



# PROCESS FOR ISSUING SMALL MS4 PERMITS

## Comprehensive (One – Step) General Permit Approach



For comprehensive small MS4 general permits, the NPDES authority issues a permit that includes the full set of requirements necessary to meet the *MS4 permit standard*. Under this type of permit, all requirements are contained within the general permit, and no additional requirements are established after permit issuance, as is the case with the “Two-Step General Permit.”

### KEY CONCEPTS:

**MS4 Permit Standard:** Regulated MS4s are required to reduce the discharge of pollutants from its MS4 to the maximum extent practicable (MEP), protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.

**Iterative Approach:** Permit requirements must continue to meet the MS4 permit standard in subsequent permit terms in consideration of current water quality conditions, evaluation of current permit requirements, record of permittee compliance, permit implementation progress, and other relevant information.

## 1 IDENTIFY PERMITTEES & EVALUATE DATA

### Identify Permittees

- Identify traditional and non-traditional MS4s for permit coverage considering the latest decennial Census definition of Urbanized Area and/or other designation criteria.
- Evaluate existing MS4 waivers and potential for new waivers.

### Evaluate Data

- Evaluate progress toward meeting the MS4 permit standard over the previous permit term. Consider information from NOIs, SWMPs, Annual Reports, data on water quality conditions, and other relevant data sources.
- Identify which MS4s discharge to impaired waters and any applicable TMDLs.

## 2 PERMIT WRITING

### Develop Permit Conditions

Develop clear, specific and measurable requirements for the general permit addressing:

- Minimum Control Measures (e.g., requirements that address MS4-specific actions to be taken for pollution prevention).
- Water Quality Protection (e.g., requirements that address TMDLs and other water quality concerns).
- Evaluation, Recordkeeping, and Reporting consistent with the NPDES e-Reporting Rule.

### Notice of Intent

Specify required information to be submitted in the NOI.

At a minimum, this information must include:

- Legal name and address of MS4 operator
- MS4 address
- Receiving water

### Fact sheet

Prepare Fact sheet that explains how the permit meets the MS4 permit standard.

## 3 REVIEW AND PUBLIC PARTICIPATION

### EPA-State Reviews

- For State-issued permits, provide 90 days for EPA to review and comment on draft general permit.
- For EPA-issued permits, initiate ESA and NHPA consultations, and CWA Section 401 certification process with States/Tribes (if Treatment as a State applies).

### Public Notice and Comment on Draft Permit

- Publish draft permit with a minimum 30-day public comment period.
- Hold public hearing if requested and if significant degree of public interest, or clarification is needed.
- Receive, process, and respond to public comments, and revise permit accordingly.

## 4 ISSUE FINAL PERMIT

### Issue General Permit

- Upon issuance, NPDES authority provides appropriate notice to eligible MS4s and the public of the availability of the final permit.
- Finalize permit support documents (i.e., response to comments; for EPA-issued permits complete the administrative record).

### MS4s Submit NOIs

- Review submitted NOIs for eligibility and completeness.
- If NOI is incomplete, it may be rejected or returned with a request for missing information from the MS4.

## 5 AUTHORIZATION TO DISCHARGE

- MS4s that have submitted a complete NOI will be authorized to discharge in accordance with the terms and conditions of the general permit.
- MS4s may be provided coverage after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notice of coverage from the NPDES authority.



# PROCESS FOR ISSUING SMALL MS4 PERMITS

## Two-Step General Permit Approach



For two-step small MS4 general permits, the permit conditions are developed in two distinct steps. In the first step, the NPDES authority establishes clear, specific, and measurable requirements for some program areas in the base general permit. For any areas of the permit not fully addressed in the base general permit by clear, specific, and measurable requirements, a second permitting step (see part 5) is necessary to establish additional requirements for individual MS4s based on information they submit to the permitting authority.

### KEY CONCEPTS:

**MS4 Permit Standard:** Regulated MS4s are required to reduce the discharge of pollutants from its MS4 to the maximum extent practicable (MEP), protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.

**Iterative Approach:** Permit requirements must continue to meet the MS4 permit standard in subsequent permit terms in consideration of current water quality conditions, evaluation of current permit requirements, record of permittee compliance, permit implementation progress, and other relevant information.

## 1 IDENTIFY PERMITTEES & EVALUATE DATA

### Identify Permittees

- Identify traditional and non-traditional MS4s for permit coverage considering the latest decennial Census definition of Urbanized Area and/or other designation criteria.
- Evaluate existing MS4 waivers and potential for new waivers.

### Evaluate Data

- Evaluate progress toward meeting the MS4 permit standard over the previous permit term. Consider information from NOIs, SWMPs, Annual Reports, data on water quality conditions, and other relevant data sources.
- Identify which MS4s discharge to impaired waters and any applicable TMDLs.

## 2 DEVELOP "FIRST STEP" BASE GENERAL PERMIT

### Develop Base General Permit Conditions

Develop clear, specific, and measurable requirements for the general permit addressing:

- Minimum Control Measures (e.g., requirements that address MS4-specific actions to be taken for pollution prevention).
- Water Quality Protection (e.g., requirements that address TMDLs and other water quality concerns).
- Evaluation, Recordkeeping, and Reporting consistent with the NPDES e-Reporting Rule.

### Describe Second Step Permitting Process & Develop NOI Requirements

Specify which permit requirements will be developed using the second permitting step based on permittee-provided information.

Detail the review and approval process for the second step permit conditions. This can be included in the permit or the fact sheet. The process must include procedures for:

- NPDES authority review
- Public notice and comment
- Opportunity to request a public hearing
- Notice of authorization

Specify required information to be submitted as part of the NOI or in a separate submission (with a specified time frame) that will be relied on to establish the second step permitting requirements.

### Fact sheet

Prepare Fact sheet that explains how the permit meets the MS4 permit standard.

## 3 REVIEW AND PUBLIC PARTICIPATION

### EPA-State Reviews

- For State-issued permits, provide 90 days for EPA to review and comment on draft general permit.
- For EPA-issued permits, initiate ESA and NHPA consultations, and CWA Section 401 certification process with States/Tribes (if Treatment as a State applies).

### Public Notice and Comment on Draft Permit

- Publish draft permit with a minimum 30-day public comment period.
- Hold public hearing if requested and if significant degree of public interest, or clarification is needed.
- Receive, process, and respond to public comments, and revise permit accordingly.

## 4 ISSUE FINAL BASE GENERAL PERMIT

### Issue General Permit

- Upon issuance, NPDES authority provides appropriate notice to eligible MS4s and the public.
- Finalize permit support documents (i.e. response to comments; for EPA-issued permits, the administrative record).

## 5 COLLECT NOIs/SECOND STEP INFORMATION

- Review submitted NOIs for eligibility and completeness
- If NOI is incomplete, it may be rejected or returned with a request for missing information from the MS4.

If second step information submitted AFTER the NOI.

PROCEED TO STEP 6

If second step information submitted WITH the NOI.

PROCEED TO STEP 7



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## Two-Step General Permit Approach



(Process continued from previous page)

### 6 CONTINGENT AUTHORIZATION

Authorize MS4s to discharge under the base general permit contingent on the submittal of information required for the second step.

### 7 SECOND STEP PROCESS

#### Collect Second Step Information

Permit will specify the time allowed for the MS4s to develop and submit information required for the second step.

#### Develop Draft Second Step Permit Conditions

Based on information submitted by the MS4, develop draft permit conditions for specific MS4s. These permit conditions will address areas of the permit not already fully addressed in the base general permit, and which are necessary to meet the MS4 permit standard. Note: This step is not considered a permit modification.

#### EPA Review & Public Notice and Comment on Second Step Permit Conditions

For State-issued permits, provide EPA with the opportunity to review draft second step permit conditions in accordance with procedures agreed upon between EPA and the State in the MOA.

#### Public Notice and Comment

In order to formally incorporate the additional permit requirements as permit conditions, the permitting authority must:

- Publish public notice with a minimum 30-day public comment period.
- Hold public hearing if there is significant degree of public interest.
- Receive, process, and respond to public comments, and revise permit accordingly.

#### Additional Steps for EPA-Issued Permits

For EPA-issued permits, consider whether consultation is needed under ESA or NHPA, and whether Section 401 certification is required for the proposed additional permit requirements.

### 8 FINAL NOTICE OF SECOND STEP AUTHORIZATION

Upon completion of the second step, NPDES authority must notify the MS4, and any person who has submitted comments or has requested notice, that the MS4's discharge is authorized subject to the terms of the base general permit and the second step permit conditions.

Finalize permit support documents (i.e. response to comments; for EPA-issued permits, the administrative record), if necessary, based on additional second step permit requirements.