

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Point and Non-Point Source Management

DOCUMENT NUMBER: 385-0820-001

TITLE: Designation Criteria for Regulated Small Municipal Separate Storm Sewer Systems (MS4)

EFFECTIVE DATE: Upon publication of notice as final in the *Pennsylvania Bulletin*

AUTHORITY: Pa. Title 25, Section 92.a.32(c), Pennsylvania Clean Streams Law, and Federal Clean Water Act, 40 CFR § 122.26(b)(16), 40 CFR § 123.34 and 40 CFR § 122.32.

POLICY: The action undertaken by this guidance will be to identify designation criteria for regulated small MS4s.

PURPOSE: This Guidance serves to set forth the criteria that the Department of Environmental Protection (DEP) uses to designate a regulated small MS4. By providing a guidance document, DEP can work in cooperation with the potential MS4 communities and “non-traditional” MS4s which may be introduced into the EPA Phase II Stormwater Program. The guidance will also serve as a public education tool in describing the process of how MS4s will be designated.

APPLICABILITY: The guidance is applicable to potential MS4 municipalities in Urban Areas (UAs), municipalities outside UAs which are designated pursuant to DEP criteria, municipalities which are physically interconnected to other MS4s, and entities which may be designated following third party petition. The guidance is also applicable to “non-traditional” MS4s such as large airports, public institutions, educational facilities, and highways and thoroughfares in UAs as determined by DEP.

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give these rules that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 5 pages

DEFINITIONS:

1. **303(d) Listed water** – Section 303(d) of the Clean Water Act requires states to list all impaired waters not supporting uses even after appropriate and required water pollution control technologies have been applied. (Source: DEP website: www.portal.state.pa.us/portal/server.pt/community/water_quality_standards/10556/integrated_water_quality_report_-_2012/1127203)
2. **DEP** – Pennsylvania Department of Environmental Protection is the permitting authority authorized to implement the federal NPDES program in Pennsylvania. (Source: General)
3. **EPA** – United States Environmental Protection Agency. (Source: General)
4. **HQ/EV Waters** – High Quality (HQ) surface waters have quality which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by satisfying certain regulatory criteria and Exceptional Value (EV) waters are high quality waters which satisfy antidegradation requirements in the regulations. (Source: Pa. Title 25, Chapter 93, Section 93.1 Definitions)
5. **Large MS4** – Phase I MS4 located in an incorporated place or county with a population of 250,000 or greater. (Source: EPA Fact Sheet 2.1, January 2000, revised June 2012)
6. **Medium MS4** – Phase I MS4 located in an incorporated place or county with a population between 100,000–249,999. (Source: EPA Fact Sheet 2.1, January 2000, revised June 2012)
7. **MS4** – “Municipal separate storm sewer system” which is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains).... Refer to full definition at 40 CFR § 122.26(b)(8).
8. **NPDES Permit** – An authorization, license or equivalent control document issued by the Administrator or DEP to implement the requirements of 40 CFR Parts 122-124 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System, state program requirements, and procedures for decision making) and the Federal Act. (Source: Pa. Title 25, Chapter 92, Section 92a.2 Definitions)
9. **Phase II Final Rule** – Requires that operators of Phase II-designated small MS4s and small construction activity apply for NPDES permit coverage, most likely under a general rather than individual permit, and to implement stormwater discharge management controls (known as “best management practices” (BMPs)). (Source: EPA Fact Sheet 1.0, January 2000, revised December 2005)
10. **Small MS4** – Any MS4 not already covered by the Phase I stormwater program. Small MS4s include federally-owned systems, such as military bases and MS4s regulated as discussed in the technical guidance document. (Source: EPA Fact Sheet 2.1, January 2000, revised June 2012)
11. **Total Maximum Daily Load (TMDL)** – The sum of individual waste load allocations for point sources, load allocations for nonpoint sources and natural quality and a margin of safety

expressed in terms of mass per time, toxicity or other appropriate measures. (Source: Pa. Title 25, Chapter 96, Section 96.1 Definitions)

12. **Urbanized Area (UA)** – A densely settled core of census tracts and/or census blocks that have populations of at least 50,000, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core. It is a calculation used by the Bureau of the Census to determine the geographic boundaries of the most heavily developed and dense urban areas. (Source: EPA Fact Sheet 2.1, January 2000, Revised June 2012)

Designation Criteria for Regulated Small MS4s Pennsylvania Department of Environmental Protection

Introduction:

EPA's National Pollutant Discharge Elimination System (NPDES) stormwater permitting program labels municipal separate storm sewer systems (MS4s) as small, medium or large for the purpose of regulation. Phase II of EPA's stormwater program automatically designates small MS4s with any portion of their jurisdiction located within an Urbanized Area (UA) and requires them to obtain an NPDES permit to discharge to surface waters. A UA is determined by the latest decennial census and defined by the Census Bureau as an area with a population greater than 50,000 and a population density of 1,000 people per square mile. However, it is possible for jurisdictions outside of a UA to become regulated under the NPDES MS4 program as well.

This document describes the conditions under which an entity may be regulated as a small MS4.

Designation of MS4s:

Small MS4s located within a UA are categorized as "regulated." The Permitting Authority for Pennsylvania's NPDES permitting program, including the MS4 permitting program, is the Pennsylvania Department of Environmental Protection (DEP). An MS4 may be designated by DEP as regulated as follows:

1. Automatic Designation (based on UA as described in the introduction) – Once a small MS4 is designated into the program based on the UA boundaries, it cannot be removed from the program on the basis that subsequent decennial UA calculation shows that the MS4 is no longer within the UA boundaries. However, designated small MS4s may be eligible for waivers from permitting, when applicable.
2. Designation by Criteria – The Phase II Final Rule required NPDES Permitting Authorities (i.e., DEP) to develop a set of criteria and apply them at a minimum to all small MS4s located outside of a UA serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile.
3. Designation by Interconnection – DEP may designate any small MS4 located outside of a UA that contributes substantially to the pollutant loadings of a physically interconnected MS4 already regulated by the stormwater program.
4. Designation Following Petition – At any time a petition may be filed by a person or entity requesting that an MS4 be designated as regulated. When a petition is filed, DEP must make a final determination on whether or not to designate the MS4 as regulated within 180 days after its receipt.
5. Designation by DEP as required by EPA's regulations at 40 CFR § 122.26(b)(16)(iii) to systems within urban areas such as military bases, large hospital or prison complexes, large airports, and highways and thoroughfares (non-traditional). Permits are issued to such systems when the regional office Clean Water Management Program staff determines pursuant to the additional designation criteria and Bureau of Point and Non-Point Source Management staff concurs it

would not be reasonable to expect the affected municipality to accept MS4 responsibility for the stormwater discharges from non-traditional sources.

Additional Designation Criteria:

DEP will use census data and environmental data to identify MS4s that have the potential to be regulated based on the designation options listed above. Additionally, once an MS4 is identified as meeting one of the above criteria, DEP will analyze the potential for stormwater discharges from the MS4 to exceed water quality standards based on the guidance provided by the federal regulations (40 CFR 123.35(b)(1)(ii)).

- Discharge to sensitive waters
 - 303(d) Listed waters impaired, or likely to be impaired, by stormwater
 - Waters with an established TMDL
 - HQ or EV waters
 - Waters used for drinking water or recreation
 - Critical habitat for plant or animal species
- Population density or growth potential
- Contiguity to an urbanized area
 - Will directly contribute to a regulated MS4
- Significant contributor of pollutants to waters of the United States/Commonwealth of Pennsylvania

DEP will determine if the discharge from the MS4: will exceed water quality standards, impairs designated uses, or has significant biological and ecological impacts.

Permit Highlights:

- As a result of the designation criteria explained above, small MS4s designated as regulated are required to apply for coverage under an NPDES MS4 stormwater permit within 180 days after receiving formal notification from DEP.
- DEP has published a Storm Water Best Management Practices (BMP) Manual to provide guidance for the design and implementation of stormwater management programs.

For More Information:

A reference map identifying the Census 2010 urbanized areas within your jurisdiction can be found on the following website: www.epa.gov/npdes/stormwater/urbanmaps. Regulated MS4s located wholly or partially within the automatically designated UA or those MS4s additionally designated by DEP will be required to obtain NPDES permit coverage and develop a Stormwater Management Program for that portion of the MS4 located within the designated area.