

~~Raining~~ **Discharging** Cats and Dogs...and Everything Else: *Stormwater Management in the U.S.*

NACWA Clean Water Law Seminar

November 17, 2010



New England Interstate Water
Pollution Control Commission



Stormwater Presentation Outline

I. How is it Regulated?

- a. Phase I
- b. Phase II
 - i. MS4 (Municipal Separate Storm Sewer System)
 - ii. MSGP (Multi-Sector General Permit)
 - iii. CGP (Construction General Permit)

II. How are those Regulations Evolving?

- a. Residual Designation Authority
- b. Case Law
 - i. Logging
 - ii. NAHB

III. How are Federal, State, and Local Governments Responding?

- a. Proposed SW Rulemaking
- b. Innovative Approaches
 - i. Planning
 - 1. 604(b) grants
 - 2. Assessment of most cost-effective BMP placements (EPA- Charles River Watershed)
 - ii. SW utilities (and intermediate stages like non-utility inter-municipal SW groups)
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 - 2. Careful use of 319 funds (MA)

How is it Regulated?

- 💧 **Clean Water Act Amendments of 1987**

- 💧 **EPA Regulations - Permits**

 - 💧 Phase I – medium and large cities

 - 💧 Phase II – small MS4s in urbanized areas

 - 💧 MS4

 - 💧 MSGP

 - 💧 CGP

Residual Designation Authority

- 💧 40 C.F.R. §122.26(a) provides that a NPDES permit may also be required if:
 - 💧 (9)(i)(C) The Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) of concern; or



Residual Designation Authority

- 💧 (D) The Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

Who May Petition?

40 CFR 122.26(f):

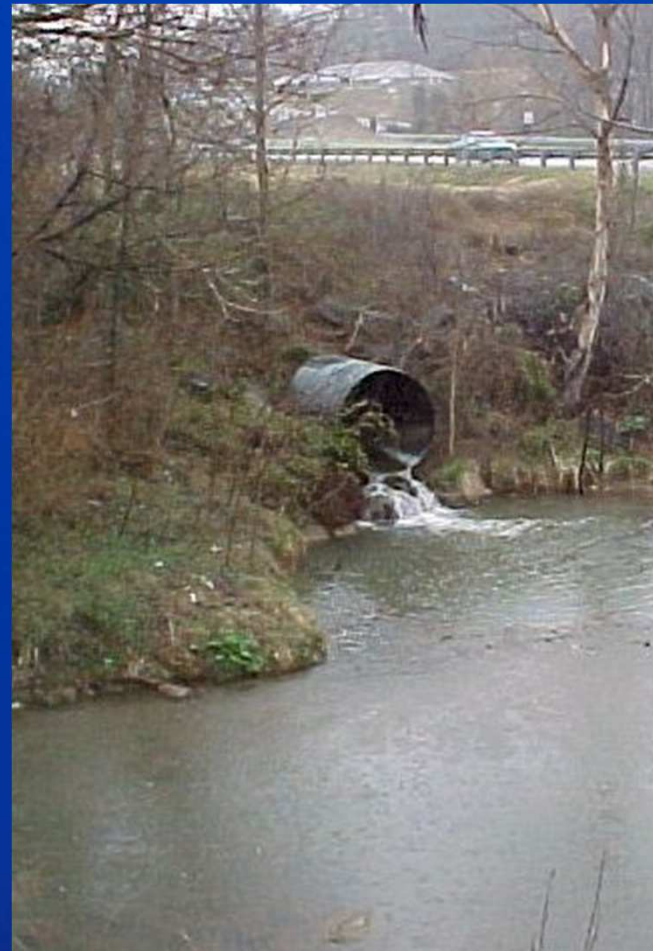
- 💧 (1) any operator of a MS4 may petition the Director to require a separate NPDES permit for any discharge into the MS4
- 💧 (2) any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

Three Real World Examples...

- 💧 Three examples:
 - 💧 Vermont
 - 💧 Maine
 - 💧 Massachusetts
- 💧 RDA used differently in each
- 💧 Who is Next?

What is Regulated?

- 💧 **Rain...and all that it brings...**
- 💧 **Run-off...and all that it carries...**
- 💧 **Precipitation Driven Discharges!**



Permit Requirements

💧 What do the various permits require?

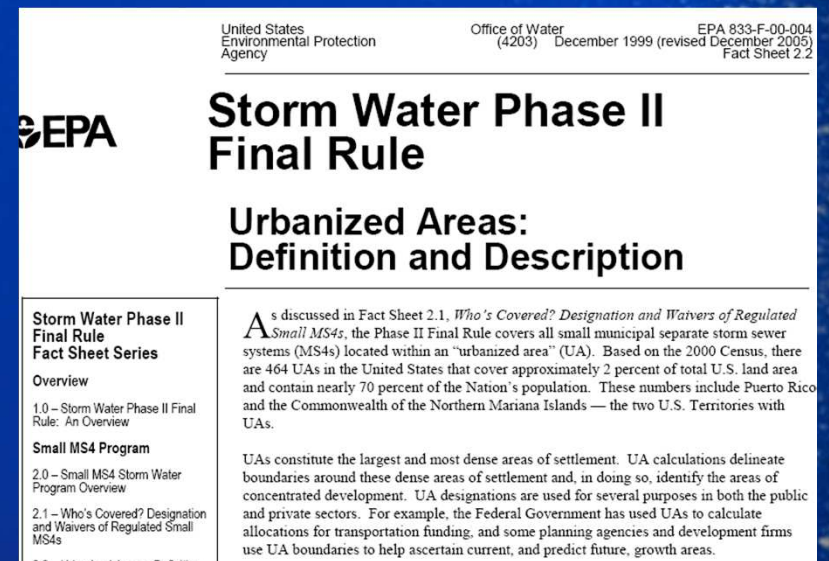
- 💧 6 minimum control measures
- 💧 stormwater pollution prevention plans
- 💧 BMPs

💧 Examples

- 💧 Sweeping Program
- 💧 Management of Snow and Deicing Chemicals
- 💧 Management of Waste and Hazardous Materials
- 💧 Proper Management of Landscaped Areas
- 💧 Stabilization of Exposed Soil Areas

💧 How many...who is impacted by these permits

💧 Other duties as assigned...RDA...



United States Environmental Protection Agency Office of Water (4203) December 1999 (revised December 2005) EPA 833-F-00-004 Fact Sheet 2.2

EPA **Storm Water Phase II Final Rule**

Urbanized Areas: Definition and Description

Storm Water Phase II Final Rule Fact Sheet Series

Overview

1.0 - Storm Water Phase II Final Rule: An Overview

Small MS4 Program

2.0 - Small MS4 Storm Water Program Overview

2.1 - Who's Covered? Designation and Waivers of Regulated Small MS4s

2.2 - Urbanized Areas: Definition and Description

As discussed in Fact Sheet 2.1, *Who's Covered? Designation and Waivers of Regulated Small MS4s*, the Phase II Final Rule covers all small municipal separate storm sewer systems (MS4s) located within an "urbanized area" (UA). Based on the 2000 Census, there are 464 UAs in the United States that cover approximately 2 percent of total U.S. land area and contain nearly 70 percent of the Nation's population. These numbers include Puerto Rico and the Commonwealth of the Northern Mariana Islands — the two U.S. Territories with UAs.

UAs constitute the largest and most dense areas of settlement. UA calculations delineate boundaries around these dense areas of settlement and, in doing so, identify the areas of concentrated development. UA designations are used for several purposes in both the public and private sectors. For example, the Federal Government has used UAs to calculate allocations for transportation funding, and some planning agencies and development firms use UA boundaries to help ascertain current, and predict future, growth areas.

Case Law



- 💧 *In Re Stormwater NPDES Petition (VT Environmental Court)*
- 💧 *Northwest Environmental Defense Center v. Brown* (9th Circuit, 2010)
- 💧 *Nat'l Association of Homebuilders v. EPA* (7th Circuit, 2010)

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Proposed Stormwater Rulemaking

💧 EPA Proposal/Information Request

💧 Expansion of MS4 Program?

- 💧 Inclusion of urban clusters?

- 💧 Extending to watershed boundaries?

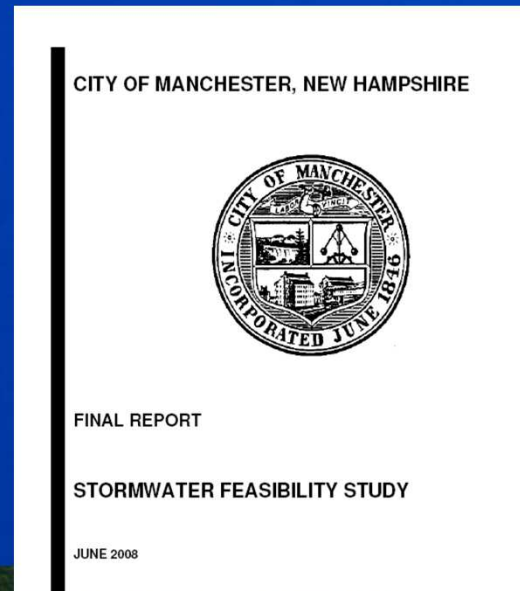
💧 Construction and Development

- 💧 Post-construction standards?

 - 💧 Based on EISA?

Innovative Approaches

- 💧 **Planning** – assessment of most cost-effective BMP placements
- 💧 **Planning** – I/C and Flow TMDLS
- 💧 **Implementation** – Stormwater Utilities
- 💧 **Implementation** - Outreach



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Questions?

- 💧 Yes – tons!
- 💧 How to monitor success? What's working?
- 💧 What is best way to ensure BMP maintenance?
- 💧 Is CWA Section 402 the best way to regulate stormwater? If not, then don't we have to give some teeth to Clean Water Act Section 319?
- 💧 How do we fund comprehensive stormwater management?

Thanks!

- 💧 Clair Ryan, NEIWPCC
- 💧 Peter LaFlamme and Mary Borg, VT DEC
- 💧 University of New Hampshire Stormwater Center

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