

## Changes proposed under MS4 General Permit Remand Rule.

Text is CFR (e-CFR, current as of September 29, 2015). Strikeout reflects draft text proposed to be deleted. Underline reflects draft text proposed to be added.

The narrative description of each of these proposed modifications is included below in Attachment A.

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### **§122.33 If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply? Requirements for obtaining permit coverage for regulated small MS4s.**

(a) ~~If you operate a~~ The operator of any regulated small MS4 under §122.32, ~~you~~ must seek coverage under ~~a~~ an NPDES permit issued by ~~your~~ the applicable NPDES permitting authority. If ~~you are the small~~ MS4 is located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is ~~your~~ the NPDES permitting authority. Otherwise, ~~your~~ the NPDES permitting authority is the EPA Regional Office.

(b) ~~You~~ The operator of any regulated small MS4 must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) ~~If your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you seeking coverage under a general permit issued by the Director, the operator must submit a Notice of Intent (NOI) consistent with § 122.28(b)(2) that includes the information on your best management practices and measurable goals required by §122.34(d). You~~ The operator may file ~~your~~ its own NOI, or ~~the operator~~ you and other municipalities or governmental entities may jointly submit an NOI. If ~~the operator~~ you wants to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, ~~the operator~~ you must submit an NOI that describes which minimum measures ~~it~~ you will implement and identify the entities that will implement the other minimum measures within the area served by ~~the~~ your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2)(i) ~~If you are~~ seeking authorization to discharge under an individual permit and wishing to implement a program under §122.34, ~~the operator~~ you must submit an application to ~~the appropriate~~ your NPDES permitting authority that includes the information required under §§122.21(f) and ~~122.34(d)~~, the following:

**[Text in (A), (B), and (C) was moved from §122.34(d)(1)]** (A) the best management practices (BMPs) that the operator or another entity proposes to implement for each of the storm water minimum control measures described in §122.34(b)(1) through (b)(6):

(B) the measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of the action;

(C) the person or persons responsible for implementing or coordinating the storm water management program;

(D) an estimate of square mileage served by ~~your~~ the small MS4; and

(E) any additional information that ~~your~~ the NPDES permitting authority requests. A storm sewer map that satisfies the requirement of §122.34(b)(3)(i) will satisfy the map requirement in §122.21(f)(7).

(ii) If ~~you are~~ seeking authorization to discharge under an individual permit and wishing to implement a program that is different from the program under §122.34, ~~the operator you~~ will need to comply with the permit application requirements ~~of in~~ §122.26(d). ~~The operator will need to~~ You must submit both Parts of the application requirements in §§122.26(d)(1) and (2) at least 180 days before the operator proposes to be covered by an individual permit by March 10, 2003. ~~The operator does~~ You do not need to submit the information required by §§122.26(d)(1)(ii) and (d)(2) regarding its your legal authority, unless the operator you intends for the permit writer to take such information into account when developing ~~your~~ other permit conditions.

(iii) If allowed by the Director your NPDES permitting authority, the operator of the regulated small MS4 you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If the regulated your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have the small MS4 you participate in its storm water program, ~~you and the other MS4~~ the parties may jointly seek a modification of the other MS4 permit to include the small MS4 you as a limited co-permittee. As a limited co-permittee, the operator of the small MS4 you will be responsible for compliance with the permit's conditions applicable to its your jurisdiction. If the operator of the small MS4 ~~you~~ chooses this option it you will need to comply with the permit application requirements of §122.26, rather than the requirements of ~~§122.33(b)(2)(i) 122.34.~~ The operator of the small MS4 You does not need to comply with the specific application requirements of §122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The operator of the small MS4 You may satisfy the requirements in §122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance for paragraph (b)(3): In referencing an MS4's storm water management program, the regulated small MS4 you should briefly describe how the existing program plan will address discharges from the your small MS4 or would need to be supplemented in order to adequately address the your discharges. The regulated small MS4 You should also explain its your role in coordinating storm water pollutant control activities in the your MS4, and detail the resources available to the MS4 you to accomplish the program plan.

(c) If ~~the you operate a~~ regulated small MS4:

(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 (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under §123.35(d)(3) of this chapter.~~

(2) ~~is D-designated under §122.32(a)(2), the operator of the MS4 you~~ must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

### **§122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require? Minimum permit requirements for regulated small MS4s.**

(a) General requirements for regulated small MS4s. Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed in each permit issued under this section, the Director must include permit conditions that establish in specific, clear, and measurable terms what is required to reduce the discharge of pollutants from the your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under

~~§122.26(d).~~ For the purposes of this section, narrative effluent limitations may be expressed as requirements to implement requiring implementation of best management practices (BMPs) with clear, specific, and measurable requirements, including, but not limited to, specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and frequency of actions 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 to protect water quality. Implementation of 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 constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." Your NPDES permitting authority will For permits being issued to a small MS4 for the first time, the Director may specify a time period of up to 5 years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs you to develop and implement your program. Each successive permit must meet the requirements of this section based on current water quality conditions, record of BMP effectiveness, and other relevant information.

(b) *Minimum control measures.* The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in subparagraphs (1) through (6) of this paragraph during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describes how the permittee intends to comply with the permit's requirements for each minimum control measure. —

(1) *Public education and outreach on storm water impacts.* (i) ~~You must implement~~ The permit must require implementation of 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 the public can take to reduce pollutants in storm water runoff.

(ii) *Guidance for permitting authorities and regulated small MS4s:* ~~The permittee You~~ may use storm water educational materials provided by the your State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the permit require the permittee to tailor the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that the permit require that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. The permit should You are encouraged the permittee to tailor the your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) The permit must require implementation of You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program that complies with State, Tribal, and local public notice requirements.

(ii) Guidance for permitting authorities and regulated small MS4s: EPA recommends that the permit include provisions addressing the need for the public to be included in developing, implementing, and reviewing your the storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) The permit must require the development, implementation, and enforcement of ~~You must develop, implement and enforce~~ a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into the your small MS4. At a minimum, the permit must require the permittee to:

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

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

(iii) The permit must require the permittee to ~~You need~~ address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if they are identified ~~you identify them~~ as significant contributors of pollutants to the your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(iv) (iii) Guidance for permit writers and regulated small MS4s: EPA recommends that the permit require the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends that the permit require the permittee to visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education 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.* (i) The permit must require the permittee to ~~You must~~ develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with §122.26(b)(15)(i), the permittee is you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The permit must require

(ii) ~~Your program must include~~ the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(iii) Guidance for permit writers and regulated small MS4s: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that the procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. EPA also recommends that the permit encourage the permittee to ~~You are encouraged to~~ provide appropriate educational and training measures for construction site operators. The permit should also include a requirement for the permittee to require ~~You may wish to require~~ a storm water pollution prevention plan for construction sites within the MS4's your jurisdiction that discharge into the your system. See §122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see §122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.* (i) The permit must require the development, implementation, and enforcement of ~~You must develop, implement, and enforce~~ a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the your small MS4. The permit Your program must ensure that controls are in place that would prevent or minimize water quality impacts. The permit You must require the permittee to:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(ii) Guidance for permit writers and regulated small MS4s: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the permit ensure that BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages the permittee you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that the permit require the permittee to you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing the your program, the permit should also require the permittee to assess you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, the permit should require the permittee to you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that the permit you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that the permit your requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.* (i) The permit must require the development and implementation of You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the your State, Tribe, or other organizations, the your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance for permit writers and regulated small MS4s: EPA recommends that the permit address the following: , at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers 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. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

**[Text in (c) moved below to (e)]**~~(c) Qualifying local program. If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.~~

~~(d)(1) In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information:~~

**[Text in (i), (ii), and (iii) moved to §122.33(b)(2)(i)]**~~(i) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;~~

~~(ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and~~

~~(iii) The person or persons responsible for implementing or coordinating your storm water management program.~~

~~(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.~~

~~(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.~~

~~(e c) Other applicable requirements. (1) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.~~

~~(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in §122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.~~

~~(f c)(2) You must comply with other~~ 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.

~~(g d)~~ Evaluation and assessment requirements. The permit must require the permittee to—(1) Evaluation. ~~You must~~ Evaluate permit program compliance, the appropriateness of its ~~your~~ identified best management practices, and progress towards achieving ~~your~~ identified measurable goals.

NOTE TO PARAGRAPH ~~(g)(d)~~(1): The NPDES permitting authority may determine monitoring requirements for the permittee ~~you~~ in accordance with State/Tribal monitoring plans appropriate to ~~your~~ the watershed. Participation in a group monitoring program is encouraged.

(2) Recordkeeping. ~~You must~~ Keep records required by the NPDES permit for at least 3 years. ~~You must~~ and submit such ~~your~~ records to the NPDES permitting authority only when specifically asked to do so. ~~You must make your~~ The permit must require the permittee to make records, including a written description of the ~~your~~ storm water management program, available to the public at reasonable times during regular business hours (see §122.7 for confidentiality provision). ~~(You~~ The permittee ~~may~~ may assess a reasonable charge for copying. The permit may allow the permittee to ~~You may~~ require a member of the public to provide advance notice.)

(3) Reporting. Unless the permittee is ~~you are~~ relying on another entity to satisfy its ~~your~~ NPDES permit obligations under §122.35(a), the permit must require the permittee to ~~you must~~ submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, the permit must require the permittee to ~~you must~~ submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. ~~Your~~ The report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of the permittee's ~~your~~ identified best management practices and progress towards achieving its ~~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 the permittee ~~you~~ plans to undertake during the next reporting cycle;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that the permittee is ~~you are~~ relying on another governmental entity to satisfy some of the ~~your~~ permit obligations (if applicable), consistent with §122.35(a).

(e) Qualifying local program. If an existing qualifying local program requires the permittee ~~you~~ to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct the permittee ~~you~~ to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

**§122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?**

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:



(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under §122.34(g ~~d~~)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by §122.34(g ~~d~~)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. 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.

[Subsection (b) unchanged, omitted here]

## **Attachment A**

### **Narrative Description of Each Proposed Regulatory Modification**

1. Revise the title to § 122.33 and revise paragraph (a) to read as follows:

§122.33 Requirements for obtaining permit coverage for regulated small MS4s.

(a) The operator of any regulated small MS4 under §122.32 must seek coverage under an NPDES permit issued by the applicable NPDES permitting authority. If the small MS4 is located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is the NPDES permitting authority. Otherwise, the NPDES permitting authority is the EPA Regional Office.

2. Revise paragraph (b) of § 122.33 to delete “You” and replace it with “The operator of any regulated small MS4” in the introductory language, revise the first sentence in paragraph (b)(1) to delete “your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you”, add “seeking coverage under a general permit issued by the Director the operator”, delete “that includes the information on your best management practices and measurable goals required by §122.34(d)” and add “consistent with §122.28(b)(2)”; revise the second sentence to delete “You” and replace it with “The operator,” delete “you” and replace it with “the operator” within the sentence, and replace “your” with “its”; delete “You” and replace it with “The operator” at the beginning of the third sentence, replace “want” with “wants”, delete “you” and replace it with “the operator” within the sentence, delete “you” and replace it with “it” and delete “your” and replace it with “the” also in the third sentence, to read as follows:

(b) The operator of any regulated small MS4 must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If seeking coverage under a general permit issued by the Director, the operator must

submit a Notice of Intent (NOI) consistent with §122.28(b)(2). The operator may file its own NOI, or the operator and other municipalities or governmental entities may jointly submit an NOI. If the operator wants to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, the operator must submit an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4.\* \* \*

3. Revise paragraph (b)(2)(i) of § 122.33 to delete “you are”, replace “wish” with wishing”, replace “you” with the “the operator”, replace “your” with “the”, replace “122.34(d)” with “the following:”, insert after “the following:” the text from existing 122.34(d)(1)(i)-(iii) with minor edits as indicated below, replace “your small MS4” with “the small MS4”, replace “your NPDES permitting authority” with “NPDES permitting authority”, revise paragraph (b)(2)(ii) to delete “you are ” after “If” in the first sentence, replace “wish” with “wishing”, delete the “you” and replace it with “the operator”, replace “of” with “in”, also at the end of the first sentence, replace “122.26(d)” with “§122.26(d)(1) and (2) for its initial application for an individual permit and submit the application at least 180 days before the operator proposes to be covered by an individual permit”, delete the second sentence, and delete “You do” and replace it with “The operator does”, replace “your” with “its”, replace “you intend” with “the operator intends”, delete “your” following “developing” in the third sentence, and delete “your NPDES permitting authority” and replace it with “the Director”, delete “you” and replace it with “the operator of the regulated small MS4” in paragraph (b)(2)(iii), to read as follows.

(2)(i) If seeking authorization to discharge under an individual permit and wishing to implement a program under § 122.34, the operator must submit an application to the appropriate

NPDES permitting authority that includes the information required under §§122.21(f) and the following: (A) the best management practices (BMPs) that the operator or another entity proposes to implement for each of the storm water minimum control measures described in §122.34(b)(1) through (b)(6); (B) the measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of the action; (C) the person or persons responsible for implementing or coordinating the storm water management program; (D) an estimate of square mileage served by the small MS4; and (E) any additional information that the NPDES permitting authority requests.\* \* \*

(ii) If seeking authorization to discharge under an individual permit and wishing to implement a program that is different from the program under §122.34, the operator will need to comply with the permit application requirements in §122.26. The operator will need to submit both Parts of the application requirements in §§ 122.26 (d)(1) and (2) at least 180 days before the operator proposes to be covered by an individual permit. The operator does not need to submit the information required by §§122.26(d)(1)(ii) and (d)(2) regarding its legal authority, unless the operator intends for the permit writer to take such information into account when developing other permit conditions.

(iii) If allowed by the Director, the operator of the regulated small MS4 and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

4. Revise paragraph (b)(3) of § 122.33 to delete “your” and replace it with “the regulated”, delete “you” and replace it with “the small MS4” twice, and delete “you and the other MS4” and replace it with “the parties” in the first sentence, delete “you” and replace it with “the operator of the small MS4,” and delete “your” and replace it with “its” in the second sentence, delete “you”

and replace it with “the operator of the small MS4,” replace “choose” with “chooses”, delete “you” and replace it with “it” and delete the cross reference to §122.34 and replace it with a cross-reference to §122.33(b)(2)(i) in the third sentence, and delete “You” and replace it with “The operator of the small MS4” in the fourth and fifth sentences to read as follows below. In addition revise the title to paragraph (b)(4), delete “you” and replace it with “the regulated small MS4” and delete “your” and replace it with “the” in the first sentence, delete “you” and replace it with “the regulated small MS4”, delete “your” and replace it with “its”, delete “your” and replace it with “the”, and replace “you” with “the MS4” in the second sentence to read as follows:

(3) If the regulated small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have the small MS4 participate in its storm water program, the parties may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee. As a limited co-permittee, the operator of the small MS4 will be responsible for compliance with the permit's conditions applicable to its jurisdiction. If the operator of the small MS4 chooses this option it will need to comply with the permit application requirements of §122.26, rather than the requirements of §122.33(b)(2)(i). The operator of the small MS4 does not need to comply with the specific application requirements of §122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The operator of the small MS4 may satisfy the requirements in §122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance for paragraph (b)(3): In referencing an MS4’s storm water management program, the regulated small MS4 should briefly describe how the existing plan will address discharges from the small MS4 or would need to be supplemented in order to adequately address the discharges. The regulated small MS4 should also explain its role in coordinating storm water pollutant control activities in the MS4, and detail the resources available to the MS4 to accomplish the plan.

5. Revise paragraph (c) of § 122.33 to delete “you operate a” and replace it with “the” in the introductory language, add “is” and delete the colon at the end of the introductory language, remove existing paragraph (c)(1), delete “you” and replace it with “the operator of the MS4” in existing paragraph (c)(2), and redesignate existing paragraph (c)(2) as part of paragraph (c) to read as follows:

(c) If the regulated small MS4 is designated under §122.32(a)(2), the operator of the MS4 must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

6. Revise § 122.34 of this Part to change the title and revise paragraph (a) to add “In each permit issued under this section, the Director must include permit conditions that establish in specific, clear, and measurable terms what is required”, delete “Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed”, and replace “your MS4” with “the MS4”, in the first sentence, delete the second sentence, in the third sentence delete “narrative”, “requiring implementation of”, and “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 to protect water quality”, and add “may be expressed as requirements to implement” after “effluent limitations”, add “with clear, specific, and measurable requirements, including, but not limited to, specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and frequency of actions” following “(BMPs)”, delete the existing fourth sentence, in the fifth sentence delete “Your NPDES permitting authority will” and replace it with “For permits being issued to a small MS4 for the first time, the Director may”, delete “you to develop and implement your program”, add “the permittee to fully comply with the conditions of the permit and to implement necessary BMPs”, and add a final sentence “Each successive permit must meet the requirements of this section based on current water quality conditions, record of BMP effectiveness, and other relevant information” to read as follows:

§ 122.34 Minimum permit requirements for regulated small MS4 permits.

(a) General requirement for regulated small MS4 permits. In each permit issued under this section, the Director must include permit conditions that establish in specific, clear, and measurable terms what is required to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. For the purposes of this section, effluent limitations may be expressed as requirements to implement best management practices (BMPs) with clear, specific, and measurable requirements, including, but not limited to, specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and frequency of actions. For permits being issued to a small MS4 for the first time, the Director may specify a time period of up to 5 years from the date of permit issuance for

the permittee to fully comply with the conditions of the permit and to implement necessary BMPs. Each successive permit must meet the requirements of this section based on current water quality conditions, record of BMP effectiveness, and other relevant information.

7. Revise paragraph (b) of § 122.34 to add introductory language to read as follows:

(b) Minimum control measures. The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in subparagraphs (1) through (6) of this paragraph during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describes how the permittee intends to comply with the permit's requirements for each minimum control measure.

8. Revise paragraph (b)(1)(i) to delete "You must implement" and replace it with "The permit must require implementation of" to read as follows:

(1) Public education and outreach on storm water impacts. (i) The permit must require implementation of 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 the public can take to reduce pollutants in storm water runoff.

9. Revise the title to (b)(1)(ii), remove "You" and replace it with "The permittee" and remove "your" and replace it with "the" in the first sentence, delete "be tailored" and replace it with "permit require the permittee to tailor the" in the fourth sentence, add "that the permit should require" in the sixth sentence, and delete "You are encouraged" and replace it with "The permit should encourage the permittee" and replace "your" with "the" in the last sentence to read as follows:

(b)(1)(ii) Guidance for permitting authorities and regulated small MS4s: The permittee may use storm water educational materials provided by the State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. \* \* \* EPA recommends that the permit require the permittee to tailor the public education program, using a mix of locally appropriate strategies, to target specific audiences and communities. \* \* \* In addition, EPA recommends that the permit should require that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. \* \* \* The permit should encourage the permittee to tailor the outreach program to



address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

\* \* \* \* \*

10. Revise the introduction to paragraph (b)(2)(i) to delete “You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing” and replace it with “The permit must require implementation of” and adding “that complies with State Tribal and local public notice requirements”, as well as to revise the title to paragraph (b)(2)(ii) and insert “the permit include provisions addressing the need for” after “EPA recommends that,” add “to” following “the public” and to delete “your” and replace it with “the” in the first sentence, to read as follows:

(2) Public involvement/participation. (i) The permit must require implementation of a public involvement/ participation program that complies with State, Tribal, and local public notice requirements.

(ii) Guidance for permitting authorities and regulated small MS4s: EPA recommends that the permit include provisions addressing the need for the public to be included in developing, implementing, and reviewing the storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups.\* \* \*

11. Revise the first sentence in paragraph (b)(3)(i) to delete “You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into your small MS4.” and replace it with “The permit must require the development,

implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to:”, and to revise (b)(3)(i)(B) to replace “your” with “the”, to revise paragraph (b)(3)(iii) to delete “You need” and replace it with “The permit must require the permittee to” and to replace “your with “the”, to revise the title to paragraph (b)(3)(iv) and insert “the permit require” after “EPA recommends that” in the first sentence and insert “that the permit require the permittee to” in the second sentence after “EPA recommends”, replace “screening” with “screen” and “conducting” with “conduct”, and to remove (b)(3)(ii) and redesignate (b)(3)(iii) and (iv) as (b)(3)(ii) and (iii), to read as follows:

(3) Illicit discharge detection and elimination. (i) The permit must require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to:

\* \* \* \* \*

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

\* \* \* \* \*

(ii) The permit must require the permittee to address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if they are identified as significant contributors of pollutants to the small MS4: \* \* \*

(iii) Guidance for permit writers and regulated small MS4s: EPA recommends that the permit require the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends that the permit require the permittee to visually screen outfalls during dry weather and conduct field tests of selected pollutants as part of the procedures for locating priority areas.\* \* \*

12. Revise paragraph (b)(4)(i) to remove “You must” and replace it with “The permit must require the permittee to” in the first sentence, delete “your” and replace it with “the” in the first and second sentences, replace “you are” with “the permittee is” in the third sentence, , add a fourth sentence “The permit must require the development and implementation of the following, at a minimum:” remove paragraph (b)(4)(ii), revise paragraph (b)(4)(iii) to revise the title, insert “the” before “procedures” in the second sentence, replace “You are encouraged” with “EPA also recommends that the permit encourage the permittee to” in the fourth sentence, replace “You may wish to require” with “The permit should also include a requirement for the permittee to require”, replace “your” with “the MS4’s”, replace “your” with “the” in the fifth sentence, and redesignate paragraph (b)(4)(iii) as (b)(4)(ii), to read as follows:

(4) Construction site storm water runoff control. (i) The permit must require the permittee to develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan

of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with §122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The permit must require the development and implementation of, at a minimum:

\* \* \* \* \*

(ii) Guidance for permit writers and regulated small MS4s: \* \* \* EPA recommends that the procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. EPA also recommends that the permit encourage the permittee to provide appropriate educational and training measures for construction site operators. The permit should also include a requirement for the permittee to require a storm water pollution prevention plan for construction sites within the MS4's jurisdiction that discharge into the system. See §122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). \* \* \*

13. Revise paragraph (b)(5)(i) to delete “You must develop, implement, and enforce” and replace it with “The permit must require the development, implementation, and enforcement of” and delete “your” and replace it with “the” in the first sentence, to delete “Your program” and replace it with “The permit” in the second sentence, to make paragraph (b)(5)(ii) part of (b)(5)(i)

and to renumber paragraph (b)(5)(iii) as (b)(5)(ii), to delete “You must” and replace it with “the permit must require the permittee to” in the last sentence of of paragraph (b)(5)(i), to delete “your” and replace it with “the,” in new paragraph (b)(5)(i)(A) , to revise the title to new paragraph (b)(5)(ii) to add “for permit writers and regulated MS4s”, to insert “that the permit ensure” after “EPA recommends” in the second sentence of new (b)(5)(ii), to delete “you” and replace it with “the permittee,” in the third sentence, to delete “you” and replace it with “the permit require the permittee to” in the fourth sentence, replace the fifth sentence with “In developing the program, the permit should also require the permittee to assess existing ordinances, policies, programs and studies that address potential impacts of storm water runoff to water quality”, replace “you should” with “the permit should require the permittee to” in the sixth sentence, to delete “you” and replace it with “the permit,” in the ninth sentence, and delete “your” and replace it with “the permit” before “requirements” in the tenth (and last) sentence, to read as follows:

(5) Post-construction storm water management in new development and redevelopment. (i) The permit must require the development, implementation, and enforcement of a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The permit must ensure that controls are in place that would prevent or minimize water quality impacts. The permit must require the permittee to:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;

\* \* \* \* \*

(ii) Guidance for permit writers and regulated small MS4s: \* \* \* EPA recommends that the permit ensure that BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages the permittee to participate in locally-based watershed planning efforts, which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that the permit require the permittee to adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and

maintenance policies and procedures, and enforcement procedures. In developing the program, the permit should also require the permittee to assess existing ordinances, policies, programs and studies that address potential impacts of storm water runoff to water quality. In addition to assessing these existing documents and programs, the permit should require the permittee to provide opportunities to the public to participate in the development of the program.\* \* \* EPA recommends that the permit ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that the permit requirements be responsive to these changes, developments or improvements in control technologies.

14. Revise paragraph (b)(6)(i) to delete “You must develop and implement” and replace it with “The permit must require the development and implementation of” in the first sentence, and to delete “your” and replace it with “the” twice in the second sentence, to revise the title to paragraph (b)(6)(ii) and delete “, at a minimum, you consider the following in developing your program” and replace it with “the permit address” after “EPA recommends,” to delete “your” and replace it with “the” and delete “you” and replace it with “the permittee” after “operated by” in the first sentence to read as follows:

(6) Pollution prevention/good housekeeping for municipal operations. (i) The permit must require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, Tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance for permit writers and regulated small MS4s: EPA recommends that the permit address the following: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and

storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); \* \* \*

15. Redesignate existing paragraph (c) of §122.34 as paragraph (e) of § 122.34. Revise redesignated 122.34(e) to include the title “Qualifying local program.” Delete “you” and replace it with the “the permittee”, delete “your” and replace it with “the”, delete “you” and replace it with “the permittee” in the first sentence, and delete “, at a minimum,” in the second sentence, to read as follows:

(e) *Qualifying local program.* If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in the NPDES permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal stormwater management program that imposes the relevant requirements of paragraph (b) of this section.

16. Redesignate existing paragraphs (d)(1)(i) – (iii) of § 122.34 and move them to § 122.33(b)(2)(i) after “the following:” in the first sentence and delete the introductory language “In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information,” as shown in the new text for 122.33(b)(2)(i) above.

17. Remove existing paragraphs (d)(2) and (d)(3) of § 122.34.

18. Redesignate existing paragraph (e)(1) as paragraph (c) and revise redesignated (c) to delete “You must comply with any” and replace it with “Other applicable requirements. (1) Any”, delete “in your permit” in the first sentence, and delete “The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis” in the second sentence, remove existing paragraph (e)(2), to read as follows:

(c) *Other applicable requirements.* (1) Any more stringent effluent limitations, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis that determines such limitations are needed to protect water quality.

19. Redesignate paragraph (f) as paragraph (c)(2) and revise (c)(2) to delete “You must comply with other” and replace it with “Other” to read as follows:

(2) 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.

20. Redesignate paragraph (g) as paragraph (d).

21. Revise the newly designated paragraph (d) to add “requirements” to the title, to add following the title “the permit must require the permittee to:”, revise newly designated paragraph (d)(1) to delete “you must”, delete “program” and replace it with “permit” after “Evaluate,” delete “your” and replace it with “its,” delete the second occurrence of “yours”, and redesignate the note to paragraph (g)(1) as the note to paragraph (d)(1) and delete “you” and replace it with “the permittee” and replace “your” with “the”, in the first sentence, revise the newly designated paragraph (d)(2) to delete “You must” at the beginning of the first sentence, connect the first two sentences with “and to”, delete “You must” at the beginning of the existing second sentence, replace “your” with “such” and delete “only” in the existing second sentence, delete “You” and replace it with “The permit must require the permittee”, delete “your” twice in the third sentence and insert “the” before “storm water management program”, and delete “You” and replace it with “The permittee” in the fourth sentence, delete “You” and insert “The permittee” in the fourth sentence, delete “You” and insert “The permit may allow the permittee to” in the fifth sentence, revise the newly designated paragraph (d)(3) to delete “You are” and replace it with “The permit is”, delete “your” and replace it with “its”, replace “you must” and replace it with “the permit must require the permittee to”, replace “your” with “the”, in the first sentence, to delete “you must” and replace it with “the permit must require that permittee to” in the second sentence, and delete “Your” and replace it with “The” in the third sentence, to revise newly designated (d)(3)(i) to replace “your” with “the permittee’s” and replace “your” with “it’s”, to revise the newly designated paragraph (d)(3)(iii) to delete “you” and replace it with “the permittee”, and to revise the new paragraph (d)(3)(v) to delete “you” and replace it with “the permittee is”, replace “your” with “the”, and add “, consistent with 122.35(a)” at the end, to read as follows:

(d) Evaluation and assessment requirements. The permit must require the permittee to:

(1) Evaluation. Evaluate permit compliance, the appropriateness of its identified best management practices, and progress towards achieving identified measurable goals.

NOTE TO PARAGRAPH (d)(1): The NPDES permitting authority may determine monitoring requirements for the permittee in accordance with State/Tribal monitoring plans appropriate to the watershed. \* \* \*

(2) Recordkeeping. Keep records required by the NPDES permit for at least 3 years, and to submit such records to the NPDES permitting authority when specifically asked to do so. The permit must require the permittee to make records, including a written description of the storm water management program, available to the public at reasonable times during regular business hours (see §122.7 for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permit may allow the permittee to require a member of the public to provide advance notice.)

(3) Reporting. Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under § 122.35(a), the permit must require the permittee to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the permit must



require that permittee to submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. The report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of the permittee's identified best management practices and progress towards achieving its identified measurable goals for each of the minimum control measures;

(ii) \* \* \*

(iii) A summary of the storm water activities the permittee plans to undertake during the next reporting cycle;

(iv) \* \* \*

(v) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations (if applicable), consistent with §122.35(a).

[64 FR 68843, Dec. 8, 1999]

22. Revise paragraph (a)(3) of §122.35, to delete the cross-references to 122.34(g)(3) and replace it with cross-references to 122.34(d)(3) to reflect new designations resulting from other proposed revisions, to read as follows:

**§122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities.**

(a) \* \* \*

(3) \* \* \* In the reports you must submit under §122.34(d)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by §122.34(d)(3), you must note that fact in your NOI, but you are not required to file the periodic reports.\* \* \*

\* \* \* \* \*