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Second Wave of Federal Stormwater Rules to Soak Small Towns Nationwide

By Ralph Vasquez

A new wave of federal stormwater regulations -- 12 years in the making -- is coming to a town nearest you. And with the deadline for compliance merely months away, targeted municipalities are scrambling to get sufficient programming in place.

Since 1990, municipalities nationwide have operated under the National Pollutant Discharge Elimination System (NPDES) stormwater program, part of the federal Clean Water Act. When the program initially was implemented, commercially available management systems designed to run stormwater programs did not exist.

In early 1998, the EPA proposed the "Phase II" regulations of the NPDES program to expand permitting requirements for certain urbanized areas and construction sites. By March 10, 2003, municipalities falling under the

Phase II umbrella must have compliant stormwater programs in place or face potential enforcement from the EPA.

Phase II affects more than 8,000 municipal and county governments across the U.S., specifically:

- small municipal separate storm sewer systems (MS4s), which generally serve populations of less than 100,000;
- industrial activities operated by a municipality smaller than 100,000;
- any construction activity disturbing between one and five acres

Who Receives an MS4 Designation?

Phase II requires nationwide compliance by all operators of small MS4s located within the boundaries of "urbanized areas." An urbanized area is a land area comprising one or more locales with a total a residential population of at least 50,000, and an overall population density of at least 1,000 people per square mile.

A typical MS4 is a conveyance or system of conveyances designed or used for col-

lecting or carrying stormwater. MS4s can include roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains. They generally are owned or operated by a state, city, borough, Indian tribe, governmental agency, or other public entity.

Small MS4 owners can include state departments of transportation, local sewer districts, universities, hospitals, military bases, prisons, and other institutional facilities. By December 9, 2002, NPDES permitting authorities are required to evaluate small MS4s -- serving populations of at least 10,000 and with population densities of at least 1,000 people per square mile -- for potential designation as a Phase II regulated system.

Although Phase II designation criteria will vary from state to state, key factors include potential for pollutant discharge, population density, growth potential, contiguity to an urbanized area, and determination of ineffective pollutant protection.

Are Waivers Possible for Phase II Requirements?

Two waiver options are available to operators of designated MS4s. However, they must be granted by an NPDES permitting authority by the same December 9, 2002 "cut-off" date.

The first option applies to MS4s located in urbanized areas serving a population of less than 1,000. The permitting authority must determine that the system is not substantially contributing to pollutant loadings of an interconnected MS4 or water body.

The second option addresses MS4s serving a population of less than 10,000. The permitting authority must determine that stormwater control for pollutant loadings from the MS4 are not needed to comply with water quality standards for current or potential future MS4 discharges.

Required Control Measures

Small MS4s that do not qualify for Phase II waivers must submit Notice of Intent (NOI) forms for coverage under the NPDES Permit by March 10, 2003. Furthermore, targeted MS4s must develop stormwater management plans that incorporate Phase II's six required control measures: public education and outreach, public participation and involvement, illegal discharge detection and elimination, construction site runoff control, pollution prevention or "good housekeeping" measures. A narrative of measurable goals, a schedule of implementation, and a list of responsible

persons must accompany each of the six required control measures.

Who Can Help?

The EPA has developed a "tool box" to assist MS4 owners and operators subject to the Phase II rule. The tool box includes fact sheets, guidance documents, a menu of BMPs, training and outreach efforts, technical research, an information "clearing house," and compliance monitoring and assistance tools. The tool box can be obtained through the EPA's website at www.epa.gov.

For compliance assistance, local governments can contact the Local Government Assistance Network at 1-877-TO-LGEAN, or through its website at www.lgean.org. Also, the American Public Works Association has developed a guidance document, "Designing and Implementing an Effective Storm Water Management Program (2002)," which can be found at www.apwa.net.

For direct one-on-one help, municipalities may want to consider working with a qualified environmental consultant. A number of environmental consulting firms have on-staff storm water specialists who are experienced and trained to evaluate MS4s for applicability to the Phase II rule. A specialist also can assist with submittal of the NOI form to the permitting authority, as well as help to implement required control measures.

Phase II of the NPDES stormwater program represents the next logical step in the Clean Water Act for addressing non-point source pollution problems. Taking a proactive approach is critical. By doing so, targeted municipalities can breathe a sigh of relief come the March 10, 2003 deadline. In addition to avoiding costly penalties, municipalities will be doing their part to help keep our nation's waters clean.

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