



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY - 8 2006

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Qualifying Local Programs for Construction Site Stormwater Runoff

FROM: Benjamin H. Grumbles
Assistant Administrator

A handwritten signature in black ink, appearing to read "B. Grumbles", written over the printed name of Benjamin H. Grumbles.

TO: Robert W. Varney, Administrator
Region I

As we continue to work with our municipal partners to implement the stormwater regulations, we should take advantage of the provisions in the regulations that allow for streamlined implementation of these programs. Particularly, I want to draw your attention to the "qualifying local program" provision for the management and oversight of stormwater runoff from construction activities. This provision offers the opportunity to increase administrative efficiencies in the stormwater program by formally recognizing local construction management programs that meet or exceed the provisions in EPA's construction general permit. The recognition of qualifying local programs eases the burden on construction site operators by providing them with one set of requirements to follow.

More fully utilizing this regulatory option would further several important goals: helping the construction industry to comply with the National Pollutant Discharge Elimination System (NPDES) requirements, encouraging development of strong municipal sediment and erosion control programs, and ensuring that we are efficiently implementing the construction stormwater permitting program to protect water quality.

You will find a fact sheet attached to this memo that provides detailed information on the qualifying local programs provisions in the NPDES regulations. We encourage you to work with the regulated municipalities in the states where you are the permitting authority to make the greatest possible use of the qualifying local program concept over the next several years.

If you have questions or need more information, please call me or have your staff contact Nikos Singelis in the Water Permits Division. He can be reached at 202-564-0692 or at singelis.nikos@epa.gov.

cc: Regional Administrators
Water Division Directors
Branch Chiefs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY - 8 2008

Mr. James (Mac) McIndoe
Chief of Water Division
AL Dept. of Environmental Management
1400 Coliseum Blvd.
PO Box 30146
Montgomery, AL 36130-1463

OFFICE OF
WATER

RE: Qualifying Local Programs for Construction Site Stormwater Runoff

Dear Mr. McIndoe:

As we continue to work with our municipal partners to implement the stormwater regulations, we should take advantage of the provisions in the regulations that allow for streamlined implementation of these programs. Particularly, I want to draw your attention to the "qualifying local program" provision for the management and oversight of stormwater runoff from construction activities. This provision offers the opportunity to increase administrative efficiencies in the stormwater program by formally recognizing local construction management programs that meet or exceed the provisions in Alabama's construction general permit requirements. The recognition of qualifying local programs eases the burden on construction site operators by providing them with one set of requirements to follow.

More fully utilizing this regulatory option would further several important goals: helping the construction industry to comply with the National Pollutant Discharge Elimination System (NPDES) requirements, encouraging development of strong municipal sediment and erosion control programs, and ensuring that we are efficiently implementing the construction stormwater permitting program to protect water quality.

You will find a fact sheet attached to this memo that provides detailed information on the qualifying local programs provisions in the NPDES regulations. We encourage you to work with the regulated municipalities in Alabama to make the greatest possible use of the qualifying local program concept over the next several years.

If you have questions or need more information, please call me or have your staff contact Nikos Singelis in the Water Permits Division. He can be reached at 202-564-0692 or at singelis.nikos@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. H. Grumbles".

Benjamin H. Grumbles
Assistant Administrator

cc: Regional Administrator, Water Division Director, Branch Chief



Qualifying Local Programs for Construction Site Stormwater Runoff

The Phase II stormwater regulations included provisions that would allow for further streamlining and coordination among programs at the state and local levels, particularly relating to the regulation of construction site runoff. The “qualifying local program” provision¹ for the management and oversight of stormwater runoff from construction activities allows for such streamlining, particularly as regulated municipalities² develop and implement their programs. Under this provision, the NPDES authority (usually an authorized state agency), can formally recognize a municipal program that meets or exceeds the provisions of its own construction general permit. Under such a scenario, a construction site operator, responsible for a project within the jurisdiction of a recognized municipality, would follow that municipality’s requirements for stormwater management. Permitting authorities may also waive NOI requirements for small construction sites, further streamlining the process. More fully utilizing the qualifying local program provision will increase the administrative efficiencies in the program and simplify the requirements for construction site operators.

Background:

The promulgation of the Phase I and II stormwater regulations in 1990 and 1999, respectively, established the federal requirements for the control of stormwater runoff from construction activity. These regulations established federal requirements for permitting authorities (generally state agencies) and for municipalities.³ Permitting authorities are required to develop NPDES permits to regulate stormwater discharges associated with construction activity. Municipalities are required to develop programs to address construction site runoff within their boundaries. All of these discharges are subject to NPDES permitting requirements (CWA 402(p)).

¹ The regulations at 40 CFR 122.44(s) establishes the concept of a “qualifying local program” for construction activity. Both Phase I and II communities may be recognized as qualifying local programs and the concept may be used to address both small and large construction. The preamble to the Phase II regulations also contains some useful discussion and examples (e.g. 64 FR 68722-68777, December 8, 1999).

² The NPDES Phase I stormwater regulations cover municipalities with populations of 100,000 or more (122.26(b)(4) & (b)(7) or otherwise designated by the Director for permit coverage. The Phase II regulations cover smaller municipalities in U.S. Census designated urbanized areas (122.26(b)(16) & 122.28(a)(1)). Approximately 6,000 municipalities are covered by these regulations.

³ EPA’s NPDES regulations require permitting authorities (generally authorized states) to address stormwater discharges from construction activity (40 CFR 123.25(a)(9), 122.26(b)(14)(x), and 122.26(b)(15)). The regulations also require regulated municipalities to develop programs to address stormwater runoff from construction sites within their jurisdictions (122.26(d)(2)) & (122.34(b)(4)).

State-Level Requirements for Construction

Today, all construction sites and other activities disturbing one or more acres of land, including smaller sites that are part of a larger, common plan of development, are required to obtain NPDES permit coverage for their stormwater discharges (122.26(a)(ii)). Most states are authorized to administer the NPDES program and have issued general permits for these discharges.⁴ These state-level requirements focus on developing and implementing stormwater pollution prevention plans (SWPPPs). A short application (often called a Notice of Intent) is generally required.

Municipal-Level Requirements for Construction

In urban areas, where construction activity is concentrated, the stormwater regulations also require regulated municipalities to develop and implement programs that provide a broader level of review and oversight of construction activities. Regulated municipalities have the ability to tailor their programs to meet local needs, but, in general, the requirements imposed by municipalities on construction sites reference or mirror the requirements contained in the construction permit issued by the state. The primary responsibility of these municipalities is to review and approve the erosion and sediment control plans (that are part of the SWPPPs mentioned above) in advance of construction. The regulations also specify that local governments are to inspect sites to ensure compliance with erosion and sediment control requirements and to ensure that corrective actions are taken when needed to protect water quality. (The regulations at 122.26(a)(4) also require many construction site operators to provide basic information about their activities to permitted municipalities).

In plain English, the steps that a construction site operator would take are as follows:

A construction site operator who is developing a site outside the jurisdiction of a stormwater Phase I or II community:

- Reads the applicable NPDES construction general permit and then develops a SWPPP and begins to implement provisions of that SWPPP
- Files for NPDES permit coverage with the state permitting authority (or EPA, in unauthorized states)

A construction site operator developing a site within the jurisdiction of a stormwater Phase I or II community also:

- Checks with the municipality for any additional requirements to be included in the SWPPP
- Submits the erosion and sediment plan (or entire SWPPP) to the municipality for review and approval

⁴ EPA is the permitting authority in MA, NH, NM, ID, AK, PR, DC, all territories except the U.S. Virgin Islands, most Indian country lands, and for federal facilities in CO, DE, VT, and WA.

Discussion:

A number of municipalities had strong stormwater or sediment and erosion control programs that pre-dated the NPDES Phase I and II stormwater regulations. However, most municipalities, particularly the smaller municipalities included in Phase II, did not. EPA's stormwater regulations were developed to accommodate this wide range of experience and expertise. To recognize those municipalities with strong stormwater programs or those that would develop them in the future, the "qualifying local program" concept was included in the regulations (122.44(s)). To accommodate those communities with less advanced programs, all regulated municipalities covered by the Phase II requirements have five years (generally until 2008) to develop and fully implement their stormwater management programs.

The stormwater regulations (122.44(s)) provide authority for NPDES permitting authorities to recognize Phase I and Phase II MS4 construction programs that meet or exceed a state's construction program (or EPA program in unauthorized states). When a local sediment and erosion control program meets the requirements in 122.44(s), the state may incorporate that program by reference in its permit for construction activities. In such a case, the local program is then a "qualifying program" and construction site operators' compliance with the local requirements constitutes compliance with the state's NPDES permit requirements. State (or EPA) permitting authorities can further streamline the process by waiving NOI requirements for small construction sites (122.28(b)(2)(v)). We encourage each state (or EPA) NPDES authority to exercise this option when a municipal construction program has been recognized as a qualifying local program.

The regulations provide a great deal of flexibility to permitting authorities regarding the design and implementation of the qualifying program provisions. State, tribal or local programs can be considered qualifying if they meet the minimum requirements outlined in the regulations (122.44)(s)).

Implementation:

Permitting authorities should focus on Phase I and II communities with programs that meet or exceed the relevant requirements and have the institutional capacity to take on these responsibilities. Permitting authorities should carefully review each potential qualifying local program and incorporate provisions in their permits. Further, permitting authorities should utilize the annual reporting process and their general role in overseeing regulated municipal stormwater programs to improve municipal construction management programs to the point that they can be recognized as qualifying local programs.

EPA Headquarters is working on several projects that should help clarify and advance the "Qualifying Local Program" concept, including:

- Several states have already implemented the qualifying local program concept. A brief summary of these existing examples will be developed in the near future to provide further guidance as permitting authorities develop their own policies and procedures for implementing this concept.
- An outreach effort to enlist the help of local building departments in educating

contractors about the NPDES stormwater requirements. This effort will include information on how local governments can work with their NPDES authorities on becoming “qualifying local programs.”

- Training for stormwater communities, particularly Phase II communities, on developing their stormwater management programs. These workshops generally include a half-day detailed session on developing and implementing a construction program.

If you need more information on qualifying local programs, please contact Nikos Singelis at 202-564-0692 or singelis.nikos@epa.gov.