

MS4 General Permit Remand Rule

Mark-Up Version

November 17, 2016

EPA Note: This document shows the changes that are being made to the applicable sections of the National Pollutant Discharge Elimination System (NPDES) regulations in 40 CFR Part 122 by the final Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule. Deleted regulatory language is shown as strikethrough text (*i.e.*, ~~deleted text~~). New rule language is shown as underlined text (*i.e.*, new text).

EPA made every attempt to ensure the accuracy of this document; however, in the event of a conflict between the text included herein and the official version of the regulation published in the Federal Register, the Federal Register version controls.

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§ 122.28 General permits (applicable to State NPDES programs, see § 123.25)

(d) Small municipal separate storm sewer systems (MS4s). (Applicable to State programs). For general permits issued under paragraph (b) of this section for small MS4s, the Director must establish the terms and conditions necessary to meet the requirements of § 122.34 using one of the two permitting approaches in paragraph (d)(1) or (d)(2) of this section. The Director must indicate in the permit or fact sheet which approach is being used.

(1) Comprehensive general permit: The Director includes all required permit terms and conditions in the general permit; or

(2) Two-step general permit: The Director includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one or more of the permit requirements in § 122.34 for individual small MS4 operators.

(i) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consistent with § 122.33(b)(1)(ii).

(ii) The Director must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of § 122.34. The Director may require the small MS4 operator to submit additional information. If the Director makes a preliminary decision to authorize the small MS4 to discharge under the general permit, the Director must give the public notice of and opportunity to comment and request a public hearing on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in §§ 124.10 through 124.13 (excluding § 124.10 (c)(2)). The Director must respond to significant comments received during the comment period as provided in § 124.17.

(iii) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Director must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4.

§ 122.33 ~~If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?~~ Requirements for obtaining permit coverage for regulated small MS4s.

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(a) ~~If you operate a~~ The operator of any regulated small MS4 under § 122.32, ~~you~~ must seek coverage under a an NPDES permit issued by you ~~the applicable NPDES permitting authority.~~ If ~~you are~~ the small MS4 is located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is ~~you~~ the NPDES permitting authority. Otherwise, ~~you~~ the NPDES permitting authority is the EPA Regional Office for the Region where the small MS4 is located.

(b) ~~You~~ The operator of any regulated small MS4 must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) *General Permit.* (i) ~~If your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you seeking coverage under a general permit issued by the NPDES permitting authority in accordance with § 122.28(d)(1), the small MS4 operator must submit a Notice of Intent (NOI) to the NPDES permitting authority consistent with § 122.28(b)(2)(ii) that includes the information on your best management practices and measurable goals required by § 122.34(d).~~ ~~You~~ The small MS4 operator may file ~~your~~ its own NOI, or the small MS4 operator ~~you~~ and other municipalities or governmental entities may jointly submit an NOI. If the small MS4 operator ~~you~~ wants to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, the small MS4 operator ~~you~~ must submit an NOI that describes which minimum measures ~~it~~ ~~you~~ will implement and identify the entities that will implement the other minimum measures within the area served by the ~~your~~ MS4. The general permit will explain any other steps or information necessary to obtain permit authorization.

(ii) If seeking coverage under a general permit issued by the NPDES permitting authority in accordance with § 122.28(d)(2), the small MS4 operator must submit an NOI to the Director consisting of the minimum required information in § 122.28(b)(2)(ii), and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of § 122.34, such as the information required under § 122.33(b)(2)(i). The general permit will explain any other steps necessary to obtain permit authorization.

(2) *Individual Permit.* (i) ~~If you are seeking authorization to discharge under an individual permit and wish to implement a program under § 122.34, the small MS4 operator~~ ~~you~~ must submit an application to the appropriate ~~your~~ NPDES permitting authority that includes the information required under §§ 122.21(f) and ~~122.34(d), the following:~~

[Text in (A), (B), and (C) was moved from § 122.34(d)(1)] (A) The best management practices (BMPs) that the small MS4 operator or another entity proposes to implement for each of the storm water minimum control measures described in § 122.34(b)(1) through (b)(6);

(B) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the small MS4 operator proposes to undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the storm water management program;

(D) An estimate of square mileage served by ~~your~~ the small MS4;

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(E) Any additional information that ~~you~~ the NPDES permitting authority requests; and

(F) A storm sewer map that satisfies the requirement of § 122.34(b)(3)(i) ~~will satisfy~~ satisfies the map requirement in § 122.21(f)(7).

(ii) If ~~you are~~ seeking authorization to discharge under an individual permit ~~and wish to~~ implement a program that is different from the program under §122.34, the small MS4 operator you will need ~~must~~ to comply with the permit application requirements ~~of~~ in § 122.26(d). The small MS4 operator must ~~You must~~ submit both parts of the application requirements in §§122.26(d)(1) and (2). The small MS4 operator must submit the application at least 180 days before the expiration of the small MS4 operator's existing permit by March 10, 2003. You do not need to submit the ~~i~~ Information required by §§ 122.26(d)(1)(ii) and (d)(2) regarding its ~~your~~ legal authority is not required, unless the small MS4 operator you intends for the permit writer to take such information into account when developing ~~your~~ other permit conditions.

(iii) If allowed by the ~~your~~ NPDES permitting authority, the small MS4 operator you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If the regulated ~~your~~ small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have the small MS4 operator you participate in its storm water program, ~~you and the other MS4~~ the parties may jointly seek a modification of the other MS4 permit to include the small MS4 operator you as a limited co-permittee. As a limited co-permittee, the small MS4 operator you will be responsible for compliance with the permit's conditions applicable to its ~~your~~ jurisdiction. If the small MS4 operator you chooses this option it you will need to ~~must~~ comply with the permit application requirements of §122.26, rather than the requirements of § 122.33(b)(2)(i) ~~122.34~~. The small MS4 operator you does not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The small MS4 operator you may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance for paragraph (b)(3) of this section: In referencing ~~an~~ the other MS4 operator's storm water management program, the small MS4 operator you should briefly describe how the existing program plan will address discharges from the ~~your~~ small MS4 or would need to be supplemented in order to adequately address the ~~your~~ discharges. The small MS4 operator you should also explain its ~~your~~ role in coordinating storm water pollutant control activities in the ~~your~~ MS4, and detail the resources available to the small MS4 operator you to accomplish the program plan.

(c) If the ~~you~~ operate a regulated small MS4:

~~(1) Designated under §122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the~~

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~~NPDES permitting authority has established a phasing schedule under §123.35(d)(3) of this chapter.~~

~~(2) is~~ is ~~designated~~ under § 122.32(a)(2), ~~the small MS4 operator you~~ must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice of such designation, unless the NPDES permitting authority grants a later date.

§122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require? Permit requirements for regulated small MS4s.

(a) General requirements. ~~Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed~~ For any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under §122.26(d). Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions). ~~For the purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to §122.33 constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable.”~~ Your NPDES permitting authority will

(1) For permits providing coverage to any small MS4s for the first time, the NPDES permitting authority may specify a time period of up to 5 years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs. ~~you to develop and implement your program~~

(2) For each successive permit, the NPDES permitting authority must include terms and conditions that meet the requirements of this section based on its evaluation of the current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information.

(b) Minimum control measures. The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in paragraphs (1) through (6) of this paragraph during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describes in detail how the

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permittee intends to comply with the permit's requirements for each minimum control measure.

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

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: The permittee ~~You~~ may use storm water educational materials provided by the ~~your~~ State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the permit require the permittee to tailor the public education program ~~be tailored~~, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that the permit require that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. The permit should ~~You are~~ encouraged the permittee to tailor the ~~your~~ outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) The permit must identify the minimum elements and require implementation of ~~You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing~~ a public involvement/ participation program that complies with State, Tribal, and local public notice requirements.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit include provisions addressing the need for the public to be included in developing, implementing, and reviewing ~~your~~ the storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing

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programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) The permit must identify the minimum elements and require the development, implementation, and enforcement of ~~You must develop, implement and enforce~~ a program to detect and eliminate illicit discharges (as defined at § 122.26(b)(2)) into ~~the your~~ small MS4. At a minimum, the permit must require the permittee to:

~~(ii) You must:~~

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

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

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

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

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

~~(iv~~ iii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit require the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends that the permit require the permittee to visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

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

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

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

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

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

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

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

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

(iii) Guidance for NPDES permitting authorities and regulated small MS4s: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that the procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. EPA also recommends that the permit require the permittee to ~~You are encouraged to~~ provide appropriate educational and training measures for construction site operators, and require ~~You may wish to require~~ a storm water pollution prevention plans for construction sites within the MS4's your jurisdiction that discharge into the your system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The ~~NPDES permitting authority~~ NPDES permitting authority may recognize that another government entity, including the ~~permitting authority~~

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NPDES permitting authority, may be responsible for implementing one or more of the minimum measures on the permittee's ~~your~~ behalf.)

(5) *Post-construction storm water management in new development and redevelopment.* (i) The permit must identify the minimum elements and require the development, implementation, and enforcement of ~~You must develop, implement, and enforce~~ a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the ~~your~~ small MS4. The permit ~~Your program~~ must ensure that controls are in place that would prevent or minimize water quality impacts. At a minimum, the permit ~~You~~ must require the permittee to:

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

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

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

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the permit ensure that BMPs included in the program chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. ~~In choosing appropriate BMPs,~~ EPA encourages the permittee ~~you~~ to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that the permit require the permittee to ~~you~~ adopt a planning process that identifies the municipality's program goals (*e.g.*, minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (*e.g.*, adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing the ~~your~~ program, the permit should also require the permittee to assess ~~you should consider assessing~~ existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, the permit should require the permittee to ~~you should~~ provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality

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impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that the permit you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that the permit you requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.* (i) The permit must identify the minimum elements and require the development and implementation of ~~You must develop and implement~~ an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the your State, Tribe, or other organizations, the your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit address the following: ~~at a minimum, you consider the following in developing your program:~~ maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

~~[Text in (c) moved below to (e)](e) *Qualifying local program.* If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.~~

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~~(d)(1) In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information:~~

~~[Text in (i), (ii), and (iii) moved to §122.33(b)(2)(i)](i) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;~~

~~(ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and~~

~~(iii) The person or persons responsible for implementing or coordinating your storm water management program.~~

~~(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.~~

~~(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.~~

~~(e c) *Other applicable requirements.* As appropriate, the permit will include: (1) You must comply with any More stringent effluent limitations in your permit terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis, or where the Director. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations terms and conditions are needed to protect water quality.~~

~~(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in §122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.~~

~~(f)(2) You must comply with other Other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§122.41 through 122.49.~~

~~(g d) *Evaluation and assessment requirements.* (1) *Evaluation.* You must The permit must require the permittee to evaluate compliance with the terms and conditions of the permit program~~

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~~compliance, including the appropriateness effectiveness of the components of its your identified best management practices storm water management program, and progress the status towards of achieving your identified~~ the measurable requirements in the permit goals.

NOTE TO PARAGRAPH ~~(g)~~(d)(1): The ~~NPDES permitting authority~~ NPDES permitting authority may determine monitoring requirements for ~~the permittee you~~ in accordance with State/Tribal monitoring plans appropriate to your the watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* ~~The permit must require that the permittee keep You must keep~~ records required by the NPDES permit for at least 3 years. ~~You must and submit such your~~ records to the NPDES permitting authority ~~only~~ when specifically asked to do so. ~~You must make your~~ The permit must require the permittee to make records, including a written description of ~~the your~~ storm water management program, available to the public at reasonable times during regular business hours (see §122.7 for confidentiality provision). ~~(You~~ The permittee may assess a reasonable charge for copying. The permit may allow the permittee to ~~You may~~ require a member of the public to provide advance notice.)

(3) *Reporting.* Unless ~~you~~ the permittee is relying on another entity to satisfy ~~your~~ its NPDES permit obligations under § 122.35(a), ~~you~~ the permittee must submit annual reports to the NPDES permitting authority for ~~your~~ its first permit term. For subsequent permit terms, ~~you~~ the permittee must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. As of December 21, 2020 all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the NPDES permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. ~~Your~~ The report must include:

(i) The status of compliance with permit terms and conditions, ~~an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;~~

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities the permittee you plan proposes to undertake to comply with the permit during the next reporting cycle;

(iv) Any changes made during the reporting period to the permittee's storm water management program in any identified best management practices or measurable goals for any of the minimum control measures; and

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(v) Notice that the permittee is ~~you are~~ relying on another governmental entity to satisfy some of the ~~your~~ permit obligations (if applicable), consistent with § 122.35(a).

(e) Qualifying local program. If an existing qualifying local program requires the permittee ~~you~~ to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in ~~your~~ the NPDES permit that direct the permittee ~~you~~ to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

§ 122.35 May the ~~As an operator of a regulated small MS4,~~ may I share the responsibility to implement the minimum control measures with other entities?

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

(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on ~~your~~ the permittee's behalf. In the reports, ~~you~~ the permittee must submit under § 122.34(g d)(3), ~~you~~ the permittee must also specify that ~~you~~ it is relying ~~rely~~ on another entity to satisfy some of ~~your~~ the permit obligations. If ~~you~~ the permittee ~~is~~ are relying on another governmental entity regulated under section 122 to satisfy all of ~~your~~ the permit obligations, including ~~your~~ the obligation to file periodic reports required by § 122.34(g d)(3), ~~you~~ the permittee must note that fact in ~~your~~ its NOI, but ~~you~~ are ~~the permittee~~ is not required to file the periodic reports. ~~You~~ The permittee remains responsible for compliance with ~~your~~ the permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages ~~you~~ the permittee to enter into a legally binding agreement with that entity if ~~you~~ the permittee wants to minimize any uncertainty about compliance with ~~your~~ the permit.

[Subsection (b) unchanged, omitted here]