

## Stormwater Frequently Asked Questions

The following is a list of Frequently Asked Questions for Stormwater organized from general questions about the NPDES Program to more technical questions about Stormwater. Click [here](#) to search for other program-specific FAQs or to display a list of all NPDES FAQs. Please check back periodically for updates!

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### What is the National Pollutant Discharge Elimination System (NPDES) Stormwater Program?

Polluted stormwater runoff is a leading cause of impairment to the nearly 40 percent of surveyed U.S. water bodies which do not meet water quality standards. Over land or via storm sewer systems, polluted runoff is discharged, often untreated, directly into local water bodies. When left uncontrolled, this water pollution can result in the destruction of fish, wildlife, and aquatic life habitats; a loss in aesthetic value; and threats to public health due to contaminated food, drinking water supplies, and recreational waterways.

Mandated by Congress under the Clean Water Act, the NPDES Stormwater Program is a comprehensive two-phased national program for addressing the non-agricultural sources of stormwater discharges which adversely affect the quality of our nation's waters. The program uses the National Pollutant Discharge Elimination System (NPDES) permitting mechanism to require the implementation of controls designed to prevent harmful pollutants from being washed by stormwater runoff into local water bodies.

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### **What is required of regulated entities under the NPDES Stormwater Program?**

The regulated entities must obtain coverage under an NPDES stormwater permit and implement stormwater pollution prevention plans (SWPPPs) or stormwater management programs (both using best management practices (BMPs)) that effectively reduce or prevent the discharge of pollutants into receiving waters.

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### **Whom should entities regulated under the NPDES Stormwater Program contact to obtain permit coverage?**

Regulated entities should contact their [NPDES permitting authority](#), which will be either their state or EPA Regional Office, depending on the type of entity and its location. For regulated entities located in areas where EPA is the NPDES permitting authority, all information and forms needed to obtain permit coverage are available through visiting any one of the three regulated stakeholder areas (MS4s, industrial activity, construction activity) or the Resources section of this web site.

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### **What kinds of stormwater discharges are required to have NPDES stormwater permit coverage?**

The NPDES stormwater permit regulations, promulgated by EPA, cover the following classes of stormwater discharges on a nationwide basis:

- Operators of MS4s located in "urbanized areas" as delineated by the Bureau of the Census,
- Industrial facilities in any of the 11 categories that discharge to an MS4 or to waters of the United States; all categories of industrial activity (except construction) may certify to a

condition of "no exposure" if their industrial materials and operations are not exposed to stormwater, thus eliminating the need to obtain stormwater permit coverage,

- Operators of construction activity that disturbs 1 or more acres of land; construction sites less than 1 acre are covered if part of a larger plan of development.

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### **Construction: Who must seek permit Coverage Under an EPA construction General Permit?**

See [Stormwater Phase II Final Rule-Small Construction Program Overview](#) (5 pp, 299K, [About PDF](#)) (Fact Sheet 3.0) for more information on both the small and large construction programs.

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### **Construction: What types of construction activities are regulated under the construction stormwater permit program?**

All construction activities 1 acre or larger must obtain permit coverage. Construction activities less than 1 acre must also obtain coverage if they are part of a larger common plan of development or sale that totals at least 1 acre. Small construction activities, i.e., less than 5 acres, may qualify for a waiver. For more information on the waiver see <http://cfpub.epa.gov/npdes/stormwater/waiver.cfm>.

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### **Construction: Is the oil and gas industry required to apply for construction stormwater permit coverage?**

Oil and gas industry construction activities that disturb more than five acres of land are required to apply for permit coverage. EPA has postponed until March 10, 2005, the permit application date for oil and gas construction activity that disturbs one of five acres, i.e., those covered under the Phase II rule. State permitting authorities may require small oil and gas construction activities to obtain permit coverage immediately.

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### **Construction: Who is responsible for applying for a construction stormwater permit?**

The operator is responsible for applying for the permit as required by 40 CFR 122.21(b). The operator is the person who has operational control over construction plans and specifications, and/or the person who has day-to-day supervision and control of activities occurring at a construction site. In some cases, the operator may be the owner or the developer, in other cases the operator may be the general contractor, in some cases both entities will be considered operators. Some States require a single entity, usually the land owner or easement holder, to be the permittee for a given construction project. Other States and EPA require all relevant entities to obtain permit coverage, as co-permittees, for a given construction project. Contact your permitting authority for clarification on who must apply.

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### **Construction: What is meant by a "larger common plan of development or sale?"**

A "larger common plan of development or sale" is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a larger common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than one acre by separate, independent builders, this activity still would be subject to stormwater permitting requirements if the smaller plots were included on the original site plan. The larger common plan of development or sale also applies to other types of land development such as industrial parks or well fields. A permit is required if 1 or more acres of land will be disturbed, regardless of the size of any of the individually-owned or developed sites.

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### **Construction: What waivers are available for Stormwater Phase II construction activity?**

Under the Stormwater Phase II Rule, NPDES permitting authorities have the option of providing a waiver from the requirements to operators of "small" construction activity who could certify to one of two conditions:

1. Low predicted rainfall potential (i.e., activity occurs during a negligible rainfall period), where the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation (RUSLE)) is less than 5 during the period of construction activity.
2. A determination that stormwater controls are not necessary based on either: (A) Total Maximum Daily Load (TMDL) approved or established by EPA that addresses the pollutant(s) of concern for construction activities; or (B) For non-impaired waters that do not require

TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.

Note: Waivers are not available for any construction activity disturbing 5 acres or greater, or less than 5 acres if part of a common plan of development or sale (or if designated for permit coverage by the NPDES permitting authority).

See the [Stormwater Construction General Permit](#) page for more information on waivers.

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#### **MS4: What is a Municipal Separate Storm Sewer System (MS4)?**

The regulatory definition of an MS4 (40 CFR 122.26(b)(8)) is "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created to or pursuant to state law) including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

In practical terms, operators of MS4s can include municipalities and local sewer districts, state and federal departments of transportation, public universities, public hospitals, military bases, and correctional facilities. The Stormwater Phase II Rule added federal systems, such as military bases and correctional facilities by including them in the definition of small MS4s.

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#### **MS4: Which MS4s are regulated by the NPDES Stormwater Program?**

For regulatory purposes, EPA's NPDES Stormwater Program regulates "medium," "large," and "regulated small MS4s."

A medium MS4 is a system that is located in an incorporated place or county with a population between 100,000 – 249,999.

A large MS4 is a system that is located in an incorporated place or county with a population of 250,000 or more.

In addition, some MS4s that serve a population below 100,000 have been brought into the Phase I program by an NPDES permitting authority and are treated as medium or large MS4s, independent of the size of the population served.

A **regulated** small MS4 is any small MS4 located in an "urbanized area" (UA), as defined by the Bureau of the Census, or located outside of a UA and brought into the program by the NPDES permitting authority.

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#### **MS4: What is an Urbanized Area (UA)?**

UAs constitute the largest and most dense areas of settlement. UA calculations delineate boundaries around these dense areas of settlement and, in doing so, identify the areas of concentrated development. UA designations are used for several purposes in both the public and private sectors. For example, the federal government has used UAs to calculate allocations for transportation funding, and planning agencies and developers use UA boundaries to help ascertain current, and predict future, growth areas.

The Bureau of the Census determines UAs by applying a detailed set of published UA criteria (see 55 FR 42592, October 22, 1990) to the latest decennial Census data. Although the full UA definition is complex, the Bureau of the Census' general definition of a UA, based on population and population density, is provided below.

An urbanized area is a land area comprising one or more places -- central place(s) -- and the adjacent densely settled surrounding area -- urban fringe -- that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.

Note: The Bureau of the Census proposed a change in the definition of an urbanized area (see 66 FR 17018, March 28, 2001). A summary of the differences between the Census 1990 UA criteria and the 2000 UA criteria can be viewed at the [Census Bureau website](#) [EXIT Disclaimer](#).

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#### **MS4: Is a permit required for regulated MS4s?**

Yes. A National Pollutant Discharge Elimination System (NPDES) permit must be obtained by the operator of an MS4 covered by the NPDES Stormwater Program.

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#### **MS4: Does a particular MS4 lie within an urbanized area?**

For more information about UAs and how to determine if your MS4 is in a UA, see [Stormwater Urbanized Area Maps](#).

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#### **Industrial: To which industrial facilities does the Stormwater Multi-Sector General Permit (MSGP) apply?**

Operators of industrial facilities requiring an NPDES Stormwater Permit are eligible to obtain coverage under the MSGP if their activities are included within one of 29 industrial sectors AND the facility is located in an area where EPA is the NPDES permitting authority. Where an authorized state is the permitting authority, operators of regulated industrial operations should apply to the state for industrial stormwater permit coverage.

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#### **Industrial: How does an industrial facility operator determine whether they need to obtain an NPDES Stormwater Permit?**

Step 1. Determine whether the facility or site discharges to a municipal separate storm sewer system (MS4) or to waters of the United States. If it discharges to one or both, proceed to Step 2, otherwise no permit is needed.

Step 2. Determine if the facility's industrial activities are listed among the eleven Categories of Industrial Activities, provided in the federal regulations at 40 CFR 122.26(b)(14) or if the facility's SIC code falls within one of the [sector/subsectors identified](#). If its activities are listed, proceed to Step 3, otherwise no permit is needed.

Step 3. Determine if the listed facility or site may qualify for the ["no exposure" exclusion](#) under the federal regulations at 40 CFR 122.26(g).

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**Industrial: How does a permitted stormwater facility operator terminate coverage?**

A Notice of Termination (NOT) form for Industrial Activity must be submitted to EPA's NOI Processing Center (address identified on the NOT form) in order to terminate coverage. Permittees may submit an NOT when their facility no longer has any stormwater discharges associated with industrial activity as defined at 40 CFR 122.26(b)(14), or when they are no longer the operator of the facility.