

## NPDES MS4 PERMITS FREQUENTLY ASKED QUESTIONS (FAQs)<sup>1</sup>

### General

#### 1. What is a “Municipal Separate Storm Sewer System (MS4)”?

An MS4 is a conveyance or system of conveyances that is:

- a. Owned by a state, city, town, village, or other public entity that discharges to waters of the Commonwealth;
- b. Designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.);
- c. Not a combined sewer; and
- d. Not part of a Publicly Owned Treatment Works (sewage treatment plant).

#### 2. What is a small MS4?

A small MS4 is defined as “All separate storm sewer systems that are:

- a. Owned or operated by the US, a State, city, town, borough, city, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law, such as a sewer district, flood control district or drainage district, or similar entity;
- b. Not defined as “large” or “medium” MS4s pursuant to 40 CFR §§122.26(b)(4) and (7), or designated under 40 CFR § 122.26(a)(1)(v);
- c. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways or other thoroughfares.”

#### 3. What is a regulated small MS4?

A regulated small MS4 as defined in PAG-13 is the portion of a small MS4 located within a designated Urbanized Area (UA) or a small MS4 that is specifically designated by DEP.

Federal regulations (see 64 FR 235, December 8, 1999, Page 68838) require operators of small MS4s within designated UAs to obtain authorization to discharge stormwater under a National Pollutant Discharge Elimination System (NPDES) permit beginning on March 10, 2003.

UA is based upon the US Census Bureau data in accordance with 40 CFR 122.28(a)(1)(vi) and is “a land area comprised of a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.”

#### 4. How do I determine if my small MS4 is regulated?

Not all small MS4s are regulated. Small MS4s are designated as regulated by either:

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<sup>1</sup> **DISCLAIMER:** The questions and answers outlined in this document are intended to supplement existing MS4 regulatory requirements. Nothing in this document shall affect these regulatory requirements. The information provided herein are not an adjudication or a regulation. The Department of Environmental Protection (DEP) reserves the discretion to vary from this supplemental information as circumstances warrant.

- a. The Environmental Protection Agency's (EPA's) Automatic Nationwide Designation – all small MS4s located in Urbanized Areas as defined by the Bureau of the Census.
- b. Discretionary designation by DEP.

Please see the EPA Urbanized Area map webpage (<http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm>) to see if all or part of a municipality is located within an Urbanized Area. If you are still unsure, you may ask DEP if your municipality has a regulated small MS4.

**5. How do I determine if my regulated small MS4 is eligible for the NPDES PAG-13 General Permit?**

See “General Permit Eligibility” in the Authorization to Discharge Section of the PAG-13 General Permit.

**6. How do I determine if my regulated small MS4 requires an Individual Permit Application submission?**

Any NPDES MS4 permit applicant that does not satisfy the requirements in “General Permit Eligibility” in the Authorization to Discharge Section of the PAG-13 General Permit must submit an application for an Individual Permit.

**7. How do I determine if my regulated small MS4 is eligible for a waiver?**

See “Who is eligible to use the Request for Waiver (RFW) Forms” in the “Request for Waiver Instructions,” which is part of the PAG-13 permit package. MS4s that receive waivers must submit a renewal application for a waiver at least 180 days prior to the expiration date of the waiver or otherwise every 5 years.

**8. If my regulated small MS4 is eligible for a waiver and I submit a waiver request, must I also submit an NOI or Individual Permit Application?**

Yes, you must submit your waiver request together with your NOI or Individual Permit application by the application due date along with the applicable fee. You must submit both the waiver request and the NOI or Individual Permit application for DEP to act on the waiver request.

**9. My municipality has only a small portion within the Urbanized Area (UA). Is my small MS4 still regulated?**

Yes, but if your small MS4 is not located entirely within an UA, only the portion that is within the UA is regulated.

**10. What are Stormwater Best Management Practices (BMPs)?**

For purposes of the NPDES permitting program, stormwater BMPs are defined in the NPDES permit as: “Schedules of activities, prohibitions of practices, structural controls (e.g., infiltration trenches), design criteria, maintenance procedures, and other management practices to prevent or reduce pollution to the waters of the Commonwealth. BMPs include Erosion and Sedimentation Control Plans, Post Construction Stormwater Management Plans, MS4 TMDL Plans, Stormwater Management Act Plans, and other treatment requirements, operating procedures and practices to control runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, and methods to reduce pollution, to recharge groundwater, to enhance stream base flow and to reduce the threat of flooding and stream bank erosion.”

**11. What must I do to meet the requirements of the MS4 permit?**

The general requirement is to develop and implement a Stormwater Management Program (SWMP) of Best Management Practices (BMPs) to reduce the discharge of pollutants from your regulated small MS4 to the Maximum Extent Practicable (MEP). The six (6) Minimum Control Measures (MCMs) are: Public Education & Outreach; Public

Participation/Involvement; Illicit Discharge Detection & Elimination; Construction Site Runoff Control; Post-Construction Runoff Control; and Pollution Prevention/Good Housekeeping. Each MCM requires implementation of BMPs to meet Measurable Goals according to an approved schedule. Annual or periodic reports are also required. In addition, an appropriate stormwater management ordinance must be adopted to provide local regulation of development and activities that may affect stormwater runoff. There are additional requirements for small regulated MS4s that discharge to impaired waters with approved TMDLs, impaired waters without approved TMDLs, and watersheds draining to the Chesapeake Bay.

## 12. How do I determine the receiving waters for my permit?

A topographic map can be reviewed to determine streams flowing through the regulated area (e.g., Urbanized Area, municipal boundary, and MS4). eMapPA is an online map feature that can be utilized to determine receiving waters. To determine receiving waters through eMapPA, go to: <http://www.emappa.dep.state.pa.us/>.

## 13. How long is my permit or permit waiver valid?

Permit coverage is valid for five (5) years from the effective date of the Approval of Coverage. Permit waivers are valid for 5 years from the date of approval of the waiver. Both permits and waivers must be renewed every 5 years, and applications or Notices of Intent (NOIs) along with applicable fees must be submitted at least 180 days prior to the permit or waiver expiration date. If the permit expires but an application to renew permit coverage was submitted in a timely manner, the permit may be administratively continued until DEP is able to renew coverage.

## 14. What stormwater flows and pollutant loads am I responsible for under the permit?

MS4s are, under the PAG-13 General Permit or an individual NPDES permit, responsible for the stormwater flow and associated pollutant load that are generated within and enter the permittee-owned MS4 and are discharged to downstream storm sewers or waters of the Commonwealth. Below are some practical examples that may help illustrate this concept.

- **Example 1** – A Homeowner’s Association (HOA) is within the UA of an MS4. The streets are owned by the HOA. Stormwater flows through the streets and swales to a stream. Is the flow the responsibility of the MS4? *No, because the flow is not conveyed by nor does it enter upon municipally-owned property; the HOA’s streets and swales are not part of the MS4.*

Would the answer change if the area was served by separate storm sewers? *If the storm sewers are publicly-owned, then yes, the stormwater would be the responsibility of the MS4. If the storm sewers are privately-owned, then the stormwater is not the responsibility of the MS4.*

- **Example 2** – A large shopping mall is located within the UA of a municipality and discharges stormwater to the MS4. Is the MS4 responsible for the stormwater flows and loads from the shopping mall? *Yes, unless the mall is designated by DEP as an MS4. DEP has the authority under federal regulations to designate “non-traditional” MS4s if warranted.*
- **Example 3** – A municipality contains a UA that includes state highways, a university and an industrial facility. The stormwater discharges from all of these facilities have NPDES permit coverage already, and discharge directly to waters of the Commonwealth. Is the municipal MS4 responsible for the stormwater discharged by these facilities? *No.*

Would the answer change if the discharges were to the municipality’s MS4 instead of directly to waters of the Commonwealth? *The MS4 would be responsible for managing the stormwater flow. The quality of the stormwater flowing to the MS4 is the responsibility of the NPDES-permitted entities. Such entities would need to comply with their NPDES permits and with municipal ordinances.*

- **Example 4** – An upstream MS4 connects to a downstream MS4. There are no discharges to waters of the Commonwealth from the upstream MS4. Which municipality is responsible for the upstream flow and load? *The downstream municipality is responsible for managing all stormwater conveyed through its MS4. However, the*

*pollutant load associated with the upstream municipality's discharge cannot generally be controlled by the downstream municipality. If the downstream MS4 discharges to waters with an approved TMDL and there are WLA(s) in the TMDL for stormwater, in general the upstream municipality will be required to control loads discharged to the downstream MS4 in order to achieve the WLA(s).*

**NOTE** – If the upstream municipality is not designated as an MS4 but is discharging pollutants to the downstream MS4 in amounts that cause or contribute to impairment of waters of the Commonwealth, DEP may designate the upstream municipality as an MS4 and require the submission of an NPDES permit application or NOI.

- **Example 5** – A municipality owns 5% of the land area within the UA (streets, parks, municipal buildings, etc.). The TMDL has an MS4 WLA for Sediment. No other entities within the municipality discharge to storm sewers under a DEP-issued NPDES permit. How much of the WLA is the MS4 permittee responsible for? *All of the pollutant load that drains to the MS4 within the UA. The ownership of land within the UA that drains to the MS4 does not impact the permittee's responsibility, with the exception of load received from other NPDES permittees.*
- **Example 6** – An MS4 that discharges to the Chesapeake Bay Watershed is preparing a Chesapeake Bay Pollutant Reduction Plan (PRP). In the PRP, the MS4 is attempting to estimate the current pollutant load that it is responsible to manage. The MS4 receives flow from two upstream municipalities. Should the MS4 exclude the pollutant loads from the upstream municipalities? Yes.
- **Scenario 6** – A TMDL provides an overall MS4 WLA for three MS4s in a watershed but it is not broken down to reflect individual WLAs for the MS4s. Are all the MS4s in this watershed required to develop a TMDL Plan? Yes. *DEP encourages a cooperative effort between the MS4s to allocate specific WLAs.*

## Impaired Watersheds

### **15. Where can I find the legal definitions for Pollutant, Total Maximum Daily Load (TMDL), and Wasteload Allocation (WLA)?**

TMDL, WLA, and Pollutant are defined in 25 Pa. Code §96.1 as follows:

*Pollutant* — Any contaminant or other alteration of the physical, chemical, biological, or radiological integrity of surface water which causes or has the potential to cause pollution as defined in section 1 of The Clean Streams Law (35 P. S. § 691.1).

*TMDL — Total maximum daily load* — The sum of individual waste load allocations for point sources, load allocations for nonpoint sources and natural quality and a margin of safety expressed in terms of mass per time, toxicity or other appropriate measures.

*WLA — Wasteload allocation* — The portion of a surface water's loading capacity that is allocated to existing and future point source discharges.

### **16. What is a Total Maximum Daily Load (TMDL)?**

See definition above. A TMDL is a calculation of the maximum amount of a pollutant that a water body can assimilate and still meet water quality standards, and an allocation of the allowable discharge of that pollutant load among the various sources. Pollutants can include alteration of the physical, chemical, biological, or radiological integrity of a surface water that causes or has the potential to cause pollution. Pollutant sources are characterized as either point sources that receive a Wasteload Allocation (WLA) or nonpoint sources that receive a Load Allocation (LA). Point sources include all sources subject to regulation under NPDES permits, such as discharges from MS4s. Nonpoint sources include all remaining sources of the pollutant including anthropogenic (manmade) and natural background sources. TMDLs also must account for seasonal variations in water quality, and include a Margin of Safety (MOS) to account for uncertainty in the estimates of pollutant reductions necessary to meet water quality standards.

If a Wasteload Allocation (WLA) in an approved TMDL is applicable to the discharges from a regulated small MS4, the MS4 permittee must develop and submit an MS4 TMDL Plan that is consistent with the assumptions and requirements of applicable WLA(s) in the TMDL.

**17. In addition to the six (6) Minimum Control Measures, what are the MS4 permit requirements for discharges into impaired waters or into waters tributary to the Chesapeake Bay?**

Where a regulated small MS4 discharges into impaired waters, or into waters tributary to the Chesapeake Bay watershed, it must meet additional requirements, as follows:

- a. For regulated small MS4s discharging into impaired waters with an approved TMDL and with applicable Wasteload Allocation(s) (WLA(s)), the permittee must develop, submit for approval, and implement an approved MS4 TMDL Plan that is designed to achieve pollutant reductions consistent with the assumptions and requirements of applicable WLA(s) in the TMDL.
- b. Regulated small MS4s discharging into the Chesapeake Bay watershed must develop, submit for approval, and implement a Chesapeake Bay Pollutant Reduction Plan (PRP), including a schedule, to implement BMPs to reduce nitrogen, phosphorus, and sediment associated with existing stormwater discharges into regulated small MS4s discharging to receiving waters tributary to the Chesapeake Bay.
- c. MS4s discharging into impaired waters without an approved TMDL shall ensure that new discharges from the permittee's regulated small MS4s do not cause or contribute to exceedances of water quality standards. In addition, the NPDES permit requires that the permittee (1) identify outfalls that discharge to impaired waters, (2) identify additional or modified BMPs in the SWMP to ensure that new discharges do not cause or contribute to the impairment, and (3) implement such BMPs and report on the status of each in periodic reports to DEP.

**18. Why are MS4 TMDL Plans required?**

Federal regulations require that any NPDES permit issued for discharges to waters with an established TMDL must be consistent with the assumptions and requirements in WLAs in approved TMDLs (40 CFR 122.44(d)(1)). A TMDL Plan consists of a TMDL Strategy, to be submitted with the application/NOI, and TMDL Design Details, to be submitted within 12 months of the effective date of permit coverage.

- If the MS4 discharges to waters with an approved TMDL but there are no WLAs for MS4s in the TMDL, an MS4 TMDL Plan is not required at this time, but may be required in the future. The requirements for discharging to impaired waters as noted in number 17 above would apply.
- If the approved TMDL contains WLAs for MS4s but specific MS4 allocations are not identified (i.e., the WLA is assigned to an MS4 or urban stormwater sector), all MS4s in the watershed covered by the TMDL are responsible for developing a TMDL Plan. In such scenarios DEP highly encourages MS4s to work together to determine MS4-specific WLA(s) and/or develop one plan for the group of MS4s.
- If the approved TMDL contains WLAs that are specific to individual MS4s, only those MS4s with WLAs must prepare a TMDL Plan at this time (although one may be required in the future, if/when the TMDL is revised).

Also, please note that the presence of an MS4 within the Chesapeake Bay Watershed does not necessarily mean that a TMDL Plan is required. While a PRP is required for MS4s discharging to the Chesapeake Bay Watershed, a TMDL Plan is also required only if the MS4 discharges to waters with an approved TMDL containing WLA(s) for the MS4.

**19. Can an MS4 take credit in TMDL Plans or Chesapeake Bay PRPs for previously installed BMPs?**

In general, yes. For PRPs, MS4s may take credit for previously installed structural BMPs that are operational and are maintained if such BMPs were installed after 2005 (i.e., 2006 or later), which is the cutoff used by Pennsylvania in its Chesapeake Bay Tributary Strategy. For TMDL Plans, MS4s may take credit for previously installed structural BMPs that are operational and are maintained if such BMPs were installed after the TMDL approval date and were designed to reduce pollutant load(s).

## **20. What targets must be met through a TMDL Plan and by when?**

The target loads in a TMDL Plan are the WLA(s) for the pollutant(s) of concern. DEP does not expect that BMPs are implemented by specific dates, but will determine whether the schedules contained in TMDL Plans are reasonable, considering factors including but not limited to the quantity of pollutant load reduction required, and whether the MS4 is in compliance with Minimum Control Measures (MCMs) required by the permit. However, DEP expects that annual reports submitted by the permittee will demonstrate progress toward meeting the objectives of the TMDL Plan.

## **21. How do I determine if I need to submit a Chesapeake Bay Pollutant Reduction Plan (PRP)?**

If your regulated small MS4 discharges into a watershed that drains to the Chesapeake Bay, then you must prepare and submit a Chesapeake Bay Pollutant Reduction Plan within twelve (12) months after the effective date of permit coverage.

## **22. What targets must be met through a PRP and by when?**

DEP expects to develop county-wide planning level load objectives for the Chesapeake Bay TMDL parameters of concern – N, P and Sediment. When available, these objectives will be posted on DEP's website and DEP will encourage MS4s to use them as a guide in determining MS4-specific targets. Where practical, DEP also recommends that MS4s work cooperatively at a county level in developing PRPs. There is no specific deadline for implementation. However, DEP expects that annual reports submitted by the permittee will demonstrate progress toward meeting the objectives of the PRPs.

## **23. Does an MS4 that does not discharge directly to surface waters but instead discharges to a neighboring municipality's MS4 need to develop a TMDL Plan or PRP?**

If the downstream municipality has WLA(s) in an approved TMDL or if there are general WLA(s) for MS4s in the watershed, the upstream MS4 must develop a TMDL Plan to account for the load reduction needed in the upstream MS4's portion of the watershed; in other words, the upstream MS4 must take responsibility for the quality of its stormwater discharge to a neighboring MS4. If the downstream municipality discharges to waters in the Chesapeake Bay Watershed, the upstream MS4 must develop a PRP to account for the load reduction needed in the upstream MS4's portion of the watershed. DEP encourages MS4s to work cooperatively in such situations.

## **Ordinances**

### **24. Which ordinance option can I use?**

New permittees must enact and implement within the first year of permit coverage either: one (1) of the model ordinances in the MS4 permit package; an ordinance from an applicable Act 167 Stormwater Management Plan approved by DEP in 2005 or later; or an ordinance(s) that satisfies all applicable requirements in a completed and signed MS4 Stormwater Management Ordinance Checklist. The permittee must satisfy these requirements in accordance with the information provided by the permittee in the permit application.

### **25. How do renewal permittees demonstrate their existing ordinance satisfies all applicable ordinance requirements?**

Renewal permittees must continue to maintain, update, implement, and enforce a Stormwater Management Ordinance that satisfies all applicable requirements.

Permittees with a stormwater management ordinance from the 2003 NPDES MS4 permitting package or with a stormwater management ordinance implementing a DEP approved Act 167 Plan should review their ordinances using the checklist option to determine what needs to be updated in the ordinance, then fill-out the checklist after amending the ordinance if necessary. The permittee must justify the absence of provisions included in the checklist that are not in the ordinance, if they are not incorporated into an updated ordinance.

For each option, DEP suggests that the applicant submit the appropriate checklist for the option selected and have it signed by the municipal solicitor prior to submittal to DEP.

## **Compliance**

### **26. What do I need to do if I have been notified by DEP that I am in violation of the conditions of my permit?**

You must resolve the violation as soon as possible and prior to obtaining a new or renewed permit. DEP cannot issue permits, or permit renewals, to anyone in violation of a current permit until the violations have been resolved or are being resolved to the satisfaction of DEP in accordance with The Clean Streams Law (35 P.S. § 691.609). After the violation is resolved, the permit renewal can be issued. Even while working through non-compliance issues, your renewal NOI or Individual Permit Application must be submitted by the application due date (i.e., 180 days before expiration of your current permit).

### **27. I have not been notified by DEP of a violation, but I think a violation may exist.**

If you are aware that you are in violation of your current MS4 permit, you need to take action to correct the violation immediately or you may face DEP and/or EPA enforcement and may be unable to obtain a new or renewed permit.

## **New Permittees**

### **28. What is the fee to submit a Notice of Intent (NOI) or Individual Permit (IP) Application? What is the annual fee?**

The fee to submit a NOI is \$500 for new general permit coverage (PAG-13). PAG-13 has no annual fee.

The fee to submit an IP Application is \$5,000 for first-time permit applications. . At the end of each permit year, an annual fee of \$500 is charged for Individual permits.

Except for certain exempt federal and state government entities, the check must be included with the NOI or IP Application. The check must be made payable to the *Commonwealth of Pennsylvania* and the check must be dated within ten (10) days of the NOI or IP Application submittal date.

## **Renewal Permittees**

### **29. What is the fee to submit a Notice of Intent (NOI) or Individual Permit (IP) Application? What is the annual fee?**

The fee to submit a NOI is \$500 for renewal general permit coverage (PAG-13). PAG-13 coverage has no annual fee.

The fee to submit an individual permit application is \$2,500 for permit renewals. At the end of each permit year, an annual fee of \$500 is charged for Individual Permits.

Except for certain exempt federal and state government entities, the check must be included with the NOI or Individual Permit Application. The check must be made payable to the *Commonwealth of Pennsylvania* and the check must be dated within ten (10) days of the NOI or individual permit application submittal date.

If an MS4 permittee previously had permit coverage under the PAG-13 but is no longer eligible for PAG-13 coverage, it must submit an individual permit application. A fee of \$5,000 for a new individual permit is required.

**30. Must MS4 permittees update their existing Stormwater Management Programs to comply with the renewed MS4 permit?**

Yes, all MS4 permittees must review and modify their Stormwater Management Programs to ensure that they meet the requirements contained in the renewed PAG-13 or Individual Permit, as applicable.