

WY Laramie
 WY Rock Springs
 WY Sheridan

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. In § 122.26, revise paragraphs (a)(9), (b)(4)(i), (b)(7)(i), (b)(8)(i), (b)(14) introductory text, (b)(14)(xi); redesignate paragraph (b)(15) as paragraph (b)(17) and add new paragraphs (b)(15) and (b)(16); revise paragraph (c) heading, paragraphs (c)(1) introductory text first sentence, (c)(1)(i) introductory text, (c)(1)(i)(C) first sentence, (c)(1)(i)(E) introductory text, (c)(1)(ii) first sentence of introductory text, (e)(1)(ii); add paragraph (e)(1)(iii); revise paragraphs (f)(4), (f)(5), and (g) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, owners or operators shall be required to obtain a NPDES permit if:

(A) The discharge is from a small municipal separate storm sewer system required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with other activity pursuant to paragraph (b)(15) of this section;

(C) The Director determines that storm water controls are needed for the discharge based on:

(1) Wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of concern; or

(2) A comprehensive watershed plan, implemented for the waterbody, that includes the equivalents of TMDLs, and addresses the pollutants of concern; or

(D) The Director determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Owners or operators of municipal separate storm sewer systems designated pursuant to paragraphs

(a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section, shall seek coverage under an NPDES permit in accordance with §§ 122.33 through 122.35. Owners or operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section, shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Owners or operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section, shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter).

* * * * *

(b) * * *

(4) * * *

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (appendix F of this part); or

* * * * *

(7) * * *

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (appendix G of this part); or

* * * * *

(8) * * *

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, 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 CWA that discharges to waters of the United States;

* * * * *

(14) For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual

treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

* * * * *

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25;

* * * * *

(15) *Storm water discharges associated with other activity* means the discharge from any conveyance used for collecting and conveying storm water that needs to be regulated to protect water quality. For the categories of facilities identified in this paragraph, the term includes the entire facility except areas located at the facility separated from the plant's operational activities. Such separated areas may include office buildings and accompanying parking lots, as long as the drainage from the separated areas is not mixed with storm water drained from the plant's operational activities. The following types of facilities or activities are sources of "storm water discharges associated with other activity" for the purposes of this paragraph:

(i) *Construction activities.* (A) Construction activities including clearing, grading, and excavating activities that result in land disturbance of equal to or greater than one acre and less than five acres. Sites disturbing less than one acre are included if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one and less than five acres. The NPDES permitting authority may waive the otherwise applicable requirements for a storm water discharge from construction activities that disturb less than five acres where:

(1) The rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than two during the period of construction activity. The owner/operator must certify that construction activity will take place during the period when the rainfall erosivity factor is less than two;

(2) On a case-by-case basis the annual soil loss for a site will be less than two tons/acre/year. The owner or operator must certify that the annual soil loss for their site will be less than two tons/acre/year through the use of the Revised Universal Soil Loss Equation, assuming the constants of no ground cover and no runoff controls in place; or

(3) Storm water controls are not needed based on:

(j) Wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of

concern. The owner or operator must certify that the construction activity will take place, and storm water discharges will occur, within an area covered by the TMDLs; or

(ii) A comprehensive watershed plan, implemented for the waterbody, that includes the equivalents of TMDLs, and addresses the pollutants of concern. The owner or operator must certify that the construction activity will take place, and storm water discharges will occur, within an area covered by the watershed plan.

(B) Any other construction activity designated by the NPDES permitting authority based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

(ii) Any other discharges, except municipal separate storm sewer systems, designated by the NPDES permitting authority pursuant to paragraph (a)(9) of this section.

EXHIBIT 1 TO § 122.26(b)(15).—SUMMARY OF COVERAGE OF "STORM WATER DISCHARGES ASSOCIATED WITH OTHER ACTIVITY"* UNDER THE NPDES STORM WATER PROGRAM

[*See definition in § 122.26(b)(15)]

Table with 2 columns: Designation/Requirement and Description. Rows include Automatic Designation (Required Nationwide Coverage), Potential Designation (Optional Evaluation and Designation by the Permitting Authority), Automatic Designation (Required nationwide Coverage), and Potential Waiver (Waiver from Requirements as Determined by the Permitting Authority).

(16) Small municipal separate storm sewer system means all municipal separate storm sewer systems that are not designated as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section; or designated under paragraph (a)(1)(v) of this section.

(c) Application requirements for storm water discharges associated with industrial activity or storm water discharges associated with other activity—

(1) Individual application. Dischargers of storm water associated with industrial or other activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit.

(i) Except as provided in § 122.26(c)(1)(ii) through (c)(1)(iv), the operator of a storm water discharge associated with industrial or other

activity subject to this section shall provide:

* * * * *

(C) A certification that all outfalls that should contain storm water discharges associated with industrial or other activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.

* * * * *

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 from all outfalls containing a storm water discharge associated with industrial or other activity for the following parameters:

* * * * *

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is

associated with other activity solely under paragraph (b)(15)(i) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section.

* * * * *

(e) * * * (1) * * *

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, the permit application must be submitted to the Director by August 7, 2001.

(iii) For any storm water discharge associated with other activity identified in paragraph (b)(15) of this section that is not authorized by a general or individual permit, the permit application made under paragraph (c) of this section must be submitted to the Director by {insert date 3 years and 90 days from date of publication of final rule in the Federal Register}.

* * * * *

(f) * * *

(4) Any person may petition the Director for the designation of a large, medium, or small municipal separate sewer system as defined by paragraphs (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small municipal separate storm sewer system in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(g) *Conditional exemption for "no exposure" of industrial activities and materials to storm water.* Discharges composed entirely of storm water do not require an NPDES permit if the owner or operator of the facility satisfies the conditions of this paragraph concerning "no exposure." For purposes of this section, "no exposure" means all industrial materials or activities are protected by a storm resistant shelter so that they are not exposed to rain, snow, snowmelt, or runoff. Industrial materials or activities include, but are not limited to, material handling equipment, industrial machinery, raw materials, intermediate products, by-products, or waste products, however packaged. This exemption does not apply to storm water discharges from facilities identified in paragraphs (b)(14)(x) and (b)(15)(i) of this section and sources individually designated under paragraphs (a)(1)(v), (a)(9)(i)(B),(C)&(D) and (g)(3) of this section. Actions taken to qualify for this provision shall not interfere with the attainment or maintenance of water quality standards, including designated uses. To establish that the facility meets the definition of no exposure described in this paragraph, an owner or operator must submit a written certification to the NPDES permitting authority once every five years.

(1) Any owner or operator claiming the no exposure exemption must:

- (i) Notify the NPDES permitting authority at the beginning of each permit term or prior to commencing discharges during a permit term;
- (ii) Allow the permitting authority, or the municipality where the facility discharges into a municipal separate storm sewer system, to inspect the facility and allow the permitting authority or the municipality to make such inspection reports publicly available upon request;
- (iii) Upon request, also submit a copy of the certification to the municipality in which the facility is located; and

(iv) Sign and certify the certification in accordance with § 122.22.

(2) If there is a change in circumstances which causes exposure of industrial activities or materials to storm water, the owner or operator must comply immediately with all the requirements of the storm water program including applying for and obtaining coverage under an NPDES permit.

(3) Even if an owner or operator certifies to no exposure under paragraph (g)(1) of this section, the NPDES permitting authority still retains the authority to require the owner or operator of a facility to apply for an individual or general permit if the permitting authority has determined that the discharge:

- (i) Is, or may reasonably be, causing or contributing to the violation of a water quality standard; or
- (ii) Is, or may reasonably be, interfering with the attainment or maintenance of water quality standards, including designated uses.

3. Revise § 122.28(b)(2)(v) to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate.

* * * * *

4. Add undesignated centerheadings and §§ 122.30 through 122.37 to subpart B to read as follows:

General Purpose of the CWA Section 402(p)(6) Storm Water Program

§ 122.30 What is the purpose of the CWA section 402(p)(6) storm water regulations?

(a) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Since the storm water program is part of the National Pollutant Discharge Elimination System (NPDES) Program, you should also refer to § 122.1 which addresses the broader purpose of the NPDES program.)

(b) Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in two ways: by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(c) EPA strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

Tribal Role for the CWA Section 402(p)(6) Storm Water Program

§ 122.31 As a Tribe, what is my role under the CWA section 402(p)(6) storm water program?

As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under §§ 123.31 through 123.34 of this chapter. (If you do not have an authorized NPDES program, EPA generally will implement the program on your reservation as well as other Indian country.);

(b) Be classified as an owner or operator of a regulated small municipal separate storm sewer system, as defined in § 122.32, to the extent the population within the urbanized area of the reservation is greater than or equal to 1,000 persons. (Designation of your Tribe as an owner or operator of a small municipal separate storm sewer system for purposes of this part is an approach that is consistent with EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small municipal separate storm sewer system, your reservation would be subject to the requirements under §§ 122.33 through 122.35. If you are not designated as a regulated small municipal separate storm sewer system, you may ask EPA to designate you as such for the purposes of this part. Being regulated as a small municipal separate storm sewer system and having coverage under an NPDES permit may benefit you by enhancing your ability to establish and enforce certain

requirements for facilities that discharge storm water into your separate storm sewer system.); or
 (c) Be a discharger of storm water associated with industrial or other

activity under §§ 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority generally would be EPA,

unless you are authorized to administer the NPDES program.
 Municipal Role for the CWA Section 402(p)(6) Storm Water Program

EXHIBIT 1 TO SUBPART B.—SUMMARY OF COVERAGE OF SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS* UNDER THE NPDES STORM WATER PROGRAM

[*See definition at § 122.26(b)(16)]

Who is Designated/Covered Under This Part?

Automatic Designation Required Nationwide Coverage	All owners or operators of small municipal separate storm sewer systems (MS4s) located <i>within</i> an "urbanized area." (see § 122.32(a)(1)).
Potential Designation: Required Evaluation by the Permitting Authority for Coverage.	All owners or operators of small MS4s located <i>outside</i> of an "urbanized area" with a population of at least 10,000 <i>and</i> a population density of at least 1,000. (see §§ 122.32(a)(2) and 123.35(b)(2)). All owners or operators of small MS4s that contribute substantially to the storm water pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program. (see §§ 122.32(a)(2) and 123.35(b)(4)).
Potential Designation: Optional Evaluation by the Permitting Authority for Coverage.	Owners and operators of small MS4s located <i>outside</i> of an "urbanized area" with a population of less than 10,000 <i>or</i> a density of less than 1,000. (see §§ 122.32(a)(2) and 123.35(b)(3)).

Who is Eligible for a Waiver or an Exemption From the Small MS4 Permit Requirements?

Potential Waiver: Locally-Based Waiver from Requirements as Determined by the Permitting Authority.	Owners or operators of small MS4s, located <i>within</i> an "urbanized area," with a jurisdiction of less than 1,000 persons and a system that is not contributing substantially to the pollutant loadings of a physically interconnected MS4 may certify that storm water controls are not needed based on: (1) Waste load allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of concern; or (2) A comprehensive watershed plan, implemented for the waterbody, that includes the equivalents of TMDLs, and addresses the pollutants of concern.
Exemption: Not Defined as a Regulated Small MS4	Federal Indian reservations where the population within the "urbanized area" portion of the reservation is less than 1,000 persons.

§ 122.32 As an owner or operator of a small municipal separate storm sewer system, am I regulated under the CWA section 402(p)(6) municipal storm water program?

(a) You are a regulated small municipal separate storm sewer system if you are the owner or operator of a small municipal separate storm sewer system, including but not limited to systems owned or operated by local governments, State departments of transportation, and State, Tribal, and Federal facilities; and you meet the following definition. Regulated small municipal separate storm sewer systems are defined as all small municipal separate storm sewer systems that are located in:
 (1) An incorporated place, county (only the portion located in an urbanized area), or other place under the jurisdiction of a governmental entity, including but not limited to Tribal or Territorial governments, located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, except for Federal Indian reservations

where the population within the urbanized area of the reservation is under 1,000 persons;
 (2) An incorporated place, county, or other place under the jurisdiction of a governmental entity other than those described in paragraph (a)(1) of this section that is designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(2) and (b)(4) of this chapter, or is based upon a petition under § 122.26(f).
 (b) You may be the subject of a petition, by any person, to the NPDES permitting authority to require an NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. Upon a final determination by the NPDES permitting authority, you would be required to comply with §§ 122.33 through 122.35.
 (c) If you receive a waiver under § 122.33(b), you may subsequently be designated back into the municipal storm water program by the NPDES

permitting authority if circumstances change. (See also § 123.35(b) of this chapter.)

§ 122.33 If I am an owner or operator of a regulated small municipal separate storm sewer system, must I apply for an NPDES permit? If so, by when do I have to seek coverage under an NPDES permit? If so, who is my NPDES permitting authority?

(a) If you are the owner or operator of a regulated small municipal separate storm sewer system under § 122.32, you must seek coverage under a general or individual NPDES permit, unless waived under paragraph (b) of this section, as follows:
 (1) If you are seeking coverage under a general permit, you must submit a Notice of Intent (NOI). The general permit will explain the steps necessary to attain coverage.
 (2) If you are seeking coverage under an individual permit, you must submit an individual application to your NPDES permitting authority that includes the information required under § 122.21(f) and the following information:

(i) Estimate of square mileage served by your separate storm sewer system, and

(ii) Any additional information that your NPDES permitting authority requests.

(3) If there is an adjoining municipality or other governmental entity with an issued NPDES storm water permit that is willing to have you participate in its storm water program, you may jointly with that adjoining municipality or other governmental entity seek a permit modification to include your municipality or other governmental entity in the relevant portions of that NPDES permit. If you choose this option you will need to comply with the permit application requirements of § 122.26, in lieu of the requirements of § 122.34. You do not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in § 122.26(d)(1)(v) and (d)(2)(iv) (identifying a management plan) by referring to the adjoining municipality's storm water management plan. (In referencing an adjoining municipality's storm water management plan, you should briefly describe how the existing plan will address discharges from your municipal separate storm sewer system or would need to be supplemented in order to adequately address your discharges, explain the role you will play in coordinating storm water activities in your jurisdiction, and detail the resources available to you to accomplish the plan.)

(b) The NPDES permitting authority may waive the requirements otherwise applicable to you if you are an owner or operator of a regulated small municipal separate storm sewer system, as defined in § 122.32(a)(1), the jurisdiction served by your system includes a population of less than 1,000 persons, your system is not contributing substantially to the storm water pollutant loadings of a physically interconnected regulated municipal separate storm sewer system (see § 123.35(b)(4) of this chapter), and you have certified that storm water controls are not needed based on:

(1) Wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of concern; or

(2) A comprehensive watershed plan, implemented for the waterbody, that includes the equivalents of TMDLs, and addresses the pollutants of concern.

(c) If you are an owner or operator of a regulated small municipal separate storm sewer system:

(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 (a)(3) of this section, by {insert date 3 years and 90 days from date of publication of final rule}.

(2) Designated under § 122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (a)(3) of this section, within 60 days of notice, unless the NPDES permitting authority grants a later date.

(d) If you are located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is your NPDES permitting authority. Otherwise, your NPDES permitting authority is the EPA Regional Office. (You should call your EPA Regional Office to find out who your NPDES permitting authority is.)

§ 122.34 As an owner or operator of a regulated small municipal separate storm sewer system, what will my NPDES municipal storm water permit require?

(a) Your NPDES municipal storm water permit will, at a minimum, require you to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your municipal separate storm sewer system to the maximum extent practicable (MEP) and protect water quality. Your storm water management program must include the minimum control measures described in paragraph (b) of this section. For 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 water quality-based requirements of the Clean Water Act. Implementation of the 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 will constitute compliance with the standard of "reducing pollutants to the maximum extent practicable." Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) *Minimum control measures. (1) Public education and outreach on storm water impacts.* You must implement 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 can be taken to reduce storm water pollution. (You may use storm water educational materials provided by your State, Tribe, EPA, or, subject to the approval of the local government, environmental or other public interest or trade organizations. The materials or outreach programs should inform individuals and households about the steps they can take, such as ensuring proper septic system maintenance, limiting the use and runoff of garden chemicals, becoming involved in local stream restoration activities that are coordinated by youth service and conservation corps and other citizen groups, and participating in storm drain stenciling, to reduce storm water pollution. In addition, some of the materials or outreach programs should be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as children.)

(2) *Public involvement/participation.* You must comply with State, Tribal and local public notice requirements. (You should include the public in developing, implementing, and reviewing your storm water management program. The public participation process should make efforts to reach out and engage all economic and ethnic groups. You may consider impaneling a group of citizens to participate in your decision-making process, hold public hearings, or work with volunteers.)

(3) *Illicit discharge detection and elimination.* You must:

(i) Develop, if not already completed, a storm sewer system map, or equivalent, showing the location of major pipes, outfalls, and topography. In addition, if data already exist, show areas of concentrated activities likely to be a source of storm water pollution;

(ii) To the extent allowable under State or Tribal law, effectively prohibit, through ordinance, order, or similar means, illicit discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(iii) Implement a plan to detect and address illicit discharges, including illegal dumping, to your system; and

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

(4) *Construction site storm water runoff control.* You must develop, implement, and enforce a program to reduce pollutants in storm water runoff to your municipal separate storm sewer system from construction activities that result in land disturbance of greater than or equal to one acre. You must use an ordinance or other regulatory mechanism that controls erosion and sediment to the maximum extent practicable and allowable under State or Tribal law. Your program must control other waste at the construction site that may adversely impact water quality, such as discarded building materials, concrete truck washout, and sanitary waste. Your program also must include, at a minimum, requirements for construction site owners or operators to implement appropriate BMPs, provisions for pre-construction review of site management plans, procedures for receipt and consideration of information submitted by the public, regular inspections during construction, and penalties to ensure compliance. (See § 122.44(s))

(5) *Post-construction storm water management in new development and redevelopment.* You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that result in land disturbance of greater than or equal to one acre and that discharge into your municipal separate storm sewer system. Your program must include a plan to implement site-appropriate and cost-effective structural and non-structural best management practices (BMPs) and ensure adequate long-term operation and maintenance of such BMPs. Your program must ensure that controls are in place that would prevent or minimize water quality impacts. (If the involved parties consider water quality impacts from the beginning stages of projects, new development and potentially redevelopment allow opportunities for water quality sensitive projects. EPA recommends that municipalities establish requirements for the use of cost-effective BMPs that minimize water quality impacts and attempt to maintain pre-development runoff conditions. In

other words, post-development conditions should not be different from pre-development conditions in a way that adversely affects water quality. The municipal program should include structural and/or non-structural BMPs. EPA encourages locally-based watershed planning and the use of preventative measures, including non-structural BMPs, which are generally lower in cost than structural BMPs, to minimize water quality impacts. Non-structural BMPs are preventative actions that involve management and source controls. Examples of non-structural BMPs include policies and ordinances that result in protection of natural resources and prevention of runoff. These include requirements to limit growth to identified areas, protect sensitive areas such as wetlands and riparian areas, minimize imperviousness, maintain open space, and minimize disturbance of soils and vegetation. Examples of structural BMPs include storage practices (wet ponds and extended-detention outlet structures), filtration practices (grassed swales, sand filters and filter strips), and infiltration practices (infiltration basins, infiltration trenches, and porous pavement). Storm water technologies are constantly being improved, and EPA recommends that municipal requirements be responsive to these changes.)

(6) *Pollution prevention/good housekeeping for municipal operations.* You must develop and implement a cost-effective operation and maintenance program with the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, or Tribe, or from other organizations whose materials are approved by the local government, your program must include local government employee training to prevent and reduce storm water pollution from government operations, such as park and open space maintenance, fleet maintenance, planning, building oversight, and storm water system maintenance. (EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and other storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, and waste transfer stations; procedures for properly disposing of

waste removed from the separate storm sewer systems 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. In general, the requirement to develop and implement an operation and maintenance program, including local government employee training, is meant to ensure that municipal activities are performed in the most appropriate way to minimize contamination of storm water discharges, rather than requiring the municipality to undertake new activities.)

(c) The NPDES permitting authority may include permit provisions in your NPDES permit that incorporate by reference qualifying local, State or Tribal municipal storm water management program requirements that address one or more of the minimum controls of § 122.34(b). Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of paragraph (b) of this section.

(d) You must identify and submit to your NPDES permitting authority either in your notice of intent or in your permit application (see § 122.33) the following information: best management practices (BMPs) to be implemented and the measurable goals for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section, the month and year in which you will start and aim to complete each of the measures or indicate the frequency of the action, and the person or persons responsible for implementing or coordinating your storm water management program. Measurable goals to satisfy minimum control measures in paragraphs (b)(3) through (b)(6) of this section identified in a notice of intent will not constitute a condition of the permit, unless EPA or your State or Tribe has provided or issued a menu of regionally appropriate and field-tested BMPs that EPA or your State or Tribe believes to be cost-effective. (EPA will provide guidance on developing BMPs and measurable goals and modify, update, and supplement such guidance based on the assessments of the NPDES municipal storm water program and research conducted by (date 13 years from effective date of final rule).)

(e) You must comply with 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, as appropriate.

(f) *Evaluation and assessment.* (1) *Evaluation.* You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. (The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.)

(2) *Record keeping.* You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the NPDES permitting authority only when specifically asked to do so. You must make your records, including your storm water management program, available to the public at reasonable times during regular business hours (see § 122.7 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice, not to exceed two working days.)

(3) *Reporting.* You must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

(i) The status of compliance with permit 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 you plan to undertake during the next reporting cycle; and

(iv) A change in any identified measurable goals that apply to the program elements.

§ 122.35 As an owner or operator of a regulated small municipal separate storm sewer system, what if another governmental or other entity is already implementing a minimum control measure in my jurisdiction?

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if: the other entity is implementing the control measure; the particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and you have

requested, and the other entity has agreed to accept responsibility for implementation of the control measure on your behalf to satisfy your permit obligation. You must note in your § 122.34(f)(3) reports when you are relying on another entity to satisfy your permit obligations. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) Where appropriate, the NPDES permitting authority may recognize existing responsibilities among governmental entities for the minimum control measures in your NPDES permit. (For example, a State or Tribe may be responsible for addressing construction site runoff and municipalities may be responsible for the remaining minimum control measures. You are not required to provide notice to the other governmental entity when your NPDES permit recognizes the entity and its existing responsibilities.) Where the permitting authority recognizes an existing responsibility for one or more of the minimum control measures in your permit, your responsibility to include such minimum control measure, or measures, in your storm water management program is waived so long as the other governmental entity implements the measure consistent with the requirements of § 122.34(b).

§ 122.36 As an owner or operator of a regulated small municipal separate storm sewer system, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act would be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health.

§ 122.37 Will the municipal storm water program regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter change in the future?

EPA will evaluate the municipal storm water regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter after {insert date 13 years from date of publication of final rule in the

Federal Register} and make any necessary revisions. (EPA will conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES municipal storm water program. EPA strongly recommends that no additional requirements beyond the minimum control measures be imposed on regulated small municipal separate storm sewer systems without the agreement of the owner or operator of the affected municipal separate storm sewer system, except where adequate information exists in approved TMDLs or equivalents of TMDLs to develop more specific measures to protect water quality, or until EPA's comprehensive evaluation is completed. EPA will evaluate the regulations based on data from the NPDES municipal storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs).)

5. Add § 122.44(s) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25)

* * * * *

(s)(1) For storm water discharges from construction sites identified in § 122.26(b)(15)(i), the Director may include permit provisions that incorporate by reference qualifying State, Tribal, or local sediment and erosion control program requirements. A qualifying State, Tribal, or local sediment and erosion control program is one that meets the requirements of a municipal NPDES separate storm sewer permit or a program otherwise approved by the Director. For the Director to approve such programs, the program must meet the minimum program requirements established under § 122.34(b)(4).

(2) For storm water discharges identified in § 122.26(b)(14)(x), the Director may include by reference State, Tribal or local requirements that meet the standard of "best available technology" (BAT) as defined, for example, in the storm water general permit.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.25 is amended by adding paragraphs (a)(39) through (a)(46) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(39) § 122.30 (What is the purpose of the CWA section 402(p)(6) storm water regulations?);

(40) § 122.31 (For Indian Tribes only) (As a Tribe, what is my role under the CWA section 402(p)(6) storm water program?)

(41) § 122.32 (As an owner or operator of a small municipal separate storm sewer system, am I regulated under the CWA section 402(p)(6) municipal storm water program?);

(42) § 122.33 (If I am an owner or operator of a regulated small municipal separate storm sewer system, must I apply for an NPDES permit? If so, by when do I have to seek coverage under an NPDES permit? If so, who is my NPDES permitting authority?);

(43) § 122.34 (As an owner or operator of a regulated small municipal separate storm sewer system, what will my NPDES municipal storm water permit require?);

(44) § 122.35 (As an owner or operator of a regulated small municipal separate storm sewer system, what if another governmental or other entity is already implementing a minimum control measure in my jurisdiction?);

(45) § 122.36 (As an owner or operator of a regulated small municipal separate storm sewer system, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?);

(46) § 122.37 (Will the municipal storm water program regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter change in the future?);

* * * * *

3. Add an undesignated centerheading and § 123.35 to subpart B to read as follows:

NPDES Permitting Authority Role for the CWA section 402(p)(6) Municipal Program

§ 123.35 As the NPDES Permitting Authority for regulated small municipal separate storm sewer systems, what is my role?

(a) You must comply with the requirements for all NPDES permitting authorities under parts 122, 123, 124, and 125 of this chapter. (This section is meant only to supplement those requirements and discuss specific issues related to the small municipal storm water program.)

(b) You must develop a process, as well as criteria, to designate incorporated places, counties, or other places under the jurisdiction of a governmental entity, other than those described in § 122.32(a)(1) of this chapter, as regulated small municipal separate storm sewer systems to be covered under the CWA section

402(p)(6) program. This process must include the authority to designate a small municipal separate storm sewer system waived under paragraph (d) of this section if circumstances change. EPA may make designations under this section if a State or Tribe fails to comply with the requirements listed in this paragraph. In making your designations, you must:

(1) Develop criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. (EPA recommends as guidance for determining other significant water quality impacts a balanced consideration of the following designation criteria on a watershed or other local basis: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to waters of the United States, and ineffective control of water quality concerns by other programs.);

(2) Apply such criteria, at a minimum, to any incorporated place, county, or other place under the jurisdiction of a governmental entity located outside of an urbanized area that has a population density of at least 1,000 people per square mile and a population of at least 10,000;

(3) Designate any incorporated place, county or other place under the jurisdiction of a governmental entity that meets the selected criteria by {insert date three years and 90 days from date of publication of final rule in the FEDERAL REGISTER}. You may have until {insert date five years from date of publication of final rule in the FEDERAL REGISTER} to apply the designation criteria on a watershed basis where there is a comprehensive watershed plan. You may apply these criteria to make additional designations at any time, as appropriate; and

(4) Designate any incorporated place, county, or other place under the jurisdiction of a governmental entity that contributes substantially to the storm water pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated by the NPDES storm water program.

(c) You must make a final determination within 180 days from receiving a petition under § 122.32(b) of this chapter (or analogous State or Tribal law). If a State or Tribe fails to do so, EPA may make a determination on the petition.

(d) You must issue permits consistent with §§ 122.32 through 122.35 of this chapter to all regulated small municipal separate storm sewer systems. You may waive the requirements otherwise applicable to regulated small municipal separate storm sewer systems, as defined in § 122.32(a)(1) of this chapter, if the jurisdiction of the regulated small municipal separate storm sewer system includes a population of less than 1,000 persons, its discharges are not contributing substantially to the storm water pollutant loadings of a physically interconnected regulated municipal separate storm sewer system (see paragraph (b)(4) of this section), and the owner or operator of the regulated small municipal separate storm sewer system has certified that storm water controls are not needed based on:

(1) Wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutants of concern; or

(2) A comprehensive watershed plan, implemented for the waterbody, that includes the equivalents of TMDLs, and addresses the pollutants of concern.

(e) You must specify a time period of up to 5 years from the date of permit issuance for owners or operators of small municipal separate storm sewer systems to fully develop and implement their storm water program.

(f) You must include the requirements in § 122.34 of this chapter including as modified in accordance with §§ 122.33(a)(3), 122.34(c), or 122.35(b) of this chapter, in any permit issued for regulated small municipal separate storm sewer systems. (You may include permit provisions in a regulated small municipal separate storm sewer system NPDES permit that incorporates by reference qualifying local, State or Tribal municipal storm water management program requirements that address one or more of the minimum controls of § 122.34(b) of this chapter (see § 122.34(c) of this chapter). Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of § 122.34(b) of this chapter.)

(g) If you plan to issue a general permit to authorize storm water discharges from small municipal separate storm sewer systems, you must provide or issue by {insert 2 years from date of publication of final rule in the **Federal Register**} a menu of regionally appropriate and field-tested BMPs that you believe to be cost-effective from which regulated small municipal separate storm sewer systems can select. Failure to issue the menu of BMPs would not affect the legal status of the general permit. If a State or Tribe fails

to provide or issue the menu, EPA may do so.

(h) You must incorporate additional measures necessary to ensure effective implementation of your State storm water program for regulated small municipal separate storm sewer systems. (EPA recommends consideration of the following:

(1) You are encouraged to use a general permit for regulated small municipal separate storm sewer systems;

(2) To the extent that there is a dedicated funding source, you should play an active role in providing

financial assistance to owners and operators of regulated small municipal separate storm sewer systems;

(3) You should support local programs by providing technical and programmatic assistance, conducting research projects, performing watershed monitoring, and providing adequate legal authority at the local level;

(4) You are encouraged to coordinate and utilize the data collected under several programs including water quality management programs, TMDL programs, and water quality monitoring programs;

(5) Where appropriate, you may recognize existing responsibilities among governmental entities for the control measures in an NPDES small municipal storm water permit (see § 122.35(b) of this chapter); and

(6) You are encouraged to use a brief (e.g., two page) reporting format to facilitate compiling and analyzing data from submitted reports under § 122.34(f)(3) of this chapter. EPA will develop a model form for this purpose.)

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