

## National Stormwater Network Conference Call Minutes

June 30, 2015  
2:00 pm – 3:00 pm EST  
1-877-394-0659; Conf. ID 8153732026

### Participants:

Name	Org Name
Aubrey Strause	Central Mass. Stormwater Coalition
Robin Craver	Central Mass. Stormwater Coalition
Kyle Dreyfuss-Wells	Chair, NACWA Stormwater Management Committee (SMC)
Jill Piatt-Kemper	Colorado Stormwater Council, Vice Chair, NACWA SMC
Mary Doston	Colorado Stormwater Council
Christopher Pettit	Florida Stormwater Association (FSA)
Vicki Meredith	Kentucky Stormwater Association
Tim Whittie	Maryland Municipal Stormwater Association (MAMSA)
Monica Kacprzyk	NEIWPC
Harry Stark	Ohio Stormwater Association
Therese Walch	Oregon Association of Clean Water Agencies (ORACWA)
Janet Gillaspie	ORACWA
Kurt Spitzer	Southeast Stormwater Association (SESWA) & FSA
Barbara Seal	SESWA/Gwinnett County
Jennifer Watson	Tennessee Stormwater Association (TSA)
Don Green	TSA
Randy Bartlett	Virginia Municipal Stormwater Association (VAMSA)
Chris Pomeroy	VAMSA/MAMSA
Kaitlyn Bendik	EPA
Debora Clovis	EPA
Sharon Cooperstein	EPA
Rachel Herbert	EPA
Sylvia Horwitz	EPA
Greg Schaner	EPA
Katherine Telleen	EPA
Amanda Waters	NACWA
Brenna Mannion	NACWA
Chris Hornback	NACWA
Nathan Gardner-Andrews	NACWA
Robin Davis	NACWA

## I. Welcome, Introductions & Network Overview

Kyle Dreyfuss-Wells, Deputy Director of Watershed Programs at the Northeast Ohio Regional Sewer District and Chair of NACWA's Stormwater Management Committee welcomes call attendees. Brenna Mannion, Director of Regulatory Affairs and Outreach at NACWA provides overview of NACWA's stormwater advocacy in Washington and the organization of the National Stormwater Network (NSN) and offerings moving forward.

- Stormwater management and more specifically MS4 issues are significant and will be increasing over the coming years.
- NACWA is well positioned to act as a convener for this type of group based on over 45 years of advocacy around the Clean Water Act.
- NSN is a no-cost network providing ability to share information, to provide feedback to EPA, Congress, & the administration on key issues like this Phase II remand, and to use NACWA as a resource on legal, legislative and regulatory challenges faced by you and your members.
- NSN Offerings:
  - Regular publication providing national MS4 policy analysis.
  - Scheduled calls amongst Network members
  - Occasional briefings/webinars for Network organizations' member utilities
  - Targeted stormwater policy resources
  - Ultimate goal is to further unify and clarify the stormwater message as we work with our federal partners to address stormwater management.
- The NSN as a complimentary effort to WEF's recently announced SW Institute which will be a more technical resource – which is also much needed, and we will continue to collaborate with them as it develops over the next couple months.

## II. Potential Phase II Rule Remand, Greg Schaner, Attorney Advisor, U.S. EPA Office of Water

Greg notes that the NSN fills a gap because EPA has been trying to find a group of state and local MS4 organizations to work with. He presents on two potential regulatory options to address the Phase II Rule remand using presentation slides attached to these minutes.

- EPA views the 9th circuit decision as a legal basis for their regulation even though it's not, say, a Supreme Court decision.
- If you are operating under a state permit that has not been challenged then there's no reason to think your coverage would no longer be valid with these changes.
- EPA is NOT looking to change the MEP standard.

Comments from participants:

- It is unlikely our state has the ability to slow down enough to publically notice NOI's, so option 1 may be preferable.
- Minimum control measures 1 & 2 already allow for public feedback.
- Publishing each notice in something like the newspaper for public comment would be overly onerous.
- Whatever EPA does, they should be as minimal as possible because there is a significant chance that Congress will attempt to override more than just the Clean Water Rule. It might avoid the

paradoxical result where changes to the rule/new rules like CWR ultimately reduce water quality, not improving it. Taking on Phase 2 MS4s will probably add fuel to the fire, as if the fire could get any bigger anyway!


- Group seemed to lean towards option #1 as it puts less burden on the MS4's than option #2, but remain undecided.

Brenna will draft a NSN comment letter summarizing these and other feedback and circulate it with Network participants for review.

### III. Adjourn

**We welcome any feedback on our first official action of the National Stormwater Network.**

# MS4 Remand Rule

A decorative graphic on the left side of the slide. It features several thin, dark green lines representing reeds or grass, some of which are curved. An orange arrow points from the left edge towards the text.

Greg Schaner  
Water Permits Division  
U.S. EPA

# Agenda

- ▶ Provide background on the MS4 remand
- ▶ Discussion: rule scenarios to address MS4 remand
- ▶ Other topics/next steps



# Background on the MS4 Remand

# *EDC v. EPA* decision (Ninth Circuit, 2003)

- ▶ Focus of the ruling: Ninth Circuit found deficiencies in the Phase II stormwater regulations regarding the procedures to be used for providing coverage to small MS4s under general permits
- ▶ The court vacated the relevant portions of the Phase II regulations, and remanded to EPA to fix the deficiencies:
  1. Lack of permitting authority review
  2. Failure to make NOIs available to the public
  3. Failure to provide the public with the opportunity to request a public hearing on individual NOIs

# EPA Guidance

- ▶ 2004 Jim Hanlon Memorandum
  - ▶ Public Availability of NOIs:
    - ▶ Permits should include language how NOIs will be made available to the public with sufficient time to allow for a meaningful public comment
  - ▶ Opportunity for Public Hearing:
    - ▶ EPA recommendation: include permit language explaining the process for requesting a public hearing on an NOI, the standard by which such requests will be judged, the procedures for conducting public hearing requests that are granted, and the procedures for permitting authority consideration of the information submitted at the hearing
  - ▶ Permitting Authority Review of NOIs:
    - ▶ Permitting authority needs to conduct an appropriate review of the NOIs to ensure consistency with the permit
- ▶ MS4 Permit Improvement Guide (2010)
- ▶ Revisions to 2002 Memorandum on TMDLs and Stormwater Permits
  - ▶ Recommendation that NPDES permitting authorities establish clear, specific, and measurable permit requirements to implement the minimum control measures in MS4 permits



# NRDC/EDC petition to Ninth Circuit (2014)

- ▶ Petitioners asked the Ninth Circuit to require EPA to take action to address the 2003 *EDC v. EPA* ruling
- ▶ Petition requests the Court to order EPA to take the following actions:
  - ▶ Immediately revise its Phase II small MS4 regulations include a statement that directs permitting authorities to comply with the 2003 *EDC* order pending further rulemaking. "This action is needed to ensure that state permitting agencies do not continue to mistakenly rely on the vacated rules."
  - ▶ Propose within 6 months (and finalize within 6 months after that date) a rule revising the Phase II small MS4 regulations to address the "procedural deficiencies" found in the Court's 2003 order.
- ▶ Ninth Circuit has given EPA until July 10 to respond

## Status of Rulemaking Effort

- ▶ Preparation of a proposal to address the Ninth Circuit remand is underway
- ▶ Timing of the rule is to be determined by the outcome of the NRDC/EDC petition
- ▶ Conducting outreach to MS4s, states, and other stakeholders to inform the proposed rule



# Discussion: Rule Scenarios to Address MS4 Remand

## Scenario 1: Traditional General Permit

### Concept Description (in development)

- ▶ NPDES authority defines permit requirements that establish what actions are necessary (including associated deadlines and frequencies) to meet the standard of “reducing the discharge of pollutants from [the] MS4 maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act”
  - ▶ During each permit reissuance, the NPDES authority reevaluates the permit requirements to determine whether they continue to be adequate to meet the standard – consistent with the Iterative BMP Approach
  - ▶ Each permit will include enforceable requirements that address each of the 6 minimum measures and any more stringent effluent limits necessary to protect water quality
- ▶ MS4 permittee still required to develop SWMP that describes what BMPs will implemented to meet the requirements of the permit
- ▶ Process to obtain permit coverage would be the same as for traditional general permits
  - ▶ Information requirements for NOI can be streamlined
  - ▶ NOI reviewed by NPDES authority for completeness
  - ▶ Public notice of individual NOIs not required
  - ▶ Coverage can be granted immediately, after a waiting period, or upon notification

# Scenario 1: Traditional General Permit

## Some State Examples

- ▶ Western Washington small MS4 general permit
  - ▶ Public education: each permittee must select from a menu of target audiences and behavior changes, and then measure the understanding and effectiveness of the strategy.
  - ▶ IDDE: All Permittees ... shall complete field screening for at least 40% of the MS4 no later than December 31, 2017, 10 and on average 12% each year thereafter.
  - ▶ Construction and post-construction: requirement to comply with minimum technical standards (based on statewide stormwater design manual)
- ▶ Minnesota small MS4 general permit
  - ▶ Public participation: Provide a minimum of one (1) opportunity annually for the public to provide input on the adequacy of the SWPPP.
  - ▶ Post-construction: "The permittee shall develop and implement a Post-Construction Stormwater Management program that requires the use of any combination of BMPs, with highest preference given to Green Infrastructure techniques and practices ... necessary to meet the following conditions on the site of a construction activity to the MEP: (a) For new development projects – no net increase from pre-project conditions (on an annual average basis) of: 1) Stormwater discharge Volume ... , 2) Stormwater discharges of Total Suspended Solids (TSS), 3) Stormwater discharges of Total Phosphorus (TP)"

## Scenario 1: Traditional General Permit

### Some State Examples

- ▶ New York small MS4 general permit
  - ▶ IDDE: "Conduct an outfall reconnaissance inventory ... addressing every outfall within the urbanized area and additionally designated area within the covered entity's jurisdiction at least once every five years, with reasonable progress each year."
  - ▶ For all small MS4s located East of the Hudson River: implement additional MCMs to target phosphorus reduction consistent with the WLA for the TMDL
    - ▶ Ex: Develop, implement and enforce a program that ensures that on-site sanitary systems designed for less than 1000 gallons per day (septic systems, cesspools, including any installed absorption fields) are inspected at a minimum frequency of once every five years and, where necessary, maintained or rehabilitated.

## Scenario 2: Procedural Requirements

### Concept Description (in development)

- ▶ Include requirements for permitting authority review, public notice of NOIs, and providing the opportunity for the public to request a hearing (if necessary) on individual NOIs
- ▶ Permitting authority review – NPDES authority required to determine if the NOI is complete and whether the identified BMPs will meet the requirement to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA
  - ▶ Include a mechanism for requiring modifications to the NOI where appropriate
- ▶ Public notice – NPDES authority required to provide a public comment period (e.g., 30 days) for each NOI
  - ▶ Must describe process for receiving public comment and considering any comments received
  - ▶ Public hearing – NPDES authority also required to provide the opportunity for a public hearing on any specific NOI, and to describe in the permit how requests for a hearing should be made and considered



## Scenario 3: Choose Between Scenario 1 or 2

### Description

- ▶ Provide NPDES authorities with the option of selecting which approach works best for them





Other Topics/Next Steps