list of FWS and NMFS offices for the areas of permit coverage is found in section II of this Addendum; or

Contact the State Natural Heritage centers. These centers compile and disseminate information on Federally listed and other protected species. They frequently have the most current information on listed species and critical habitat. A list of these centers for the areas of permit coverage is provided in section III of this Addendum.

=>Proceed to 1-C.

1-C. Check for Proximity. If there are listed species in the counties described in Step One, are they in proximity to your MS4 or discharge locations? You will need to use the proximity criteria in Eligibility Criteria A to determine if the listed species are in your part of the county. The area in proximity to be searched/surveyed for listed species will vary with the size of the MS4, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of MS4s potentially covered by the general permit, no specific method to determine whether species are in proximity is required for permit coverage under the general permit. Instead, you should use the method or methods which best allow you to determine to the best of your knowledge whether species are in proximity to your particular MS4. These methods may include:

CConducting visual inspections. This method may be particularly suitable for MS4s that are smaller in size, MS4s located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and MS4s that discharge directly into municipal storm water collection systems. For other MS4s, a visual survey of the MS4 site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.

CContacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices. Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies.

CContacting local/regional conservation groups. These groups inventory species and their locations and maintain lists of sightings and habitats.

CConducting a formal biological survey. Larger MS4s with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess
whether species are located in proximity and whether there are likely adverse effects.

If neither your MS4 nor discharge locations are located in designated critical habitat, then you need not consider impacts to critical habitat when following Steps Two through Five below. If your MS4 or discharge locations are located within critical habitat, then you must look at impacts to critical habitat when following Steps Two through Five. EPA notes that many measures imposed to protect listed species under these steps will also protect critical habitat. However, obligations to protect habitat under this permit are separate from those to protect listed species. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

=> Proceed to 1-D.

1-D. Check for Criteria “A” Eligibility IF NO SPECIES WERE LISTED FOR YOUR COUNTY OR THE SPECIES THAT WERE LISTED WERE NOT IN PROXIMITY TO YOUR DISCHARGE AND YOUR MS4 AND DISCHARGE LOCATIONS WERE NOT IN PROXIMITY TO CRITICAL HABITAT, YOU ARE ELIGIBLE UNDER CRITERIA “A”. Document your endangered species assessment and certify eligibility under Part I.D.5.a of the permit. Go to Step Five.

=> If there were listed species or critical habitat, proceed to Step Two.

Step Two: Can You Meet Eligibility Criteria “B”, “C”, or “E”?

2-A Check for Criteria “B”, “C”, or “E” Basis Do one of the following apply:

- There was a completed consultation under ESA Sec. 7 for your MS4 (Criteria B) => proceed to 2-B.

- There is a previously issued ESA Sec. 10 permit for your MS4 (Criteria C) => proceed to 2-C.

- Another operator previously certified eligibility for the area where your MS4 is located (Criteria E) => proceed to 2-D.

=> If no, proceed to Step Three.

2-B Check for Criteria “B” Eligibility Did the previously completed ESA Sec. 7 consultation consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?

=> If no, proceed to Step Three.

2-B-1 Did the ESA Sec. 7 consultation result in either a “no jeopardy” opinion by the Service (for formal consultations) or a concurrence by the service that your activities would be “unlikely to adversely affect” listed species or critical habitat?

=> If no, proceed to Step Three.

2-B-2 IF YOU AGREE TO IMPLEMENT ANY MEASURES UPON WHICH THE CONSULTATION WAS CONDITIONED, YOU ARE ELIGIBLE UNDER CRITERIA “B”. Incorporate any necessary measures into your Storm Water Management Program, document your endangered species assessment, and certify eligibility under Part I.D.5.b. Go to Step Five.

=> If you do not agree to implement conditions upon which the consultation was based, proceed to Step Three.

2-C Check for Criteria “C” Eligibility IF YOUR ESA Sec. 10 PERMIT CONSIDERED ALL CURRENTLY LISTED SPECIES AND CRITICAL HABITAT AND ADDRESSES YOUR STORM

WATER, ALLOWABLE NON-STORM WATER, AND DISCHARGE RELATED ACTIVITIES, YOU ARE ELIGIBLE UNDER CRITERIA "C". Incorporate any necessary measures into your Storm Water Management Program, document your endangered species assessment, and certify eligibility under Part I.D.5.c of the permit. Go to Step Five.

=> If your ESA Sec. 10 permit did not meet these criteria, proceed to Step Three.

2-D Check for Criteria "E" Eligibility Did the other operator's certification of eligibility consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?

=> If no, proceed to Step Three.

2-D-1 IF YOU AGREE TO IMPLEMENT ANY MEASURES UPON WHICH THE OTHER OPERATOR'S CERTIFICATION WAS BASED, YOU ARE ELIGIBLE UNDER CRITERIA "E". Incorporate any necessary measures into your Storm Water Management Program, document your endangered species assessment, and certify eligibility under Part I.D.5.e of the Permit. Go to Step Five.

=> If you do not agree to implement conditions upon which another operator's certification was based, proceed to Step Three.

Step Three: Are Listed Species or Critical Habitat Likely To Be Adversely Affected by Your MS4's Storm Water Discharges, Allowable Non-storm Water Discharges, or Discharge-related Activities?

If you are unable to certify eligibility under Criteria A, B, C, or E, you must assess whether your storm water discharges, allowable non-storm water discharges, and discharge-related activities are likely to adversely affect listed species or critical habitat. "Storm water discharge-related activities" include: activities which cause, contribute to, or result in point source storm water pollutant discharges; and measures to control storm water discharges and allowable non-storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent water pollution. Effects from storm water discharges, allowable non-storm water discharges, and discharge-related activities which could pose an adverse effect include:

Hydrological. Wastewater or storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of wastewater or storm water discharged and the volume and condition of the receiving water. Where a discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.

Habitat. Excavation, site development, grading, and other surface disturbance activities, including the installation or placement of wastewater or storm water ponds or BMPs, may adversely affect listed species or their habitat. Wastewater or storm water associated with MS4 operation may drain or inundate listed species habitat.

Toxicity. In some cases, pollutants in wastewater or storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each MS4. If you are having difficulty in determining whether your MS4 is likely to cause adverse effects to a listed species or critical habitat, you must contact the appropriate office of the FWS, NMFS, or Natural Heritage Center.

Document the results of your assessment and make a preliminary determination on whether your activities are or are not likely to cause an adverse effect. Your determination may be based on measures that you implement to avoid, eliminate, or minimize adverse affects.

=> Proceed to Step Four.

Step Four: Can You Meet Eligibility Criteria ``D"?

4-A IF STEP THREE DETERMINATION IS ``UNLIKELY TO ADVERSELY AFFECT", YOU ARE ELIGIBLE UNDER CRITERIA "D". Incorporate appropriate measures upon which your eligibility was based into your Storm Water Pollution Prevention Plan and certify eligibility under Part I.D.5.d of the permit. Go to Step Five.

=> If there may be adverse effects, proceed to Step 4-B.

4-B Step Three (or Step 4-A-1) Determination is "May Adversely Affect." You must contact the Service(s) to discuss your findings and measures you could implement to avoid, eliminate, or minimize adverse affects.

4-B-1 IF YOU AND THE SERVICE(S) REACH AGREEMENT ON MEASURES TO AVOID ADVERSE EFFECTS, YOU ARE ELIGIBLE UNDER CRITERIA "D".

Incorporate appropriate measures upon which your eligibility was based into your Storm Water Pollution Prevention Plan and certify eligibility under Part I.D.5.d of the permit. Go to Step Five.

4-C Endangered Species Issues Cannot be Resolved. If you cannot reach agreement with the Service(s) on measures to avoid, eliminate, or reduce adverse effects to an acceptable level; and if any likely adverse effects cannot otherwise be addressed through meeting the other criteria of Part I.D.5; then you are not eligible for coverage under the general permit at this time and must seek coverage under an individual permit. Proceed to 40 CFR 122.26(c) for individual permit application requirements.

Step Five: Submit Notice of Intent and Document Results of the Eligibility Determination.

Once all other Part I.D eligibility requirements have been met, you may submit the Notice of Intent (NOI). Signature and submittal of the NOI is also deemed to constitute your certification, under penalty of law, of your eligibility for permit coverage.

You must include documentation of Part I.D.5 eligibility in the pollution prevention plan required for the MS4. Documentation required for the various eligibility criteria are as follows:

Criteria A--A copy of the County-Species List pages with the county(ies) where your MS4 and discharges are located and a statement on how you determined that no listed species or critical habitat was in proximity to your discharge.
Criteria B--A copy of the Service(s)'s Biological Opinion or concurrence on a finding of "unlikely to adversely effect" regarding the ESA Sec. 7 consultation.
Criteria C--A copy of the Service(s)'s letter transmitting the ESA Sec. 10 authorization.
Criteria D--Documentation on how you determined adverse effects on listed species and critical habitat were unlikely.
Criteria E--A copy of the documents originally used by the other operator of your MS4 (or area including your MS4) to satisfy the documentation requirement of Criteria A, B, C or D.

E. Duty To Implement Terms and Conditions Upon Which Eligibility Was Determined

You must comply with any terms and conditions imposed under the eligibility requirements of Part I.D.5 to ensure that your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not pose adverse effects or jeopardy to listed species and/or critical habitat. You must incorporate such terms and conditions in your MS4's Storm Water Pollution Prevention Plan as required by the permit. If the eligibility requirements of Part I.D.5 cannot be met, then you may not receive coverage under this permit. You should then consider applying to the permitting authority for an individual permit.

II. U.S. Fish and Wildlife Service Offices

National Website For Endangered Species Information. Endangered Species Home page: http://www.fws.gov/r9endspp/endspp.html.

Regional, State, Field and Project Offices

USFWS, Region One--Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, 911 NE 11 Avenue, Portland, OR 97232-4181, (503) 231-6121

State, Field, and Project Offices (Region One)

Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, 300 Ala Moana Blvd., Rm 3108, Honolulu, HI 96850

State Supervisor, U.S. Fish and Wildlife Service, Nevada State Office, 4600 Kietzke Lane, Building C, Rm. 125, Reno, NV 89502-5093

Field Supervisor, U.S. Fish and Wildlife Service, Klamath River F&W Office, 1215 South Main, Suite 212, Yreka, CA 96097-1006

Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008

Field Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, CA 93003

Project Leader, U.S. Fish and Wildlife Service, Coastal California Fish and Wildlife Office, 1125 16th St., Rm. 209, Arcata, CA 95521-5582

Project Leader, U.S. Fish and Wildlife Service, Northern Central Valley F&W Office, 10959 Tyler Road, Red Bluff, CA 96080

State Supervisor, U.S. Fish and Wildlife Service, California State Office, 3310 El Camino Avenue, Suite 120, Sacramento, CA 95821-6340

Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish & Wildlife Office, 3310 El Camino Avenue, Suite 120, Sacramento, CA 95821-6340

USFWS Region Two--Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, P.O. Box 1306, Albuquerque, NM 87103

State, Field, and Project Offices (Region Two)

Field Supervisor, U.S. Fish and Wildlife Service, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951

III. National Marine Fisheries Service Offices

The National Marine Fisheries Service is developing a database to provide county and territorial water (up to three miles offshore) information on the presence of endangered and threatened species and critical habitat. The database should be found at the "Office of
Protected Resources" site on the NMFS Home page at: http://www.nmfs.gov.

Southwest Region

Protected Species Management Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, California 90802-4213

Arcata Field Office, National Marine Fisheries Service, 1125 16th Street, Room 209, Arcata, California

95521

Eureka Field Office, National Marine Fisheries Service, 1330 Bayshore Way, Eureka, California 95501

Pacific Islands Area Field Office, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822-2396

Santa Rosa Field Office, Protected Resources Program, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404

IV. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers, corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website at http://www.heritage.tnc.org, which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below for the area of coverage of the permit:

Arizona Heritage Data Management System, Arizona Game & Fish Department, WM-H, 2221 W. Greenway Road, Phoenix, AZ 85023, 602/789-3612 Fax: 602/789-3928, Internet: hdms@gf.state.az.us.

California Natural Heritage Division, Department of Fish & Game, 1220 S Street, Sacramento, CA 95814, 916/322-2493 Fax: 916/324-0475

Hawaii Natural Heritage Program, The Nature Conservancy of Hawaii, 1116 Smith Street, Suite 201, Honolulu, HI 96817, 808/537-4508 Fax: 808/545-2019

Navajo Natural Heritage Program, P.O. Box 1480, Window Rock, Navajo Nation, AZ 86515, (520) 871-7603, (520) 871-7069 (FAX)

Nevada Natural Heritage Program, Department of Conservation & Natural Resources, 1550 E. College Parkway, Suite 145, Carson City, NV 89706-7921, 702/687-4245 Fax: 702/885-0868

Addendum B--Historic Properties Guidance

Applicants must determine whether their MS4's storm water discharges, allowable non-storm water discharges, or construction of best management practices (BMPs) to control such discharges, has potential to affect a property that is either listed or eligible for
listing on the National Register of Historic Places.

For existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic properties are affected. However, for MS4s

which are new storm water dischargers and for existing MS4s which are planning to construct BMPs for permit eligibility, applicants should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, applicants should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (e.g., they are "eligible for listing").

Due to the large number of entities seeking coverage under this permit and the limited number of personnel available to State and Tribal Historic Preservation Officers nationwide to respond to inquiries concerning the location of historic properties, EPA suggests that applicants first access the "National Register of Historic Places" information listed on the National Park Service's web page (http://www.nr.nps.gov/nrishome.htm). Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers are listed in Parts II and III of this addendum, respectively. In instances where a Tribe does not have a Tribal Historic Preservation Officer, applicants should contact the appropriate Tribal government office when responding to this permit eligibility condition. Applicants may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

(1) If historic properties are not identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges (e.g., diversion channels or retention ponds), then the applicant has met the permit eligibility criteria under I.D.6.a.

(2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the applicant has met the permit eligibility criteria under Part I.D.6.b.

(3) If historic properties are identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges, and it is determined that there is the potential to adversely affect the property, the applicant can still meet the permit eligibility criteria under Part I.D.6.b if he/she obtains and complies with a written agreement with the appropriate State or Tribal Historic Preservation Officer which outlines measures the applicant will follow to mitigate or prevent those adverse effects.

The contents of such a written agreement must be included in the MS4's Storm Water Management Program.

In situations where an agreement cannot be reached between an applicant and the State or Tribal Historic Preservation Officer, applicants should contact the Advisory Council on Historic Preservation listed in Part IV of this Addendum for assistance.

The term "adverse effects" includes but is not limited to damage, deterioration, alteration or

destruction of the historic property or place. EPA encourages applicants to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

Applicants are reminded that they must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places.

I. Internet Information on the National Register of Historic Places

An electronic listing of the ``National Register of Historic Places," as maintained by the National Park Service on its National Register Information System (NRIS), can be accessed on the Internet at http://www.nr.nps.gov/nrishome.htm.

II. State Historic Preservation Officers (SHPO)

SHPO List for areas covered by the permit:

American Samoa

Mr. John Enright, HPO, Executive Offices of the Governor, American Samoa Historic Preservation Office, American Samoa Government, Pago Pago, American Samoa 96799, 011-684-633-2384 FAX: 684-633-2367, E-Mail: enright@samoatelco.com

Arizona

Mr. James W. Garrison, SHPO, Arizona State Parks, 1300 West Washington, Phoenix, AZ 85007, 602-542-4174 FAX: 602-542-4180, E-Mail: jgarrison@pr.state.az.us

California

Daniel Abeyta, Acting SHPO, Ofc of Hist Pres, Dept Parks & Recreation, P.O. Box 942896, Sacramento CA 94296-0001, 916-653-6624 FAX: 916-653-9824, E-Mail: dabey@ohp.parks.ca.gov

Guam

Lynda B. Aguon, SHPO, Guam Historic Preservation Office, Department of Parks & Recreation, PO Box 2950 Building 13-8 Tiyan, Hagatna, Guam 96932, 1-671-475-6290 FAX: 1-671-477-2822, E-Mail: laguon@mail.gov.gu.

Nevada

Mr. Ronald James, SHPO, Historic Preservation Office, 100 N Stewart Street, Capitol Complex, Carson City, NV 89701-4285, 775-684-3440 FAX: 775-684-3442 http://www.state.nv.us

Northern Mariana Islands, Commonwealth of the

Mr. Joseph P. DeLeon Guerrero, HPO, Dept of Community & Cultural Affairs, Division of Historic Preservation, Airport Road, Northern Mariana Islands, Saipan, MP 96950, 670-664-2125 FAX 670-664-2139, E-Mail: cnmihpo@itecnmi.com

III. Tribal Historic Preservation Officers (THPO)

In instances where a Tribe does not have a Tribal Historic Preservation Officer, please contact the appropriate Tribal government office when responding to this permit eligibility condition.

Tribal Historic Preservation Officers:

Alan S. Downer, Ph.D., Historic Preservation Dept., Navajo Nation, P.O. Box 4950, Window Rock, AZ 86515

Thomas Gates, Cultural Division, Yurok Tribe, 1034 6th St., Eureka, CA 95501

Monza V. Honga, Office of Cultural Resources, Hualapai Tribe, P.O. Box 310, Peach Springs, AZ 86434

John Welch, White Mt. Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941, Phone: (520) 338-5430, Fax: (520) 338-5488

IV. Advisory Council on Historic Preservation

Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004 Telephone: (202) 606-8503/8505, Fax: (202) 606-8647/8672, E-mail: achp@achp.gov

APPENDIX H

MARICOPA COUNTY COMMENTS ON THE DRAFT EPA NPDES STORMWATER PHASE II GENERAL PERMIT

Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, Arizona 85009-6399
(602) 506-4113
FAX: (602) 506-4601
TT: (602) 506-5897

Wednesday, October 30, 2002

Ms. Lisa Honor
U.S. EPA, Region 9 (WTR-5)
75 Hawthorne Street
San Francisco, CA
94105

(Sent Via Email & U.S.P.S.)
honor.lisa@epa.gov

RE: Proposed Draft General Permit for Small MS4s located in Arizona (EPA Version)

The Flood Control District of Maricopa County as technical representative of Maricopa County (the "County") appreciates this opportunity to comment on the Proposed Draft General Permit for Small MS4s located in Arizona (EPA Version).

As an initial comment, the County hereby requests a public hearing on the proposed permit as provided for in 40 CFR 124.12.

While the County's comments to follow will address many of the fundamental problems with the draft permits (EPAs version and ADEQs version being substantially similar), the chief concern is the requirement that all discharges meet State of Arizona Water Quality Standards (specifically numeric and narrative surface water quality standards). This goes beyond the Maximum Extent Practicable (MEP) standard that Congress established for the municipal storm water program. The MEP standard was upheld by the Ninth Circuit U.S. Court of Appeals when EPA issued the initial Arizona Phase I permits. Due to the uncertainty as to which agency will be the permitting authority, Phase II entities are not being given ample opportunity to meet with the definitive permitting authority and effectuate meaningful changes in the general permit. To add to the uncertainty, the County is concerned with the continuing program and budget cuts planned by the Arizona Department of Environmental Quality and how this new program will be administered.

The County's general comments are summarized below, followed by the County's specific comments on the Proposed Draft General Permit for Small MS4s located in Arizona (EPA Version).

GENERAL COMMENTS

MEP Standard, Not Water Quality Standards

Maricopa County has major concerns with the Phase II municipal stormwater general permit. While fully understanding that the goal of the National Pollutant Discharge Elimination System/Arizona Pollutant Discharge Elimination System (NPDES/AZPDES) programs is to improve water quality, the reality is that storm water runoff is difficult to treat and to monitor, particularly in the arid southwest, where a few storms may bring the majority of a year's precipitation. The MEP (Maximum Extent Practicable) standard was created to address the unique nature of stormwater, and it is not a technology driven standard. MEP is a BMP (Best Management Practices) standard, designed to deal with what is essentially a non-point source problem. MEP is the standard for the municipal programs dealing with stormwater runoff from very large, diverse areas, including parks and streets, commercial and residential areas. This standard is very different from what may be imposed upon industrial dischargers that are clearly point sources dealing with a confined area.

The Phase II permits should state clearly that meeting MEP equates to meeting Water Quality Standards (WQS). MEP and Water Quality Standards are not two separate goals. Section 402(p)(3) of the CWA establishes the standard of compliance for municipal stormwater as the reduction of stormwater pollutants to the MEP. This standard was to enable stormwater programs to meet technically achievable and fiscally responsible standards set forth in the Clean Water Act (CWA). While the Court of Appeals acknowledged EPA had the authority to use standards other than MEP, such as numeric permit limitations, it did not rule that EPA was mandated to do so and did not rule that EPA's discretion could be applied without regard to practicality. There is nothing in the record regarding potential Phase II pemittees that indicates that EPA must exercise that discretion at this time to protect Arizona's usually dry or ephemeral waters.

Suggested permit language to resolve the MEP issue could be similar to that outlined in Pennsylvania's draft permit. Modified for Arizona, it would read as follows, "The permittee must, within the permit term, develop, implement and enforce a stormwater management program designed to reduce the discharge of pollutants from its municipal separate storm sewer system (MS4) to the maximum extent practicable (MEP), with the goal of protecting water quality and satisfying the appropriate water quality standards (Arizona Administrative Code, Title 18, Chapter 11, Article 1). Implementation of the Stormwater Management Plan (SWMP) is deemed to satisfy the water quality requirements as described in the federal regulations during this permit term."

Flexible Nature of Phase II Program Lost

The second major item of concern is that the Phase II program was designed to be a flexible, not prescriptive program. By taking recommendations from the Phase II Rules

and making them mandatory permit provisions EPA has sacrificed the flexibility of the program, and is also not in compliance with its own Rules.

In the preamble to the Phase II rule (Federal Register, Volume 64, No. 235, Wednesday, December 8, 1999, p. 68739) EPA states that "The proposal to today's final rule included guidance as well as legal requirements. The word "must" indicates a requirement. Words like "should", "could," or "encourage," indicate a recommendation or guidance. In addition, the guidance was set off in parentheses to distinguish it from requirements." Furthermore, EPA go on to say, "EPA believes that it is important to include the guidance in the rule and agrees that the distinction between requirements and EPA recommendations must be very clear. In today's final rule, EPA has put the guidance in paragraphs entitled "Guidance" and replaced the word "should" with "EPA recommends." This is intended to clarify that the recommendations contained in the guidance paragraphs are not legally binding." This is also rephrased on Page 68842 of the actual rule, not the preamble. By incorporating into the rule the generic language identified in the final regulation, the program can remain flexible.

In the draft general permit, EPA Region IX clearly goes beyond the requirements of the rule. On Page 21 of the fact sheet the language reads as follows, "The proposed permit also includes a number of additional requirements for each minimum measure which were derived from the recommendations of the regulations; these provisions are included in the permit as requirements rather than recommendations to ensure their enforceability". This language goes beyond the intent of the language identified on page 68739 of the final rule.

Monitoring

The third major item of concern is that although monitoring is not a required part of the Phase II permit program, there is a large section on monitoring and it is confusing. The draft permit language should be clarified and state succinctly that only if a TMDL is adopted will any monitoring be required.

In a Report to Congress in February 2000, EPA identified one of the weaknesses of the Phase I program to be the monitoring program. Specifically, "it appears in some communities that the Phase I monitoring requirements have resulted in a significant expenditure of resources without a commensurate return from the resource investment (return in terms of storm water management program or direct water quality benefits). These inefficiencies were particularly noted in areas where the standard Phase I end-of-pipe monitoring was considered inappropriate for the specific geographic and climatological locations of some MS4s (e.g., areas that experience infrequent rainfall events)." It was also identified that there are no mechanisms in place to directly demonstrate the effectiveness of the Phase I MS4 program on improving water quality at a national level.

Also, on page 68846 of the final rule under "guidance", "EPA strongly recommends that until the evaluation of the stormwater program in subsection 122.37, no additional

requirements beyond the minimum control measures be imposed on regulated MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." The County strongly objects to any additional requirements beyond the minimum control measures outlined in the rule. Referring to section 122.37 on page 68847 of the rule, "EPA will evaluate the small MS4 regulations at subsections 122.32 through 122.36 and subsection 122.35 of this chapter after December 10, 2012 and make any necessary revisions."

There is no need to apply an ineffective, expensive, and unproven monitoring or other additional requirements beyond the six minimum control measures.

Other Major Concerns

Third party liability. The general permit as written, does not protect MS4s from what may generally be described as third party liability, either the consequences of actions of others beyond the control of the permittee or others exempt from the water quality laws. For example, what happens when a third party discharges into a system, for example a tanker truck flips over on the highway and the spill accidentally discharges to a flood control facility which discharges to a Water of the U.S.? EPA should go after the cause of the problem, the owners of the tanker, as opposed to the MS4 permit holder. Another example is agricultural irrigation tailwater, which is now exempt under federal law. A municipality or county cannot be responsible if this water enters an MS4 system and should not have liability for any pollution carried in those tailwaters as long as the federal government does not regulate agricultural discharges. The permit must include language to address these "third party" activities and problems.

The timing of primacy. We are still unclear who the regulatory authority in Arizona is going to be. With less than a month and a half to go before Dec. 8, 2002 (the date identified as a deadline for the permitting authority to issue general permits, Page 68738 (Exhibit 2), this does not leave much time to affect change in the general permits.

Why put definitions in the general permit, if they are interpretive only? A statement is made that the regulatory language takes precedence. We should not confuse the matter by simplifying the language or having definitions that are different from those in the adopted Rules. The permit should reference the actual definitions in the Rules.

Clarify what an existing qualifying program is. For example, in Maricopa County construction sites down to $1/10^{th}$ of an acre in size are already regulated. Is this county dust control program acceptable to replace a construction site BMP as it essentially accomplishes the same thing? The general permit should define what a local qualifying program may be and provide examples.

The map of the MS4 that is required with the Notice of Intent (NOI). The permittees should have the full permit term to create this map. In Maricopa County's specific case, the County boundaries are known, however, the only regulated part of our County is the

urbanized area as identified in the census bureau maps. As with most Phase II applicants we will need time to evaluate what components are specifically included in our MS4 system before we can fully map them.

SPECIFIC COMMENTS

Part I

-Page 4, C.2. - The wording "to or from" the MS4 is not appropriate. We cannot be liable for something that enters our MS4 system (i.e. third party liability; tanker spill example provided above). Under the Phase II program, you'll potentially have all interconnecting Phase II's prohibiting each other from discharging to another municipality's system, effectively forcing unrealistic and unachievable water quality treatment for stormwater. We suggest the sample permit language identified (see page 2 herein) in the Pennsylvania draft permit, which only addresses pollutants from an MS4 system. Leaving the language with only the "from" language would make this consistent with existing Phase I permits in Arizona. The language should also state that this requirement is "to the Maximum Extent Possible".

-Page 5, C.2. – If any of these items are shown to be significant contributors of pollutants, EPA must require that they are addressed by a DeMinimus Discharge Permit or other NPDES permit.

-Page 7, D.7. – As discussed above, the Phase II permittees do not have total control over discharges, as exempt waters, such as agricultural flows, and flows covered by other NPDES permits, and other unpermitted flows will be in their systems. The permit provision should include the MEP standard, clarify that only discharges to Waters of the U.S. are covered, and address the exempt and uncontrollable sources that may cause or contribute to an exceedance of the "applicable numeric or narrative surface water quality standards." What are the applicable standards for municipal stormwater as specific storm water concerns were not addressed in the latest Arizona triennial review?

-Page 7, D.8. – EPA is planning on repealing the latest TMDL rule in April 2003 and TMDLs should not be included in the general MS4 permit for stormwater. The County also argues that MEP is the standard for all stormwater discharges, not water quality standards, even when a TMDL has been adopted.

-Page 8, D.8.b. - The word "ensure" is an inappropriate word for a storm water permit because stormwater is essentially a non-point source, not a point source. Also, clarification is required as to how "instream exceedances" can be defined or detected in an ephemeral system.

Part II

-Page 8, A.1. – The County encourages EPA to develop a standard NOI form for all permittees.

-Page 8, A.3. – Because there is a 30 day wait after NOI submission before the permit is approved, clarification is needed as to the status of the permittee during that time.

-Page 8, A.4. – The County is concerned that no timeframe for correcting deficiencies is included, and that there is no appeal process if the permittee needs to challenge EPA on potential deficiencies.

Part III

-Page 11, B.9. – The reference should be to Part V.B.

Part IV

-Page 12, A., B., & C. – This entire section should be deleted. The final rule clearly states there should be "…no additional requirements beyond the minimum control measures be imposed on regulated MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality. (P.68846, final rule)"

-Page 12, A. ***Compliance with Water Quality Standards***
-This goes beyond the MEP standard for municipal stormwater. Municipal stormwater permittees are meeting water quality standards through the use of Best Management Practices to the Maximum Extent Practicable. EPA national guidance affirms that meeting the six minimum control measures is meeting MEP. (Please see general comments section above.)

Page 12, B**. *TMDLs***
-EPA is repealing the current TMDL rule in April 2003 and the program should not be part of the Phase II permits. MEP is the water quality standard for all stormwater permits.

Part V

-Page 13, A. – The reference to water quality standards should be deleted. The goal of any SWMP must be to reduce the discharge of pollutants to a Water of the U.S. to the Maximum Extent Practicable.

-Page 13, A.3.a. –This item is not necessary. Again, it goes beyond the MEP standard established by EPA and affirmed by the Ninth Circuit Court of Appeals (see discussion earlier).

-Page 13, B.1.b. – This entire section should be deleted as it goes beyond the specific wording of the rule (see discussion above.) Another option would be to include this section as recommendations only.

-Page 14, B.2.a.,b.,c., and d. –These sections should be deleted or left in solely as recommendations. They are very prescriptive and EPA is micromanaging well beyond the specific wording and intent of the rule. Only item (e) is appropriate for the final permit.

-Page 15, B.3.d. – The Rule does not require a Phase II permittee to "identify the source of" a non-storm water discharge and this phrase should be removed. The language could be amended to include a time period (say 180 days) in which the permittee will notify EPA (or the State, if primacy occurs) that there is an unpermitted discharge. Note again that these non-storm water discharges may be exempt under the federal Rules.

-Page 15, B.3.f. – Delete the word "spills" from the list as they are uncontrollable and this wording is not in the Rule. Everything in this section in the second paragraph and beyond through (h) are not in the Rule and should only be written as recommendations. Item (e) is mislabeled on page 16.

-Page 17, B.4.b. – This language must reflect what is in the actual rule, 40 C.F.R. 122.34.4.ii.A regarding the extent practical and allowable under State, Tribal or local law. The current wording "under the legal authorities of the small MS4" goes beyond that and should be deleted.

-Page 17, B.4.c. – This item should be deleted and follow the language of the rule. The language is too prescriptive and not flexible as intended by the rule. The Rule states "(D) Procedures for site plan review which incorporate consideration of potential water quality impacts and (E) Procedures for receipt and consideration of information submitted by the public." This language is more appropriate and more flexible than what is being attempted in this general permit. Any language other than that seen in the final rule is above and beyond the intent of the regulation.

-Page 17, B.4.e. – This section requires far more than the final Rule and should be recommendations only.

-Page 18, B.5.e. – This section is not required by the Rule and should only be a recommendation.

-Page 19, B.6.a. – The last sentence of the paragraph, "The permittee shall address the following topics in the program" and beyond should be a recommendation, not a requirement. The same is true of B.6.b. The Rule does not require the MS4's to track compliance with the MSGP; that is EPA's job.

-Page 20, C. – Clarification is needed as to what a qualifying program is.

-Page 21, E.3.a.,b. & c. These provisions are not in the federal requirements for Phase II and should not be included in this general permit.

-Page 22, E., 4. – EPA has 60 days to respond in E.2.b. yet permittees only have 30 days to make required changes to the SWMP. Permittees should be allowed the same timeframe that EPA has to review proposed changes.

-Page 22, F. – ***Monitoring*** – This entire section should be deleted. Monitoring (specifically end of pipe or receiving water monitoring) is not a requirement of the Phase II program. See discussion in the general comments section above. Also see P. 68846 of the final regulation.

-Page 24, H. – The date of the annual report submittals should be changed. June 30th is fiscal year end for most MS4s. Since any changes requested by EPA would potentially require money, the MS4s would not be in a position to budget for the subsequent year since the new fiscal year starts one day after the annual report submittal.

-As a general comment on annual reporting, EPA should provide guidance on annual report streamlining. Also, language should be included in the permit that says if permittees do not hear back from EPA within 60 days they may assume that the SWMP is approved.

Part VI

Sections VI.G.1 and 2 should be revised to be consistent with the federal Rule conditions found at 40 C.F.R. 41.f

Part VII

-Page 30 – ***Definitions*** – See the comments in the general comments section as to why this entire section should be deleted. Definitions should not be included in the general permit unless they follow the specific language in the law or adopted Rule.
In particular on Page 31 – Illicit discharge – Delete. This definition should also include an exemption for something that has an NPDES or AZPDES permit or one that is listed in Part I.C.2. And on -Page 32 – MEP – Delete. This definition is incorrect as MEP is not "the technology based standard". Also on Page 33, heat is listed as a pollutant, which is not correct in Arizona. Arizona specifically excluded heat related to stormwater in the latest triennial review.

FACT SHEET

Although the Fact Sheet is not technically part of the permit, the following comments are noted:

-Page 5, I.A. – EPA's interpretation of the MEP standard is wrong. See discussion above under the general comments section.

-Page 8, I.E. – A reference to is made to the 2000 305(b) report; however, the 2002 report concludes that water quality has improved.

-Page 17, III.E. – We strongly disagree with EPA's interpretation of the Ninth Circuit court opinion. See discussion in the general comments on the MEP standard. EPA has requested comments on this interpretation. The County believes the correct and reasonable approach to Phase II municipal storm water permits is flexible and utilizes the six minimum control measures in the Rule as the focus of a stormwater management program. By implementing the six minimum control measures, a permittee is in compliance with the Rule (see discussion on water quality requirements above).

-Page 19 – The great discussion on the NOT in the fact sheet needs to be in the permit itself, not in the fact sheet.

-Page 21 – IV.B. Additional requirements – The statement that "The proposed permit also includes a number of additional requirements for each minimum measure which were derived from the recommendations of the regulations; these provisions are included in the permit as requirements rather than recommendations to ensure their enforceability". This language goes beyond the intent of the language identified on page 68739 of the final rule. Furthermore, the County believes that this wording goes beyond Arizona law (ARS 49-203A.2) that states, "Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the Clean Water Act for the point source discharge of any pollutant or combination of pollutants into navigable waters."

-Page 23, IV.G. – This section should not be in the general permit and stormwater permits are only required to meet the MEP standard. Additional compliance with water quality standards are not a requirement for the municipal stormwater program. See discussions on MEP and water quality standards above.

-Page 25, IV.H.3. – The date the annual report is due should not be June 30, 2004. This is the fiscal year end for most MS4s and will make it very difficult for most permitted entities to have all of the data gathered for the annual report. We suggest September 30, 2004.

-Page 29 – ***Appendix B – Requirements and Guidance*** – Guidance in the appendix has been included as requirements in the permit. Appendix B accurately follows the Rule.

-Page 34 – Appendix C – The sample programs identified from some of the successes of the Phase I permit program illustrate the flexible way to develop BMPs. This flexibility is unfortunately not incorporated in the very prescriptive general permit language in this draft Phase II permit.

Another general concern is that potential Phase II permit applicants have been receiving information from EPA headquarters representatives that differ greatly from this Region IX permit language. The message from headquarters discusses a program that is flexible in nature and can be developed for appropriate local conditions. This draft permit is very prescriptive in nature and does not appear to follow that philosophy. To verify the intent of EPA headquarters we have included a copy of a training session put on by APWA from February of 2000 during which session Michael Cook talks about the Phase II program. The original video was pulled down from PA DEP website at: http://www.dep.state.pa.us/dep/deputate/watermgt/wqp/WQP_WM/Phase2NPDES.htm. You will need Real Player to run these videos, but you can fast forward to the (approximate) cues that have been set up. EPA headquarters clearly stated that by implementing the six Minimum Control Measures that are part of the Rule, Phase II stormwater permittees would meet MEP.

In Part 1, the following topics may be of interest.

14:00 min	-definition of point/non-point sources
18:42 min	-small construction sites
27:30 min	-concept of General Permits
28:30 min	-Individual permits
29:30 min	-Flexibility and Administration (Simplicity)
30:30 min	-MEP
32:45 min	-No Anticipation of numeric limits
35:43 min	-Flexibility into program (local focus)
38:00 min	-Encourage general permits
39:00 min	-Responsibility of permitting authority

Part 2

1:50 - 5:07 min	-MEP

Part 5

4 min	-If WQ based, cost will go up substantially
14 min	-Construction general permit


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There are many important and substantive issues raised by these comments in regard to the potential effect of this draft permit on Phase II communities. As a lead regional party active in stormwater quality issues, Maricopa County feels our concerns are region-wide. EPA and ADEQ should carefully consider addressing some of the major flaws in the draft permits. Numerous individual permit applications or legal challenges are not the preferred and constructive approach to solving stormwater management issues. County and Flood Control District staff are available to further discuss these comments and we encourage either EPA and/or ADEQ to sit down with us. Please feel free to contact me at (602) 506-4113 if you have any questions on these comments.

Sincerely,

Todd G. Williams, M.Sc.
Water Quality Branch Manager

APPENDIX I

ADEQ DRAFT GENERAL PERMIT NO. AZG2002-002, SEPTEMBER 27, 2002

Permit No. AZG2002-002

STATE OF ARIZONA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
PHOENIX, ARIZONA 85012-2809

ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR DISCHARGE FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) TO WATERS OF THE UNITED STATES

In compliance with the provisions of the Arizona Pollutant Discharge Elimination System program, (Arizona Revised Statutes, Title 49, Chapter 2, Article 3.1 and Arizona Administrative Code, Title 18, Chapter 9, Articles 9 and 10), this general permit authorizes discharges certified under this general permit from those locations specified throughout the state of Arizona to waters of the United States. These discharges shall be in accordance with the conditions of this general permit.

This general permit specifically authorizes only those operators of small municipal separate storm sewer systems in Arizona who submit a complete Notice of Intent in accordance with Parts III and V of this general permit and who comply with the permit requirements and conditions of Parts IV and VI. All discharges authorized by this general permit shall be consistent with the terms and conditions of this general permit.

This general permit becomes effective on April 10, 2003.

This general permit and the authorization to discharge expire at midnight, March 10, 2008.

Issued this ____ day of _____ 2002.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Karen Smith, Director
Water Quality Division

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PART I. COVERAGE UNDER THIS GENERAL PERMIT

A. Permit Area. This permit covers the state of Arizona, except for Indian Country.

B. Eligibility.

1. This permit authorizes the discharge of storm water from small municipal separate storm sewer systems (MS4s) provided that the permittee complies with all the requirements of this general permit and the MS4:

a. Is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census, or

b. Is designated for permit authorization by the Department under R-18-9-A902(D)(1), R18-9-A902(D)(2), R-18-9-A902(E), and R18-9-A905(A)(1)(f) which incorporates or 40 CFR 122.32.

C. Non-Stormwater Discharges.

1. The permittee shall prohibit all types of non-stormwater discharges into its MS4 unless the discharges are authorized by a separate NPDES permit or not prohibited under Part I.C.2.

2. The following categories of non-stormwater discharges are only prohibited if the discharges are identified as significant contributors of pollutants to or from the MS4. If any of the following categories of discharges are identified as a significant contributor, the permittee must address the category as an illicit discharge as specified in Part V.B.3 of this permit:

a. Water line flushing,

b. Landscape irrigation,

c. Diverted stream flows,

d. Rising ground waters,

e. Uncontaminated ground water infiltration,

f. Uncontaminated pumped groundwater,

g. Discharges from potable water sources,

h. Foundation drains,

i. Air conditioning condensate,

j. Irrigation water,

k. Springs,

l. Water from crawl space pumps,

m. Footing drains,

n. Lawn watering,

o. Individual residential car washing,

p. Discharges from riparian habitats and wetlands,

q. Dechlorinated swimming pool discharges,

r. Street wash water, and

s. Discharges or flows from emergency fire fighting activities.

D. Limitations of Coverage. This general permit does not authorize:

1. Discharges mixed with sources of non-stormwater unless the non-stormwater discharges:

a. Comply with a separate NPDES or AZPDES permit, or

b. Are determined not to be a significant contributor of pollutants to waters of the United States;

2. Stormwater discharges associated with industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi);

3. Stormwater discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15);

4. Stormwater discharges currently covered under another permit;

5. Discharges or discharge-related activities (including construction of any stormwater controls) that are likely to cause a "take" of threatened or endangered species; or discharges or discharge-related activities (including construction of any stormwater controls) that jeopardize the continued existence of any species listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act;

6. Discharges and discharge-related activities with adverse effects on historic properties that are listed or eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior;

7. Discharges that are causing or contributing to an exceedance of applicable numeric or narrative surface water quality standards;

8. Discharges to impaired waterbodies listed under section 303(d) of the Clean Water Act (CWA) if discharges from the MS4 contain, or may contain, pollutant(s) for which the waterbody is listed except:

a. If a TMDL has been established, and the stormwater management program (SWMP) is consistent with the requirements of the TMDL, including any wasteload allocation or load allocation in the TMDL. The SWMP must also identify BMPs the permittee will use to meet wasteload allocations or load allocations and include monitoring for associated pollutant(s); and

b. If a TMDL has not been established, and the SWMP must include a section describing how the program will control the discharge of 303(d) listed pollutants and ensure that discharges from the MS4 will not cause or contribute to instream

exceedances of surface water quality standards.

9. Discharges that do not comply with Arizona's anti-degradation rule (R18-11-107). The anti-degradation rule may be obtained from the Department's Phoenix office or from the Department's Web site.

PART II. AUTHORIZATION UNDER THIS GENERAL PERMIT

A. Application for Coverage.

1. An applicant seeking authorization to discharge under this general permit shall submit to the Department a complete notice of intent (NOI), in accordance with the deadlines in Part III.A of this permit. The NOI must include the information and attachments required by Part III.B of this permit.

   If the Department notifies a discharger (either directly, by public notice, or by making information available on the Internet) of other NOI options that become available at a later date, such as electronic submission of forms or information, the applicant may take advantage of those options to satisfy the NOI submittal requirements.

2. If an operator changes or a new operator is added after an NOI has been submitted, the permittee shall submit a new or revised NOI to the Department.

3. A discharger who submits a complete NOI is authorized to discharge stormwater from a small MS4 under the terms and conditions of this general permit 30 days after the date the NOI is postmarked.

4. If the Department notifies the applicant of deficiencies or inadequacies in any portion of the NOI (including the stormwater management program), the applicant must correct the deficient or inadequate portions and submit a written statement to the Department certifying that appropriate changes have been made. The certification must be submitted within the time-frame specified by the Department and must specify how the NOI has been amended to address the identified concerns.

B. Terminating Coverage.

1. A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is post-marked for delivery to the Department.

2. A permittee shall submit an NOT to the Department within 30 days after the permittee:

   a. Ceases discharging stormwater from the MS4,

   b. Ceases operations at the MS4, or

   c. Transfers ownership of or responsibility for the facility to another operator.

3. The NOT may consist of a letter to the Department and must include the following information:

   a. Name, mailing address, and location of the MS4 for which the notification is submitted;

b. The name, address and telephone number of the operator addressed by the NOT;

c. The NPDES or AZPDES permit number for the MS4;

d. An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the stormwater discharges have been eliminated; and

e. The following certification:

I certify under penalty of law that all stormwater discharges from the identified MS4 that are authorized by an NPDES or AZPDES general permit have been eliminated, or that I am no longer the operator of the MS4, or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination I am no longer authorized to discharge stormwater under this general permit, and that discharging pollutants in stormwater to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES or AZPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

f. NOTs, signed in accordance with Part VI.L of this permit, must be sent to the Department at the following address:

Small MS4 NOT
Surface Water Permits Unit (5415 B)
Arizona Department of Environmental Quality
1110 West Washington
Phoenix, AZ 85007

PART III. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for Notification.

1. MS4s automatically designated under R18-9-A905(A)(1)(f) are required to submit an NOI and a stormwater management program or apply for an individual permit by March 10, 2003.

2. MS4s designated under R18-9-A902(D)(1), R18-9-A902(D)(2), or R18-9-A902(E) are required to submit an NOI and a stormwater management program within 180 days of notice (unless the permitting authority provides additional time in the designation notice).

3. New MS4s and New Operators

a. For new MS4s within urbanized areas which commence discharges subsequent to March 10, 2003, the NOI must be submitted not later than 30 days prior to commencing discharges.

b. For new operators of an existing MS4, the NOI must be submitted not later than two days prior to taking operational control of the MS4.

c. *Submitting a Late NOI*. Applicants are not prohibited from submitting an NOI after the dates provided in Part III.A.1 or 2. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is granted. The permitting authority

reserves the right to take appropriate enforcement actions for any unpermitted discharges.

B. Contents of Notice of Intent. An applicant eligible for coverage under this general permit shall submit an NOI to discharge under this general permit. The NOI shall contain the following information:

1. The name, mailing address, and telephone number of the municipal entity applying;

2. An indication of whether the applicant is a Federal, State, or other public entity;

3. The urbanized area or core municipality (if not located in an urbanized area) where the small MS4 is located; the county(ies) where the small MS4 is located, and the latitude and longitude of the approximate center of the small MS4;

4. The name of the major receiving water(s) and an indication of whether any of the receiving waters are on the latest CWA section 303(d) list of impaired waters. If the small MS4 discharges to any 303(d) listed waters, include a certification that the SWMP meets the requirements of Part I.D.8;

5. An indication of whether all or a portion of the small MS4 is located in Indian country;

6. If the applicant is relying on another governmental entity to satisfy one or more permit obligations (see Part V.D), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;

7. The name and work position or title of the contact person;

8. The signature of the certifying official, signed in accordance with the signatory requirements of Part VI.L; and

9. A stormwater management program (SWMP), including best management practices (BMPs) that will be implemented and the measurable goals for each of the stormwater minimum control measures specified in Part V.C of this permit, the month and year in which the applicant will start and fully implement each of the minimum control measures or the frequency of the action, and the name of the person(s) responsible for implementing or coordinating the SWMP.

10. The following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition I certify that the permittee will comply with all terms and conditions stipulated in General Permit No. AZG2002-002 issued by the Director.

C. Where to Submit. The applicant shall submit the signed NOI to the Department at the following address:

D. Co-Permittees Under a Single NOI.

Any small MS4 that meets the requirements of Part I of this general permit may choose to partner with another regulated MS4 to develop and implement a SWMP. The MS4s may also jointly submit one NOI. If responsibilities are being shared as provided in Part V.D of this permit, the SWMP must describe which permittees are responsible for implementing each of the minimum measures. All small MS4 permittees are subject to the provisions in Part V.E.

PART IV. SPECIAL CONDITIONS

A. Compliance with Water Quality Standards. Discharges shall not cause or contribute to an exceedance of an applicable numeric or narrative surface water quality standard. Where a discharge is already authorized under this general permit and is later determined to cause or contribute to the violation of an applicable water quality standard, the Department will notify the permittee of the violation(s). The permittee must take all necessary actions to ensure that future discharges do not cause or contribute to a violation of a surface water quality standard and shall document these actions in the SWMP. If a violation remains or re-occurs, the coverage under this general permit may be terminated by the Department, and the Department may require an application for coverage under an alternative general permit or for an individual permit. Compliance with this requirement does not preclude any enforcement activity for the underlying violation.

B. Total Daily Maximum Loads (TMDLs) Allocations Established after Permit Issuance. If a TMDL is established for any waterbody into which the permittee discharges prior to the date that the permittee or applicant submits an NOI, and if that TMDL includes a wasteload allocation or load allocation for a parameter likely to be discharged by the MS4, the permittee must meet the requirements of the TMDL and/or its associated implementation plan. If a TMDL is approved for any waterbody into which the permittee discharges afer the date that the permittee or applicant submits an NOI, the Department may require revisions to the SWMP to ensure that the wasteload allocation, load allocation and/or the TMDL's associated implementation plan will be met. Monitoring of the discharges may also be required, as appropriate, to ensure compliance with the TMDL.

C. Endangered Species Act Requirement. This permit does not authorize nor require the construction of any particular structural stormwater quality control device that could adversely affect listed or proposed threatened or endangered species.

PART V. STORMWATER MANAGEMENT PROGRAM (SWMP)

A. General Requirements. An applicant shall develop, and a permittee shall implement, and enforce a SWMP designed to reduce the discharge of pollutants from a small MS4 to the maximum extent practicable (MEP), to protect water quality and to satisfy the appropriate surface water quality standards. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions the Department determines appropriate for the control of pollutants.

1. A permittee must fully implement the SWMP, including its measurable goals, no later than December 9, 2007 (except as provided under Part V.A.2 of this permit).

2. If a permittee is required to obtain permit coverage after March 10, 2003, the permittee shall implement the SWMP, including its measurable goals, for the period between the date of authorization to discharge and the expiration date of this permit. For example, if the permittee was authorized to discharge under this permit on March 10, 2006 the measurable goals established in the SWMP for the period between 2006 and the expiration date of this general permit must be met.

3. The SWMP shall address each of the minimum control measures of Part V.B. The SWMP must provide:

   a. BMPs that ensure that the discharges do not cause or contribute to a violation of an applicable numeric or narrative water quality standard; and

   b. Measurable goals, including interim milestones, for each BMP, including as appropriate, the months and years in which the MS4 will undertake the required actions and the frequency of the action.

B. Minimum control measures.

1. Public Education and Outreach on Stormwater Impacts. The permittee or applicant, as applicable, shall:

   a. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of stormwater discharges on waterbodies and the steps that the public can take to reduce pollutants in stormwater runoff.;

   b. Include the following information in the SWMP:

      i. A description of the education program and outreach activities;

      ii. A description of the methods for disseminating information;

      iii. The target audiences and target pollutants and sources that the applicant will address in the program, and how they were selected;

      iv. An estimation of the number of people with whom the applicant intends to communicate;

      v. A list of measurable goals for the public education and outreach program;

      vi. Dates by which the permittee will achieve specific measurable goals; and

      vii. The name of the person(s) responsible for implementing and coordinating the education activities.

2. Public Involvement/Participation. The permittee or applicant, as applicable, shall:

   a. Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP;

b. Develop and implement a process by which public comments to the plan are received and reviewed by the person(s) responsible for the SWMP;

c. Make the SWMP and NOI available to the public and to the operator of any MS4 or Tribal authority receiving discharges from the small MS4; and

d. Include the following information in the SWMP:

i. A description of the general plan for informing the public of involvement and participation opportunities;

ii. The types of activities for public involvement that the program will include and the target audiences;

iii. A description of the procedure for receiving and reviewing public comments;

iv. An explanation of how interested parties may access the SWMP and NOI;

v. A list of measurable goals for the public involvement/participation program;

vi. Dates by which the permittee will achieve specific measurable goals and;

vii. The name of the person(s) responsible for implementing and coordinating the public involvement/participation activities; and

vii. How the public was involved in the development of the SWMP submitted with the NOI.

e. The permittee shall comply with State, Tribal and local public notice requirements when implementing the public involvement/participation program.

3. Illicit Discharge Detection and Elimination. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4;

b. Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

c. To the extent allowable under State, Tribal or local law, effectively prohibit through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

d. Develop and implement a plan to detect, identify the source of, and address non-stormwater discharges, including illegal dumping, to the system;

e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;

f. Address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if the small MS4 identifies them as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40

CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, spills, street wash water, and discharges from emergency fire fighting activities (however, emergency fire fighting does not include discharges from fire fighting training exercises or facilities, discharges from activities intended to prevent fires or from the testing of fire fighting equipment).

The permittee may also develop a list of other similar occasional incidental non-stormwater discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-stormwater discharges must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee shall document in the SWMP any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-stormwater discharge that is determined to be a significant contributor of pollutants to the MS4.

g. Conduct dry weather field screening for non-stormwater flows. The screening must include field tests of selected chemical parameters as indicators of discharge sources. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up investigation with an action to further study the source of the discharge and ultimately eliminate the discharge.

h. Address on-site sewage disposal systems that flow into the storm drainage system;

i. Include the following information in the SWMP:

   i. A description of detection methods;

   ii. A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.

   iii. A description of enforcement policy and jurisdiction;

   iv. A list of the non-stormwater discharges allowed in the small MS4 because they are identified as non-significant contributors of pollutants to the small MS4. This list must also identify any additional categories of discharges (besides those named in the first paragraph of Part V.B.3.f) that the MS4 intends to address as non-illicit discharges;

   v. The methods for informing/training employees about illicit discharges;

   vi. The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;

   vii. A list of measurable goals for the illicit detection and elimination program;

   viii. Dates by which the permittee will achieve specific measurable goals; and

ix. The name of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.

4. Construction Site Stormwater Runoff Control. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for stormwater discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites;

b Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Review all site plans for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V.B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;

d. Develop and implement procedures for site inspection and enforcement of control measures;

e. Include the following information in the SWMP:

i. A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and waste on construction sites. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

ii. A description of the sanctions and enforcement mechanism(s) to ensure compliance;

iii. A description of the procedures for site inspection and enforcement of control measures, and procedures for site plan reviews;

iv. Procedures for receipt, acknowledgment and consideration of information submitted by the public.

v. A list of measurable goals for the construction site runoff control program;

vi. Dates by which the permittee will achieve specific measurable goals; and

vii. The name of the person(s) responsible for overseeing construction site runoff

control activities.

5. Post-Construction Stormwater Management in New Development and Redevelopment. The permittee or applicant, as applicable, shall:

   a. Develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;

   b. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;

   c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4;

   d. Ensure adequate long-term operation and maintenance of BMPs; and

   e. Include the following information in the SWMP:

      i. A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community;

      ii. A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;

      iii. A description of the procedure to ensure compliance with local requirements;

      Iv. A description of the education program for developers and the public about project designs that minimize water quality impacts;

      v. An identification of the measurable goals for the post-construction runoff control program;

      vi. Dates by which the permittee will achieve specific measurable goals; and

      vii. The name of the person(s) responsible for the development, implementation, and enforcement of post-construction stormwater management.

6. Pollution Prevention/Good Housekeeping for Municipal Operations. The permittee or applicant, as applicable, shall:

   a. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance. The permittee shall address the following topics in the program:

i. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4;

ii. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand storage locations and snow disposal areas; and

iii. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris; and

iv. Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices;

b. Include the following information in the SWMP:

i. A list of the municipal operations impacted by this operation and maintenance program;

ii. A list of industrial facilities owned or operated by the permittee that ultimately discharge to the small MS4 and are subject to:

(1) The Multi-Sector General Permit (MSGP), or

(2) Individual NPDES permit for discharges of stormwater associated with industrial activity;

iii. A map showing the industrial facilities owned and operated by the MS4;

iv. The EPA or AZPDES permit authorization number or a MSGP NOI form for each facility;

v. A description of the training program for municipal employees

vi. A list of measurable goals for the municipal pollution prevention program;

vii. Dates by which the permittee will achieve specific measurable goals; and

viii. The name of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.

C. Qualifying State or Local Program. The permittee may substitute the BMPs and measurable goals of an existing stormwater pollution control program to qualify for compliance with one or more of the minimum control measures if the existing measure meets the requirements of the minimum control measure as established in Part V.B.

D. Sharing Responsibility. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. A permittee may rely on another entity only if:

1 The other entity, in fact, implements the control measure;

2. The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;

3. The other entity agrees to implement the control measure on the permittee's behalf. Written acceptance of this obligation is expected. The permittee shall maintain this obligation as part of the SWMP description. If the other entity agrees to report on the minimum measure, the permittee shall supply the other entity with the reporting requirements in Part V.H of this general permit. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component;

E. Reviewing and Updating SWMPs.

1. The permittee shall annually review the SWMP in conjunction with preparation of the annual report required under Part V.H.

2. The permittee may change the SWMP during the life of the permit according to the following procedures:

a. Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWMP may be made at any time upon written notification to the Department;

b. Changes replacing an ineffective or infeasible management practice specifically identified in the SWMP with an alternate management practice may be requested at any time. Unless denied by the Department, changes proposed according to the criteria below are deemed approved and may be implemented 60 days after submitting the request. If the request is denied, the Department will send a written response giving a reason for the decision. Modification requests must include:

i. An analysis of why the management practice is ineffective or infeasible (including cost prohibitive),

ii. Expectations on the effectiveness of the replacement management practice, and

iii. An analysis of why the replacement management practice is expected to achieve the goals of the management practice to be replaced;

c. Change requests or notifications must be made in writing and signed in accordance with Part VI.L.

3. The Department may notify a permittee that changes to the SWMP are necessary:

a. To address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;

b. To include more stringent requirements necessary to comply with new federal or state statutory or regulatory requirements;

c. To include other conditions deemed necessary by the Department to comply with surface water quality standards, or other goals and requirements of the CWA, or

d. If, at any time, the Department determines that the SWMP does not meet permit requirements.

4. Within 30 days of receipt of notification, as described in Part V.E.3 above, the permittee must make the required changes to the SWMP and submit to the Department a written statement certifying that the requested changes have been made. The Department will request changes in writing, and offer an opportunity to propose alternative program changes to meet the objective of the requested modification.

5. Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP on all new areas added to the permittee's portion of the MS4 (or for which the permittee becomes responsible for implementation of stormwater quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

   a Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee must have a plan for implementing the SWMP on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP must be included in the annual report.

   b. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the SWMP and not modifications to the permit.

F. Monitoring

1. The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been established, the permittee must monitor to determine if the stormwater controls are adequate to maintain compliance with the MS4's wasteload allocation or load allocation.

2. If the permittee conducts monitoring at the permitted small MS4, the permittee must comply with the following:

   a. *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

   b. *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136.

   c. *Discharge Monitoring Report*. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The names(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

d. The names of the individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

G. Recordkeeping

1. The permittee shall retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the permitting authority at any time.

2. The permittee shall submit its records to the permitting authority only when specifically asked to do so. The permittee must retain the SWMP required by this permit (including a copy of the permit language) at a location accessible to the permitting authority. The permittee must make its records, including the notice of intent (NOI) and the SWMP, available to the public if requested to do so in writing.

H. Reporting

1. The permittee must submit annual reports to the Department for each year of the permit term. The first report is due June 30, 2004, covering the activities of the permittee during the period beginning on the effective date of the permit for the permittee and ending March 10, 2004. Subsequent annual reports are due on June 30 of each year following 2004 during the remainder of the term of the permit. The report must include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

c A summary of the stormwater activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

d. Proposed changes to the stormwater management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;

e. Description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and

f. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).

3. Where to Submit. Annual reports shall be submitted, signed in accordance with Part VI.L.2 of this permit, must be sent to the Department at the following address:

Arizona Department of Environmental Quality
Stormwater Coordinator, 5415B
1110 West Washington
Phoenix, AZ 85007

VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply.

1. The permittee shall comply with all conditions of this general permit and any standard and prohibition required under A.R.S. Title 49, Chapter 2, Article 3.1 and A.A.C. Title 18, Chapter 9, Articles 9 and 10. Any permit noncompliance constitutes a violation of A.R.S. Title 49, Chapter 2, Article 3.1 and A.A.C. Title 18, Chapter 9, Articles 9 and 10, and is grounds for enforcement action, permit termination, revocation and reissuance, or modification, or denial of a permit renewal application, or for requiring a permittee to apply for and obtain an individual permit.

2. The issuance of this general permit does not waive any federal, state, county, or local regulations or permit requirements with which a person discharging under this general permit is required to comply.

B. Duty to Reapply. If a permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

C. Continuation of an Expired General Permit.

1. If the Director does not reissue this general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.

2. Any permittee granted general permit coverage before the expiration date automatically remains covered by the continued general permit until the earlier of:

a. Reissuance or replacement of the general permit, at which time the permittee shall comply with the NOI conditions of the new general permit to maintain authorization to discharge; or

b. The date the permittee has submitted a Notice of Termination; or

c. The date the Director has issued an individual permit for the discharge; or

d. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

3. Upon reissuance of a new general permit, the permittee shall file an NOI, within 45 days of the effective date of the new general permit.

D. Need to Halt or Reduce an Activity Is Not a Defense. It is not a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

E. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any

discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

F. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the conditions of the permittee's SWMP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. Permit actions.

1. This general permit may be reopened to address any changes in state or federal plans, policies, or regulations that would affect the quality requirements for the discharge.

2. This general permit may be modified by the Director before the expiration date to include discharge or receiving water limitations for toxic constituents determined to be present in significant amounts in the discharge.

3. This general permit may be modified, revoked and reissued, or terminated for cause.

4. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

H. Property Rights. The issuance of this general permit does not convey any property rights or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, Indian tribe, or local laws or regulations.

I. Duty to Provide Information. The permittee must promptly furnish the Department with the following information:

1. Upon request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit, or to determine compliance with this general permit.

2. Upon request, copies of records required by this general permit.

3. In the event that the permittee becomes aware that the permittee failed to submit any relevant facts in the NOI or submitted incorrect information in the NOI or in any other report to the Department, such facts or information.

J. Inspection and Entry. The permittee shall allow the Director or the Director's designee, upon presentation of credentials and other documents as required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this general permit;

2. Have access to and copy, at reasonable times, any records required by this general permit;

3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and

4. Sample or monitor, at reasonable times, to assure permit compliance or as otherwise authorized under A.R.S. Title 49, Chapter 2, Article 3.1, and A.A.C. Title 18, Chapter 9, Articles 9 and 10, any substances or parameters at any location.

K. Monitoring and Recordkeeping.

1. Monitoring. A permittee shall evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been approved, the permittee must monitor to determine if the stormwater controls are adequate to maintain compliance with the MS4's wasteload allocation.

a. Samples and measurements taken for monitoring shall be representative of the monitored activity.

b. Monitoring results shall be conducted according to test procedures approved R18-9-A905(B), unless other test procedures have been specified in the permit.

c. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

2. Recordkeeping.

a. A permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

b. Monitoring records shall include:

i. The date, exact place, and time of sampling or measurements;

ii. The individual(s) who performed the sampling or measurements;

iii. The date(s) analyses were performed;

iv. The individual(s) who performed the analyses;

v. The analytical techniques or methods used; and

vi. The results of the analyses.

L. Signatory Requirements. All NOIs, NOTs, reports required by the general permit, and other information requested by the Director shall be signed as follows:

1. NOIs and NOTs:

a. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official.

2. Reports and other information:

   a. All reports required by this general permit and other information requested by the Department or authorized representative of the Department shall be signed by a person described in Part VI, Section L.1 or by a duly authorized representative of that person.

   b. A person is a duly authorized representative only if the authorization is made in writing by a person described in Part VI, Section L.1. The authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the permittee.

3. Changes to Authorization. If the information on the NOI filed for general permit coverage is no longer accurate because a different operator has responsibility for the overall operation of the facility, a new authorization satisfying the requirement of Part VI, Section L.2.b. above must be submitted to the Department prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

4. Certification. Any person (as defined above in Part VI, Sections L.2.a and L.2.b) signing documents under this Section shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

M. Reporting.

1. Annual report. The permittee shall submit annual reports to the Department.

   a. The first report is due June 30, 2004 and covers the activities of the permittee through March 10, 2004. Subsequent annual reports are due on June 30 of each year through 2008.

   b. The annual report shall include:

      i. The status of the permittee's compliance with permit conditions, a narrative that identifies the extent to which all BMPs and all measurable goals have been implemented, and an assessment of the appropriateness and effectiveness of those BMPs and measurable goals;

      ii. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

      iii. A summary of the stormwater activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

iv. Proposed changes to the SWMP, including changes to any management practices or any identified measurable goals that apply to the program elements;

v. A description of BMPs to be implemented within new areas annexed over the past year that are located within the regulated boundaries of the MS4; and

vi. Whether the permittee is relying on another government entity to satisfy some of the permit obligations.

2. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements that may be necessary to comply with the permit. (In some cases, modification or revocation and reissuance is mandatory.)

4. Other information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the Director, the permittee shall promptly submit the facts or information.

N. Severability. The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of this general permit shall not be affected.

O. Requiring Coverage Under an Individual Permit.

1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:

a. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

b. Effluent limitation guidelines are promulgated for point sources covered by the general permit;

c. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;

d. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

e. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:

i. The location of the discharge with respect to waters of the United States,

ii. The size of the discharge,

iii. The quantity and nature of the pollutants discharged to waters of the United States, and

iv. Any other relevant factor.

2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:

a. A brief statement of the reasons for the decision,

b. An application form,

c. A statement setting a deadline to file the application,

d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,

e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and

f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

3. The discharger shall apply for an individual permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.

4. If the permittee fails to submit the individual permit application within the time period established in Part V, Section Q.3, the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.

5. Coverage under the general permit shall continue until an individual permit is issued unless the general permit coverage is terminated under Part V, Section Q.4.

P. Request For an Individual Permit.

1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.

a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than 90 days after publication of the general permit.

b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.

2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Q. Other Environmental Laws. No condition of this general permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.

VII. Penalties for Violations of Permit Conditions

Any permit noncompliance constitutes a violation and is grounds for an enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

A. Civil Penalties. A.R.S. § 49-262(C) provides that any person who violates any provision of A.R.S. Title 49, Chapter 2, Article 2, 3 or 3.1 or a rule, permit, discharge limitation or order issued or adopted under A.R.S. Title 49, Chapter 2, Article 3.1 is subject to a civil penalty not to exceed $25,000 per day per violation.

B. Criminal Penalties. Any a person who violates a condition of this general permit, or violates a provision under A.R.S. Title 49, Chapter 2, Article 3.1, or A.A.C. Title 18, Chapter 2, Articles 9 and 10 is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

VIII. Definitions

All definitions contained in Section 502 of the Act and 40 CFR 122 apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the even of a conflict, the definition found in the Statute or Regulation takes precedence.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

Department as used in this permit, refers the Arizona Department of Environmental Quality.

Discharge when used without qualification means the discharge of a pollutant.

Discharge-related activities include: activities which cause, contribute to, or result in stormwater point source pollutant discharges; and measures to control stormwater discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent stormwater pollution.

Facility means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit discharge means any discharge to a municipal separate storm sewer that is not composed

entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

Indian country means:

a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
b. All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Large or Medium Municipal Separate Storm Sewer System means all municipal separate storm sewers as defined at 40 CFR 122.26(b)(4) or (7)

MEP means maximum extent practicable, the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges. A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and other provisions that the State determines appropriate for the control of such pollutants.

Measurable Goal means a quantitative measure of progress in implementing a component of a stormwater management program.

MS4 means municipal separate storm sewer system.

Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):

1. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

NOI means Notice of Intent to be covered by this permit (see Part II of this permit).

NOT means Notice of Termination.

Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Owner or operator means the owner or operator of any facility or activity subject to regulation under the NPDES program.

Permitting Authority means the Arizona Department of Environmental Quality.

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant is defined at R18-9-A901(22). A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

Significant contributors of pollutants means any discharge that causes or could cause or contribute to a violation of surface water quality standards.

Small Municipal Separate Storm Sewer System all separate storm sewers that are:

1 Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, 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 CWA that discharges to waters of the United States.

2 Not defined as large or medium municipal separate storm sewer systems in accordance with this permit

3 This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Stormwater means stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Management Program (SWMP) means a comprehensive program to manage the quality of stormwater discharged from the municipal separate storm sewer system.

Waters of the United States means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
   a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
   b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
   c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423, which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

ALL REQUESTED INFORMATION MUST BE PROVIDED ON THIS FORM

Arizona Department of Environmental Quality
Water Permits Section
1110 N. Washington, 5415B-3, Phoenix, Arizona 85007
Notice of Intent (NOI) for Coverage
under AZPDES Permit No. AZG2002-002 for
Discharges from Small MS4s to Waters of the United States

FOR AGENCY USE ONLY

AUTHORIZATION NUMBER: |__|__|__|__|__|__| AUTHORIZATION GRANTED: Y N

DATE RECEIVED: |__|__|-|__|__|-|__|__| REVIEWER: |__|__|__| RECEIPT MAILED: |__|__|-|__|__|-|__|__|

CHECK AS APPLICABLE: NEW NOI ” REVISED NOI ”

IF A REVISION, PROVIDE PRIOR AUTHORIZATION NO. _____

Applicant is:
” Federal
” State
” Other_____

PERMITTEE (Agency Responsible for the Discharge)

Applicant's Name: _____ Phone: _____

Applicant's Mailing Address: _____

City: _____ Zip Code: _____

CONTACT PERSON Name: _____ Phone:_____

E-mail Address: _____ Fax: _____

Contact Person's Agency and Title: _____

LOCATION INFORMATION

Name of Urbanized Area where the MS4 is located: _____

Name of county(ies) where the MS4 is located: _____

Provide the following information on the approximate center of the MS4:

Latitude: _____E_____'_____" Longitude: _____E _____'_____"

Township: _____ Range: _____ Section: _____

Is any portion of the MS4 located in Indian Country? Yes ” If yes, name_____ No ”

Does any portion of the MS4 service a population within Indian Country?

Yes ” If yes, how many people within the Indian Country are served by your MS4?_____ No ”

Name(s) of neighboring Tribes/Counties/Cities/Towns (places that share borders with the permittee):

_____ _____ _____

_____ _____ _____

_____ _____ _____

WATERSHED INFORMATION

Name of Watershed: _____

Is the Receiving Water a 303 (d) Impaired Water?

Name of Receiving Water(s): _____ Yes ” No ”

_____ Yes ” No ”

_____ Yes ” No ”

_____ Yes ” No ”

If any of the receiving waters are 303 (d)-listed Impaired Waters, you must complete the Impaired Water Information portion of this form.

IMPAIRED WATERS INFORMATION

If you indicated that any of the receiving waters to which you discharge are listed as a 303 (d) Impaired Water, please answer the following questions.

Is there a Total Maximum Daily Load (TMDL) for the 303 (d) Impaired Water?

Yes ” Proceed to Part A No ” Proceed to Part B

Part A.

Does the TMDL prescribe a wasteload allocation to stormwater discharge from your MS4?

Yes ” Check the box below No ” Proceed to Part B

” *I certify that the SWMP identifies specific BMPs that will be used to meet wasteload allocations. I also certify that I will monitor for pollutants for which my MS4 is assigned a wasteload allocation.*

Part B.

Check the box below if the MS4 has the potential to discharge the pollutants identified on the 303(d) list.

” *I certify that the description of the SWMP addresses specific BMPs for reducing the discharge of 303 (d)-listed pollutants.*

ADDITIONAL INFORMATION

This NOI must include the following attachments prepared as specified in Part III of the general permit.

” A description of your Stormwater Management Program

Has another governmental entity agreed to satisfy any of your permit obligations?

Yes ” If yes, check the boxes below No ”

” The agreement is explained in the description of your Stormwater Management Program.

” Written documentation of your agreement is included as an attachment.

CERTIFICATION

This certification must be signed by the appropriate party as specified in this general permit Part VI.L.

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition I certify that the permittee will comply with all terms and conditions stipulated in General Permit No. AZG2002-002 issued by the Director.”

Printed Name of Applicant’s Representative:_____ Title: _____

Signature of Applicant’s Representative:_____ Date: |__|__|-|__|__|-|__|__|

NOTICE OF TERMINATION

Discharges of Small MS4s to Waters of The United States

AZPDES Permit No. AZG2002-002

Submission of this Notice of Termination (NOT) constitutes notice that the party identified on this form is terminating coverage under the AZPDES general permit, and authorization to discharge aquatic pesticides to waters of the U.S. terminates at midnight on the day the NOT is post-marked for delivery to ADEQ. **ALL REQUESTED INFORMATION MUST BE PROVIDED**. Submit this form to:

Surface Water Permits Unit – MS4 NOT
Arizona Department of Environmental Quality
Water Permits Section
1110 W. Washington, Phoenix, AZ 85007

PERMIT INFORMATION

AZPDES Authorization Number _____

Name of applicant on Notice of Intent (NOI) submitted to ADEQ _____

Address of applicant on NOI submitted to ADEQ _____

_____

" **Check Here** if you are no longer the Owner/Operator of the facility

If checked, provide the following information concerning the new Operator/Owner:

Name: _____ Phone: _____

Contact Person: _____

Address/Location: _____

City: _____ State: |___|___| Zip Code: _____

" **Check Here** if the stormwater discharge is being terminated

" **Check Here** if the stormwater discharge is being covered under another AZPDES individual or general permit

If checked, provide the permit number _____

II. CERTIFICATION

This certification must be signed by the appropriate party as specified in Part VI.L. of the general permit.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Printed Name:_____ Title: _____

APPENDIX J

MARICOPA COUNTY COMMENTS ON DRAFT ADEQ GENERAL PERMIT NO. AZG2002-002

Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, Arizona 85009-6399
(602) 506-4113
FAX: (602) 506-4601
TT: (602) 506-5897

Wednesday, October 30, 2002

Ms. Karyn Moldenhauer
Arizona Dept. of Environmental Quality
1110 W. Washington St.
Phoenix, AZ
85007

(Sent Via Email & Federal Express)
Moldenhauer.Karyn@ev.state.az.us

RE: Proposed Draft General Permit for Small MS4s located in Arizona (ADEQ Version)

The Flood Control District of Maricopa County as technical representative of Maricopa County (the "County") appreciates this opportunity to comment on the Proposed Draft General Permit for Small MS4s located in Arizona (ADEQ Version).

As an initial comment, the County hereby requests a public hearing on the proposed permit as provided for by 40 CFR 124.12.

While the County's comments to follow will address many of the fundamental problems with the draft permits (EPAs version and ADEQs version being substantially similar), the chief concern is the requirement that all discharges meet State of Arizona Water Quality Standards (specifically numeric and narrative surface water quality standards). This goes far beyond the Maximum Extent Practicable (MEP) standard that Congress established for the municipal storm water program. The MEP standard was upheld by the Ninth Circuit U.S. Court of Appeals when EPA issued the initial Arizona Phase I permits. Due to the uncertainty as to which agency will be the permitting authority, Phase II entities are not being given ample opportunity to meet with the definitive permitting authority and effectuate meaningful changes in this general permit. To add to the uncertainty, the County is concerned with the continuing program and budget cuts planned by ADEQ and how this new program will be administered. The County's general comments are summarized below, followed by the County's specific comments on the Proposed Draft General Permit for Small MS4s located in Arizona (ADEQ Version).

GENERAL COMMENTS

MEP Standard

Maricopa County has some major concerns with the Phase II municipal stormwater general permit. While fully understanding that the goal of the National Pollutant Discharge Elimination System/Arizona Pollutant Discharge Elimination System (NPDES/AZPDES) programs is to improve water quality, the reality is that stormwater runoff is difficult to treat and to monitor, particularly in the arid southwest, where a few storms may bring the majority of a year's precipitation. The MEP standard was created to address the unique nature of stormwater, and it is not a technology driven standard. MEP is a BMP (Best Management Practices) standard, designed to deal with what is essentially a non-point source problem. MEP is the standard for the municipal programs dealing with stormwater runoff from very large diverse areas, including parks and streets, commercial and residential areas. This standard is very different from what may be imposed upon industrial dischargers that are clearly point sources dealing with a confined area.

The Phase II permits should state clearly that meeting MEP equates to meeting Water Quality Standards (WQS). MEP and Water Quality Standards are not two separate goals. Section 402(p)(3) of the Clean Water Act establishes the standard of compliance for municipal stormwater as the reduction of storm water pollutants to the MEP. And indeed, Arizona's Water Quality Standards recognize this when it references "implementation of all reasonable and cost-effective best management practices to control the discharge of pollutants in storm water" (R18-11-121D).

The MEP standard was to enable stormwater programs to meet the technically achievable and fiscally responsible standards set forth in the Clean Water Act (CWA). While the Court of Appeals acknowledged EPA had the authority to use standards other than MEP, such as numeric permit limitations, it did not rule that EPA was mandated to do so and did not rule that EPA's discretion could be applied without regard to practicality. There is nothing in the record regarding potential Phase II permittees that indicates that EPA or ADEQ must exercise that discretion at this time to protect Arizona's usually dry or ephemeral waters.

Suggested permit language to resolve the MEP issue could be similar to that outlined in Pennsylvania's draft permit. Modified for Arizona, it would read as follows, "The permittee must, within the permit term, develop, implement and enforce a stormwater management program designed to reduce the discharge of pollutants from its municipal separate storm sewer system (MS4) to the maximum extent practicable (MEP), with the goal of protecting water quality and satisfying the appropriate water quality standards (Arizona Administrative Code, Title 18, Chapter 11, Article 1). Implementation of the Stormwater Management Plan (SWMP) is deemed to satisfy the water quality requirements as described in the federal regulations during this permit term."

Flexible Nature of Phase II Program

The second major item of concern is that the Phase II program was designed to be flexible in nature, not prescriptive in nature.

In the preamble to the Phase II rule (Federal Register, Volume 64, No. 235, Wednesday, December 8, 1999, p. 68739) EPA states that "The proposal to today's final rule included guidance as well as legal requirements. The word "must" indicates a requirement. Words like "should", "could," or "encourage" indicate a recommendation or guidance. In addition, the guidance was set off in parentheses to distinguish it from requirements." Furthermore, EPA go on to say, "EPA believes that it is important to include the guidance in the rule and agrees that the distinction between requirements and EPA recommendations must be very clear. In today's final rule, EPA has put the guidance in paragraphs entitled "Guidance" and replaced the word "should" with "EPA recommends." This is intended to clarify that the recommendations contained in the guidance paragraphs are not legally binding." This is also rephrased on Page 68842 of the actual rule, not the preamble. By incorporating into the permit the generic language identified in the final regulation, the program can remain flexible.

In the draft general permit, EPA Region IX clearly goes beyond the requirements of the rule. Since ADEQ did not prepare a fact sheet, we have to refer to page 21 of the federal draft of the general permit. This language reads as follows, "The proposed permit also includes a number of additional requirements for each minimum measure which were derived from the recommendations of the regulations; these provisions are included in the permit as requirements rather than recommendations to ensure their enforceability". This language goes beyond the intent of the language identified on page 68739 of the final rule. Furthermore, the County believes that this wording goes beyond state law (ARS 49-203A.2) that states, "Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the Clean Water Act for the point source discharge of any pollutant or combination of pollutants into navigable waters." As such the permit is in violation of both what the stakeholders agreed to and the legislature provided in enabling primacy.

Monitoring

The third major item of concern is that although monitoring is not a required part of the Phase II permit program, there is a large section on monitoring and it is confusing. The draft permit language should be clarified and state succinctly that only if a TMDL is adopted will any monitoring be required.

In a Report to Congress in February 2000, EPA identified one of the weaknesses of the Phase I program to be the monitoring program. Specifically, "it appears in some communities that the Phase I monitoring requirements have resulted in a significant expenditure of resources without a commensurate return from the resource investment (return in terms of storm water management program or direct water quality benefits). These inefficiencies were particularly noted in areas where the standard Phase I end-of-

pipe monitoring was considered inappropriate for the specific geographic and climatological locations of some MS4s (e.g., areas that experience infrequent rainfall events)." This particular comment would definitely apply to areas within Maricopa County. Furthermore, it was also identified that there are no mechanisms in place to directly demonstrate the effectiveness of the Phase I MS4 program on improving water quality at a national level.

Also, on page 68846 of the final rule under "guidance", "EPA strongly recommends that until the evaluation of the stormwater program in subsection 122.37, no additional requirements beyond the minimum control measures be imposed on regulated MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." The County strongly objects to any additional requirements beyond the minimum control measures outlined in the rule. Referring to section 122.37 on page 68847 of the rule, "EPA will evaluate the small MS4 regulations at subsections 122.32 through 122.36 and subsection 122.35 of this chapter after December 10, 2012 and make any necessary revisions."

There is no need to apply an ineffective, expensive and unproven monitoring or other additional requirements beyond the six minimum control measures.

Other Major Concerns

Third party liability. The general permit as written does not protect MS4s from what may generally be described as third party liability, either the consequences of action of others beyond the control of the permittee or other exempt from the water quality laws. For example, what happens when a third party discharges into our system, for example, a tanker truck flips over on the highway and the spill accidentally discharges to a county flood control facility which discharges to a Water of the U.S.? ADEQ should go after the cause of the problem, the owners of the tanker, as opposed to the MS4 permit holder. Another example is agricultural irrigation tailwater, which is now exempt under federal law. A municipality cannot be responsible if this water enters an MS4 system and should not have liability for any pollution carried in those tailwaters as long as the federal government does not regulate agricultural discharges. The permit must include language to address these "third party" activities and problems.

The timing of primacy. We are still unclear who the regulatory authority in Arizona is going to be. With less than a month and a half to go before Dec. 8, 2002 (the date identified as a deadline for the permitting authority to issue general permits, Page 68738 (Exhibit 2), this does not leave much time to affect change in the general permits.

Why is there no fact sheet for the Arizona draft? If Arizona intends to take over the program, they should supply this information to complete the general permit.

Why put definitions in the general permit, if they are interpretive only? A statement is made that the regulatory language takes precedence. We should not confuse the matter

by simplifying the language or having definitions that are different from the adopted rules. The permit should reference the actual definitions in the rules

Clarify what an existing qualifying program is. For example, in Maricopa County, we already regulate construction sites down to $1/10^{th}$ of an acre in size. Is this county dust control program acceptable to replace a construction site BMP as it essentially accomplishes the same thing? The general permit should define what a local qualifying program may be and provide examples.

The map of the MS4 that is required with the Notice of Intent (NOI). The permittee's should have the full permit term to create this map. In our specific case, the County boundaries are known, however, the only regulated part of our County is the urbanized area as identified in the census bureau maps. As with most Phase II applicants, we will need time to evaluate what components are specifically included in our MS4 system before we can fully map them. The NOI form provided with the general permit requires an initial submittal of the map.

SPECIFIC COMMENTS

Part I

-Page 1 – Because there is no fact sheet, there is no list of permittees that may be covered by the general permit. ADEQ should add that list and also be specific as to whether individual departments in an agency, such as those that govern highways or schools, are required to submit separate NOIs.

-Page 4, C.1. – This language should also incorporate anything authorized by a separate AZPDES permit in addition to the NPDES permit and those not prohibited under Part I.C.2.

-Page 4, C.2. - The wording "to or from" the MS4 is not appropriate. We cannot be liable for something that enters our MS4 system (i.e. third party liability; tanker spill example provided above). Under the Phase II program, potentially all Phase II's may prohibit each other from discharging to another municipality's system, effectively forcing water quality treatment for stormwater. We suggest the sample permit language identified (see page 3 herein) in the Pennsylvania draft permit which only addresses pollutants from an MS4 system. Leaving the language with only the "from" language would make this consistent with existing Phase I permits in Arizona. The language should also state that this requirement is "to the Maximum Extent Possible."

-Page 5, C.2. – If any of these items are shown to be significant contributors of pollutants, ADEQ must require that they be addressed by a DeMinimus Discharge Permit or other NPDES permit.

-Page 5, D.2.& 3. – Is the state going to issue it's own multisector general permit or construction permit? If so, those should be referenced here.

Page 5, D.7. – As discussed above, the Phase II permittees do not have total control over discharges such as exempt flows, agricultural flow, and flows covered by other NPDES permits. These and other unpermitted flows will be in their systems. The permit provision should include the MEP standard, clarify that only discharges to Waters of the U.S. are covered, and address the exempt and uncontrollable sources that may cause or contribute to an exceedance of the "applicable numeric or narrative surface water quality standard." What are the applicable standards for municipal stormwater as specific stormwater concerns were not addressed in the latest Arizona triennial review?

-Page 7, D.8. – EPA is planning on repealing the latest TMDL rule in April 2003 and TMDLs should not even be included in the general MS4 permit for storm water. The County also argues that MEP is the standard for all stormwater discharges, not water quality standards, even when a TMDL has been adopted.

-Page 5, D.8.b. –Use of "ensure" is inappropriate for storm water because storm water is essentially a non--point source, not a point source. Also, clarification is required as to how "instream exceedances" can be defined or detected in an ephemeral system.

Part II

-Page 6, A.1. – Why doesn't ADEQ simply reference the NOI included as Appendix A in their draft permit? The County encourages ADEQ to develop an electronic NOI form for all permittees.

-Page 6, A.3. – Because there is a 30 day wait after NOI submission before the permit is approved, clarification is needed as to the status of the permittee during that time.-Page 6, A.4. – The County is concerned that no timeframe for correcting deficiencies is included, and that there is no appeal process if the permittee needs to challenge ADEQ on potential deficiencies.

Part III

-Page 7, B. – This section should reference the NOI in Appendix A of the draft general permit.

-Page 8, B.9. – The reference should be to Part V.B.

Part IV

-Page 9, A.,B.,& C. – This entire section should be deleted. The final rule clearly states there should be "…no additional requirements beyond the minimum control measures be imposed on regulated MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.(P.68846, final rule)"

-Page 9, A. ***Compliance with Water Quality Standards***
-This goes beyond the MEP standard for municipal stormwater. Municipal storm water permittees will meet WQS through the use of Best Management Practices to the Maximum Extent Practicable. EPA national guidance affirms that meeting the six minimum control measures is meeting MEP. (See general comments section above.)

-Page 9, B. ***TMDLs***-EPA is repealing the current TMDL rule in April 2003 and the program should not be part of the Phase II permits. MEP is the water quality standard for all municipal storm water permits.

Part V

Page 9,A. – The reference to water quality should be deleted. The goal of any SWMP must be to reduce the discharge of pollutants to a Water of the U.S. to the Maximum Extent Practicable.

-Page 9, A.3.a. –This item is not necessary. Again, it goes beyond the MEP standard established by EPA and affirmed by the Ninth Circuit Court of Appeals (see previous discussion).

-Page 10, B.1.b. – This entire section should be deleted as it goes beyond the specific wording of the rule (see discussion above). Another option would be to include this section as recommendations only.

-Page 10, B.2.a.,b.,c., & d. –These sections should be deleted or left in solely as recommendations. They are very prescriptive and ADEQ is micromanaging well beyond the specific wording of the rule. Only item (e) is appropriate for the final permit.

-Page 11, B.3.d. – The rule does not require a Phase II permittee to "identify the source of" a non-storm water discharge and this phrase should be removed. The language could be amended to include a time period (say 180 days) in which the permittee will notify ADEQ or EPA that there is an unpermitted discharge. Note again that these non-stormwater discharges may be exempt under the federal rules.

-Page 11, B.3.f. – Delete the word "spills" from the list as they are uncontrollable and this wording is not in the rule. Everything in this section in the second paragraph and beyond through item (h) is not in the rules and should only be written as recommendations. All requirements beyond those established in federal law are not in compliance with A.R.S. 49-203.A.2

-Page 12, B.4.b. – This language must reflect what is in the actual rule., 40 C.F.R. 122.34.4.II.A regarding the extent practical and allowable under State, Tribal or local law. The current wording "under the legal authorities of the small MS4" goes beyond that and should be deleted. Page 13, B.4.c. – This item should be deleted and follow the language of the rule. The language is too prescriptive and not flexible as intended by the

rule. The rule states: "(D) Procedures for site plan review which incorporate consideration of potential water quality impacts and (E) Procedures for receipt and consideration of information submitted by the public." This language is more appropriate and more flexible than what is being provided in this general permit. Any language other than that seen in the final rule is above and beyond the intent of the regulation.

-Page 13, B.4.e. – This wording requires far more than the final ruleand should be recommendations only.

-Page 14, B.5.e. – This section is not required by the rule and should only be a recommendation.

-Page 14, B.6.a. – The last sentence of the paragraph, "The permittee shall address the following topics in the program" and beyond should be a recommendation, not a requirement. The same is true of B.6.b.The rule does not require the MS4sto track compliance with the MSGP; that is ADEQ's job.

-Page 15, C. – Please clarify what a qualifying program is. For example, is a county dust control program that regulates down to 1/10th of an acre acceptable for the construction BMP?

-Page 16, E., 4. – ADEQ has 60 days to respond in E.2.b. yet permittees only have 30 days to make required changes to the SWMP. Permittees should be allowed the same timeframe that ADEQ has to review proposed changes.

-Page 17, F. – ***Monitoring*** – This entire section should be deleted. Monitoring (specifically end of pipe or receiving water monitoring) is not a requirement of the Phase II program. See discussion in the general comments section above. Also see P. 68846 of the final regulation.

-Page 17, G. – Add a reference to AZPDES permits as well.

-Page 18, H. – The date of the annual report submittals should be changed. June 30th is fiscal year end for most MS4s. Since any changes requested by ADEQ would potentially require money, the MS4s would not be in a position to budget for the subsequent year since the new fiscal year starts one day after the annual report submittal.

-As a general comment on annual reporting, ADEQ should provide guidance on annual report streamlining. Also, language should be included in the permit that says if permittees do not hear back from ADEQ within 60 days they may assume that the SWMP is approved.

Finally, we note that section H on page 18 is a duplication of section M of page 22 and having both sections included in the permit is confusing.

Part VI

There are numerous requirements in Part VI that clearly go beyond what is required by the federal law and regulations, and also exceed what EPA has required in its draft Phase II permit. In particular, on page 19, section F on proper operation and maintenance is very broad and exceeds the federal requirements, in violation of Arizona law.

Similarly, there is no authority for (page 19) sections G.1 and G.2 allowing reopening the permit for changes in federal plan and regulations or for the Director to modify the general permit to address toxic discharges and these provisions are also in violaton of the AZPDES enabling statutes.

-Page 19, C. – The timeframe to file an NOI upon reissuance of a new general permit should be longer than 45 days to allow time for major changes.

-Page 20, K. – The monitoring section should be deleted. See comment from Part V, page 17F above, as this section duplicates 17.F. Monitoring is only required for "established" TMDLs in EPA permit; here "approved" TMDLs are referenced. Section K.1.c. may be state law, but it is not in the federal requirements and should be deleted from this permit.

-Page 22, M. – This section should be deleted. It is already discussed on page 18 (see comments above). It is repetitive and unnecessary.

-Page 22, O.1. The language here is not consistent with the federal language, which has the option of applying for and obtaining an alternative NPDES general permit in the cases cited. Also, there is no federal authority for sections b through e and they should be deleted as not in compliance with the federal requirements.

-Page 24, Q – Not included in the federal requirements and should be deleted from this general permit.

Part VIII

-Page 24 – ***Definitions*** – See the comments in the general comments section as to why the entire section should be deleted. Definitions should not be included in the general permit unless they follow the specific language of the law or adopted rule. In particular, on Page 25 – Illicit discharge, Delete. This definition should also include an exemption for something that has an AZPDES permit or one that is listed in Part I.C.2. And on Page 25 – MEP – Delete. This definition is incorrect as MEP is not "the technology based standard". And on page 26, - Heat is listed as a pollutant, this is not correct in Arizona. Arizona specifically excluded heat related to stormwater in the latest triennial review.

Other Supporting Documents

A general concern is that potential Phase II permit applicants have been receiving information from EPA headquarters representatives that differs greatly from what Regions IX has been presenting. The message from headquarters discusses a program that is flexible in nature and can be developed for appropriate local conditions. This draft permit is very prescriptive in nature and does not appear to follow that philosophy. To verify the intent of EPA headquarters we have included a copy of a training session put on by APWA from February of 2000 when Michael Cook talks about the Phase II program. The original video was pulled down from PA DEP website at: http://www.dep.state.pa.us/dep/deputate/watermgt/wqp/WQP_WM/Phase2NPDES.htm. You will need Real Player to run these videos, but you can fast forward to the (approximate) cues set up for you. EPA headquarters clearly stated that by implementing the six Minimum Control Measures that are part of the rule, Phase II storm water permittees would meet MEP.

In Part 1, the following topics may be of interest.

14:00 min	-definition of point/non-point sources
18:42 min	-small construction sites
27:30 min	-concept of General Permits
28:30 min	-Individual permits
29:30 min	-Flexibility and Administration (Simplicity)
30:30 min	-MEP
32:45 min	-No Anticipation of numeric limits
35:43 min	-Flexibility into program (local focus)
38:00 min	-Encourage general permits
39:00 min	-Responsibility of pemitting authority

Part 2

1:50 - 5:07 min -MEP

Part 5

4 min	-If WQ based, cost will go up substantially
14 min	-Construction general permit


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In addition to the videos presented above, the County would like to refer to comments prepared previously by the Flood Control District with respect to the State Water Quality Standards through the last triennial review process. We believe these issues are still a concern. Although municipal stormwater programs should not be exempt from dry weather requirements to meet water quality standards through the use of best management practices, the majority of runoff is associated with ephemeral waterways. ADEQ should provide exemptions for the runoff from these rain events and the rule does not clarify if ADEQ expects to apply the state surface water quality standards to ephemeral waterbodies.

There are many important and substantive issues raised by these comments, particularly in regard to the potential effect of this draft permit on Phase II communities. As a lead regional party active in storm water quality issues, Maricopa County feels our concerns are region-wide. ADEQ should carefully consider addressing some of the major flaws in the draft permits. Numerous individual permit applications or legal challenges are not the preferred and constructive approach to solving stormwater management issues. County and Flood Control District staff are available to further discuss these comments and we encourage ADEQ to meet with us. Please feel free to contact me at (602) 506-4113 if you have any questions on these comments.

Sincerely,

Todd G. Williams, M.Sc.
Water Quality Branch Manager

APPENDIX K

DOCUMENTATION OF INTERVIEWS WITH MARICOPA COUNTY STAFF

Documentation of Interviews with County Staff

TO: Todd Williams, Project Manager
Maricopa County Project File

FROM: Ed Latimer
Elizabeth Treadway
Mason Bolitho

PROJECT: On-Call Stormwater Contract (FCD 2002CO17) – Assignment No. 2
AMEC Earth & Environmental Project No. 2-114-002109

DATE: **December 30, 2002**

On the dates and times presented in the table below, Ed Latimer, Elizabeth Treadway, and/or Mason Bolitho met with Maricopa County personnel with the objective of assessing the County's processes and programs that could eventually support or have an impact on the development a stormwater management plan for NPDES Phase II compliance.

Person/Group	Representing	Role/Position	Date & Time
Joe F. Muñoz	FCDMC	Public Info. Officer	Dec. 16, 1:00P
Bob Erdman Craig Seppelfrick Gary Pasciak Lisa Ruane Ted Giannini	MCDOT	Materials/Sr. Civil Engr. Manager, Environ Planning Subdivision/Permits Constructions Ops Inspector/Plan Review	Dec. 16, 2:00P
John Power John Townsend	Environ. Services Department	Manager, W/WW Division Vector Control Manager	Dec. 17, 9:00A.
Bill Kicksey Sheila Brott-Loewe	Environ. Services Department	Manager, Comm. Services Complaints Manager	Dec. 17, 10:30A
Hugh Larkin Rita Neill	Risk Management	Environmental Consultant Compliance Analyst	Dec. 17, 1:30P
Cynthia Robinson	MCDOT	Facilities Manager	Dec. 17, 3:00P
David Boggs	FCDMC	Development Review Mgr.	Dec. 20, 8:30A
Ken Conklin	Environ. Services Department	Mgr of Regional Office - Environ Health Division	Dec. 20, 10:30A
Joe Young	FCDMC	Chief Financial Officer	Dec. 20, 1:00P
George Lindop	FCDMC	Inspections Branch Mgr.	Dec. 20, 2:00P

The following thoughts/entries highlight the discussions and relevant findings:

1. Performed primarily for purposes of the Community Rating System[1], one of the main tasks of the Public Information Office (PIO) of the Flood Control District of Maricopa County (FCDMC or "District") is public outreach and education efforts, which includes schools, on flash/flood hazards and safety. The PIO also helps with outreach and information dissemination on area- or project-specific issues.

2. FCDMC/PIO staff target schools within flood zones with educational messages and brochures, some in Spanish. The District has built a flood safety curriculum for grades 4 through 6. Joe Muñoz, who is bilingual, leads the educational effort. To properly document a school visit, District staff typically request a letter from the school system summarizing the visit and the number/grade of children that benefited from it.

3. FCDMC/PIO wishes to create and fill during 2003 a Public Education Coordinator position to help with the CRS and all outreach efforts. Currently, FCDMC/PIO consist of 5 full-time staff members.

4. Different tools used by FCDMC Public Information Office to get the message out include:
   - Press releases
   - Media tours
   - FCDMC website (Josh Van Kylen)
   - School and community group presentations
   - Brochure and pamphlets
   - Open houses and public meetings
   - Exhibit boards in community areas
   - Videos

5. County Administration PIO plans to issue a "County Page" in local newspapers starting sometime in 2003.

6. FCDMC has produced a couple of educational videos that are widely used by other agencies. The National Weather Service and the National Association of Safety Professionals use one of these videos (showing actual footage of flood rescues). The District is also planning to order equipment to produce educational web movies.

7. FCDMC staffs a booth at the annual Lawn and Garden Show at the Phoenix City Plaza, where typically 700 to 2,000 people visit every year. Starting in 2003, FCDMC will make available educational brochures on stormwater quality and other related issues. The FCDMC plans to use the EPA brochure titled "*When it Rains, it Drains*"

8. The District has organized some volunteer cleanups of litter and trash in Upper Skunk Creek in the past. Larger items such as appliances and old vehicles must be hauled away by professional haulers. "No Dumping" warning signs are placed in strategic locations in the FCDMC system but the District has no legal police power.

[1] The National Flood Insurance Program's (NFIP) Community Rating System (CRS) was implemented in 1990 as a program for recognizing and encouraging community floodplain management activities that exceed the minimum NFIP standards. Under the CRS, flood insurance premium rates are adjusted to reflect the reduced flood risk resulting from the implementation of local mitigation, outreach, and educational activities.

9. The Maricopa County web site (www.maricopa.gov) represents a comprehensive source of information about the County. Almost any information about the County Government that is public knowledge can be found on this site.

10. MCDOT construction inspectors routinely inspect construction projects, but their efforts do not cover/involve stormwater issues. Current MCDOT roadway and highway designs do not include (post-construction) water quality BMPs. "First flush" not really addressed in any of MCDOT's roadway system.

11. MCDOT maintains about 3,000 miles of roads, of which about 700 miles (mostly unincorporated area of the county) are unpaved. Under a program called "PM-10 paving project", MCDOT aggressively paves roads with the goal of reducing air pollution. Over 20 miles of dirt roads were paved during 2002. The goal is to pave over 60 miles of dirt roads by 2003.

12. MCDOT has established a dust hotline (602-506-DUST) that County residents can call 24 hours a day with questions about dirt road maintenance or paving. A recorded message will give the caller the latest updates on dust issues and allow the caller to have their questions or concerns recorded. Additionally, residents with internet access can email MCDOT at: dirtroads@mail.maricopa.gov.

13. MCDOT is the coordinator of the Adopt-A-Highway Program in Arizona.

14. On construction-related projects, MCDOT requires contractors to report on their SWPPP implementation status with their invoices. Beyond that, there is no other construction site stormwater permit compliance protocol being enforced by MCDOT.

15. MCDOT stockpiles roadway construction materials but do not process them and operates any borrow pits. Vendors do all material hauling and processing.

16. Maricopa has a Zoning Ordinance for the unincorporated area of Maricopa County that was adopted in May of 1969 and revised in April of 1985. This ordinance can be found on the County's web site. The ordinance divides the unincorporated area of the county into zoning districts appropriate for various classes of residential, business and industrial uses. It mostly provides for the establishment of setback lines, adequate light and parking facilities, for expediting traffic within the zoning districts, and establishes the percentage of a lot or parcel which may be covered by buildings, including the size of yards and other open spaces. The Zoning Ordinance will probably be updated in 2004.

17. Maricopa County adopted Subdivision Regulations in August 1990, which provide for the regulation of subdivision development within the unincorporated area of the County, defining its terms, setting forth subdivision platting procedures and requirements, establishing subdivision design principles and standards, establishing street and utility improvement requirements, etc. The Subdivision Regulations can be found on the County's web site.

18. The Maricopa County Environmental Services Department (MCESD) is responsible for the health and safety of the County's environment. It consists of five divisions, including Air Quality, Water and Wastewater, and Environmental Health.

19. The Air Quality Division of the MCESD regulates air quality and sets the long-range direction for clean air within Maricopa County. The rules most relevant to stormwater are: 1) Rule 310 – Fugitive Dust Sources, and 2) Rule 310.01 – Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways.

20. Any soil disturbing (construction) activities involving 0.1 acre or more require a permit (Rule 310). The project is required to have a valid permit that requires a dust control plan before the soil is disturbed. Maricopa County requires that dirt tracked onto paved surfaces be promptly removed and that measures be taken to control dust from operations, such as construction, landscaping, and road work at all times (Rule 310.01).

21. The Environmental Health Division of MCESD reviews and approves construction plans for food production facilities, issues construction and operating permits, and inspects establishments according to the Maricopa County Environmental Health Code and the 2002 Arizona Food Code. Both codes can be downloaded from the Maricopa County web page. Environmental Health also manages a Special Programs Section that performs specialized functions related to the investigation of food borne illness outbreaks; inspections of day care homes; temporary food establishments; and food processors. This division also inspects public and semi-public swimming pools.

22. The inspections by the Environmental Health Division that are most applicable to NPDES Phase II General Permit are restaurant inspections, particularly those regarding housekeeping of restaurant exteriors and parking lots. Inspectors check for general housekeeping outside restaurants, including conditions of dumpsters, improper disposal of wastewaters, trash, and grease, maintenance of grease traps, the presence of food residue, and other items. Hosing of dumpsters rather than collecting and properly disposing of wastes is a common violation. Housekeeping of parking lots is of a lower priority than food safety and handling. MCDES performs about 80,000 inspections a year from its four regional offices.

23. The Water and Waste Management Division of MCESD is divided into eight main program areas, which includes: Individual Sewage Disposal System Program – oversees the issuance of septic permits; Vector Control Program – oversees the investigation and abatement of vectors (mosquitoes, rats, etc); Illegal Dumping Program - oversees the investigation of illegal dumping in incorporated areas; and Solid Waste Program – issues and oversees permits on refuse haulers & non-hazardous liquid waste haulers. The County does not run any water or wastewater treatment facilities, and does not run or govern any pretreatment programs.

24. MCESD receives its authority to regulate septic systems by delegation from the Arizona Department of Environmental Quality. Through this authority, MCESD, through the Individual Sewage Disposal System Program, is responsible for site inspections, soil evaluations, percolation tests, plan reviews, issuance of approvals to construct and approvals of construction for individual sewage disposal systems (ISDS).

25. The Vector Control Program uses larvicides, including growth-inhibiting hormone and larvicidal mineral oil. The County also applies malathion and synthetic pyrethrins. All application equipment is cleaned at the site of application before returning to County offices. There are six vector control inspectors working for the County. The office monitors the 91st Avenue Wastewater Treatment Plant, the Tres Rios treatment wetlands, dairies, and other locations to check for the presence of mosquito larvae. All

applicators are certified and trained, and must complete six hours of continuing education credits annually. Vector Control stores all chemicals including rodenticides in two sheds on County property at 3345 W. Durango St. The office performs an annual inventory of all chemicals and continuously tracks all certifications.

26. The Illegal Dumping Program is essentially regulatory in nature by enforcing the Maricopa County Environmental Health Code and provides no cleanup or collection services. The Illegal Dumping Program staff investigates citizen's complaints of illegal dumping and refers the complaint to a local Agency that has enforcement authority and cleanup capabilities or gain compliance with the property owner. Items illegally dumped routinely include household garbage, business trash, construction and demolition waste, appliances, tires, furniture, landscape and yard waste, mattresses, waste/used oil, chemicals and medical waste.

27. The Solid Waste Program provides no collection, removal or cleanup services. Its function is strictly regulatory in nature. Under this program, the County issues permits and conducts compliance inspections on refuse hauling vehicles, non-hazardous liquid waste hauling vehicles, chemical toilets and construction debris landfills. Historically most citations have been issued for leaky trucks and hauling without tarps. Through this program, the County also investigates permit related complaints and citizens complaints of illegal dumping of septage and solid waste.

28. Maricopa County has no household hazardous waste (HHW) collection program or disposal site. However, the County does operate/manage the Northwest Waste Tire Collection Site on 195th Avenue & Deer Valley Road. The Facility is open Monday through Friday, 6:00A TO 2:00P.

29. FCDMC, MCDOT, and the Parks and Recreation Department each responsible for management and application of herbicides.

30. MCESD has maintained an Environmental Response and Complaint (ER&C) hotline since 1996. The hotline (602.506.6616) is monitored by operators from 8 AM to 5 PM on business days, other days and times are handled by voice mail. MCESD also fields complaints via its website, which nets about 10-15 complaints daily. Approximately 37,000 complaints were received in calendar year 2001, about half of them environmental complaints. MCESD expect to log about 40,000 complaints in 2002. Most complaint calls are classified by type and category (9 categories total) given a tracking number, which is used to track the handling/resolution of the complaint, and subsequently passed on to the appropriate department for proper handling. The most common complaints pertain to food safety, vectors, water quality, dust, and polluting vehicles. The County dust control hotline (602.506-DUMP) is also linked to the ER&C hotline.

31. The Risk Management Department manages Maricopa County's risk management program, which includes insurance procurement; contract and document review; investigation and disposition of casualty and unemployment claims and lawsuits; environmental remediation; OSHA/ADOSH training, reporting, and compliance; and EPA/ADEQ investigation, remediation, and reporting.

32. Maricopa County Risk Management is in the process of auditing County properties for environmental hazards, covering the perceived high-priority facilities first. The County's

policy on environmental liability issues is that all legal requirements must be met. Risk Management must report the County's environmental liability every two years. Maricopa County is self-insured for liability issues related to environmental compliance.

33. Individual county departments are responsible for facility-specific training and good housekeeping. There is no comprehensive environmental compliance database for County properties. Likewise, no comprehensive record-keeping in relation to training and certifications exist.

34. MCDOT operates four maintenance yards: Southwest (Buckeye), Southeast (Chandler), Northeast (Surprise), and Northwest (Surprise). The Southeast yard will not be operational after June 30, 2003. The maintenance supervisor at each facility is responsible for proper housekeeping. The Southwest maintenance yard has a wash rack. Most MCDOT vehicles/equipment are serviced at the Northeast Yard, Southwest Yard, and the County's 3325 W. Durango regional service center.

35. MCDOT also operates its Administration Building (2901 W. Durango), Highway Operations (2919 W. Durango), MCDOT Distribution Center (2222 S. 27th Ave., Phoenix) and Traffic Operations Building (2909 W. Durango).

36. There is a washing facility located near the parking lot of the MCDOT Administration Building that used by MCDOT's "sign-and-paint" fleet. This washing facility currently discharges to open land. (*Note: AMEC assumes that the facility operates under an Aquifer Protection Permit*).

37. FCDMC reviews, inspects, and approves drainage clearance, floodplain use, and grading for the County. FCDMC directly issues permits for floodplain use and right-of-way access. FCDMC requires that 100-year, 2-hour storm retention be provided. This requirement is lessened to only requiring retention of the "first flush" volume (i.e., first half-inch of runoff) for new development near a flood control conveyance/retention facility. No on-lot retention is required for lots of an acre or less. However, subdivisions as a whole must meet retention standards.

38. The FCDMC is divided into seven divisions. These are: Administration, Engineering, Operations & Maintenance, Planning & Project Management, Lands, Regulatory, and Information. Each division has multiple branches. The three divisions with ties to the County's Stormwater Management Program are: 1) Engineering for its role in the water quality and stormwater areas for the County, 2) Information for its role on public outreach and education, and 3) Regulatory for its role in reviewing, inspecting, and approving drainage clearance, floodplain use, and grading for the County (done in coordination with the Planning and Development Department).

39. There are six branches under the District's Regulatory Division. These are: Floodplain Administration, Floodplain Technical, Development Review, Enforcement, Inspection, and Permitting. The first two branches exist and operate under Arizona Revised Statutes (ARS) Title 48 – Special Taxing Districts. The latter four operate under ARS Title 11 – Counties through an inter-government agreement with the County.

40. Any development with earth moving of 50 cubic yards or greater requires an earth-moving permit, which is a permit managed through the District. Approximately 15,000 new developments are handled every year. The vast majority of the developments are

handled at the construction site by staff from the Inspection Branch. This Branch typically performs three inspections: 1) Site Visit, 2) Stem Inspection (when stemwall is ready), 3) Final, Pre-occupancy Inspection. Complex developments typically get a fourth in-progress inspection. Inspections do not check for any erosion and/or sediment control measures, site trash/debris management measures, nor it provides any checking of the SWPPP/NOI for sites disturbing over 5 acres.

41. About 10 percent of the County's annual development cases - approximately 1,000 building permits, 50 subdivisions, and 100 zoning cases - go to the Development Review Branch annually for further review and processing.

42. Planning and Development Department (P&DD) is responsible to provide planning and development services to unincorporated Maricopa County. In that role, P&DD is responsible for processing applications for land use approvals, zoning and land use permits, construction and building permits, and engineering and subdivision permits in unincorporated Maricopa County. To achieve its goals for plan review and permitting, the P&DD recently implemented the One Stop Shop (OSS) program. The intent of the OSS is a central location at which the public can get all the permits needed at one time. All the agencies that permit receive a copy of the permit application and their comments are compiled into one response. The process uses the software *Permit Plus*). P&DD has a Technical Advisory Committee (TAC) with members from various County departments that meet biweekly to discuss all new development in unincorporated areas of the County.

43. FCDMC is funded by property tax at the rate of $0.2119/$100 assessed valuation. The District is the county agency that has most expertise and experience on stormwater-related matters. However, the FCDMC charter does not include stormwater. Therefore, it has been determined that stormwater-related costs to the County must be paid by the appropriate County department and not just FCDMC. For now, FCDMC will take the lead in developing and helping implement the Stormwater Management Program that is required for permitting purposes, but will need to get properly reimbursed by the several individual departments or County agencies involved in the program.

44. Like most other state governments, Maricopa County will be impacted by Arizona's current budget situation. With this in mind, the Maricopa County Stormwater Management Program has to be built so as to defer most costly program elements to the latter years of the permit period to accommodate proper program budgeting and funding.

45. Maricopa County Drainage Regulations legal provisions are sufficiently broad-worded to prohibit any illicit discharges and illegal dumping, but the ability for the District to enforce is limited (only possible through the County Attorney). Therefore, wide spread illicit discharges and illegal dumping (e.g., landscaping debris, tires, and old appliances) into the regional flood control system tends to be a continual problem for the District. The Operations and Maintenance Division of the District performs quarterly inspections of the District's entire flood control infrastructure, and issue work orders for any cleanup, repair, or replacement that is needed – including the discovery of illicit connections. When this happens, a letter is typically sent out communicating the problem and requesting corrective action.

46. Although the Maricopa County Superintendent of Schools (elected position) manages school districts within the county, these are not part of the County government system.

Community colleges are not part of the County government either. There are only a couple of homeless children "schools" that are part of the County organization.

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List of Materials/Documents Received from the County during the Interviews:

1. Department Level Organization Chart of Maricopa County
2. Drainage Regulations for Maricopa County, as adopted September 26, 1988, rev'd. 1994
3. Floodplain Regulations for Maricopa County, as adopted August 4, 1986, rev'd. 2000
4. Maricopa County Food Safety Evaluation Report (form)
5. Flood Control Statutes 48-3621: Right-of-Way, and 48-3622: Permission required to connect to storm water drain; fee; violation; classification.
6. FCDMC – Plan Submittal Requirements for Drainage Review
7. Sample calculations of Volume to Capture and Treatment of "First Flush"
8. Copies of floor/site plan for various MCDOT buildings.
9. List of various tools used by FCDMC to perform public outreach/education

M E M O R A N D U M

Documentation of Interview Process with Maricopa County Staff for SWMP Gap Analysis

TO: Maricopa County Project File

FROM: Ed Latimer
Elizabeth Treadway
Mason Bolitho

PROJECT: NPDES Stormwater Phase II Compliance (Project No. 2-114-002109)

DATE: **January 9, 2003**

During the morning and afternoon of Wednesday, January 8, 2003, and the afternoon of Thursday, January 9, 2003, Ed Latimer, Elizabeth Treadway, and Mason Bolitho met with several Maricopa County personnel with the objective of assessing the County's processes and programs that could eventually support or have an impact on the development a stormwater management plan for NPDES Phase II compliance. The meetings occurred as follows:

Person/Group	Representing	Title/Role	Date & Time
James Stewart Tom Ewers	P&D P&D	Development Services Supv. Plan Review Manager	Jan. 8, 9:00a.m.
Lucinda Swann	MCDES	Earthmoving Program Mgr.	Jan. 8, 1:00p.m.
Brian Hushek Daren Frank Janette Weedon	OMB	Deputy Budget Director Mgmt. & Budget Coord. Sr. Mgmt. & Budget Analyst	Jan. 8, 3:00p.m.
Ken Mouw Bill VanAusdal	Parks & Rec.	Engineering Manager Chief, Parks Police	Jan. 9, 1:30p.m.
Jennifer Lawrence-Harris	Parks & Rec.	Regional Park Supt.	Jan. 13, 10:30a.m.

The following thoughts/entries highlight the discussions and relevant findings:

1. The Maricopa County Planning and Development (P&D) Department issues permits for all development in the unincorporated areas of Maricopa County. The Department issues grading permits, infrastructure permits, and building permits. All Department permits for a project can be included in one permit for each structure.

2. Drainage reviews for new development are now conducted by the Flood Control District of Maricopa County (FCDMC).

3. P&D conducts no site reviews but reviews for zoning requirements and building permits. Inspectors only look at the building itself and do no site inspections such as curb and gutter. There is no final approval of a building permit until FCDMC conducts a drainage inspection.

4. Erosion and sedimentation controls are not required to be in place before construction begins. P&D does not require proof of a Stormwater Pollution Prevention Plan (SWPPP).

5. P&D has no post-construction involvement in new developments unless a complaint is received. Any post-construction complaints including illicit connections to the stormwater system or regarding drainage are referred to FCDMC.

6. P&D is organized into several organizational units: Planning, Code Enforcement, Development Services, Administration, Information Technology, Plan Review, and Inspection Services. The Director of the Planning and Development Department is Ms. Joy Rich.

7. P&D enforcement is complaint-driven. The Department maintains several hotlines, including: zoning, building, planning, building safety, status, and Spanish hotlines. The hotlines are voicemail boxes in which callers may leave messages.

8. The Maricopa County Zoning Code and Subdivision Regulations govern issues such as setbacks, lot sizes, etc. Maricopa County recently updated County Building Codes to conform with 2000 Uniform Codes.

9. P&D inspectors look at building construction and evaluate things such as setbacks using a pentab with an electronic checklist. A paper checklist for applicants is provided over the counter.

10. The only P&D grading reviews are for hillside disturbances, when construction will disturb a hillside >15% within five feet of elevation change. A hillside letter from a registered engineer is required when applicants want to place a development on a hillside.

11. When the County Zoning Code or Planning Regulations are updated, P&D informs stakeholders and the public in a number of ways. Staff attend Maricopa County “Zipper” meetings, an interagency County group whose meetings are open to the public. The County’s Northwest Complex hands out updated information over the counter, and any changes to County building regulations are posted on the Maricopa County website and can be accessed via the “What’s New?” button. Hugh Iseman is P&D’s training coordinator and gives internal classes on P&D issues.

12. The County experiences an ongoing problem with wildcat subdivisions. Recent state legislation gives all Arizona counties a mechanism to form a lot split review committee, but Maricopa County has not formed such a committee.

13. Applicable County rules for dust control are Rule 310, which regulates construction activities, large sources, and power plants; and Rule 310.01, which regulates government-owned roads and properties, off-road vehicles, and other issues. Rule 310.01 primarily addresses complaints regarding dust.

14. Rule 301 contains a 20% opacity standard for construction and contains standard work practices. All construction sites are required to have a dust control plan; the County issues approximately 3,000 dust permits per year. All plans must be written to conform with the 20% opacity standard. The rule also regulates bulk material hauling and track-out of soils. Track-out that extends less than 50 feet from a construction entrance must be cleaned at the end of a day's construction, and track-out over 50 feet from an entrance must be cleaned up immediately. Most dust control plans use water at construction sites. The rule also requires final stabilization at the end of construction activities.

15. Maricopa County Department of Environmental Services (MCDES) inspectors typically inspect construction sites over 10 acres five times per year, and sites less than ten acres once per year. The site's dust control plan and permit must be kept on site and must be accessible. If a site has uncontained trash or other housekeeping problems MCDES inspectors can contact ADEQ directly about site controls.

16. MCDES conducts training through community colleges by sending an inspector to address students. MCDES also conducts informal seminars and visits construction contractors to directly address employees.

17. At present, MCDES has seven inspectors. A college degree is required to work as an inspector.

18. Maricopa County is not chartered, so any new fees (such as stormwater fees) must be approved by the Arizona Legislature. The Stormwater Management Plan (SWMP) will probably require an intergovernmental agreement between FCDMC and MCDES. The County will maintain three basic accounting categories (Personnel, Supplies and Services, and Capital) for the SWMP.

19. For Fiscal Year 2004 the County began budgeting in December. Because of the funding situation, County Departments were required to submit three budgets: Base, Base with a 5% reduction, and Base with a 10% reduction. New mandated programs are typically funded at minimum levels. The County maintains a contingency fund for unforeseen obligations.

20. The Maricopa County Board of Supervisors meets in a policy session every other Monday, in a full Board Meeting every other Wednesday, and informal work sessions the third Thursday of each month. Special Board Meetings may be added at the discretion of the Chairman.

21. The Maricopa County Parks and Recreation Department maintains a Desert Outdoor Center at Lake Pleasant for educational and outreach purposes. The County has interpretive park rangers at each of its parks. These park rangers give educational talks to park visitors every week. The County has brochures available at the Desert Outdoor Center which have educational messages including some information regarding runoff into Lake Pleasant, since it is used as a water source. Jennifer Lawrence-Harris is the superintendent for Lake Pleasant.

22. The Parks and Recreation Department experiences significant illegal dumping, primarily old tires, yard waste, and stolen vehicles. When illegally dumped hazardous materials are found on park property, Risk Management is called to rectify the problem. There are no major problems with illegally dumped oil or septage. Because of budget limitations, the Parks and Recreation Department does not maintain a hotline for illegal dumping.

23. When a park visitor genuinely cannot pay the $5.00 entry fee, the County will give the visitor an empty trash bag to be filled in lieu of the fee. The County plans to commence a volunteer trash cleanup program in Calendar Year 2003 in which volunteers pick up trash and receive a coupon good for a discount on a park entry fee. The County also coordinates with such groups as the Girl Scouts, Boy Scouts, and other civic groups to conduct cleanups along trails and bike trails within County parks.

24. Park employees are eligible for tuition reimbursement for advanced education if coursework is related to the employee's job duties. The Department holds meetings of its safety committee where hazardous materials issues are addressed on an as-needed basis.

25. The Parks and Recreation Department has two patrol boats and two work boats at Lake Pleasant. Boats are fueled from a fueling truck. All parks have fueling facilities for vehicles with above-ground storage tanks and double-walled concrete berms in case of spills.

26. The County owns three golf courses, all of which are operated by contractors who have agreed in writing to follow all environmental and safety laws. County staff inspect each course annually for any environmental problems and call Risk Management if any problems need to be addressed.

27. Each park has septic systems and no package plants. There are drinking water wells in some parks which are regulated by MCDES. All Parks water systems are classified as transient, non-community water systems by MCDES. No wells are chlorinated at this time.

28. All County parks parking lots are paved. There is no street sweeping in the parks.

29. The County Parks and Recreation Department oversees construction at park properties. If a consultant in involved, the consultant provides construction administration and inspections.

30. Parks staff member with PIO responsibilities is Rand Hubbell, who may be reached at (602) 506-1114.

31. The Desert Outdoor Center at Lake Pleasant holds approximately five to six full-day classes and 3-6 half-day classes each weekday during the school year. The center holds classes for approximately 20,000 students per year, mostly from kindergarten through eighth grade, although some high school students attend classes.

32. The Desert Outdoor Center has been open since 1978 on land owned by the Bureau of Reclamation. The center has an onsite observatory, an amphitheater, a nature trail, dormitories, a science lab, a resource room, a lecture room, a kitchen and a large multi-purpose room. There are six computers available though they may be underutilized at present. Weekday classes are generally taken by Phoenix-area schoolchildren, while civic groups such as the Boy Scouts, Girl Scouts, and Campfire Girls.

33. Interpretive Park Rangers have college degrees. Majors in biology, wildlife management, and education are ideal areas of study.

34. The Desert Outdoor Center offers a number of different classes. Issues related to stormwater are generally addressed via the “Impact Monster” class (which teaches students the value of minimum impact outdoor use), aquatic life classes, fishing program classes, and mining classes. At present, discussion of stormwater focuses on the fact that runoff to Lake Pleasant will eventually become drinking water and should be protected.

35. The Center has hosted an Eagle Scout Program as a public involvement effort. This program was responsible for building erosion barriers at the Center site. There is also a Friends of the Desert Outdoor Center group comprised mainly of senior citizens. A group may enter the park without a fee if the group spends 1-2 hours picking up trash. Maricopa County provides trash bags for groups.

36. Educational materials are produced in-house or sent to County offices for printing. Beth Mabie handles the Center’s newsletter, which mainly has environmental news and news regarding wildlife releases by the Arizona Game and Fish Department.

37. Center staff would like to reach out to all-year schools. Preliminary plans are to contact these schools by mail or to make presentations at the schools. The Center hosts primarily civic groups and church groups during the summer months.

APPENDIX L

INDIVIDUAL PERMIT APPLICATION SUBMITTED TO ADEQ, MARCH 2003

Arizona Pollutant Discharge Elimination System (AZPDES) Stormwater Phase II Permit Program

Individual Permit Application

MARICOPA COUNTY
Stormwater Management Program

March 10, 2003

Application Content and Format

Maricopa County submits to the Arizona Department of Environmental Quality an individual application for coverage under **Title 18, Chapter 9, Article 9, Part B, Individual Permits for a Small MS4.** This application is organized to follow the structure of the referenced regulation, providing a stormwater management program under **40 CFR 122.34** and application requirements under **40 CFR 122.33 as required under R18-9-B901**. By informal communication from Ms. Karyn Moldenhauer by e-mail to Mr. Todd Williams, a request for additional information was identified as "As all information under 40 CFR 122.26(d). Ms. Moldenhauer cited 40 CFR 122.33 as the authority quoting "…and any additional information that your NPDES permitting authority requests**."** This request for additional information was received on February 24, 2003. The County was not provided sufficient time to gather the information required under 40 CFR 122.26(d) in time to submit the individual application on March 10, 2003 and therefore, is not complying with this informal request for information (i.e., a complete Phase I permit application).

The application is organized in the following manner:

Section I: General Information as required under 40 CFR 122.33 with a sub-reference to 40 CFR 122.21(f) and the additional data of number of square miles in the County and a confirmation that the County is not located in a border area.

Section II: Material addressing 40 CFR 122.34, the stormwater management plan, the Best Management Practices, measurable goals and the identification of the individual responsible for carrying out the requirements for the Small MS4 program.

Section III: As per 40 CFR 122.33, a storm sewer map that satisfies the 40 CFR 122.34(b)(3)(i) requirement is satisfying the map requirement in 40 CFR 122.21(f)(7). This map will be updated as the outfall map is developed as part of Section II-C (BMP3).

Section I: General Information

1. *The activities conducted by the applicant which require it to obtain an NPDES permit.*

   Maricopa County was named under the criteria for regulation under the National Pollutant Discharge Elimination System Phase II regulations, promulgated by the Environmental Protection Agency on December 8, 1999 as a Phase II permittee, with the requirement to submit an application for coverage under the referenced regulations, by March 10, 2003. Maricopa County owns and operates the storm sewer system located within the Urbanized Area boundary identified in the regulations, in the unincorporated areas of Maricopa County. Urbanized areas are designated separately either as Phase I or Phase II permittees responsible for those systems located within their corporate boundary.

2. *Name, mailing address, and location of the MS4 for which the application is submitted.*

   The MS4 to be permitted is located throughout the unincorporated areas within the designated Urbanized Area. As owner of the system, Maricopa County offices are located at

   301 West Jefferson
   Phoenix, Arizona, 85003

   Contact Person: Todd Williams, Water Quality Branch Manager
   c/o Flood Control District of Maricopa County
   2801 West Durango Street
   Phoenix, Arizona 85009
   (602) 506-4113
   (602) 506-4601 Fax
   tgw@mail.maricopa.gov

3. *The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.*

   Maricopa County is a public entity governed by the publicly elected Board of Supervisors and whose offices are located at:

   301 West Jefferson
   Phoenix, Arizona, 85003

4. *Is any portion of the MS4 located in Indian Country?* NO

5. *Does any portion of the MS4 service a population within Indian Country?* NO

6. *Are stormwater facilities located on Indian lands?* NO

7. *A listing of all permits or construction approvals received or applied for under any of the following programs:*
   a. *Hazardous Waste Management program under RCRA.*
   b. *UIC program under SDWA.*
   c. *NPDES program under CWA.*
   d. *Prevention of Significant Deterioration (PSD) program under the Clean Air Act.*
   e. *Non-attainment program under the Clean Air Act.*
   f. *National Emission Standards for Hazardous Pollutants (NESHAPS) pre-construction approval under the Clean Air Act.*
   g. *Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.*
   h. *Dredge or fill permits under section 404 of CWA.*
   i. *Other relevant environmental permits, including State permits.*

   Refer to the attached disk for a list of all environmental permits belonging to Maricopa County.

8. *Provide the number of square miles served by the system.*

   The total square miles of land encompassed by the County, is 9,226 square miles, of which 1,441 square miles are within the incorporated area and 7,785 square miles are within the unincorporated area. Approximately 96 square miles are within the urbanized area of the unincorporated County.

9. *Provide a brief description of the nature of the business*

   Maricopa County is a local government providing a broad range of public services to its citizens, as defined by the Board of Supervisors, State and Federal law.

LOCATION INFORMATION

Name of Urbanized Area where the MS4 is located: Phoenix-Mesa

Provide the following information on the approximate center of the MS4:

Latitude: 33° 35' 17" N
Longitude: 112° 08' 01" W
Township: 3N Range: 2E Section: 23

Name(s) of neighboring Tribes/Cities/Towns (places that share borders with permittee):

Cities/Towns: Avondale, Buckeye, Carefree, Cave Creek, Chandler, El Mirage, Fountain Hills, Gila Bend, Gilbert, Glendale, Goodyear, Guadalupe, Litchfield Park, Mesa, Paradise Valley, Peoria, Phoenix, Queen Creek, Scottsdale, Surprise, Tempe, Tolleson, Wickenburg, and Youngtown.

Counties: Gila, La Paz, Pima, Pinal, Yavapai, and Yuma.

Tribes: Fort McDowell Mohave-Apache Indian Community, Gila River Indian Community, and Salt River Pima-Maricopa Indian Community.

WATERSHED INFORMATION

*Name of Watershed***:** Middle Gila, Salt, Colorado/Lower Gila, Verde, Santa Cruz, Gila

Name of Receiving Water(s):	Is the Receiving water a 303(d) Impaired Water?	
Gila River, Salt River	**Yes**	No
Agua Fria River, Cave Creek, New River	Yes	**No**
Skunk Creek, Verde River, Hassayampa River	Yes	**No**

CERTIFICATION

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Name of Applicant's Representative: Mr. R. Fulton Brock
Title: Chairman, Board of Supervisors

Signature of Applicant's Representative: _____ Date:_____

Section II: Stormwater Management Program, Best Management Practices, Measurable Goals, and Responsible Party

Maricopa County's Stormwater Management Program is designed to address the need to prevent or reduce discharges of pollutants to State waters. The Program specifically considers the six Minimum Control Measures as required in 40 CFR 122.34 for small municipal separate storm sewer systems (MS4s) as required by R18-9-B901.B.2.c.

The Best Management Practices (BMPs) presented here have been proposed because they address the required elements within the regulations, are appropriate for Maricopa County's stormwater system, are measurable, are anticipated to make improvements in the County's stormwater quality, and are achievable. For each BMP, the appropriate measurable goals are delineated along with a schedule including an indicated frequency of planned actions, interim milestones, and a date by which BMP implementation will be established.

Section II – A
Minimum Control Measure 1
Public Education and Outreach

40 CFR 122.34 (b):

(1) Public education and outreach on storm water impacts. (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

Methods of Communication: In order to reach citizens with targeted messages regarding the County's Stormwater Management Program and their role in it, the County will employ print media and the County's website. The County has an extensively developed website which provides detailed information to the public on County activities, materials and two-way communication.

Targeted Audiences: The education program seeks to reach a broad cross-section of Maricopa County's population. Targeted audiences include:

- The general public, providing information on general pollution prevention at home and work;
- The Spanish speaking population by producing some materials in Spanish in order to reach a diverse ethnic population.

Printed materials to be distributed in County facilities will carry more specific and focused information on ways in which citizens can help in the stormwater effort both at work and at home. Special printed information will target County employees with messages related to workplace pollution prevention and good housekeeping. The Maricopa County website will target the segment of the population who may use the internet rather than newspapers and television as a major information source.

It is estimated that this education plan will reach approximately 45% or 100,000 full-time residents of unincorporated Maricopa County over the 5-year program period.

Targeted pollutants. The education plan will specifically target floatables including trash, household hazardous waste, restaurant grease discharges, and illegal pollutant dumping since these are widespread sources of polluting discharge and the County has already made a significant effort in addressing these specific sources of pollution.

Responsible Department/Position: Public Information Office, Maricopa County
Al Macias or designee
Flood Control District of Maricopa County
Joe F. Muñoz or designee

Section II-A: Public Education and Outreach
BMP 1: Develop and maintain a targeted education plan

The County will prepare and develop a detailed plan for stormwater education including target audiences, information content, schedule and methods of communication. This will enable effective coordination of the overall effort. Maricopa County has many outlets for education of the public with a number of options to use for communication. A written plan will enable the coordinator of this minimum control measure to effectively follow up and implement the overall strategies chosen. Developing a plan will also enable the County to engage more organizational units in the overall outreach effort. The objective of this BMP is to create and maintain a detailed and coherent strategy for informing the public and County employees about their role and responsibilities in protecting stormwater from polluting discharges.

The County will determine which audiences to target and what method is most effective. Locally, resources from the Phase I communities such as the City of Phoenix, coordination with the on-going STORM efforts, and focusing on the arid southwest will be important.

Measurable Goals: The County will develop a targeted education plan by the end of the first year of permit issuance and implement throughout the permit period.

Schedule: Assess current communication methodologies within 6 months of permit issuance and complete plan within 12 months of permit issuance. Implement plan throughout remaining permit period.

Section II-A: Public Education and Outreach
BMP 2: Procure, Obtain and Distribute Stormwater Educational Materials to County Residents

The County will procure, obtain free materials and distribute stormwater educational materials to County residents following the education plan in Section II-A, BMP 1. The residents of Maricopa County can participate in the protection of water quality when they are educated and provided communication tools to assist in illicit discharge and construction site management controls. It is important to provide them with information on how to contact the County staff and who to contact in case of an emergency. The County will either purchase or obtain free materials where possible to make the program cost effective. The materials will target household pollution prevention measures, illicit discharge issues, construction site management issues and other key messages as identified in BMP 1.

Distribution methods may include: making brochures available in County buildings; distributing to new resident welcoming groups (i.e., The Welcome Wagon or similar agency) to distribute with their new resident information packets; materials available at meetings and events such as the annual Maricopa County Lawn and Garden Show; and making materials available on the County's website. Spanish language materials will be made available.

Measurable Goal: The County will obtain or procure materials to educate the general public within 12 months of permit issuance and will distribute them throughout the remaining permit period, targeting residents of the County on pollution prevention practices for households.

Section II-A: Public Education and Outreach
BMP 3: Stormwater page with links on County website

The County will implement, maintain, and update as necessary stormwater information on the Maricopa County website with links to appropriate web pages such as EPA and ADEQ and with a link to the e-mail of the County's contact person, providing useful information to the public on household pollution prevention planning, construction site management, post-construction controls and illicit discharge issues. There will be a general message conveyed, based on Section II-A BMP1, as well as targeted messages for Section II-C, Section II-D and Section II-E compliance. The County webpage is richly developed, carrying significant information on County services and providing for two-way communication with County staff. This resource will be most helpful in meeting the outreach efforts defined in the Section II-A, BMP 1, communication plan.

The County will research appropriate materials to include on the site as well as appropriate links to other agencies and organizations. The Stormwater Management Program will be placed on the website in support of Section II-B to involve the public in the review and input into the overall program approach.

Measurable Goals: The County will place the Stormwater Management Program application on website by June 2003. The County will expand the website for stormwater and include general education materials on website within 12 months of permit issuance and will maintain updated material over the life of the permit.

Schedule: The County will research and obtain appropriate information for use on the website within 6 months of permit issuance and will create a stormwater webpage within the County website specifically to Phase II compliance within 9 months of permit issuance. The County will have general stormwater information available on the County website within 12 months of permit issuance. The County will place information on Section II-C, Section II-D and Section II-E on the website as programs are developed and implemented.

Section II - B
Minimum Control Measure 2
Public Involvement and Participation

40 CFR 122.34 (b):

2) Public involvement/participation. (i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program.

The County currently involves residents in a number of ways. In the past, the Flood Control District of Maricopa County (FCDMC) has assisted citizens with volunteer trash pickups in parts of the stormwater system where neighbors have wanted to target cleanup efforts (e.g., Skunk Creek). Volunteers were given trash bags to collect litter and small debris while larger items such as old vehicles and appliances were hauled away by a contractor. The Maricopa County Parks and Recreation Department has discretion to waive park entrance fees if groups agree to spend a few hours picking up and delivering trash to park employees for disposal.

To further involve citizens directly in the process of preparing the County's Stormwater Management Plan, Maricopa County will conduct a public hearing specifically to accept public comment on the Plan. The County intends to comply with all state and local public noticing requirements with regard to this public hearing and all other stormwater related activities. Comments on the stormwater program will be incorporated as appropriate.

Citizens with specific stormwater problems or suggestions will be targeted through the Hotline currently operated by the Maricopa County Department of Environmental Services (MCDES). The community will be informed of public involvement opportunities through the County's website, in the newspaper and in other education materials in Section II-A.

In order to encourage participation in stormwater issues by interested citizens or groups, the County will make available on its stormwater webpage copies of its Stormwater Management Program for stormwater discharge as well as a "Comment" section, allowing for two-way communication. The availability of this information will be advertised through printed educational materials available at County facilities.

The selected BMPs described below reflect Maricopa County's commitment to involving the public in the development and implementation of its SWMP.

Responsible Department/Position: Public Information Office, Maricopa County
Al Macias or designee
Flood Control District of Maricopa County
Joe F. Muñoz or designee
Parks and Recreation Department
Bill VanAusdal or designee

Section II-B: Public Involvement and Participation
BMP 1: Compliance with public notice requirements

To make the public aware of new regulations and allow public participation in the adoption of the regulations, Maricopa County will continue to comply with public notice requirements for any newly created or revised regulations, public meetings of the Board of Supervisors when issues of the stormwater program are discussed and for other activities, as appropriate.

The County will ensure that notices are posted as mandated by state and local public notice requirements. The County will post notices in public buildings, noting subject matter and date, time and location of meetings to adopt the regulations and to conduct business regarding the stormwater program as required.

The County will report annually on the number of stormwater-specific public notices posted maintaining copies of public notices and documenting meeting dates and times.

Measurable Goals: The County will utilize public notice requirements throughout the permit period and will track the number of public notices and subject matter, documenting methods of public notice.

Schedule: This is an ongoing activity throughout the permit period.

Section II-B: Public Involvement and Participation
BMP 2: Facilitate volunteer trash pickup events within Maricopa County

The County staff will facilitate volunteer trash pickup events within Maricopa County to involve the public in volunteer activities to reduce trash and floatables in the County's stormwater system.

To accomplish this, the County will facilitate trash pickups in cooperation with civic groups by advertising cleanups via other stormwater related media including newspaper ads, printed educational materials, and the County's stormwater web page. The County will provide trash bags and issue vouchers good for future park entry fee discounts to volunteers. The County will advertise cleanups and other organized activities in community centers and other logical public notice areas; work to have trash bags donated; and possibly arrange shuttle transportation. Details will have to be addressed by the County's legal staff to ensure appropriate liability issues are addressed.

The County will annually report on the number of events assisted, identifying data such as the location, date and number of volunteers.

Measurable Goals: The County will Support at least one volunteer trash pickup events biannually, tracking the number of volunteer activities and the number of participants in each.

Schedule: Within twelve months of permit issuance and as appropriate throughout permit period.

Section II-B: Public Involvement and Participation
BMP 3: Public hearing on the SWMP

The County will provide a forum for receiving comment on the stormwater management program. Initially the County will place the individual permit application, including this stormwater management program on the County website. In addition, the County will post notice of the public comment opportunity and seek feedback from the public.

The County will hold a public hearing on the stormwater program, advertising on the County website, in the newspaper and/or other appropriate notice locations. The County will establish a comment period to receive written input after the public hearing. Staff will review comments and incorporate changes into the stormwater plan as appropriate. The County will submit recommended changes to the permitted program in the next permit year as appropriate.

In the annual report, the County will describe the public hearing process, provide an overview of the comments received and identify how they will be incorporated into the stormwater program. The County will document any public hearing by providing the date of public notice of the hearing and the number of people attending public hearing. The County will maintain copy of any sign-in sheets as well as copies of comments submitted.

Measurable Goals: The County will hold a public hearing prior to finalization of the permit by ADEQ and incorporate comments into the stormwater program as appropriate, prior to permit issuance by ADEQ.

Schedule: Public Hearing to be held by December 2003 or sooner based on the individual application review process of ADEQ.

Section II-B: Public Involvement and Participation
BMP 4: Public hearing and annual Board of Supervisors update on stormwater program

The County will update the Maricopa County Board of Supervisors annually on the status of the development and implementation of the stormwater program to educate the Board and the public, providing an opportunity to input in the implementation of the program.

Prior to submitting the annual report, County staff will brief the Board at a regular meeting, providing public notice of the meeting and giving the public an opportunity to comment on the implementation of the program. County staff will give an overview of what has been accomplished in the previous permit year and what will be accomplished in the upcoming permit year. County staff will comply with BMP 1, Section II-B of the stormwater program.

Measurable Goals: The County staff will provide an annual Board of Supervisors briefing and public hearing on the program implementation and goals for the next permit year.

Schedule: Annual briefing each year throughout the first permit cycle, with the first briefing occurring 14 months after issuance of the permit by ADEQ.

Section II – C
Minimum Control Measure 3
Illicit Discharge Detection and Elimination

40 CFR 122.34 (b):

(3) Illicit discharge detection and elimination. (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at Sec. 122.26 (b) (2)) into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

Maricopa County recognizes the potential for illicit discharges to the County's stormwater system and is committed to addressing the problem. The BMPs in this section have been developed with the County's unique stormwater system and seasonal population in mind. The BMPs are targeted toward known and potential illicit discharges. The program envisioned by Maricopa County will be based on an amended regulation which will define and prohibit illicit discharges to the County's stormwater system, clarifying rights of entry and activities that are prohibited.

122.34(b)(3)(ii)(A): A map of Maricopa County's stormwater system will be created and kept current, identifying the outfalls and receiving bodies of water.

122.34(b)(3)(ii)(B): Existing regulations for the Flood Control District, the County's subdivision ordinance and the County's Department of Transportation regulations may be

sufficient authority to address illicit discharges and illegal dumping. Current Maricopa County drainage regulations Section 1203 states that it is a violation "for any person to place or allow to be placed any fill material, rubbish, trash, weeds, filth, or debris which obstructs, retards or diverts any natural or improved drainage system upon any private or public property located in the unincorporated areas of Maricopa County". This current regulatory language targets illegal dumping that may cause drainage obstructions but may not specifically target illicit discharges that could potentially impact water quality. A review of the existing authorities is appropriate and will be completed with the assistance of the County Attorney's Office. Based upon that review, the County will amend existing regulations or create new regulations to effectively prohibit illicit discharges and illegal dumping into the MS4.

122.34(b)(3)(ii)(C): The County will inspect outfalls identified in the mapping process, completing a review of all drainage systems owned or operated by the County within the regulated boundary of the MS4 during the first five years of the permit. Where indicators (odor, color, unidentified flow) are found of a potential illegal discharge, the County will initiate investigation within 30 working days and take action to eliminate the discharge if the source can be identified.

122.34(b)(3)(ii)(D): Educational efforts for the public and employees related to the hazards of illegal discharges and improper waste disposal are included in activities of Section II –A, Public Education and Section II-F, Pollution Prevention/Good Housekeeping. Illegal dumping and illicit discharges will be covered as specific targeted messages in BMPs for the Public Education and Outreach.

122.34(b)(3)(iii): For the purposes of this regulation, all of the non-stormwater discharges specified in 40 CFR 122.34 (b)(3)(iii) will be considered allowable unless specific evidence of contamination is discovered and cause can be determined.

Responsible Department/Position: Flood Control District of Maricopa County
Michael Ellegood or designee
Environmental Services Department
Albert Brown or designee
Planning and Development Department
Joy Rich or designee
Maricopa County Department of Transportation
Tom Buick or designee

Section II – C: Illicit Discharge Detection and Elimination

BMP 1: Development of a County regulation prohibiting illicit discharges to the stormwater system

County staff will review existing regulations with the assistance of the County Attorney staff to determine sufficiency to regulate the MS4 to address illicit discharges and illegal dumping into the MS4. Upon completion of the evaluation, the County staff will develop, finalize, and adopt an amended County regulation that prohibits illicit discharges to Maricopa County's stormwater system, empowers the County to take appropriate action to disconnect any illicit discharges, including the provision of right of entry and enforcement actions necessary.

County staff will research comparable existing regulations and ordinances in the western U.S, with particular focus on the Phase I permittees in Arizona to identify measures to incorporate into an amended regulation. The County will comply with Section II-B of this program during the review and adoption of the updated/new regulations.

The County staff will report on the updating process and the date of adoption of updated/new regulations in the annual report to ADEQ.

Measurable Goals: The County will evaluate county and local regulations within 12 months of issuance of the permit and adopt updated or new regulations within 24 months of permit issuance, if necessary.

Section II – C: Illicit Discharge Detection and Elimination

BMP 2: Outfall inspection program

The County staff will evaluate current inspection programs that could identify illicit discharges and locate illegal dumping and modify these programs as needed to complete an outfall inspection program. The County staff will identify possible illicit discharges to the County's stormwater system and locate illegal dumping through the inspection program with a goal to remove the illicit discharges and find the responsible party for dumping into the system. As part of the overall effort the County staff will regularly review and update policies and procedures for outfall inspections, noting on inspection forms the appearance, color, odor, etc of any discharge. If illicit discharges is suspected, County staff will initiate an investigation to identify the pollutant and if possible, the source of the problem. County staff will evaluate what procedures Arizona Phase I communities follow to learn from their experience.

County staff will annually report on inspection activities, describing the process followed and the number of inspections completed. Details will be provided on investigations initiated and outcomes reached.

Measurable Goals: The County staff will evaluate procedures currently used for inspections and modify if necessary. The County staff will initiate inspections of outfalls in with conjunction Section II-C, BMP 1, using a pilot area for testing the procedures and

documentation. The County will establish performance goals for the outfall inspection program for the remainder of the permit period and implement the full program with 30 months of issuance of the permit.

Section II-C: Illicit Discharge Detection and Elimination
BMP 3: Development of a storm sewer map showing all outfalls

County staff will complete the Maricopa County storm sewer map showing all outfalls and names and locations of Waters of the United States in support of the program to detect and eliminate illicit discharges. In conjunction with Section II-C, BMP 1 and BMP 2, the County will compile outfall data from existing mapping sources, reviewing data and creating a current storm sewer outfall map, using both paper and electronic version.

Prior to beginning the inventory data collection for updating the existing maps, County staff will consider how the County will use the information and what type of information should be identified for each outfall. Coordinating databases for the inspection process and the mapping will be considered.

The County staff will report on the progress for completion of the map in the annual report to ADEQ and identify any issues that need to be addressed.

Measurable Goal: The County will complete a comprehensive Maricopa County stormwater system outfall map showing outfalls and identifying discharges into Waters of the United States, within 15 months of issuance of the permit by ADEQ.

Schedule: Begin outfall mapping effort in year one with a target to complete map within 15 months of permit issuance. Updating of the map will occur over the life of the permit.

Section II-C: Illicit Discharge Detection and Elimination
BMP 4: Develop and distribute illicit discharge educational materials

The County will procure, revise or develop illicit discharge educational materials and distribute to the public to inform the public of the hazards associated with illegal discharges to the Maricopa County stormwater system. The County staff will procure/obtain from another agency (i.e., ADEQ or EPA) educational materials regarding hazards of illegal discharges to storm sewer systems and revise as necessary to include County contacts for complaints and County-specific concerns. The County staff will place materials for distribution in County buildings and make available to volunteers under Section II-B.

Many existing stormwater programs have focused efforts on illicit discharge detection and elimination, including the development of education materials. Conducting research surrounding Phase I communities and identify potential educational materials addressing illicit discharges and illegal dumping that can be obtained and modified to meet the needs of

Maricopa County can provide materials free or a minimal cost. County staff will document efforts and maintain examples of materials used.

Measurable Goal: The County will make available to the general public written educational materials regarding illegal discharges, in English and Spanish within twenty-four months of permit issuance and throughout the permit period.

Section II-C: Illicit Discharge Detection and Elimination

BMP 5: Develop and implement complaint receipt procedures

To effectively enforce the County's illicit discharge and illegal dumping regulation, the County will engage the general public to provide information to the County on concerns regarding potential illicit discharges or illegal dumping. County staff will coordinate efforts with the Environmental Complaint system in place, undertaking such activities that may include a follow up process and tracking system. Training administrative staff on how to route complaint calls as well as training inspection and enforcement staff on follow up action will be part of the process. The County will promote the phone number to call for illicit discharge and illegal dumping complaints in educational materials developed in Section II-A.

Annually the County will report on the number of complaints received, type of complaints and follow up action taken.

Measurable Goal: The County will develop written procedures for complaint handling and promote contact information within 24 months of permit issuance by ADEQ, and will initiate investigation on all of the complaints received within 30 days of complaint receipt, unless there is indication that an emergency response is warranted.

Schedule: Initiate coordination with existing complaint management system within 12 months of permit issuance. Prepare promotional materials within 20 months of permit issuance and implement program within 24 months of permit issuance, and maintaining activity throughout the remaining permit period.

Section II – D
Minimum Control Measure 4
Construction Site Runoff Control

40 CFR 122.34 (b):

(4) Construction site storm water runoff control. (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or
sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with Sec. 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

122.34(b)(4)(i): Maricopa County has several on-going programs that will provide the foundation for the controls needed to address the regulations stated above. The County currently provides best management practice guidance through the Drainage Design Manual (Volume III Erosion Control), for construction site management of erosion and sediment control. In addition, the dust control program focuses on key elements of site management including issues of track-out of dirt and other debris and approved best management practices. BMPs in this section have been developed with specific attention given to Maricopa County's arid conditions.

Maricopa County will evaluate what programs it currently has to control construction site management issues on new development sites affecting one acre or more to the maximum extent practicable. The program review will consist of a combination of evaluating legal requirements, technical guidance materials, inspections, plan review, enforcement provisions, and an educational initiative. In addition, the program review may incorporate provisions for response to the public through complaint hotlines. Much of the program depends on a review

of current practices set forth in existing regulation and technical guidance materials, defining the requirements for construction site operators and site plans.

122.34(b)(4)(ii)(A): The County will review existing regulations, prepare and adopt amendments to them as needed to govern construction site management. The regulation will include requirements for proper management and disposal of construction and sanitary waste at the construction site.

122.34(b)(4)(ii)(B) and (C): The County will utilize the ADEQ Construction Site Management General Permit as a first level of control and enforcement, requiring documentation from the development community that they have complied with the NOI process and stormwater pollution prevention plan development for each site. In addition, the County provides guidance on appropriate sediment and erosion control procedures through the Drainage Design Manual. The County will review and modify if necessary existing procedures for compliance with this requirement.

122.34(b)(4)(ii)(D): The County development management process will be reviewed and amended to incorporate the acceptance of construction site management plans and documents in support of the ADEQ general permit. The plan review process currently utilized by the County coordinates all activities at one location. This will assist in getting information to the construction industry regarding these requirements. For sites that are not impacted by the Construction Site Management General Permit, no action will be necessary.

122.34(b)(4)(ii)(E): The County will follow the same procedures as outlined in Section II-C, regarding input on illicit discharge concerns from the general public (Section II-C, BMP 5) for receipt of input from the general public on construction site management issues and concerns. The current Environmental Complaint system will serve both minimum control measures.

122.34(b)(4)(ii)(F): The County will evaluate existing policies and procedures for ongoing inspection and enforcement programs and modify as necessary to address an inspection program for construction site management. Initial enforcement will be through the authority of ADEQ's Construction Site Management General Permit and the current dust control program for construction sites.

Responsible Department/Position: Environmental Services Department
Albert Brown or designee
Planning and Development Department
Joy Rich or designee
Flood Control District of Maricopa County
Michael Ellegood or designee

Section II-D: Construction Site Management Controls

BMP 1: Evaluate existing County programs, policies and regulations that address stormwater runoff from construction sites and update regulations as needed

County staff will evaluate existing programs, policies and regulations that may address the prevention of or reduced impacts of stormwater runoff from construction sites disturbing one acre or more as defined in 122.34(b)(4)(i). Staff will review County regulations that require controls at construction sites, ensuring that they address activities that disturb one acre or more and that they are sufficient to control the potential for pollutant contamination of stormwater runoff. It is anticipated that amendments will be needed and these may incorporate requirements for new development projects to submit plans prior to beginning land-disturbing activities; to properly install and maintain appropriate measures; to properly manage and dispose of construction waste; and enforcement sanctions. Enforcement sanctions may include a number of options such as penalties, stop work orders and/or permit revocation. The regulation will reference the requirement for compliance with the ADEQ Construction Site Management General Permit and require documentation to be provided to the County that demonstrates compliance with the ADEQ permit.

The County will annually report on the status of the regulatory changes, including opportunities for public input through public notice and/or public hearing process. Once changes are made, the County will provide on-going progress in implementation.

Measurable Goal: The County will evaluate current regulations and policies within 20 months of permit issuance, recommending changes or creation of new regulations. The County will adopt regulatory changes and implement within 36 months of permit issuance.

Section II-D: Construction Site Management Controls

BMP 2: Review and update if necessary Maricopa County construction site BMP manual.

County staff will review and update the existing Maricopa County Drainage Design BMP manual with particular attention to Volume III – Erosion and Sediment Controls to ensure an up-to-date manual regarding construction site runoff controls for developers and contractors in Maricopa County. The County staff will research arid-condition BMPs for construction site management and determine if the manual needs to be changed or additions made to address this minimum control measure.

The County will report annually on the status of the review and report on changes or amendments being considered.

Measurable goals: The County will research Best Management Practices and update the Maricopa County Drainage Design BMP manual with particular focus on Volume III within 30 months of permit issuance.

Schedule: Review and research arid climate BMPs for construction site management within 24 months of permit issuance. Finalize amendments or updates to the exiting manual within 30 months of permit issuance.

Section II-D: Construction Site Management Controls
BMP 3: Review existing County program policies and procedures for plan review

The County staff will review and update policies and procedures for construction site management control plan review to ensure that construction site runoff is addressed prior to issuing a construction permit. This may include revising plan review checklists to include construction site management control items, such as documentation that the Construction General Permit has been applied for, that erosion and sediment controls are specified. The Plan review process will require documentation on the contractor's NOI to comply with the ADEQ or prevailing Construction Site Management General Permit. The County will train plan review staff in construction site management requirements based on updated regulations.

The County will document the number of permit applications reviewed for runoff controls and coordinate this information with the inspection program to ensure that the most effective procedures are utilized.

Measurable Goal: The County will develop plan review policies and procedures within 20 months of permit issuance, establishing an implementation strategy and schedule for new construction site management control policies and procedures.

Schedule: The plan review policies and procedures will be developed within 20 months of permit issuance and implementation will be coordinated with the adoption of regulations.

Section II-D: Construction Site Management Controls
BMP 4: Evaluate existing County inspection programs such as dust control and drainage administration program policies and procedures for utilization/coordination with construction site inspections.

The County will review current procedures for site inspections and enforcement of dust control and drainage management programs and amend as needed to address site inspections and enforcement of the construction site management program. It is the County's goal to effectively inspect construction sites for compliance and to efficiently integrate inspection procedures with other on-going construction site inspection activities. The County staff will draft and finalize inspection policies and procedures and then train County inspectors to inspect construction sites for compliance with County regulations. The County will require documentation of all inspections, using automated technology where appropriate.

The County will report annually on the procedures development process and once implemented, on the overall activity, which may include items such as but not limited to the number of inspections, type of issues or problems identified and follow up actions taken.

Measurable Goal: The County will review existing inspection programs used at construction sites for other programs and develop written inspection and enforcement policies and procedures to address construction site runoff issues. This will be accomplished within 24 months of permit issuance with implementation strategies in place within 36 months of permit issuance.

Section II-D: Construction Site Management Controls
BMP 5: Develop and implement complaint receipt procedures

The County will coordinate with the existing Environmental Complaint system to receive input from the general public and respond to public inquiries and complaints concerning construction site management issues on regulated sites. Integrating into existing complaint procedures provides an effective communication system for the public to use and provides an effective system for the County to track complaints and follow up actions taken. The County will publicize the use of the Environmental Complaint system, coordinated through the strategies in Section II-A, Public Education and Outreach.

The County will report on the procedures for complaint handling and once implemented, on the number of complaints received and a general summary of follow up actions taken.

Measurable Goal: The County will develop within 36 months of permit issuance written procedures for complaint handling and coordinate with the existing Environmental Complaint system to receive and route complaints to the appropriate inspection program. The County will initiate the complaint management program with the implementation of the regulations, guidance materials, and inspection programs defined in other BMPs in Section II-D.

Schedule: The County will coordinate integration with existing Environmental Complaint system within 20 months of permit issuance; the County will develop procedures for complaint tracking and follow up within 36 months of permit issuance and implement in coordination with Section II-D, BMP 1.

Section II-D: Construction Site Management Controls
BMP 6: Development community educational materials

The County will prepare educational materials for the Maricopa County development community regarding the construction site runoff control regulation and technical guidance materials and distribute to them through strategies defined in Section II-A. The County will inform developers and construction contractors about construction site runoff controls and County regulations, as well as procedures requiring documentation of compliance with the ADEQ Construction Site Management General Permit.

The County will maintain up to date information on construction site requirements on the County website as well as provide printed educational materials regarding construction site runoff controls.

Measurable Goal: The County will develop educational materials and distribute to appropriate stakeholders in coordination with Section II-D, BMP 1, BMP 2 and BMP 3. Development of materials will be contingent upon the completion of these BMPs with the goal to have the program operational within 36 months of permit issuance.

Schedule: The schedule for this BMP is contingent upon the completion of the goals in BMP 1 through BMP 3 of this Section.

Section II – E
Minimum Control Measure 5
Post-Construction Runoff Controls

40 CFR 122.34 (b):

(5) Post-construction storm water management in new development and redevelopment.
(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.
(ii) You must:
(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and
(C) Ensure adequate long-term operation and maintenance of BMPs.

122.34(b)(5)(i): The Maricopa County Subdivision Regulations contain provisions regarding onsite retention of stormwater in new subdivisions, along with the area drainage master plans and watercourse master plans constitute the foundation for operation and maintenance of stormwater control structures that address water quantity and water quality.

The program will involve the review and, if needed, the revision of the County's existing subdivision regulations requiring retention/detention of stormwater at sites disturbing an acre or more as defined above in 122.34(b)(5). The regulation will contain enforcement and inspection provisions, integrating with other County inspection practices if possible. In addition, educational materials will be developed and distributed to contractors, developers and other appropriate parties.

122.34(b)(5)(ii)(A): The program will include structural (i.e., retention basins) and non-structural BMPs that can be used to reduce reliance on structural BMPs. The County Drainage Design Manual will be reviewed and amended as needed to incorporate additional strategies to address water quality controls and construction standards.

122.34(b)(5)(ii)(B): The County will review existing subdivision, drainage, and transportation regulations to determine if they are adequate to accomplish the goals of the permit. Where needed the regulations will be amended or new regulations adopted to establish the framework for post-development controls.

122.34(b)(5)(ii)(C): The County will review current inspection practices to address an ongoing inspection program for post-construction BMPs. In addition, subdivision regulations

will be reviewed and amended as necessary to incorporate requirements for long-term management of any structural controls approved and implemented. Enforcement strategies will be includes in this process of regulatory review and amendment. The County Attorney's office will assist in developing adequate enforcement strategies.

Responsible Department/Position: Flood Control District of Maricopa County
Michael Ellegood or designee
Planning and Development Department
Joy Rich or designee

Section II-E: Post Construction Stormwater Management Controls
BMP 1: Evaluate existing County regulations to address post-construction runoff

The County staff will evaluate existing County regulations and Maricopa Association of Governments (MAG) model ordinances that may address post-construction stormwater concerns for water quality performance criteria for new development and redevelopment projects as defined in 122.34(b)(5). The County will identify objectives and goals for the County's stormwater quality program for post-construction controls and modify the existing regulation(s) to incorporate authorities and strategies needed for long-term maintenance and enforcement.

Existing Drainage Design Manual standards will be reviewed as well to determine what specifications and design standards will be adopted to address the regulatory standards.

Measurable Goals: The County will review within the first 15 months of permit issuance, all existing regulations, model standards, design standards and processes to determine the most effective approach to post construction development controls in Maricopa County. The County will adopt County post-construction stormwater quality regulations or amendments within 20 months of permit issuance.

Schedule: The County staff will initiate investigation of model ordinances and a review of existing County regulations within 6 months of permit issuance. The County will draft changes and make the draft regulation available for public comment following requirements of Section II-B, and will finalize proposed changes to regulations within 20 months of permit issuance. Adoption of amendments or new regulations will be accomplished within 30 months of permit issuance.

Section II-E: Post Construction Stormwater Management Controls
BMP 2: Develop and adopt technical guidance materials

The County, in conjunction with BMP 1 above, will review technical guidance materials addressing the design, installation and maintenance of structural post-construction stormwater features (BMPs), including the Drainage Design Manual, to ensure that effective materials are made available to the development community. This activity may include research of stormwater quality programs in other arid communities, identification of technical guidance materials that can be revised and made Maricopa County-specific or creation of new guidance materials addressing stormwater quality runoff controls. The County will make materials available to the development community through the website, mailings and other public education tools. The guidance will be coordinated with the development of regulations in Section II-E, BMP1.

Measurable Goals: The County will create and/or update technical guidance materials and distribute to the development community, updating throughout the permit period as necessary to keep the program current. The County will provide the guidance materials in coordination with the adoption of new or updated regulations within 30 months of permit issuance.

Schedule: The County will review existing technical guidance materials in conjunction with the review of existing regulations during the first 24 months from permit issuance. New or updated guidance will be issued within 30 months of permit issuance.

Section II-E: Post Construction Stormwater Management Controls
BMP 3: Evaluate existing policies and procedures for plan review

The County will evaluate existing policies and procedures for post-construction stormwater quality plan review for all new development and redevelopment projects affecting one acre or greater as defined in 122.34(b)(5). The County will modify or develop new policies and procedures if necessary to address a program process to reduce pollutants in post-construction stormwater runoff to the maximum extent practicable. The County will train County staff on the stormwater quality program and plan review requirements.

Measurable Goals: The County will review current plan review processes and finalize policy and procedures for plan review for post-construction stormwater quality controls within 30 months of permit issuance.

Schedule: The County will review existing policy and process for plan review in coordination with Section II-E, BMP 1 and BMP 2. The County will update and issue new plan review procedures within 30 months of permit issuance.

Section II-E: Post Construction Stormwater Management Controls
BMP 4: Evaluate existing inspection and enforcement program for site development and modify as necessary to address post construction runoff controls

The County will evaluate existing programs for inspection of site development within the County and develop an on-going post-construction BMP inspection program to ensure that structural and non-structural BMPs are constructed/implemented as approved for use and are maintained over time. The inspection program will be developed in coordination with the Section II-E BMP 1, BMP 2 and BMP 3. The County will establish a policy addressing maintenance responsibilities for post-construction structural BMPs as well as policies and procedures for routine inspections by the County. The program will address two key components: assurance that the BMPs approved for each new or redevelopment project are built to standards and that the owner/operator of them maintains them over time. The County will research programs implemented by other communities as well as any model programs available for review.

Measurable Goals: The County will evaluate existing programs to establish an effective inspection and enforcement program for post-construction stormwater controls. The evaluaton will be completed within 20 months of permit issuance. The County will finalize policies and procedures for the inspection and enforcement program within 36 months of

permit issuance and coordinate with Section II-E, BMP 1 and BMP 3. Procedures will be presented in Section II-E, BMP 2.

Schedule: Evaluation of existing procedures will be finalized and completed within 30 months of permit issuance. New procedures for inspection and enforcement of post construction stormwater controls will be coordinated with implementation of BMP 1 and 3 of Section II-E and continuous implementation thereafter.

Section II-E: Post Construction Stormwater Management Controls

BMP 5: Create and distribute educational materials for the development community.

The County will create educational materials outlining the requirements of the post-construction stormwater management program and integrate this effort with BMP 2 of Section II-E. The County will educate the development community and the general public on the stormwater management program requirements for post construction controls, using Maricopa County regulations and policies as the focus of the education outreach. The County will emphasize how the development community can access new guidance standards, policy requirements, plan review procedures and enforcement efforts. The County will utilize the strategies identified in Section II-A, using the webpage and printed materials.

Measurable Goal: The County will create, publish and distribute final educational materials to the development community in coordination with Section II-E, BMP 1, BMP 2 and BMP 3 and release materials at the time of implementation of new regulations, anticipated to be within 30 months of permit issuance.

Schedule: Educational materials distributed and/or available to development community by June 2006.

Section II – F
Minimum Control Measure 6
Pollution Prevention/Good Housekeeping

40 CFR 122.34 (b):

(6) Pollution prevention/good housekeeping for municipal operations. (i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using
training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new
construction and land disturbances, and storm water system maintenance.

122.34(b)(6)(i): Maricopa County recognizes that any Stormwater Management Plan requires diligent good housekeeping and pollution prevention to be successful. Maricopa County already practices many pollution prevention activities, and the County is committed to improving their good housekeeping practices in operations and maintenance. The County also realizes that evaluation and refinement of good housekeeping and pollution prevention is beneficial, and is committed to the BMPs and schedules described below.

The County plans to develop and implement a program that will involve evaluation and refinement of County operations and maintenance. Specifically, the County will identify operations that should be evaluated for their impact on stormwater quality, focusing on the operations and maintenance activities impacting roadways, bridges, parking lots, fleet maintenance, public buildings and other County facilities that are identified through a risk assessment process. A comprehensive pollution prevention plan will be developed for County operations as needed. As pollution prevention plans are developed, County staff will be trained on policies and procedures. As part of this plan, procedures for construction and maintenance by County maintenance crews will be evaluated. Operations and maintenance at Maricopa County facilities, including parks, roads and maintenance and storage facilities will also be evaluated.

Responsible Department/Position: Maricopa County Risk Management
Peter Crowley or designee
Facilities & Equipment Management Department
Steve Conner, or designee
Maricopa County Department of Transportation
Tom Buick or designee

Section II-F: Pollution Prevention/Good Housekeeping Practices
BMP 1: Evaluate street sweeping practices

An important activity in keeping floatables and sediment out of the stormwater system is street sweeping. Maricopa County will evaluate its street sweeping practices from the standpoint of water quality and will make changes if necessary. The County will evaluate current standards for equipment and sweeping schedules, as well as employee training to determine if changes in practices are appropriate.

The County will report on the evaluation and identify revisions made and implemented throughout the permit period as identified in the measurable goal.

Measurable Goals: The County will review the County street sweeping program within the first 12 months of permit issuance if necessary. The County will modify practices within the second year of permit issuance. The County will integrate recommendations regarding equipment changes, if any, within the budget process for equipment replacement.

Schedule: The County will initiate the review of street sweeping practices within the first 6 months from date of permit issuance. The County will develop recommended changes to schedules and policies within 9 months of permit issuance if necessary. The County will implement schedule and policy changes within 12 months from date of permit issuance if necessary. The County will implement changes in equipment within the budget process for equipment replacement.

Section II-F: Pollution Prevention/Good Housekeeping Practices
BMP 2: Develop and implement County pollution prevention program

The County owns many facilities and properties throughout the corporate boundaries and with approximately 16,000 employees, provides many services to the community. The County will evaluate County operations and maintenance activities and evaluate County owned facilities to determine if stormwater runoff measures are in place or need to be added to ensure that pollutants are being reduced to the maximum extent practicable. The County will prioritize both facilities and operations based on potential risk and evaluate the high priority sites or operations during the first permit period. The County will develop pollution prevention plans and operating procedures for each activity or facility identified, if appropriate. Employees will be trained on new procedures and practices prior to implementation of changes.

Measurable Goals: The County will complete an evaluation of County operations and maintenance activities and facilities and establish a priority schedule within 18 months of permit issuance. The County will evaluate a minimum of two sites or operations, based on priority scheduling each permit year thereafter. The County will recommend modification of procedures for operations and maintenance activities as appropriate and development of pollution prevention plans for County-owned facilities, as appropriate, with implementation

of changes occurring within the budget process in the fiscal year following the completion of the evaluations.

Schedule: The County will begin evaluation within 9 months of permit issuance. The County will establish a priority schedule within 18 months of permit issuance. The County will evaluate and development recommendations for procedural or policy changes for at least two sites/operations annually throughout the permit period, once the schedule is completed.

Section II-F: Pollution Prevention/Good Housekeeping Practices

BMP 3: Development of a centralized, County-wide employee education and training program regarding pollution prevention

The County will develop and implement a centralized education and training program regarding pollution prevention for County employees utilizing existing training opportunities such as new employee orientation as well as specific training activities related to Section II-F, BMP 2.

The County will develop pollution prevention education and training program potentially using modules for Maricopa County employees for self-instruction, conducting appropriate educational and training classes and utilizing the County intranet for articles and communication directly with employees. The County may place articles in the employee newsletter for on-going reinforcement of specific training and add message of pollution prevention in new employee orientation.

Measurable Goals: The County will develop training materials, create training schedules and implement program including training sessions within two years of permit issuance. The County will maintain on-going training throughout the permit period.

Schedule: The County will develop training materials based on pollution prevention efforts in Section II-F, BMP 2, and on general education themes for pollution prevention within 18 months of permit issuance. The County will implement specific training for new pollution prevention programs based on Section II-F, BMP 2, as the program is implemented throughout the permit period. The County will implement general employee training within 24 months of permit issuance.

APPENDIX M

STORMWATER WEBSITES

Stormwater Websites

Maricopa County, Arizona:
http://www.fcd.maricopa.gov/Services/StormWaterQuality.asp

United States Environmental Protection Agency:
http://www.epa.gov/ebtpages/watestormwater.html

City of Mesa, Arizona:
http://www.cityofmesa.org/environ.Stormwater.asp

City of Scottsdale, Arizona:
http://www.scottsdale.gov/Water/Stormwater/StormwaterQuality/default.asp

City of Glendale, Arizona:
http://www.ci.glendale.az.us/Environmental/Stormwater

City of Tempe, Arizona:
http://www.tempe.gov/env/storm.htm

City of Sacramento, California:
http://www.sacstormwater.org

City of Knoxville, Tennessee:
http://www.ci.knoxville.tn.us/engineering/stormwater/brochures

City of Fort Worth, Texas:
http://www.ci.fort-worth.tx.us/DEM/stormpg.htm

California Stormwater Quality Association
http://www.stormwatertaskforce.org

Cal-Trans Storwmater Management Program
http://www.dot.ca.gov/hq/env/stormwater/index.htm

King County, Washington:
http://dnr.metrokc.gov/wlr/resource.htm

U.S. Geological Survey—Arizona Stormwater Page
http://dg0daztcn.wr.usgs.gov/urban_stormwater/index.htm

City of Los Angeles, California:
http://www.lacity.org/SAN/wpd/index.htm

Los Angeles County, California:
http://dpw.co.la.ca.us/epd/#stormwater/

City of Long Beach, California:
http://www.ci.long-beach.ca.us/plan/helphome/StormWater.html

City of San Antonio, Texas:
http://www.sanantonio.gov/publicworks/stormwater/

City and County of Denver, Colorado:
http://www.denvergov.org/dephome.asp?depid=376

City of San Jose, California:
http://www.ci.san-jose.ca.us/esd/com-stormwater-discharges.htm

City of Sunnyvale, California:
http://www.ci.sunnyvale.ca.us/community-dev/building/pollution-control.htm

Stormwater Resources:
http://www.stormwater-resources.com/

City of Albuquerque, New Mexico:
http://www.cabq.gov/flood/swpp.html

City of Santa Rosa, California:
http://ci.santa-rosa.ca.us/cd/brochures/stormwat.asp

City of Daly City, California:
http://www.ci.daly-city.ca.us/Water/main/frame.htm

City of Santa Monica, California:
http://www.ci.santa-monica.ca.us/environment/policy/bay/

City of Laguna Beach, California:
http://www.scag.org/homepages/laguna_beach/envmt.htm

Atlanta Regional Commission:
http://www.cleanwater.campaign.com

City of Greensboro, North Carolina:
http://www.ci.greensboro.nc.us/stormwater/Education/index.htm