

While significant improvements have been achieved in controlling point source water pollution, such as discharges from sewage and wastewater treatment plants, the U.S. Environmental Protection Agency (EPA) estimates that one half of all impaired waterways are affected by nonpoint sources of pollution, such as stormwater runoff. As a result, stormwater management has become a national priority in the effort to further reduce water pollution.

In response to the 1987 Amendments to the Clean Water Act (CWA), the U.S. Environmental Protection Agency (EPA) developed Phase I of the National Pollutant Discharge Elimination System (NPDES) Storm Water Program in 1990. The Phase I program addressed sources of storm water runoff that had the greatest potential to negatively impact water quality. The Department of Environmental Conservation (DEC) is responsible for administering the program in NYS as part of the State Pollutant Discharge Elimination System (SPDES). Under Phase I, SPDES permit coverage was required for storm water discharges from medium and large municipal separate storm sewer systems (MS4s) located in incorporated places or counties, eleven categories of industrial activity and construction activity that disturbed five or more acres of land.

The Phase II Final Rule, published in the Federal Register on December 8, 1999, expanded the stormwater permit program to include stormwater discharges from certain regulated small MS4s and construction activity that disturbs between 1 and 5 acres of land. On January 8, 2003, the DEC finalized two new permits for stormwater discharges in NYS as required by the Federal EPA; the small MS4 and small construction permits.

The MS4 permit requires regulated municipal MS4s (those with a minimum population density of 1000 people per square mile and are located in urban areas as defined by the U.S. Census Bureau) to develop and fully implement a stormwater management program by 2008. Stormwater management programs must contain appropriate management practices in each of the following minimum control measure categories: Public Education and Outreach; Public Involvement and Participation; Illicit Discharge Detection and Elimination; Construction Site Stormwater Runoff Control; Post-Construction Site Stormwater Runoff Control and Pollution Prevention for Municipal Employees.

As a first step toward obtaining SPDES permit coverage regulated MS4s were required to submit a Notice of Intent (NOI) form to DEC by March 10, 2003. The NOI required MS4s to provide an initial outline of planned management practices and to identify measurable goals to annually assess progress toward the full implementation of an appropriate stormwater management plan. Although DEC has specified a few required actions and provided a list of approved management practices for each minimum control category, regulated MS4s are encouraged to tailor the development of their stormwater management programs to best meet local stormwater problems.

DEC is encouraging MS4s to take a watershed approach to local stormwater management by working with neighboring MS4s to develop complementary or cooperative programs for solving shared problems. By combining efforts, sharing costs and working together, regulated municipalities will recognize a higher level of environmental benefits at a decreased program cost.

All publicly funded MS4s operating within the boundaries of regulated municipal MS4s are also subject to the Phase II permit requirements. Examples of other regulated MS4s include school districts, public universities, prisons, state agencies and more. Defining the jurisdictional responsibilities of all regulated entities remains a somewhat difficult process at this time. It's expected that individual responsibilities will become more easily enforceable as municipal programs develop and are fully implemented. Eventually, the MS4 permit program will be expanded statewide.

The small construction permit is somewhat different in that it is already a statewide requirement. Operators of all small construction activities disturbing at least one acre of soil must obtain a construction permit prior to breaking ground regardless of whether or not the construction takes place within a regulated MS4. Small construction operators must file an NOI form and develop an approved stormwater management plan that includes provisions for managing post-construction stormwater runoff over the life of the project. The one-acre soil disturbance is a cumulative threshold. In other words, if a construction activity disturbs less than one acre of soil, but is part of a common development plan that will cumulatively disturb one-acre or more, a construction permit is required for the entire development.