[redacted] REGS

Stormwater Phase 2 Final Regulations - various Releases

EPA United States Environmental Protection Agency
Office of Water

OFFICE OF WASTEWATER MANAGEMENT

Phase II Of The NPDES Storm Water Program

[NPDES Storm Water Phase II Final Rule]

Storm Water Program

About the Program

MS4s

Industrial Activity

Construction Activity

Phase II

Resources

Contacts

EPA has released its report to Congress on the Storm Water Phase II regulations (October 28, 1999), in compliance with the Agency's FY2000 appropriations act.

The Final Storm Water Phase II Rule was signed by Administrator Browner on October 29, 1999. It should be published in the Federal Register in mid-November. The Federal Register version will be posted here as soon as it is available.

For a copy of the Final Storm Water Phase II Rule, click here.

A fact sheet and the press release on the Final Rule are also available. The series of 14 fact sheets completed for the proposed rule will be updated soon.

The 1987 amendments to the Clean Water Act mandated EPA to develop a tiered implementation strategy for the NPDES Storm Water Program. The second phase of this approach, the Storm Water Phase II Final Rule, covers:

- Regulated small MS4s,
- Construction activity from 1-5 acres, and
- Revision to the "no exposure" exclusion for industrial facilities.

Phase II Program FAQ

- Wasn't there a Storm Water Phase II Direct Final Rule already published back in 1995 and currently in effect?
- How I obtain a copy of the final rule?
- Are fact sheets available to help explain the final rule?
- What training exists for the final rule?
- Who is regulated under the Phase II final rule?
- What is required of the regulated entities?
- Does the Phase II rule affect/change the Phase I program in any way?
- Does the Phase II rule affect/change the ISTEA moratorium for municipally-operated industrial activities in any way?
- How did EPA seek the advice of potentially affected stakeholders in developing the Phase II rule?
- What is the Phase II implementation schedule?
- How can one obtain more information on the Phase II program effort?

Phase II Regulations/Resources

- **Storm Water Phase II Final Rule**.
- Storm Water Phase II Proposed Rule (63 FR 1535; January 9, 1998 - pp. 1535-1584, 1585-1634, 1635-1643 in pdf format; pp. 1535-1584 , 1585-1634 , 1635-1643 in html). Note that the final rule has been signed. The proposed rule is here for informational purposes only.
- Storm Water Phase II Fact Sheet. Other fact sheets in this series will be available shortly.
- Proposed Phase II implementation "tool box"

Wasn't There A Storm Water Phase II Direct Final Rule Already Published Back In 1995 And Currently In Effect?

An interim Phase II Direct Final Rule was published in August 7, 1995. It requires all non-regulated (non-Phase I) storm water dischargers to apply for NPDES permit coverage by August 7, 2001. That rule was meant only as *an interim measure* until a more targeted and specific Phase II rule could be developed. The Phase II Final Rule supercedes the interim Phase II Direct Final Rule.

Return to Top of Page

How Can I Get A Copy Of The Final Rule?

The Storm Water Phase II Final Rule will be published in the Federal Register in November 1999. It is also available electronically. A hardcopy version can be obtained starting about a month after publication by contacting EPA's Water Resource Center at (202) 260-7786 or center.water-resource@epa.gov.

Note: The provisions pertaining to operators of small MS4s were written in a "readable regulation" format that uses the "plain language" method. Questions and answers are used to create more reader-friendly and understandable regulations. The plain language method uses "must" instead of "shall" to indicate a requirement and words like "should," "could," or "encourage" to indicate a recommendation or guidance. Also, the readable regulation format allows guidance to be included with rule requirements. Guidance language is identified as such and directly follows the requirements it explains.

Return to Top of Page

Are Fact Sheets Available To Help Explain The Final Rule?

One fact sheet on the final rule is available on-line. A series of fourteen fact sheets that cover every major component of the final rule will be provided here soon.

Return to Top of Page

What Training Exists For The Final Rule?

EPA and the Navy are currently working together to develop a training course on the entire NPDES Storm Water Program. For the status of this effort, click here.

The American Public Works Association (APWA) is organizing a one-day satellite videoconference on the final storm water Phase II Rule to be held February 15, 2000. More information on this will be posted soon.

APWA has also conducted introductory workshops on the Storm Water Phase II Proposed Rule. These one-day workshops, co-sponsored by EPA, were conducted across the country in 1999. Workshops on the final rule will be held if funding is available. For more information on the workshops, call APWA at (202)393-2792, or visit the APWA web site.

Return to Top of Page

Who Is Regulated Under The Phase II Rule?

The rule automatically regulates two classes of storm water dischargers on a nationwide basis:

- Operators of small MS4s located in "urbanized areas" as defined by the Bureau of the Census (termed a "regulated" small MS4). A "small" MS4 is any MS4 not already covered by Phase I of the NPDES storm water program. Waivers from coverage are available.
- Operators of construction activities that disturb equal to or greater than 1 and less than 5 acres of land. Waivers from coverage are available.

Additional small MS4s (outside of urbanized areas) and construction sites (disturbing less than 1 acre of land), along with other sources which are a significant contributor of pollutants to waters of the U.S., may be brought into the NPDES Storm Water Program by the NPDES permitting authority.

Return to Top of Page

What Is Required Of The Regulated Entities?

Operators of Phase II regulated small MS4s and small construction activity are required to apply for NPDES permit coverage (most under a general rather than an individual permit) and implement storm water discharge management controls (often referred to as best management practices (BMPs)) that effectively reduce or prevent the discharge of pollutants into receiving waters. Permit applications will not be required until early 2003.

Return to Top of Page

Does The Phase II Rule Affect / Change The Phase I Program In Any Way?

Yes. EPA has revised the original no exposure provision, found at 40 CFR 122.26(b)(14), to be a conditional exclusion applicable to *all* categories of industrial activity (except construction activity) with no exposure of industrial

materials and activities to storm water. The revision, found at Section 122.26 (g) of the Storm Water Phase II Rule, require industrial operators claiming no exposure to submit written certification that a condition of no exposure exists at their facility/site. The final rule includes a No Exposure Certification Form (Appendix 4) that is intended to serve as the required written certification in areas where EPA is the NPDES permitting authority. For more information concerning the no exposure revision, see the Storm Water Phase II Rule: Conditional No Exposure Exclusion for Industrial Activity fact sheet (Fact Sheet 4.0).

Return to Top of Page

Does The Phase II Rule Affect/Change The ISTEA Moratorium For Municipally-Operated Industrial Activities In Any Way?

Yes. Provisions within the Intermodal Surface Transportation Efficiency Act (ISTEA) temporarily exempted Phase I industrial activities operated by municipalities with populations less than 100,000 people (with the exception of power plants, airports, and uncontrolled sanitary landfills) from the need to apply for or obtain a storm water discharge permit. The interim Direct Final Phase II rule then further extended the deadline to August 7, 2001, for these facilities to submit a permit application, thereby ending the moratorium at that time. The Phase II Final Rule extends this deadline for permit coverage of all ISTEA-exempted municipally-operated industrial activities to up to 3 years and 90 day from date of publication of the final rule in the Federal Register.

Return to Top of Page

How Did EPA Seek The Advice Of Potentially Affected Stakeholders In Developing The Phase II Rule?

EPA developed the rule during extensive consultations with a cross-section of interested stakeholders brought together on a subcommittee chartered under the Federal Advisory Committee Act, and with representatives of small entities participating in an advisory process mandated under the Small Business Regulatory Enforcement Fairness Act. EPA considered and attempted to address the primary concerns of the participating State, Tribal, municipal, industrial, and environmental representatives in the preamble and rule language. For a summary of Phase II outreach activities, see the discussion under Section I.E. (EPA Outreach Efforts) of the preamble to the final rule.

Return to Top of Page

What Is The Phase II Implementation Schedule?

The dates below are approximate. Specific compliance dates will be set by each NPDES permitting authority as it changes appropriate regulations and issues general permits.

- **November 1999**: The final Phase II rule is published in the Federal Register, with Conditional No Exposure Exclusion option available on the effective date of the rule, for facilities for which EPA is the permitting

authority.

- **October 2000** (1 year from the date of publication of the final rule): EPA is obligated to issue a menu of recommended BMPs for regulated small MS4s.
- **October 2001** (1 year after the issuance of the menu of BMPs): EPA is obligated to issue guidance on the development of measurable goals for regulated small MS4s.
- **November 2002** (3 years from the date of publication of the final rule): The NPDES permitting authorities would be required to issue general permits for Phase II regulated small MS4s and small (less than 5 acre) construction activity.
- **February 2003** (3 years and 90 days from the date of publication of the final rule, or by the time specified in the permit): Operators of Phase II regulated small MS4s and small construction activity would be required to obtain permit coverage.
- By the end of their first permit terms (**typically 5 years**), operators of regulated small MS4s would have to fully implement their storm water management programs.

Return to Top of Page

How Can One Obtain More Information On The Phase II Program Effort?

More information can be obtained by calling EPA's Storm Water Phase II Rule Hotline at (202) 260-5816, or by sending an e-mail to sw2@epa.gov.

Return to Top of Page

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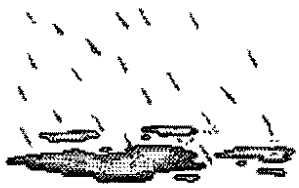
This page was last updated on November 01, 1999.



United States Environmental Protection Agency

Communications, Education, And Media Relations (1703)

EPA Environmental News

FOR RELEASE: MONDAY, NOV. 1, 1999

EPA EXPANDS CONTROLS ON POLLUTED RUNOFF TO FURTHER PROTECT NATION'S DRINKING WATER AND WATERWAYS

Robin Woods, 202-260-4377

The U.S. Environmental Protection Agency today announced another significant action under President Clinton's Clean Water Action Plan to protect America's drinking water and waterways by curbing one of the greatest remaining sources of water pollution -- storm water runoff.

EPA announced it would reduce storm water runoff from construction sites between one and five acres and municipal storm sewer systems in urbanized areas serving populations of less than 100,000. This new storm water rule builds on the existing program to control storm water runoff from municipalities with populations greater than 100,000 and 11 industrial categories, including construction disturbing over five acres.

EPA Administrator Carol M. Browner, said: "The Clinton-Gore Administration is committed to reducing one of the largest remaining sources of water pollution, storm water runoff. Today we are taking a major step to protect public health and the environment for America's families -- increasing the safety of the water they drink, and the rivers, lakes and beaches they enjoy."

Storm water is water from rain or snow that runs off of city streets, parking lots, construction sites and residential yards. It can carry sediment, oil, grease, toxics, pesticides, pathogens and other pollutants into nearby storm drains. Once this polluted runoff enters the sewer system, it is discharged -- usually untreated -- into local streams and waterways.

A leading public health and environmental threat, storm water runoff can contaminate drinking and recreational waters. It also remains a major source of beach and shellfish bed closures. Storm water runoff washes sediment from construction sites at a rate of 20 to 150 tons per acre each year. Sediment has been identified as the single largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes.

The new storm water Phase II rule is expected to make approximately 3,000 more river miles safe for boating and protect up to 500,000 people a year from illness due to swimming in contaminated waters. It will prevent beach closures, make fish and seafood safer to eat, and reduce costs of drinking water treatment. Under the expanded program, sediment discharges from approximately 97.5 percent of the acreage under development across the country will be controlled through permits.

Today's new storm water regulations will control the impacts of storm water runoff

-more-

through the issuance of discharge ... mits under the Clean Water Act. Perm... s are expected to be issued for at least 110,000 additional construction sites and over 5,000 municipalities across the country. Facilities and sites will have three years and 90 days to obtain these storm water permits.

The Phase II permitting program has been structured for maximum flexibility. Focusing on "best management practices," each permittee will be able to select those options resulting in the most common sense, cost-effective plan for reducing storm water runoff on a case-by-case basis. Examples of best management practices include filter fences, storm drain inlet protection, and temporary mulching and seeding for construction sites, as well as public education programs, storm sewer inspections and local storm water ordinances for municipal programs.

The new rule also provides incentives for industrial facilities to protect their operations from storm water exposure. At least 70,000 industrial facilities will be able to take advantage of this new permitting exemption by protecting their operations from storm water, such as covering operations under a storm resistant shelter.

The proposed storm water Phase II rule was issued in January 1998. Both the proposed and final rules were developed with extensive public outreach and communication, including consultation with a wide cross-section of interested stakeholders. There was a 90-day public comment period on the proposed rule, during which EPA received approximately 500 comments.

The final storm water Phase II rule will be published in the Federal Register within the next two weeks. A copy of the rule and additional information is available on the Internet at: http:/www.epa.gov/owm/sw/phase2.

R-134 ###

United States Environmental Protection Agency | Office of Water Washington, DC 20460 www.epa.gov/water | EPA-833-F-99-020 October 1999

EPA REDUCING POLLUTED RUNOFF: THE STORM WATER PHASE II RULE

As part of the Administration's ongoing efforts to curb polluted runoff, the Environmental Protection Agency (EPA) is finalizing a new rule to control storm water runoff from smaller storm sewer systems in urbanized areas and smaller construction sites. The second half of EPA's effort to control storm water, the storm water Phase II rule will make approximately 3,000 more miles of rivers safe for boating and protect up to 500,000 people a year from illness due to swimming in contaminated waters. Improving controls on storm water runoff will also prevent thousands of annual beach closures, make fish and seafood safer to eat, and reduce the costs of drinking water treatment.

Storm water runoff is polluting our waterways. When it rains or snows, the water that runs off of city streets, parking lots, and construction sites can wash sediment, oil, grease, toxics, pathogens, and other pollutants into nearby storm drains. Once this pollution has entered the sewer system, it is discharged–untreated–into local streams and waterways. Known as storm water runoff, this pollution is a leading threat to public health and the environment today.

Improving controls on storm water runoff. New regulations being finalized by EPA, known as storm water Phase II, will reduce the impacts of storm water runoff through a strengthened, yet flexible and cost-effective, storm water program. Phase I of the storm water program, which was promulgated in November 1990, covered municipal storm sewer systems serving populations over 100,000, construction sites above five acres, and industrial activities.

Expanding permit requirements for municipal storm sewer systems. Building upon the existing storm water program, storm water Phase II requires municipal storm sewer systems serving populations under 100,000 that are located in urbanized areas to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. This will result in storm water controls for approximately 5,040 additional municipalities across the country. Types of controls could include public education programs, storm sewer inspections for illegal connections, and ordinances to control construction site runoff.

Providing flexibility for municipalities. The Phase II rule takes a "best management practice" approach, providing municipalities with the flexibility to decide what these practices should be. Municipal Phase II storm water programs are to be composed of six minimum control measures, including:

- public education and outreach;
- public involvement and participation;
- illicit discharge detection and elimination;

- construction site storm water runoff control;
- post-construction storm water management; and
- pollution prevention, or "good housekeeping," for municipal operations.

Municipalities may be able to use existing programs to satisfy these control measures, thereby avoiding program duplication. The use of general, rather than individual, permits is encouraged. There is permitting flexibility for municipal storm sewer systems serving under 10,000 people, including waivers and permit phase-in options. In addition, to control environmental and public health impacts, unregulated facilities and activities that are causing water quality impairments may be brought into the program and required to obtain a storm water permit on a case-by-case basis.

Controlling impacts of development. Storm water Phase II requires operators of construction sites disturbing one to five acres to obtain an NPDES permit. Sediment, which runs off of construction sites at a rate of anywhere between 20 and 150 tons/acre/year, has been identified as the single largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes. The additional coverage provided under the storm water Phase II rule will ensure that sediment discharges from more than 97 percent of the land disturbed by construction activity will be controlled under a storm water permit. Types of controls could include filter fences, storm drain inlet protections, and temporary mulching and seeding of exposed land areas.

Providing incentives for industrial facilities. For those industrial facilities currently covered under Phase I of the storm water program, the new rule provides incentives to protect operations from storm water exposure. At least 70,000 industrial facilities may be able to take advantage of this new provision by adopting practices to protect their operations from exposure to storm water impacts, such as covering operations under a storm resistant shelter.

Targeting polluted runoff–an Administration priority. The new storm water Phase II rule is a key action under the Administration's Clean Water Action Plan. A primary goal of the Clean Water Action Plan is to strengthen controls for polluted runoff, the leading remaining cause of water pollution today.

*****

The storm water Phase II rule was proposed by EPA in January 1998 and received more than 500 comments during a 90 day comment period. EPA will provide a 'tool box' to facilitate implementation, including fact sheets, federal financing programs, guidance, training, research and additional support. Municipalities and construction sites will have up to three years and 90 days from the date the new rule takes affect to obtain a storm water permit. For more information on storm water Phase II, please call (202) 260-5816, e-mail your questions to sw2@epa.gov or visit EPA's website at http://www.epa.gov/owm/sw/phase2 on the Internet.

TOWN OF ADDISON

PUBLIC WORKS DEPARTMENT (972) 450-2871

Post Office Box 144 Addison, Texas 75001 16801 Westgrove

December 17, 1997

MEMORANDUM

To: John Baumgartner, Director of Public Works

From: Jim Pierce, Assistant City Engineer JP

Subject: Storm Water Regulations

This is a quick update on the Teleconference/meeting I attended on 12/10 regarding the Phase II Storm Water Regulations.

1. Addison will fall under the Phase II regulations - a General Permit will be required. Estimates are we will have until June, 2002 to file.

2. The permit will require six minimum control measures - see hilighted section on attached sheet.

3. We will need a storm sewer map that shows major pipes, inlets, outfalls and topography. We may also need an ordinance that controls construction site runoff.

4. I learned that quite a few cities in the area have established "storm water drainage fees" to defray the costs mandated by their permits, as well as O&M and capitol improvements to the system.

We could start working on some of these issues now. Please let me know if you have any questions or comments.

called EPA 12-29-97 and ordered a copy of Prop. Stormwater Regs.

Signed on with Matthews & Freeland Allen Plumber

THUNDERBOLT

Newsletter of the Statewide Storm Water Quality Task Force

Sponsored by the Texas Chapter - American Public Works Association

Fall 1997

This edition of THUNDERBOLT features the latest available revised recommendations of the EPA Phase II Subcommittee, news of a proposed WEAT/TPWA conference on Phase II in March '98, a progress report on the *Texas Nonpoint SourceBOOK,* and information on EPA Region 6's storm water web site. I hope you can join us on February 10th for the next Statewide Task Force meeting held in conjunction with the TPWA Short Course at Texas A&M University.

John Promise, Editor

Proposed EPA Draft Phase II Regulations

The latest available draft of the proposed Phase II rules was issued on July 31, 1997. This draft is an effort by EPA staff to consolidate a number of suggestions and ideas from both the Storm Water Phase II FACA Subcommittee and EPA's internal workgroup into a single uniform approach.

Some of the key differences from the earlier draft (see THUNDERBOLT Winter 1997 issue) --

Who's In or Out? -- EPA is still proposing that all cities in census-defined urban areas would be automatically required to develop a local storm water program. For example, in the DFW area this would add 57 cities to the 7 already covered. The permitting authority would be required to evaluate for coverage those small cities that are outside of an urbanized area if their population is at least 10,000 and their population density is at least 1,000 persons per square mile. A potential waiver of requirements is possible for cities in urbanized areas of less than 1,000 persons if they meet certain other criteria.

A General Permit Would Be Used -- EPA still proposes that a general permit would be issued by each permitting authority such that all cities would have to meet similar requirements. A city could still seek its own individual permit, although the value of this is unclear.

Six Minimum Control Measures Proposed -- Previously the Subcommittee reached agreement that every city would have to address five key areas, but this has been revised to include the following six measures --

- Public involvement/participation
- Public education and outreach on storm water impacts
- Illicit discharge detection and elimination
- Construction site storm water runoff control
- Post-construction storm water management in new development and redevelopment
- Pollution prevention/good housekeeping for municipal operations

Construction Activity Coverage --
All construction activities that result in a land disturbance of greater than or equal to one acre and less than five acres are covered, as well as sites less than one acre that are part of a larger common plan of development. The permitting authority has the option to consider construction activities that are smaller than one acre.

The final proposed regulations are supposed to be published in the Federal Register in December 1997, with a 90 day comment period. The final regulations would presumably be issued soon thereafter. The regulations allow permittees up to 3 years to apply for an individual permit if they choose not to be covered by a general permit that EPA will craft, so permit coverage for cities would likely not begin until 2001. It is not known how long EPA will take to develop a general permit for small MS4s.

Includes Sanitary Sewer Overflows

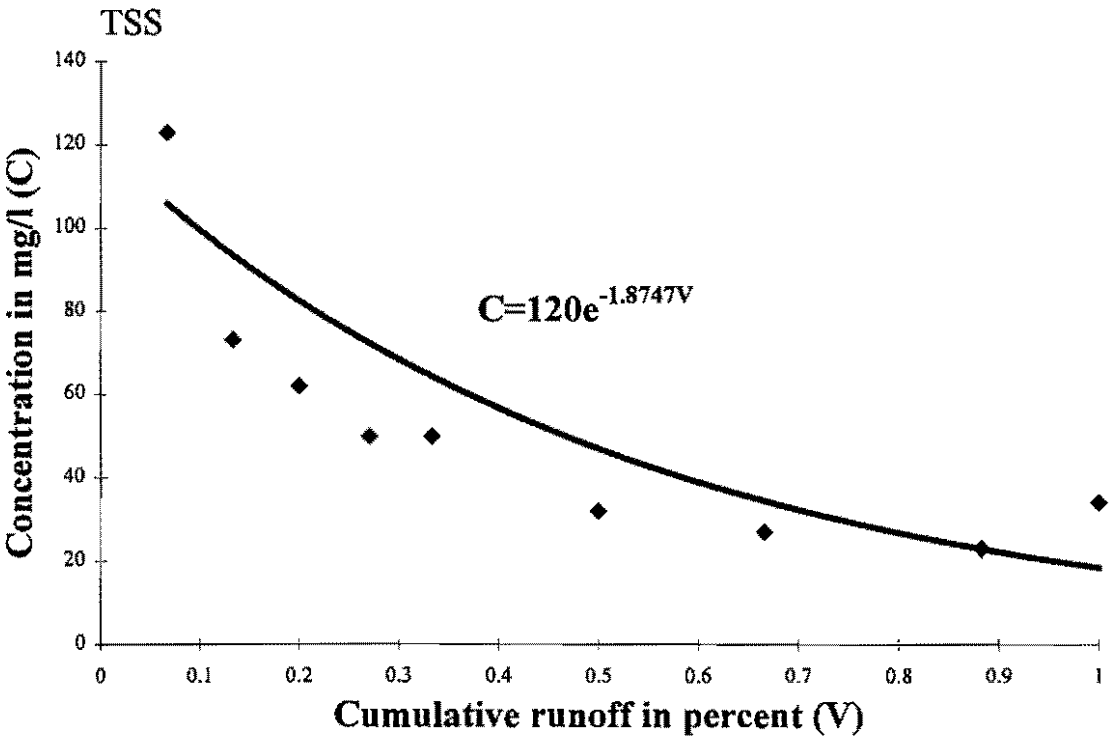
Distribution of Pollutant Concentrations during Rainfall-Runoff Process

Information Compiled
by
BMP Committee
Statewide Storm Water Quality Task Force
American Public Works Association, Texas Chapter

Irving, Texas
December 10, 1997

I. Distribution by Equation

The monitoring of 24 small watersheds* by the City of Austin discovered that the instantaneous concentrations of most pollutants decrease exponentionally during runoff events.



* Specific land-use type watersheds of 0.7 to 371 acres, with impervious covers ranging from 1 to 98 percent.

II. Distribution by Partition
(Average values of 24 watersheds)

Event Mean Concentration

Three-Partition Means of Concentrations

Parameter*	First 18% (First Flush)	Next 32% (Peak Flow)	Last 50% (Tail)	EMC
BOD	26.000	12.00	9.000	13.000
COD	168.000	70.00	52.000	79.000
TOC	22.000	10.00	9.000	12.000
TSS	426.000	210.00	148.000	218.000
NH_3	0.400	0.25	0.200	0.250
NO2+NO3	1.100	0.66	0.690	0.750
TKN	3.000	1.46	1.200	1.620
DP	0.300	0.20	0.180	0.210
TP	0.790	0.46	0.330	0.450
Fe. Col.	96000.000	46000.00	33000.000	48500.000
Cu	0.022	0.02	0.013	0.015
Pb	0.050	0.03	0.017	0.026
Zn	0.219	0.10	0.077	0.109

* Unit in mg/l or Col./100ml.

III. Impact on Data Collection

1. Concentrations decrease with time lapsed

$$C = a_0 e^{-a_1 t}$$

2. Event mean concentration in terms of instantaneous concentrations

$$EMC = b_1 C_{15} + b_2 C_{60}$$

where C_{15} is instantaneous concentration measured within the first 15 minutes, and C_{60} is instantaneous concentration measured after 60 minutes. b_1 and b_2 are constants(in fraction) depending on land-use type and/or percent impervious cover of the watershed.

3. Flow measurement may not be needed. Collect a stormwater sample within the first 15 minutes of runoff. Collect another sample 60 minutes following the runoff. An EMC can be computed from the above equation.

catch first 1/2"

IV. Impact on BMP Design (Austin Example)

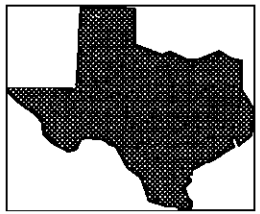
1. Design a water quality control pond.

2. Let 1/2-inch runoff entering the pond. By-pass the remaining volume of runoff (a portion of runoff not treated).

3. On an annual basis, the untreated pollutant loads are:

Imp. Cover(%)	10	30	50	70	90
Untreated Runoff(%)	0	12	26	40	50
Pollutant Parameter	Untreated Pollutant Load(%)				
BOD	0	7	15	20	30
COD	0	3	15	20	22
TOC	0	6	18	20	24
TKN	0	8	16	22	28
TN	0	9	16	24	30
TP	0	8	15	22	28
Cu	0	7	20	25	27
Pb	0	1	14	19	20
Zn	0	2	18	27	30
Average	0	6	16	22	27

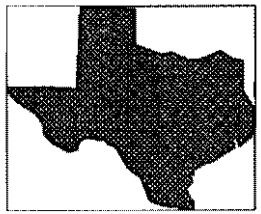
TPWA STATEWIDE STORM WATER QUALITY TASK FORCE



SURVEY OF STORM WATER DRAINAGE FEES

CITY	SINGLE FAMILY RESIDENTIAL CLASS	RESIDENTIAL MONTHLY RATE	COMMERCIAL CLASS	COMMERCIAL MONTHLY RATE	COMMENTS
ABILENE	$0.50 ENVIRONMENTAL FEE CHARGED FOR EACH WATER CUSTOMER USED FOR FUNDING OF STORM WATER MANAGEMENT PROGRAM				
ALLEN	ALL	$2.75	ALL	$18.72 / ACRE Includes Multi-Fam	$2.75 / MONTH MIN. CHARGE $50.00 / MONTH MAX. CHARGE
ARLINGTON	ALL	$1.30	0-10,000 S.F.-IA 10,001-50,000 50,001-100,000 100,001-200,000 200,001-350,000 350,001-700,000 700,001-1,000,000 > 1,000,000 S.F.-IA	$6.50 $13.00 $19.50 $39.00 $78.00 $130.00 $260.00 $390.00	MULTI-FAMILY APARTMENTS BILLED AT $ 0.65 / UNIT / MONTH
AUSTIN	ALL	$3.67	ALL	$39.59 / ACRE OF DEV. LAND	
DALLAS	0-5,000 S.F. 5,001-10,000 10,001-21,800 21,801-43,600 > 43,600 S.F.	$1.65 $2.65 $3.85 $6.75 $13.00	ALL	$0.052/100SF-IA	RESIDENTIAL RATES ARE BASED ON LOT SIZE AS OUTLINED BY TIERS AGRIC. PROP. - EXEMPTED BY LAW VACANT LOTS HAVE $13.00 MAXIMUM
FT. WORTH ENVIR. FEE	RESIDENTIAL RES. DUPLEX	0.50 $1.00	COMMERCIAL OMM. MULTI-UNI INDUSTRIAL	$10.00 $20.00 $35.00	APARTMENTS $ 0.50 / UNIT MUNICIPAL $ 0.75 NON-PROFIT $ 0.75

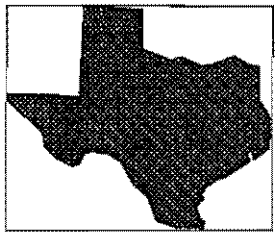
TPWA STATEWIDE STORM WATER QUALITY TASK FORCE



SURVEY OF STORM WATER DRAINAGE FEES

CITY	SINGLE FAMILY RESIDENTIAL CLASS	RESIDENTIA MONTHLY RATE	COMMERCIAL CLASS	COMMERCIAL MONTHLY RATE	COMMENTS
GARLAND	0-7,000 S.F. 7,001-10,000 > 10,000 S.F.	$1.20 $2.40 $3.60	ALL	$0.06/100 SF-IA	RESIDENTIAL RATES ARE BASED ON LOT SIZE OR ZONING CLASS (SF7, SF8)
IRVING	< 5000 S.F. ³ 5000 S.F.	$0.85 $1.18	0-10,000 S.F.(LOT) 10,001 - 20,000 20,001 - 40,000 > 40,000 S.F.(LOT)	$2.63 $5.26 $10.52 $ 0.0036/ YR /S.F.	MULTI-FAMILY APARTMENTS BILLED AT $ 0.0036 / YR / S.F. TOWNHOUSES & DUPLEXES CHARGED $ 0.85 / MONTH / UNIT
LUBBOCK	ALL	$1.71	ALL	$11.35/ WATER METER	
MESQUITE	ALL	$3.00	ALL	$0.050/100 SF-IA	
NORTH RICHLAND HILLS	ALL	$3.00/ EQUIV. RES. UNIT	ALL	$0.0442/100 SF-IA	
PLANO	0-1749 S.F. 1750 - 3450 S.F. >3450 S.F.	R1 $1.50 R2 $2.00 R3 $2.75	ALL	$0.036/100 SF-IA	RESIDENTIAL RATES ARE BASED ON BUILDING FOOTPRINT SIZE AS OUTLINED BY TIERS
SAN ANTONIO	0-4999 S.F. >5000 S.F.	$1.50 $1.99	0-21,999 S.F. 22,000 - 43,999 44,000 - 86,999 87,000 - 131,999 > 131,999 S.F.	$8.58 $23.48 $42.08 $72.52 $160.23	RESIDENTIAL AND COMMERCIAL RATES ARE BASED ON LOT SIZE APARTMENT AND PUBLIC LANDS HAVE DIFFERENT RATES

TPWA STATEWIDE STORM WATER QUALITY TASK FORCE



STATUS OF NPDES STORM WATER PERMIT

MUNICIPALITY	DRAFT PERMIT PUBLIC NOTICE	FINAL PERMIT PUBLIC NOTICE	EFFECTIVE DATE
ABILENE	JUNE 29, 1996		
AMARILLO			
ARLINGTON	FEB. 8, 1997		
AUSTIN	MAY 31, 1997		
BEAUMONT	JUNE 15, 1996		
CORPUS CHRISTI	DEC. 31, 1994	APRIL 21, 1995	JUNE 1, 1995
DALLAS	NOV. 30, 1996	MARCH 28,1997	MAY 1, 1997
EL PASO	MAY 18, 1996	JANUARY 1, 1997	JANUARY 1, 1997
FORT WORTH	SEPTEMBER 28, 1996	NOV. 22, 1996	DECEMBER 1, 1996
GARLAND	NOV. 30, 1996	JAN. 1997	FEBRUARY 1, 1997
HARRIS COUNTY HARRIS CO. FLOOD CONTROL HOUSTON	Co-permittees May 3, 1997		
IRVING	FEB. 8, 1997		
LAREDO	MAY 3, 1997		
LUBBOCK	JUNE 15, 1996		
MESQUITE	FEB. 8, 1997		
PASADENA	JULY 22, 1995	APRIL 26, 1997	
PLANO	FEB. 8, 1997		
SAN ANTONIO	JUNE 24, 1995	DEC. 23, 1995	FEB. 1, 1996
WACO	JUNE 15, 1996		
TXDOT - DALLAS	MAY 31, 1997	SEPTEMBER 26, 1997	NOVEMBER 1, 1997
TXDOT - AUSTIN	AUGUST 9, 1997		

Statewide Storm Water Quality Task Force

Sponsored by the Texas Chapter - American Public Works Association

WORKING AGENDA
FALL MEETING -- WET WEATHER VIDEO CONFERENCE, IRVING
DECEMBER 10, 1997

Introductions and Meeting Overview ... Valerie Gray, Chair of Task Force

Implementation ... Dale Hoelting, Chair,

Regulations and Legislation ...

Water Quality ... Jonathan Young, Chair

Best Management Practices ... Roger Glick (representing George Chang, Chair)

Texas Nonpoint SourceBOOK ... Keith Kennedy, Project Manager, NCTCOG, Frank Salazar, Chair, and Bob Brashear, Project Consultant, CDM

Roundtable ... All

Valerie Gray, Corpus Christi
Task Force Chair, 1997-98
512/857-1881

Dale Hoelting, Plano
Chair, Implementation
972-461-7152

George Chang, Austin
Chair, Best Mgt Practices
512/499-2888

Jonathan Young, APAI
Chair, Water Quality
817/461-1491

Mike Jones, Waco
Chair, Regulations & Legislation
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Frank Salazar, San Antonio
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Storm Water Phase II Rule

July 31, 1997

Errata Sheet

(corrections will be reflected in the November 25, 1997, draft)

(1) Page 1, Line 6.

Delete: "~~other Phase II industrial/commercial sources~~"

(2) §122.26(b)(15)(i)(3) -- Page 5, Line 27.

Create new paragraph for (3).

(3) §122.26(g) -- Page 9, Line 19.

Edit: ~~(h)~~ (g)

(4) §122.32(a) -- Page 14, Line 5.

Delete: semi-colon found after "and Federal facilities)~~;~~"

(5) §122.33(b) -- Page 16, Line 19.

Edit: "the jurisdiction served by your ~~jurisdiction~~ system"

(6) §122.35(a) -- Page 24, Lines 21 through 24.

Reverse: §122.35(a)(1) and §122.35(a)(2).

(7) §122.44(s) -- Page 28, Line 10.

Insert: "the Director may include"

Proposed Rule: Attachment A

Summary of Proposed Coverage of

"Storm Water Discharges Associated with Other Activity"

Under the NPDES Storm Water Program

[see definition in §122.26(b)(15)]

Automatic Designation: **Required Nationwide Coverage**	Construction activities that result in a land disturbance of greater than or equal to one acre and less than five acres. Sites disturbing less than one acre are included if part of a larger common plan of development or sale. [see §122.26(b)(15)(i)(A)]
Potential Designation: **Optional Evaluation & Designation by the Permitting Authority**	(1) Construction activities that result in a land disturbance of less than one acre based on the potential for adverse impact on water quality or for significant contribution of pollutants. [see §122.26(b)(15)(i)(B)] (2) Any other non-municipal storm water discharges.

	[see §122.26(b)(15)(ii)]
Potential Waiver: **Waiver from Requirements as Determined by the Permitting Authority**	Any automatically designated construction activity where the owner/operator certifies: (1) a rainfall energy factor of less than two, or (2) an annual soil loss of less than two tons/acre/year, or (3) that the activity will occur within an area where controls are not needed based on - a "waste load allocation" that is part of a total maximum daily load (TMDL), or a comprehensive watershed plan [see §122.26(b)(15)(i)(A)]

Proposed Rule: Attachment B

Summary of Proposed Coverage

of Small Municipal Separate Storm Sewer Systems*

Under the NPDES Storm Water Program

[*see definition at §122.26(b)(16)]

WHO WOULD BE DESIGNATED/COVERED UNDER TODAY'S PROPOSED RULE?	
Automatic Designation: **Required Nationwide** **Coverage**	All owners or operators of small municipal separate storm sewer systems (MS4s) located *within* an "urbanized area." [see §122.32(a)(1)]
Potential Designation: *Required* Evaluation by the Permitting Authority **for Coverage**	All owners or operators of small MS4s located *outside* of an "urbanized area" with a population of at least 10,000 and a population density of at least 1,000. [see §§122.32(a)(2) and 122.39(b)(2)] All owners or operators of small MS4s that contribute substantially to the storm water pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program. [see §122.39(b)(4)]
Potential Designation: ***Optional* Evaluation by the Permitting Authority for Coverage**	Owners and operators of small MS4s located *outside* of an "urbanized area" with a population of less than 10,000 or a density of less than 1,000. [see §122.39(b)(3)]
WHO WOULD BE ELIGIBLE FOR A WAIVER FROM THE SMALL MS4 PERMIT REQUIREMENTS?	
Potential Waiver: **Locally-Based Waiver from Requirements as Determined by the Permitting Authority**	Owners or operators of small MS4s, located *within* an "urbanized area," with a jurisdiction of less than 1,000 persons and a system that is not contributing substantially to the pollutant loadings of a physically interconnected MS4 may certify that storm water controls are not needed based on: (1) a waste load allocation that is part of a "total maximum daily load" (TMDL) that addresses the pollutants of concern; or

	(2) a comprehensive watershed plan, implemented for the waterbody, that includes the equivalent of a TMDL, and addresses the pollutants of concern.

STORM WATER PROGRAM REGULATORY REVISIONS

This draft proposed rule language represents an effort by EPA staff to consolidate into a single uniform approach a number of suggestions and ideas generated in the course of discussions by the Storm Water Phase II FACA Subcommittee and EPA's internal workgroup. Small construction sites and other Phase II industrial/commercial sources are addressed by revisions to the existing storm water regulations. The revisions to the existing regulations are noted between two groups of four asterisks ****. Language deleted by EPA from the existing regulations is ~~redlined and struck-out~~. Small municipalities, Tribes, and NPDES permitting authorities are addressed by adding new sections 122.30 through 122.38. Sections 122.30 through 122.38 and 123.35 are our first attempt at a new "readable regulations" approach to rule language, and therefore may be subject to stylistic changes as we further refine this approach. Because these "readable regulations" are written in question and answer format, the regulations use words like "must" and "should" or "encourage" instead of "shall" or "may". The legal implications are the same. When the word "must" is used, it is a requirement. When words like "should" or "encourage" are used, it is a recommendation, or guidance; we have also indicated areas that are guidance through use of square brackets ("[ ]").

Revise section 40 CFR 122.26(a)(9) to read as follows:

(9) (i) On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by paragraph(a)(1) of this section to obtain a permit, shall be required to ~~apply for and~~ obtain a permit ~~according to the application requirements in paragraph(g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§122.2 and 122.3.~~ if:

(A) the discharge is from a small municipal separate storm sewer system required to be regulated pursuant to §122.32. The operator shall seek coverage under an NPDES permit in accordance with the requirements of §122.32 through §122.35;

(B) the discharge is a storm water discharge associated with other activity pursuant to §122.26(b)(15). The operator shall seek coverage under an NPDES permit in accordance with §122.26(c)(1);

(C) the Director determines that storm water controls are needed for the discharge based on:

(*1*) a waste load allocation that is part of a "total maximum daily load" (TMDL) that addresses the pollutants of concern; or

(*2*) a comprehensive watershed plan, implemented for the waterbody, that

includes the equivalent of a TMDL, and addresses the pollutants of concern.

For storm water discharges associated with municipal separate storm sewer systems, the operator shall seek coverage under an NPDES permit in accordance with §§122.32 through 122.35. For non-municipal storm water discharges, the operator shall seek coverage under an NPDES permit in accordance with §122.26(c)(1); or

(D) the Director 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. For storm water discharges associated with municipal separate storm sewer systems, the operator shall seek coverage under an NPDES permit in accordance with §§122.32 through 122.35. For non-municipal storm water

discharges, the operator shall seek coverage under an NPDES permit in accordance with §122.26(c)(1).

(ii) Those designated pursuant to sub-paragraphs (i)(C) and (i)(D) above, shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see 40 CFR §124.52(c)).

Revise section 40 CFR 122.26(b)(4) to read as follows:

(4) *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) located in an incorporated place with a population of 250,000 or more as determined by the **** ~~latest~~ 1990 **** Decennial Census by the Bureau of the Census...

Revise section 40 CFR 122.26(b)(7) to read as follows:

(7) *Medium municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the **** ~~latest~~ 1990 **** Decennial Census by the Bureau of the Census...

Revise section 40 CFR 122.26(b)(8)(i) to read as follows:

(i) Owned or operated by ****the United States.**** a State, city, town, borough, county, . . .

Revise section 40 CFR 122.26(b)(14) to read as follows:

. . . .For the categories of industries identified in ****~~paragraphs (b)(14) (i) through (x) of~~ **** this section, the term includes, but . . . .

. . . . storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. ****~~For the categories of industries identified in paragraph (b)(14)(xi) of this section, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.~~****For the purposes of this paragraph, material handling activities include

the storage, loading and unloading, ...

Revise section 40 CFR 122.26(b)(14)(i) to read as follows:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CI R subchapter N *****~~(except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);~~****

Revise section 40 CFR 122.26(b)(14)(xi) to read as follows:

(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, 4221-25;****~~, (and which are not otherwise included within categories (ii)-(x));~~****

Move current section 40 CFR 122.26(b)(15) to new 40 CFR 122.26(b)(17).

Add paragraph to section 40 CFR 122.26(b)(15) to read as follows:

(15) *Storm water discharges associated with other activity* means the discharge from any conveyance used for collecting and conveying storm water that needs to be regulated to protect water quality. For the categories of facilities identified in this subsection, the term includes the entire facility except areas located at the facility separated from the plant's operational activities. Such separated areas may include office buildings and accompanying parking lots, as long as the drainage from the separated areas is not mixed with storm water drained from the plant's operational activities. The following types of facilities or activities are sources of "storm water discharges associated with other activity" for the purposes of this subsection:

(i) *Construction Activities.*

(A) Construction activities including clearing, grading, and excavating activities that result in land disturbance of greater than or equal to one acre and less than five acres. Sites disturbing less than one acre are included if they are part of a larger common plan of development or sale. The NPDES permitting authority may waive the otherwise applicable requirements for a storm water discharge from construction activities that disturb less than five acres where:(1) the rainfall energy factor ("R" in the Universal Soil Loss Equation) is less than two during the period of construction activity. The owner/operator must certify that construction activity will take place during the months when the rainfall energy factor is less than two.;

(2) on a case-by-case basis the annual soil loss for a site will be less than two tons/acre/year. The owner or operator must certify that the annual soil loss for their site will be less than two tons/per/acre/year through the use of the revised Universal Soil Loss Equation, assuming the constants of no ground cover and no runoff controls in place.;or *(3)* storm water controls are not needed based on:

(*i*) a waste load allocation that is part of a "total maximum daily load" (TMDL) that addresses the pollutants of concern; or

(*ii*) a comprehensive watershed plan, implemented for the waterbody, that includes the equivalent of a TMDL, and addresses the pollutants of concern. The owner or operator must certify that the construction activity will take place, and stormwater discharge will occur, within an area covered by the TMDL or watershed plan. (B) Any other construction activity designated by the NPDES permitting authority based on the potential for adverse impact on water quality or for significant contribution of pollutants.

(ii) Any other discharges, except municipal separate storm sewer systems, designated by the NPDES permitting authority pursuant to §122.26(a)(9).

[See Attachment A for a chart summarizing the coverage of "storm water discharges associated with other activity" under today's proposed rule.]

Add paragraph to new section 40 CFR 122.26(b)(16) to read as follows:

(16) *Small municipal separate storm sewer system* means all municipal separate storm sewer systems that are not designated as a "large" or "medium" municipal separate storm sewer system pursuant to 40 CFR §§122.26(b)(4) and (b)(7), or designated under 40 CFR §122.26(a)(1)(v).

Revise section 40 CFR 122.26(c) to read as follows:

(c) *Application requirements for storm water discharges associated with industrial activity****or storm water discharges associated with other activity.*****(1) *Individual application. . ..*

Revise section 40 CFR 122.26(c)(1) to read as follows:

(1) *Individual application.* Dischargers of storm water associated with industrial ****or other**** activity are required to apply for an individual permit, . . .

Revise section 40 CFR 122.26(c)(1)(i) to read as follows:

. . . the operator of a storm water discharge associated with industrial ****or other**** activity subject to this section . . .

Revise section 40 CFR 122.26(c)(1)(i)(C) to read as follows:

. . . outfalls that should contain storm water discharges associated with industrial **** or other**** activity have been tested or evaluated. . .

Revise section 40 CFR 122.26(c)(1)(i)(E) to read as follows:

. . . outfalls containing a storm water discharge associated with industrial ****or other*** activity for the following parameters: . . .

Revise section 40 CFR 122.26(c)(1)(ii) to read as follows:

. . . industrial activity solely under paragraph (b)(14)(x) of this section ****or is associated with other activity solely under paragraph (b)(15)(i) of this section,**** is exempt from the requirements . . .

Replace existing paragraph of section 40 CFR 122.26(e)(1)(ii) with new paragraph to read as follows:

(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 permit, the permit application must be submitted to the Director by August 7, 2001.

Add new paragraph to section 40 CFR 122.26(e)(1)(iii) to read as follows:

(iii) For any storm water discharge associated with other activity identified in §122.26(b)(15) not authorized by a general permit, the permit application made under paragraph (c) of this section must be submitted to the Director by {insert date 3 years and 90 days from date of publication}.

Delete section 40 CFR 122.26(g) as follows:

~~*(g) Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.~~

~~*(1) Application deadlines.* The operator shall submit an application in accordance with he following deadlines:~~

~~(i) A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see 40 CFR 124.52(c)); or~~

~~(ii) All other dischargers shall apply to the Director no later than August 7, 2001.~~

~~*(2) Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:~~

~~(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (e)(1) of this section.~~

~~(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.~~

~~(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).~~

Add new paragraph to section 40 CFR 122.26(g) to read as follows:

(h) *Conditional exemption for "no exposure" of industrial activities and materials to storm water.* Discharges composed entirely of storm water do not require a NPDES permit if the owner or operator of the facility satisfies the conditions of this paragraph concerning "no exposure." For purposes of this section, "no exposure" means all industrial materials or activities are protected by a storm resistant shelter so that they are not exposed to rain, snow, snowmelt, or runoff. Industrial materials or activities include, but are not limited to, material handling equipment, industrial machinery, raw materials, intermediate products, by-products, or waste products, however packaged. This exemption does not apply to storm water discharges from facilities identified in (b)(14)(x) and (b)(15)(i) and sources individually designated under §122.26(a)(1)(v) and §122.26(g)(1)(i). The certifying party shall not take any actions to qualify for this provision that would interfere with the attainment or maintenance of water quality standards, including designated uses.

To certify that the facility meets the definition of no exposure described above, an owner or operator must submit a certification once every five years to the NPDES permitting authority.

(1) Any owner or operator certifying to no exposure must:

(i) notify the NPDES permitting authority at the beginning of each permit term or

prior to commencing discharges during a permit term;

(ii) allow the permitting authority, or the municipality where the facility discharges

into a municipal separate storm sewer system, to inspect the facility and to make such inspection reports publicly available upon request;

[Note: The Urban Wet Weather FACA Committee is currently discussing

modifying paragraph (iii) below]

(iii) upon request, also submit a copy of the certification to the municipality or to any person who requests the certification; and

(iv) sign and certify the certification in accordance with section 122.22.

(2) If there is a change in circumstances which causes exposure of industrial activities or materials to storm water, the owners or operators must comply immediately with all the requirements of the storm water program including applying for and obtaining coverage under a NPDES permit.

(3) Even if an owner or operator certifies to no exposure under paragraph (h)(1) above, the NPDES permitting authority still retains the authority to require the owner or operator of a facility to apply for an individual or general permit if the permitting authority has determined that the discharge:

(i) is, or may reasonably be, causing or contributing to the violation of a water quality standard; or

(ii) is, or may reasonably be, interfering with the attainment or maintenance of water quality

standards, including designated uses.

Revise section 40 CFR 122.28(b)(2)(v) to read as follows:

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 with a general permit without submitting an NOI.

Add new sections 40 CFR 122.30 through 122.38 to read as follows:

General Purpose of the CWA Section 402(p)(6) Storm Water Program

§122.30 What is the purpose of the 402(p)(6) storm water regulations?

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 sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Since 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.)

Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in two ways: 1) by changing natural hydrologic patterns; and 2) 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.

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.

Tribal Role for the CWA Section 402(p)(6) Storm Water Program

§122.31 As a Tribe. what is my role under the CWA §402(p)(6) 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 the Tribe is eligible for treatment in the same manner as a State under §§123.31 through 123.34.) [If your Tribe does not have an authorized NPDES program, EPA will implement the program on the Reservation.];

(b) be classified as an owner or operator of a small municipal separate storm sewer system to the extent the population within the exterior boundaries of the Reservation within the urbanized area, as defined in §122.32, is greater than or equal to 1,000 persons. [This approach is consistent with EPA's 1984 Indian Policy of operating on a government-to-government relationship and EPA looking at the Tribe as the lead government authority to deal with environmental issues on the Reservation, but rather it is to provide additional opportunities to deal with storm water discharges within the Reservation. A few Tribes may be classified as municipalities and, if the Indian Tribe operates a separate storm sewer system that meets the definition of a small municipal separate storm sewer system, the Reservation may be subject to the requirements under §§122.33 through 122.35. If you are not classified as a municipality, you may ask EPA to designate you as a small municipal separate storm sewer system for the purposes of this rule. The resulting federal recognition from the NPDES permit issued by EPA (or a NPDES authorized Tribe) may benefit you in operating the municipal program by enhancing your ability to establish certain requirements for facilities that discharge storm water into your separate storm sewer system.]; or

(c) be a discharger of storm water associated with industrial or other activity under sections 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within the exterior boundaries of the Reservation, the permitting authority would be EPA, unless the Tribe was the authorized NPDES authority.

Municipal Role for the CWA Section 402(p)(6) Storm Water Program

[See Attachment B for chart that summarizes municipal coverage and waivers under the proposed rule.]

§122.32 As an owner or operator of a small municipal separate storm sewer system, am I regulated under the CWA §402(p)(6) municipal storm water program?

(a) You are a regulated small municipal separate storm sewer system if your are the owner or operator of a small municipal separate storm sewer system (including but not limited to systems owned or operated by local governments; State departments of transportation; and State, Tribal, and Federal facilities); and you meet the following definition. Regulated small municipal separate storm sewer systems are defined as all small municipal separate storm sewer systems that are located in:

(1) an incorporated place, county, or other place under the jurisdiction of a governmental entity (including but not limited to Tribal or Territorial governments) located in an urbanized area, as determined by the latest Decennial Census by the Bureau of the Census, except for Federal Indian Reservations where the population within the exterior boundaries of the Reservation within the urbanized area is under 1,000 persons;

(2) an incorporated place, county, or other place under the jurisdiction of a governmental entity other than those described in paragraph (1) that is designated by the NPDES permitting authority, including where designation is based upon a petition under §122.26(f). [See 40 CFR §123.35 for NPDES permitting authority designation requirements.]

(b) You may be the subject of a petition, by any person, to the NPDES permitting authority to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(c) If you receive a waiver under §122.33(b), you may subsequently be designated back into the municipal storm water program by the NPDES permitting authority if circumstances change. [See 40 CFR §123.35(b).]

§122.33 If I am an owner or operator of a regulated small municipal separate storm sewer system, must I apply for a NPDES permit? If so, by when do I have to seek coverage under a NPDES permit? If so, who is my NPDES permitting authority?

(a) If you are the owner or operator of a regulated small municipal separate storm sewer system under §122.32, you must seek coverage under a general or individual NPDES permit, unless waived under paragraph (b) of this section, as follows:

(1) If you are seeking coverage under a general permit, you must submit a Notice of Intent (NOI). The general permit will explain the steps necessary to attain coverage.

(2) If you are seeking coverage under an individual permit, you must submit an individual application to your NPDES permitting authority that includes the information required under section 122.21(f) and the following information:

(i) estimate of square mileage served by your separate storm sewer system, and

(ii) any additional information that your NPDES permitting authority requests.

(3) If there is an adjoining municipality or other governmental entity with an issued NPDES storm water permit that is willing to have you participate in its stormwater program, you may jointly with that adjoining municipality or other governmental entity seek a permit modification to include your municipality or other governmental entity in the relevant portions of that NPDES permit. If you choose this option you will need to comply with the permit application requirements of §122.26, in lieu of the requirements of §122.34. You do not need to comply with the specific application requirements of §§122.26(d)(1)(iii), (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in §§122.26 (d)(1)(v) and (d)(2)(iv) (identifying a management plan) by referring to the adjoining municipality's storm water management plan. [In referencing an adjoining municipality's storm water management plan, you should briefly describe how the existing plan will address discharges from your municipal separate storm sewer system or would need to be supplemented in order to adequately address your discharges, explain the role you will play in coordinating storm water activities in your jurisdiction, and detail the resources available to you to accomplish the plan.]

(b) The NPDES permitting authority may waive the requirements otherwise applicable to you if you are an owner or operator of a regulated small municipal separate storm sewer system, as defined in §122.32(a)(1), the jurisdiction served by your jurisdiction includes a population of less than 1,000 persons, you are not contributing substantially to the storm water pollutant loadings of a physically interconnected regulated municipal separate storm sewer system (see §123.35(b)(4)), and you have certified that storm water controls are not needed based on:

(1) a waste load allocation that is part of a "total maximum daily load" (TMDL) that addresses the pollutants of concern; or

(2) a comprehensive watershed plan, implemented for the waterbody, that includes the equivalent of a TMDL , and addresses the pollutants of concern.

(c) If you are an owner or operator of a regulated small municipal separate storm sewer system:

(1) under section 122.32 (a)(1), you must apply for coverage under a NPDES permit by {insert date 3 years and 90 days from date of final regulation}; or

(2) designated under section 122.32 (a)(2), you must apply for coverage under a NPDES permit within 60 days of notice, unless the NPDES permitting authority grants a later date.

(d) If you are located in a NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is your permitting authority. Otherwise, your permitting authority is the EPA Regional Office. [You should call the EPA Regional Office to find out who is your NPDES permitting authority.]

§122.34 As an owner or operator of a regulated small municipal separate storm sewer system, what will my NPDES municipal storm water permit require?

(a) Your NPDES municipal storm water permit will, at a minimum, require you to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your municipal separate storm sewer system to the maximum extent practicable (MEP) and to attain water quality standards. Your storm water management program must include the minimum control measures described in paragraph (b) below. 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 water quality-based requirements of the Clean Water Act. Implementation of the best management practices consistent with (1) the provisions of the storm water management program required pursuant to this section, and (2) the provisions of the permit required pursuant to section 122.33 shall

constitute 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 fully develop and implement your program.

(ii) Minimum Control Measures

(1) *Public education and outreach on storm water impacts.* 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 to reduce storm water pollution. [You may use storm water educational materials provided by your State, Tribe, EPA, or, subject to the approval of the local government, environmental or other public interest or trade organizations. The materials or outreach programs should inform individuals and households about the steps they can take (such as ensuring proper septic system maintenance; limiting the use and runoff of garden chemicals; becoming involved in local stream restoration activities that are coordinated by youth service and conservation corps, and other citizen groups; and participating in storm drain stenciling) to reduce storm water pollution. In addition, the materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts to explain their impacts on storm water pollution (for example, information to restaurants on the impact of grease clogging storm drains, to garages on the impacts of oil discharges, etc.) 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 children]

(2) *Public Involvement/Participation.* You must comply with State, Tribal and local public notice requirements. [You should include the public in developing, implementing, and reviewing your storm water management program. The public participation process should make efforts to reach out and engage all economic and ethnic groups. You may consider impanelling a group of citizens to participate in your decision-making process, hold public hearings, or work with volunteers.]

(3) *Illicit discharge detection and elimination.* You must:

(i) Develop (if not already completed) a storm sewer system map (or equivalent) showing the location of major pipes, outfalls, and topography. In addition, if data already exists, show areas of concentrated activities likely to be a source of storm water pollution;

(ii) Effectively prohibit, through ordinance, order, or similar means, illicit discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(iii) Implement a plan to detect and address illicit discharges (including illegal dumping) to your system; and

(iv) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste. [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.* You must develop, implement, and enforce a program to reduce pollutants in storm water runoff to your municipal separate storm sewer system from construction activities that result in land disturbance of greater than or equal to one acre. You must use an ordinance or other regulatory mechanism that controls erosion and sediment to the maximum extent practicable and allowable under State or Tribal law. Your program must control other waste at the construction site that may adversely impact water quality, such as discarded building materials, concrete truck washout, and sanitary waste. Your program also must include, at a minimum, requirements for construction site owners or operators to implement appropriate BMPs, provisions for pre-construction review of site management plans, procedures for receipt and consideration of information submitted by the public, regular inspections during construction, and

penalties to ensure compliance. [See §122.44(s)]

(5) *Post-construction storm water management in new development and redevelopment.* You must 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 and that discharge into your municipal separate storm sewer system. Your program must include site-appropriate and cost-effective structural and non-structural best management practices (BMPs) and ensure adequate long-term operation and maintenance of such BMPs. Your program must ensure that controls are in place that would avoid violations of water quality standards, including impairment of designated uses [See CWA §402(p)(2)(E)]. [If the involved parties consider water quality impacts from the beginning stages of projects, new development and possibly redevelopment allow opportunities for more water quality sensitive projects. EPA recommends that municipalities utilize BMPs that attempt to mimic pre-development runoff conditions, including water quality and quantity. This can be achieved through the use of design features such as extended detention outlet structures (outlets that limit discharge to pre-development discharge rates), multiple detention pond systems (multiple cells within a wet pond), sediment forebays (allows for removal of heavy particulates prior to BMP) and use of wetland vegetation (increases biological uptake, filtration and soil infiltration).

BMPS that have been shown to reduce pollutant loadings in storm water runoff from developed areas include: reduced imperviousness, wetland protection, vegetated drainage ways, infiltration trenches, riparian buffers, extended detention wet ponds, multiple-celled pond systems, prevention-based site design based on use of infiltration into preserved "pocket parks" or other natural areas suitable for storm water infiltration, locally-based watershed planning that minimizes storm water impacts of new development, and model local ordinances. It should be noted that storm water technologies are constantly being improved, and that municipal requirements should be responsive to these changes.]

(6) *Pollution prevention/good housekeeping for municipal operations.* You must develop and implement a cost-effective operation and maintenance program with the ultimate goal of preventing and reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, or Tribe, or from other organizations whose materials are approved by the local government, your program must include local government employee training to prevent and reduce storm water pollution from government operations (such as park and open space maintenance, fleet maintenance, planning, building oversight, and storm water system maintenance). [You should, at a minimum, consider the following in developing your program: (1) maintenance activities, maintenance schedules, and long-term inspection procedures for structural and other storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; (2) controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, and waste transfer stations; (3) procedures for properly disposing of waste removed from the separate storm sewer systems and areas listed above in (2) (such as dredge spoil, accumulated sediments, floatables, and other debris); and (4) 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.]

(c) The NPDES permitting authority may include permit provisions in your NPDES permit that incorporate by reference qualifying local, State or Tribal municipal storm water management program requirements that address one or more of the minimum controls of §122.34(b). Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of paragraph (b) of this section.

(d) You must identify and submit to your NPDES permitting authority either in your notice of intent or in your permit application (see section 122.33) the following information: best management practices (BMPs) to be implemented and the measurable goals for each of the storm water minimum control measures, the month and year in which you will start and aim to complete each of the

measures or indicate the frequency of the action, and the person or persons responsible for implementing or coordinating your storm water management program. Measurable goals identified in a notice of intent will not constitute a condition of the permit, unless EPA or your State or Tribe has provided or issued a menu of regionally-appropriate and field-tested measures which EPA or your State or Tribe believes to be cost-effective . } EPA will provide guidance on developing BMPs and measurable goals and modify, update, and supplement such guidance based on the assessments of the NPDES municipal Storm water program and research conducted over the next thirteen years.

(e) 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 sections 122.41 through 122.49, as appropriate.

(f) *Evaluation and assessment.*

(1) *Evaluation.* You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achievement of your identified measurable goals. [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) *Record keeping.* 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 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, not to exceed two working days.]

(3) *Reporting.* 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 achievement of 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 what storm water activities you plan to undertake during the next reporting cycle; and

(iv) A change in any identified measurable goals that apply to the program elements.

§122.35 What if another governmental or other entity is already implementing a minimum control measure in my jurisdiction?

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

(1) the particular control measure (or component thereof) is equivalent to what the NPDES permit requires,

(2) the other entity is implementing the control measure, and

(3) you have requested, and the other entity has agreed to accept responsibility for implementation of

the control measure on your behalf of and to satisfy your permit obligation.

You must note in your section 122.34(f)(3) reports when you are relying on another entity to satisfy your permit obligations. 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) Where appropriate , the NPDES permitting authority may recognize existing responsibilities among governmental entities for the minimum control measures in your NPDES permit. [For example, a State or Tribe may be responsible for addressing construction site runoff and municipalities may be responsible for the remaining minimum control measures. You are not required to provide notice to the other governmental entity when your NPDES permit recognizes the entity and its existing responsibilities.] Where the permitting authority recognizes an existing responsibility for one or more of the minimum control measures in your permit, your responsibility to include such minimum control measure, or measures, in your storm water management program is waived so long as the other governmental entity implements the measure consistent with the requirements of §122.34(b).

§122.36 What happens if I don't comply?

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§309(b), (c), and (g) and §505, or under applicable State or local law. Municipalities in compliance with NPDES Permits issued under the authority of this rule are deemed to be in compliance with the Clean Water Act under §402(k).

§ 122.37 Will these requirements change in the future?

EPA will evaluate the municipal storm water regulations in this part after {insert date 13 years from date of publication} and make any necessary revisions. [EPA will conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES municipal storm water program, EPA strongly recommends that no additional requirements beyond the minimum control measures be imposed on regulated small municipal separate storm sewer systems without the agreement of the owner or operator of the affected municipal separate storm sewer system, except where adequate information exists in an approved TMDL to develop more specific conditions or limitations to meet water quality standards, or until EPA's comprehensive evaluation is completed. EPA will evaluate the regulations based on data from the NPDES municipal Storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPS) .]

Public Role for the CWA Section 402(p)(6) Storm Water Program

§122.38 As a member of the public, what is my role under the CWA §402(p)(6) storm water program?

You may:

(a) be subject to local storm water program requirements, guidelines, and fees or other payments as authorized under State or local law to finance the program;

(b) participate as an actively involved partner in planning, developing, and implementing storm water programs (for example, participate in public meetings and other opportunities for input, perform volunteer monitoring (to the extent consistent with other operative laws, including trespass), assist in coordinating the storm water program with other pre-existing and related programs, and report suspected violators to the municipality, State, Tribe or EPA);

(c) participate as a program advocate (for example, be a proponent of funding initiatives, encourage greater public participation, and aid in developing educational materials and training activities);

(d) exercise your rights and responsibilities to take civil action under §505 of the Clean Water Act . You are strongly encouraged to resolve any disagreements or concerns directly with the parties involved informally or through any available alternative dispute resolution process prior to initiating legal action. [Should you fail to resolve your issues through the alternative dispute resolution process and decide to initiate legal action, you would still be required to comply with provisions concerning prior notice of citizen suits (see 40 CFR Part 135).];

(e) petition the NPDES permitting authority to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see §§122.26(f)(2), 122.32(b), and 123.35(c)); and

(f) find out more information by contacting the:

(1) NPDES permitting authority,

(2) municipal separate storm sewer owner or operator, or

(3) local environmental or other public interest group.

Add new paragraph to section 40 CFR 122.44(s) to read as follows:

For storm water discharges from construction sites identified in §122.26(b)(15)(i), the Director may include permit provisions that incorporate by reference qualifying State, Tribal, or local sediment and erosion control program requirements. A qualifying State, Tribal, or local sediment and erosion control program is one that meets the requirements of a municipal NPDES separate storm sewer permit or a program otherwise approved by the Director. For the Director to approve such programs, the program must meet the minimum program requirements established under §122.34(b)(4). For storm water discharges identified in §122.26(b)(14)(x), the may include by reference State, Tribal or local requirements that meet the standard of "best available technology" (BAT) as defined, for example, in the storm water general permit.

Revise section 40 CFR 123.25(a) to read as follows:

(39) Section 122.30 (What is the purpose of the 402(p)(6) storm water regulations?);

(40) Section 122.31 (As a Tribe, what is my role under the CWA §402(p)(6) storm water program?)

(41) Section 122.32 (As an owner or operator of a small municipal separate storm sewer system, am I regulated under the CWA §402(p)(6) municipal storm water program?);

(42) Section 122.33 (If I am an owner or operator of a regulated small municipal separate storm sewer system, must I apply for a NPDES permit? If so, by when do I have to seek coverage under a NPDES permit? If so, who is my NPDES permitting authority?);

(43) Section 122.34 (As an owner or operator of a regulated small municipal separate storm sewer system, what will my NPDES municipal storm water permit require?);

(44) Section 122.35 (What if another governmental or other entity is already implementing a minimum control measure in my jurisdiction?);

(45) Section 122.36 (What happens if I don't comply?);

(46) Section 122.37 ((Will these requirements change in the future?);

(47) Section 122.38 (As a member of the public, what is my role in the storm water program?);

Add new section 40 CFR 123.35 to read as follows:

NPDES Permitting Authority Role for the CWA Section 402(p)(6) Municipal Program

§123.35 As the NPDES Permitting Authority for regulated small municipal separate storm sewer systems, what is my role?

(a) You must comply with the requirements for all NPDES permitting authorities under Sections 122, 123, 124, and 125. [This section is meant only to supplement those requirements and discuss specific issues related to the small municipal storm water program.]

(b) You must develop a process to designate incorporated places, counties, or other places under the jurisdiction of a governmental entity other than those described in 40 CFR §122.32(a)(1) as regulated small municipal separate storm sewer systems to be regulated under the CWA Section 402(p)(6) program. This process must include the authority to designate a small municipal separate storm sewer system waived under 40 CFR §123.35(d) if circumstances change. EPA may make designations under this section if a State or Tribe fails to comply with the requirements listed below. In making your designations, you must:

(1) Develop criteria to evaluate whether a storm water discharge results in or has the potential to result in significant water quality impacts (including habitat and biological impacts). [EPA recommends as guidance 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, contribution to an exceedance of a water quality standard (including impairment of designated uses), significant contributor of pollutants to waters of the United States, and ineffective control of water quality concerns by other programs.];

(2) Apply such criteria, at a minimum, to any incorporated place, county, or other place under the jurisdiction of a governmental entity located outside of an urbanized area that has a population density of at least 1,000 people per square mile and a population of at least 10,000;

(3) Designate any incorporated place, county or other place under the jurisdiction of a governmental entity that meets the selected criteria by {insert date three years and 90 days from date of final regulation}. You may apply these criteria to make additional designations at any time, as appropriate. You may have until {insert date five years from date of final regulation} to apply the designation criteria on a watershed basis where there is a comprehensive watershed plan; and

(4) Designate any incorporated place, county, or other place controlled by a governmental entity that contributes substantially to the storm water pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated by the NPDES storm water program.

(c) You must make a final determination within 180 days from receiving a petition under 40 CFR §122.32(b) (or analogous State or Tribal law). If a State or Tribe fails to do so, EPA may make a determination on the petition.

(d) You must issue permits consistent with 40 CFR §§122.32 and 122.33 to all regulated small municipal separate storm sewer systems. You may waive the requirements otherwise applicable to regulated small municipal separate storm sewer systems, as defined in 40 CFR §122.32(a)(1), if the jurisdiction of the small municipal separate storm sewer system includes a population of less than 1,000 persons, its discharges are not contributing substantially to the storm water pollutant loadings of a physically interconnected regulated municipal separate storm sewer system (see §123.35(b)(4)), and the owner or operator of the small municipal separate storm sewer system has certified that storm water controls are not needed based on:

(1) a waste load allocation that is part of a "total maximum daily load" (TMDL) that addresses the pollutants of concern; or

(2) a comprehensive watershed plan, implemented fo. the waterbody, that includes the equivalent of a TMDL, and addresses the pollutants of concern.

(e) You must specify a time period of up to 5 years from the date of permit issuance for small municipal separate storm sewer system owners or operators to fully develop and implement their storm water program.

(f) You must include the requirements in 40 CFR §122.34 (except as modified in accordance with 40 CFR §122.35) in any permit issued for small municipal separate storm sewer systems. [You may include permit provisions in a small municipal separate storm sewer system NPDES permit that incorporates by reference qualifying local, State or Tribal municipal storm water management program requirements that address one or more of the minimum controls of 40 CFR §122.34(b). Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of 40 CFR §122.34(b).]

(g) If you issue a general permit to authorize storm water discharges from small municipal separate storm sewer systems, you must provide or issue a menu of regionally-appropriate and field-tested measures which you believe to be cost-effective from which small municipal separate storm sewer systems can select. If a State or Tribe fails to provide or issue the menu, EPA may do so.

(h) In addition, you must incorporate other measures necessary to ensure effective implementation of your State storm water program for regulated small municipal separate storm sewer systems:

(1) to the extent that there is a dedicated funding source, you should play an active role in providing financial assistance to local municipalities;

(2) 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;

(3) 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;

(4) where appropriate, you may recognize existing responsibilities among governmental entities for the control measures in a NPDES small municipal storm water permit (for example, you may designate a county as being responsible for addressing construction site runoff and towns or cities as being responsible for the remaining minimum measure); and

(5) you are encouraged to use a brief (for example, two page) reporting format to facilitate compiling and analyzing data from submitted reports under 40 CFR §122.34. (EPA will develop a model form for this purpose.)

Regional Strategy for Managing Storm Water Quality in North Central Texas

North Central Texas Council of Governments

The North Central Texas Council of Governments is the state-designated water quality management planning agency for the urbanized portion of the Dallas – Fort Worth Metroplex. For the past thirty years, NCTCOG has conducted an active planning and services program with its 200 member local governments on water quality issues. Since 1989, NCTCOG has worked with the seven largest cities and two TxDOT districts in the region to develop and implement a regional strategy to address the 1990 National Pollutant Discharge Elimination System (NPDES) Phase I Rule for storm water.

Storm water runoff has become the focus of many nation-wide regulatory efforts to address remaining water quality problems. Original NPDES efforts to improve water quality through reducing pollutants in industrial wastewater and municipal sewage treatment plant discharges have been very successful, but failure to meet water quality standards continues to be a widespread problem. Storm water runoff from urban areas and agricultural land has been determined to be a major cause of water quality impairment, including the inability of surface waters to meet their state-designated uses to support recreation, aquatic life, and domestic water supply.

An expanded, watershed-based, regional effort is now underway to include the additional cities and counties in the Metroplex's urbanized areas that are impacted by emerging regulations for storm water, total maximum daily loads (TMDLs), and drinking water source water protection initiatives by state and federal agencies. On the recommendation of the Regional Storm Water Management Coordinating Council, NCTCOG's Executive Board adopted this unified strategy.

Policy Position on Managing Urban Storm Water Quality

Local government agencies in North Central Texas are dedicated to protecting the region's waters by addressing both the quantity and quality of storm water runoff from urban areas. The agencies within the urbanized areas of this region are committed to implementing a cooperative and comprehensive program to manage storm water runoff to maximize the utilization of the region's lakes, streams, and rivers for drinking water supply, recreation, fish and wildlife habitat, and economic opportunity.

State and Federal Mandates to Address Urban Storm Water Quality

In addition to this Policy, the Regional Strategy is designed to address the following statutory requirements regarding urban storm water quality:

Section 402(p) of the Clean Water Act, NPDES Phase I and Phase II Rules – Phase I, initiated in 1990, requires municipalities of 100,000 population or greater to obtain permits for their separate storm water systems. Phase II is designed to address storm water discharges from the separate storm water systems of jurisdictions within urbanized areas having population under 100,000 and other jurisdictions designated by the EPA. These rules, signed in October 1999, require regulated municipalities to develop management programs to reduce the discharge of pollutants from their separate storm water systems to the "maximum extent practicable." The Texas Natural Resource Conservation Commission (TNRCC) has assumed delegation of the storm water program from EPA and will continue to develop state regulations under the Texas Pollutant Discharge Elimination System (TPDES) program.

Section 303(d) of the Clean Water Act – requires states to: 1) identify and list waters that do not meet water quality standards; 2) establish priority rankings for the waterbodies listed; and 3) develop total maximum daily loads (TMDLs) for targeted waters, taking into account the severity of the pollution and the water usage. The TNRCC has included stream segments in the NCTCOG region on the 303(d) list and is addressing these segments through TMDL development, targeted monitoring, special water quality studies, and source water protection efforts.

Safe Drinking Water Act Source Water Protection – requires each state to develop a source water assessment and protection (SWAP) program which: 1) delineates the boundaries of the areas providing source waters for public drinking water systems; and 2) identifies (to the extent practicable) the origins of regulated and certain unregulated contaminants in the delineated area to determine the susceptibility of public water systems to such contaminants. Public water systems may be required by TNRCC to implement a mandatory Best Management Practice (BMP) program or to pursue regulatory options to control nonpoint source contamination of surface waters within the designated area should voluntary BMP efforts and education programs fail.

Section 319(h) of the Clean Water Act – requires states to address water pollution by developing nonpoint source pollution assessment reports that identify nonpoint source pollution problems and the sources responsible for the water quality problems. States must then develop watershed management programs to control nonpoint source pollution.

Section 26.177 of the Texas Water Code – requires cities with 10,000 inhabitants or more, where water pollution attributable to non-permitted sources in the city has been identified, to establish water pollution control and abatement programs. The TNRCC uses water quality assessment studies such as those conducted through the Clean Rivers Program, the State Water Quality Inventory, and the TMDL process to identify problem watersheds. Targeted cities are responsible for the "development and execution of reasonable and realistic plans" to control storm water discharges and urban runoff. Cities must also develop an inventory of all significant waste discharges (permitted and non-permitted) into and adjacent to water within the city, and conduct regular monitoring of such discharges.

Goals

The goals of this expanded Regional Strategy for Managing Urban Storm Water Quality are to:

- protect the health and welfare of citizens and the environment
- effectively address state and federal regulations
- foster regional cooperation and share professional knowledge and experience
- lessen the expenditures of each local government by conducting cooperative activities wherever possible
- facilitate the collection and distribution of information to agencies
- provide training to governmental staff and the development community
- negotiate as one collective entity with the EPA and state
- maintain consistency in the collection and interpretation of water quality data
- identify economically appropriate and cost-effective Best Management Practices
- achieve proportionate share of pollution reduction among all pollutant contributors in a watershed
- preserve implementation decisions for each governmental agency

Cooperative Initiatives

Local governments, through the North Central Texas Council of Governments, will implement this Regional Strategy by developing and implementing, to the greatest extent possible, a cooperative program comprised of the following major elements:

Local Government Participation and Oversight

Guidance for the development and implementation of the regional program is provided by the Regional Storm Water Management Coordinating Council (RSWMCC), an advisory body comprised of local government officials. The membership structure of the Council is designed to be representative of the various sizes of communities and the geographic distribution of entities among regionally defined watersheds.

Through the regional program, roundtable discussions are held in each watershed to provide an opportunity for exchange of information between program participants, RSWMCC members, and NCTCOG staff. RSWMCC members are then able to reflect the interests of their watershed in regular meetings held to guide the regional strategy. In addition, regular forums are conducted to provide information to all participants and other interested parties on special topics, including specific elements of the regulations.

Regional Storm Water Resource Center

The field of storm water quality management is relatively new and is changing continuously. In order for governmental agencies to make informed decisions, they must have access to cutting-edge information from around the country, as well as information on what their neighbors are doing. In addition, agency staffs need to be able to effectively communicate proposed policies to their managers, councils, and the public.

Resource Center staff at NCTCOG could research, acquire, and catalog storm water management information including manuals, guidebooks, public education materials, reports, and articles, as well as drainage criteria manuals and storm water management programs from regulated cities. Local governments in the region could be periodically surveyed on their storm water management programs and the findings would be reported to local agencies. The Resource Center could maintain an updated Internet presence and provide custom-generated maps, charts, and other presentation materials to participants.

Public Participation in Program Development

Involvement of the public in the development of programs to control the quality of storm water is important to the ultimate success of the programs. Individual citizens, members of the development and construction community, representatives of environmental organizations, and representatives of other civic and interest groups need to be given the opportunity to participate in the program formulation process.

A concerted effort could be undertaken to identify and inform interest groups throughout the Metroplex of the efforts underway. Stakeholders could be invited to fully participate at the watershed meetings, attend regional forums, and to provide comments at meetings of the RSWMCC. When appropriate, the RSWMCC and NCTCOG staff could provide their expertise to participating members who wish to hold public meetings in their communities to get local input on development of their local requirements.

Public Education

Education of the public on the impact of their everyday activities on the quality of storm water is a key element of the storm water program. Citizens must be made aware of the potential hazards associated with their household practices. Education on the proper usage of lawn and garden, household, automotive, and pool chemicals and proper disposal of these household hazardous wastes could be major elements of the public education program. In addition, non-permitted commercial, institutional, and industrial entities whose operations could have a significant impact on storm water quality also need to be informed of their potential impacts and practical ways to mitigate these impacts.

Opportunities abound to reach citizens and businesses throughout the Metroplex in a coordinated program. Regional education and outreach programs can be more economical and effective than initiatives by individual agencies. Public outreach activities to be promoted through the regional program could include radio and television campaigns, public service announcements, video production, outreach programs at schools, health fairs and festivals, brochure and flier development, web site development, and others.

Control of Construction Site Storm Water Runoff

Construction activities can have a major impact on the health of the ecosystems of our streams, rivers, and reservoirs. Sediment carried from construction sites by storm water runoff is deposited on the bottom of streams and rivers, and collects in reservoirs, reducing their storage capacity. Practices to control the runoff of sediment and other pollutants from construction sites have proven to be effective and are gaining acceptance in the construction industry as the EPA and many local governments implement runoff control requirements.

As with any other aspect of the construction process, uniformity of policies to control storm water runoff from construction sites throughout the Metroplex is very beneficial to contractors, developers, and engineers who often work in many different communities. Regional uniformity also strengthens the position of the region as a whole to compete with other areas of the country. The regional program could continue to offer training classes to local government storm water inspectors. This training program could also be offered to developers, engineers, and contractors involved in construction activities in order to educate the private sector on runoff control techniques. The Construction BMP Manual, which is recommended for adoption by all jurisdictions, could be periodically updated to reflect the latest changes in construction Best Management Practices. Additional materials such as a model ordinance for control of storm water from construction activities could be developed.

Management of Storm Water Impacts Associated with Development

In addition to the temporary impacts of construction activities on the quality of storm water, development of land typically causes permanent impacts on both storm water quantity and quality. The amount of runoff from developed land will generally exceed that of undeveloped land and has been shown through the DFW regional monitoring program to contain higher levels of pollutants such as oil and grease, metals, nutrients, and sediment. Reducing the amount of pollutants in storm water discharges at the source through proper planning and design is often more efficient and cost-effective than trying to address polluted storm water after it has entered the storm sewer system. The impact of development has been addressed in other regions of the country through: 1) source controls such as reducing impervious surface, using natural drainageways instead of concrete channels, and maintaining buffers along streams; and 2) treatment controls such as ponds or basins for large developments.

There are at least three key areas where local governments, working cooperatively and with the private sector, could improve their own development management processes to integrate storm water quality and quantity goals: 1) comprehensive planning, where storm water quality and quantity are addressed together as part of the overall long-range planning process of each community; 2) development policies and standards, where the full range of local requirements from building codes to subdivision rules are re-examined; and 3) capital improvements programming and impact fees, where local governments themselves are "developers" of the community infrastructure.

Illicit Discharge Detection and Elimination

Discharges from storm sewers often include waste from non-storm water sources, including improper or illegal connections from homes or businesses and infiltration of flow from broken sewer mains. Illicit discharges are so-named because storm sewers are not designed to accept and process raw sanitary wastes or discharges of waste water from automobile service stations, car washes, or light industrial facilities.

The regional program could assist local jurisdictions in the detection and elimination of illicit discharges through the following: 1) technical assistance in mapping major storm sewer outfalls (geographic information system (GIS) and global position system (GPS) training and support); 2) technical assistance in detecting illicit discharges in dry weather flows (field-screening training and support); 3) tracking of citizen complaints through the Stop Illegal Dumping regional hotline; 4) development of a model ordinance to prohibit illicit discharges; and 5) assistance with education of the public on the hazards associated with illegal discharges (to be addressed as a component of the public education measure described above).

Municipal Pollution Prevention

Local governments must lead by example if they are to succeed in changing the practices and habits of businesses and residents. Toward this end, the goal of governments must be to prevent or reduce pollutant runoff from municipal operations including streets, highways, municipal parking lots, maintenance facilities, storage yards, and waste transfer stations. Agencies must also remove floatables and other pollutants discharged from storm sewers and develop procedures for proper disposal of those wastes.

Through the regional program, a regional guidance manual could be developed, to be adopted by individual entities, which would provide for cost-effective control of pollutants from a wide range of municipal operations. In addition, an expanded Internet web site, a training program and educational materials could be developed for training municipal/agency employees on the requirements and resulting benefits of the pollution prevention program.

Regional Cooperative Monitoring

Information on the quality of storm water discharges and receiving waters is the most definitive method for determining the success of a storm water management program. Baseline water quality data prior to implementation of the program followed by periodic and strategic monitoring provide a measure of program performance. Several monitoring efforts are currently underway in the Upper Trinity River Basin, including the Phase I regional monitoring program, Trinity River Authority sampling under the Clean Rivers Program, and state evaluation of TMDL impacted streams. During the early 1990's, the Phase I regional monitoring program was one of the most extensive storm water quality monitoring programs in the nation and provided the needed baseline information.

In addition to monitoring for permit compliance, the regional program could also facilitate the sharing of monitoring data among government agencies by fostering cooperation in the sample collection, quality assurance protocols, and analysis of water samples.