

Re: Fact Sheet (To be Supplemented with Final Fact Sheet from DCMS4 NPDES Permit No. DC0000221 Dated August 19, 2004)
National Pollutant Discharge Elimination System (NPDES)
Proposed Amendment No. 1 to NPDES Permit No. DC0000221

NPDES PERMIT NUMBER: DC0000221, AMENDMENT NO. 1

FACILITY NAME AND MAILING ADDRESS:

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

FACILITY LOCATION:

District of Columbia's
Municipal Separate Storm Sewer System (MS4)

RECEIVING WATERS:

Potomac River, Anacostia River,
Rock Creek, and Tributaries

FACILITY BACKGROUND AND DESCRIPTION:

The Government of the District of Columbia (the District) owns and operates a Municipal Separate Storm Sewer System (MS4) which discharges storm water during wet weather events from various outfall locations throughout the District into its waterways. On April 19, 2000, the United States Environmental Protection Agency Region III (EPA) issued the District its first Storm Water Phase I National Pollutant Discharge Elimination System (NPDES) Permit for the control and management of storm water discharges originating from these outfalls. (The collective permit for these various outfalls is known as an "MS4" permit). The Permit was issued for a three-year period and administratively extended from April 19, 2003, until August 19, 2004. (The Permit is hereafter referred to as the 2000 MS4 Permit). On August 19, 2004, EPA issued the District its second Storm Water Phase I NPDES Permit, which is valid for a five-year period and covers all discharges within the corporate boundaries of the District. This service area includes discharges served by, or otherwise contributing to, discharges from the MS4 system. The MS4 Permit does not cover the District's combined or sanitary sewer systems.

Since EPA first issued the Phase I MS4 Permit to the District in 2000, the District has made a number of accomplishments, including: (1) establishment of an infrastructure for addressing storm water activities, (2) development of a watershed-based rotating monitoring program to evaluate the chemical parameters and physical characteristics of the municipal storm water being discharged from representative outfalls in the MS4 system, (3) performance of assessments of

existing MS4 activities which contribute to the runoff being discharged into the MS4 system, (4) development of implementation measures for managing and enforcing MS4 activities within the District, and (5) upgrading its previous Storm Water Management Program (SWMP) based on these findings. The District's upgraded SWMP (which EPA approved in October 2003, and which was used as the basis for the MS4 Permit issued in August 2004) sets forth a framework for a long-term storm water management control program for determining compliance with applicable water quality standards to the maximum extent practicable through the use of best management practices (BMPs).

The current MS4 Permit requires a combination of narrative and BMP controls for addressing storm water at its sources. These mechanisms are also used to characterize storm water because of its indiscriminate nature. In general, EPA views the MS4 NPDES permit program as an iterative process requiring reexamination of ongoing controls and continued improvements to the respective storm water management programs while continuing to adequately protect the water quality of the receiving stream. The MS4 Permit builds on existing MS4 inventories, databases, baseline monitoring data, partnerships, pilot projects, and increased MS4 activity implementation as the upgraded SWMP approach for managing the quantity and enhancing the quality of storm water throughout the District. Moreover, the Permit requires measurable performance standards to be developed and assessed, and implementation plans for reducing the storm water components of waste load allocations of Total Maximum Daily Loads to be implemented, all of which are intended to evaluate the effectiveness of the District's programs.

PROPOSED ACTION TO BE TAKEN:

On July 21, 2005, EPA proposed to issue an amendment, hereafter referred to as Amendment No. 1, to the District's MS4 Permit which became effective on August 19, 2004. This action is being taken in part in response to issues raised by a permit appeal filed by petitioners Earthjustice on behalf of the Friends of the Earth and Defenders of Wildlife with the Environmental Appeals Board (EAB) on September 20, 2004. In that appeal, the petitioners argued that the District of Columbia Water and Sewer Authority (WASA or the Authority), which has been given responsibility for storm water management under the MS4 system, should be identified as a co-permittee along with the Government of the District of Columbia in the Permit. The petitioners' argument for making WASA a co-permittee was based on the fact that the WASA Board is not "directly accountable and responsible to the City Council and Mayor" and to ensure that the Authority is held legally accountable for its actions under the Permit. The petitioners also argued that the "maximum extent practicable" standard, the water quality-based effluent limits, and the total maximum daily waste load allocation narrative effluent limits specified in the MS4 Permit were not sufficient to adequately assure compliance with applicable water quality standards, let alone demonstrate that MS4 activities under the District's storm water management program will account for and reduce pollutant loadings from the MS4 system.

Furthermore, the petitioners went on to explain in the petition that the waiver, exemption, and variance provisions in the District's water quality standards and storm water regulations conflicted with the Clean Water Act and EPA rules, and that the provisions could undermine the integrity of the MS4 Permit and the District's storm water management program. Finally, the petitioners raised concerns that the monitoring program in the MS4 Permit violates EPA rules in that the program does not explicitly require monitoring from each MS4 outfall and does not require that the monitoring be representative of the monitored MS4 activity.

In October 2004, Earthjustice and EPA, Region III, began to discuss between themselves the issues on appeal, many of which had been raised during the petitioners' previous appeal of the 2000 MS4 Permit (which resulted in a decision by the EPA Environmental Appeals Board (EAB)); see Order Denying Review in Part and Remanding in Part at <http://www.epa.gov/eab/disk11/dcms4.pdf> (Feb. 20, 2002) and Order Granting Motion for Partial Reconsideration at <http://www.epa.gov/eab/orders/dcms4recon.pdf> (May 10, 2002). The parties' discussions immediately began to prove beneficial and they therefore jointly requested that the EAB defer action on the appeal to give them time to work through their differences on the issues. After several additional extensions of time, the parties reached settlement in principle on the issues on May 10, 2005, whereby the Region would propose and public notice Amendment No.1 to the current MS4 Permit and consider any comments received during the public review period before making the document final. That Permit Amendment was therefore public noticed in July 2005.

Concurrent with the review and comment period of draft Amendment No. 1 to the MS4 Permit, EPA Region III will be requesting that the District of Columbia's Department of Health certify the amendment under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. EPA also has requested that the offices of the Fish and Wildlife Service (part of the Department of Interior) and the National Marine Fisheries Service (part of the National Ocean and Atmospheric Administration) review the document for compliance with the Federal Endangered Species Act, 42 U.S.C. §§ 460 *et seq.*

The proposed modifications to the August 19, 2004 MS4 Permit is summarized in the Table below:

Table 1. (Modifications to August 19, 2004, DC MS4 Permit)

| Permit Part and Title | Effect of Amendment No.1 |
|------------------------------------|---|
| Part I.C (Limitations to Coverage) | Emphasizes that the limitations to coverage are actually prohibitions and expands on the types of discharges that are permitted to occur from the MS4 system; |

| | |
|---|--|
| Part I.D (Effluent Limits) | Clarifies the types of effluent limits to be addressed through the MS4 Permit, how these limits will be implemented through the upgraded SWMP, and the authority on which EPA will rely in implementing potential permit modifications to ensure that these limits result in an effective program as well as linking the appropriate parts of the MS4 Permit back to these limits; |
| Part III.C (Annual SWMP Reporting) | Describes annual reporting requirements for calculating pollutant loads and reductions from the MS4 system in those watersheds with approved total maximum daily loadings; |
| Part VII.P (Reopener Clause for Permits) | Describes additional requirements for opening the MS4 Permit through modifications; |
| Part IX.A (Waivers and Exemptions) | Requires accountability and reporting of waivers and exemptions; |
| Part IX.B (TMDL WLA Implementation Plans and Compliance Monitoring) | Describes how the total maximum daily loadings methodologies for complying with the effluent limits of the MS4 Permit and demonstration of compliance to ensure successful achievement of waste load reductions will be addressed; |
| Part X (Permit Definitions) | Adds a "measurable performance standard" definition for evaluating the effectiveness of the District's MS4 activities under their storm water management program. |

During the public review period, EPA Region III received four comment letters regarding proposed Amendment No.1. The Region considered these comments, when issuing the final document, by making modifications to account for existing ambient water quality conditions, placing emphasis on reducing pollutants to the maximum extent practicable, and by adding a clarifying definition. A summary of the comments along with the EPA response is contained in the responsive summary which supplements this fact sheet. The Region received comments from the District of Columbia Department of Health through its Section 401 certification letter which is addressed in the responsiveness summary. The United States Fish and Wildlife Service and the National Ocean and Atmospheric Administration's National Marine Fisheries Service both concurred with the Region's Biological Evaluation which concluded that Amendment No.1 would not adversely affect endangered or threatened species that reside within the District of Columbia by letters dated August 18, 2005, and October 6, 2005. The draft documents along with the final documents now complete the administrative record for the project and are available to the public for review at the Martin Luther King, Jr. Public Library which is located at 901 G Street, N.W. in Washington, D.C..

For additional information, contact Mr. Garrison D. Miller, Mail Code 3WP13, District of Columbia/Maryland/Virginia Branch, Office of Watersheds, EPA Region III, United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.