

Meeting Notes
Quarterly Teleconference for Florida Phase I MS4 NPDES Coordinators
Wednesday, May 30, 2012
1:00 – 2:30 pm EST

MS4 Team:

Eric Livingston – Administrator

Heather Ritchie – Phase I & Phase II Manager

Ken Kuhl – Phase I Specialist

Katie Downey – Phase II Specialist

Agenda:

- Welcome & Discussion
- Stormwater Management Programs (SWMPs) – what are they? Why are they important?
- Pinellas County Permit Challenge Status
- House Bill 503
 - Local development authorization conditional on applicant’s approval or permit from state or federal government.
 - General ERP Permit for projects meeting specific requirements.
- Ordinance review regarding flexibility for Low Impact Design (LID) in the Year 2 Annual Report
- High risk facility inventory, inspection, and MSGP confirmation
- Generic Permit for Discharges from Concrete Batch Plants
- Confirming the need for MSGP coverage
- Review of draft and adopted fertilizer ordinances by DEP
- Status of DEP on-line training materials

Notes:

- **Meeting Opening and Purpose:**
The purpose of the quarterly conference calls is to establish a forum for DEP to discuss emerging issues and for permittees to suggest agenda items, to exchange ideas on program implementation, and to ask questions. We encourage permittees to make suggestions, to lead specific discussions, and to share program implementation strategies. Since Eric was on vacation, Heather and Ken conducted the teleconference.
- **Questions during Initial Discussion:**
The NPDES Phase I MS4 Permitting Resource Manual (http://www.dep.state.fl.us/water/stormwater/npdes/docs/MS4_Permits_Resource_Manual.pdf link) is updated by DEP on a calendar quarter and is a guidance document. As per the “Introduction” to the document, the Manual is not an extension of any individual permit. As updates are made, changes are highlighted in the document’s “Table of Contents”.
- **Stormwater Management Programs (SWMPs):**
Each permittee submitted their respective SWMP to EPA as part of the initial Phase I permit application. As per 40cfr122.26 (attached to the transmittal email), the SWMP should consist of the following components:

- Standard Operating Procedures
- Adopted Ordinances, where applicable, which implement the permittee's SWMP
- Copies of the permit and annual report form
- Copy of the most recent annual report
- Responsible Departments or positions for SWMP implementation

It is not necessary to rewrite the SWMP as submitted in the original permit application to EPA. Components of your SWMP may be electronic whereas others may be more useful in a binder. In addition, the SWMP can be an important continuance document during personnel and/or program transitions at the local level. DEP will be reviewing and discussing the SWMP during future program audits. Please contact us if you have questions about your SWMP. In addition, remember that the current SWMP must be submitted as part of your reapplication package when reapplying for permit coverage.

- **Pinellas County Permit Challenge Status:**

The hearing scheduled for May 15, 2012, regarding the petition by Pinellas County challenging the Department's authority to implement certain components of Part VIII of their draft, cycle 3 permit, has been postponed. This action was prompted by the opportunity for both parties to clarify monitoring components germane to Part VIII. The original challenge was on whether DEP has the legal authority to require outfall monitoring and whether the four step TMDL process is arbitrary and capricious. After discussions, it became clear that the County's objection was to the language on how the sampling data would be used. DEP agrees that the language did not make sense and agreed to work with Pinellas County to revise it. We are very hopeful that we can resolve this issue in the near future. We will keep you informed as this issue evolves.

In the interim, permittees with fast-approaching deadlines to submit monitoring and assessment plans, as per Part VIII of the permit, may request a time extension by emailing Eric Livingston (phone 850/245-8430 or by email at Eric.Livingston@dep.state.fl.us).

- **House Bill 503:**

- Local development authorization conditional on state and/or federal approvals – Effective July 1, 2012, amendments to Chapter 125.022, F.S. (Section 1 of House Bill 503 at <http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=h0503er.docx&DocumentType=Bill&BillNumber=0503&Session=2012>), prohibit a local government from conditioning the approval for a development permit or authorization on an applicant obtaining a permit or approval from any other state or federal agency.

Local governments are adjusting to these new requirements by confirming the status of required permits during a pre-construction meeting or during the on-site inspection for proper erosion, sedimentation, and stormwater controls subsequent to commencement of construction.

- General ERP permit and self-certification for specific projects – Effective July 1, 2012, amendments to Chapter 403.813, F.S., (Section 19 of House Bill 503 at link above), provides a general permit for projects with less than 10 acres (total project size) and less than 2 acres of impervious surfaces authorized without agency action. More

specifically, the construction of such a system can proceed without an agency action by DEP or a water management district if within 30 days of commencement of construction, an electronic self-certification is submitted certifying the proposed system was designed by a Florida registered professional to meet requirements specified in statute. Please note that execution or submittal of the referenced “self-certification” is by the developer not the actual “Florida registered professional” that designed the stormwater system.

- As a result of the change in law, EPA may no longer approve of Florida’s ERP program as a “qualified local program”, at least for those projects. As a result, the MS4s may be required to review and approve these projects in the future. However, the Department is still discussing this internally and has not yet had detailed discussions with EPA on this issue. We will keep of you informed as these details evolve.

- **Evaluation of Land Development Regulations (ordinances) regarding Opportunities for LID:**

The language from Part III.A.2 “Areas of New Development and Significant Redevelopment” of the permit related to the Year 2 Summary Report is as follows:

Year 2 Summary Report

Conduct an inter-departmental review of the permittee’s current local codes and land development regulations to identify potential changes to existing codes and regulations that will further reduce the stormwater impacts of new development and areas of significant redevelopment. In particular, focus on changes to the code that will promote: reductions in impervious surfaces, the use of swales, the incorporation of low impact development principles, reduction in flow and volume of stormwater, increase in natural hydrology, and adherence to the principles of the Florida Yards and Neighborhoods program in new landscaping.

Develop a summary report of the review activity that includes the following information: all applicable local code and regulation citations reviewed (both current and draft); a description of the current and proposed techniques aimed at reducing the stormwater impacts of new development and areas of significant redevelopment that are included within the applicable codes and regulations; a description of innovative stormwater planning techniques, including those described above, recommended for possible future incorporation into the codes and regulations (beyond what may be currently in draft); and, a plan for implementing changes to codes and regulations.

Section VII, Part III.A.2 of the Year 2 Annual Report form requires the permittee to submit a summary of the current local land-development codes, related to the availability of LID technologies, and the report must include the following components:

- A summary of all codes, not comprehensive plan policies, which provide low-impact-design stormwater management options to applicants for new development or significant redevelopment projects (attaching or outlining codes is not sufficient). Summaries should focus on the low impact design elements of the code, only;
- Identification and summary of code provisions which disallow, discourage, or conflict with other agency (e.g., water management districts) low impact design technologies;
- A summary of the permittee’s suggested additions, deletions, or modifications of existing code which will foster greater use of low-impact-design technologies.

Definition of LID: Low-impact-design technologies may include innovative stormwater management strategies to reduce impervious surfaces, to include the use of swales, to control stormwater at the source, and to use non-structural methods. Ordinances which require landscape designs solely for the purposes of water conservation, provide maximum impervious surface ratios, or include general statements encouraging innovative stormwater management technologies, alone, do not adequately address this permit requirement.

Please see the Department's FTP site for examples of summary reports approved by the Department at ftp://ftp.dep.state.fl.us/pub/NPDES_Stormwater/ in the May 30, 2012 MS4 Teleconference folder.

- **High risk facility inventory, inspection, and MSGP confirmation:**

An inventory of high risk facilities should be conducted annually by searching the databases available on the U.S. EPA's Envirofacts Data Warehouse website. This site provides a multi-system query that will generate a list of facilities from the CERCLIS, RCRA Info, and TRI databases. Major types of high risk industrial facilities include:

- Municipal Landfills
- Hazardous Waste Generation, Transportation, Treatment, Storage, Disposal and Recovery Facilities
- Facilities reporting under the Emergency Planning and Community Right-to Know Act (EPCRA)
- Abandoned and/or inactive or uncontrolled Superfund sites (CERCLIS)
- Private and Municipal Waste Handling Facilities
- Any Industrial Commercial Facility that the Co-Permittee Determines is Contributing a Substantial Pollutant Loading into its MS4
- Other facilities which have a history of illicit discharge and/or illegal dumping

New facilities should be added annually, based on review of the referenced databases above, to the inventory of high risk facilities maintained by the MS4. The MS4 must establish criteria to prioritize industrial and high risk facilities that exist within the MS4 for inspection. Annual inspection activities should be scheduled based on these priorities to ensure all high risk facilities contained in the inventory are inspected at least once during the permit cycle (lower priority) and more often according to selected prioritization criteria, available resources, and annualized schedules. Inspections of individual facilities, which are listed on the high risk facility inventory, should be reported in Section VII, Part III.A.8.a "Industrial and High Risk Runoff" of the annual report form and not as a proactive illicit discharge inspection.

Additional information regarding the definition of high risk facilities, links for updating the inventory of facilities, and useful criteria for prioritizing annual inspections is available in the April 2012 MS4 Permitting Resource Manual at http://www.dep.state.fl.us/water/stormwater/npdes/docs/MS4_Permitt_Resource_Manual.pdf [ink](#).

- **Generic Permit for Discharges from Concrete Batch Plants**

The Department administers an industrial wastewater generic permit for concrete batch plants, which may be found at http://www.dep.state.fl.us/water/wastewater/iw/docs/62-621.300_3a.pdf. This generic permit is an NPDES permit that authorizes discharges from concrete batch plants to ground water and surface water. The generic permit also satisfies the MSGP requirements, where applicable.

Should a batch plant discharge to the MS4, either during or subsequent to storm events, such discharges are likely in compliance with the generic permit. However, if such discharge appears to be turbid or otherwise in violation of water quality standards, then the MS4 operator should contact the Industrial Wastewater Section of the local DEP District office.

When there is a discharge from a permitted batch plant to the MS4 during periods of little or no rainfall, the MS4 should manage the situation as a suspected illicit discharge. Also, as a courtesy, contact the Industrial Wastewater Section of the local DEP District office, as they may be able to offer assistance.

If a municipality, affected by discharge from a batch plant to its MS4, has a local ordinance which disallows such discharges and is therefore more stringent than the generic permit, then discharge from a batch plant under any conditions should be managed as a suspected illicit discharge in accordance with the applicable ordinance. Again, contacting the Industrial Wastewater Section of the local DEP District office may prove beneficial.

- **Guidance for Confirming the need for MSGP coverage**

A Conditional No Exposure Exclusion from the NPDES Stormwater Permitting Program is available for industrial facilities whose processes and materials are not exposed to stormwater or stormwater run-on. This exclusion is applicable to ALL categories of stormwater discharges associated with industrial activity as defined in [62-620.200\(48\), F.A.C.](#), which incorporates by reference [40 CFR 122.26\(b\)\(14\)](#). Additional information regarding the No Exposure Exclusion may be obtained at the following DEP site:

<http://www.dep.state.fl.us/water/stormwater/npdes/industrial3.htm>

If MS4 operators determine that the status of an industrial facility with a “no-exposure” MSGP may have changed, the MS4 operator should notify DEP at:

Borja Crane-Amores
Construction and Industrial Permit Coordinator
Environmental Manager
NPDES Stormwater Section
Phone: 850-245-7520 - Fax 850-245-7524
Borja.craneamores@dep.state.fl.us
<http://www.dep.state.fl.us/water/stormwater/npdes/>

- **Review of draft and adopted fertilizer ordinances by DEP**

MS4 operators developing fertilizer ordinances should work with Dr. Mike Thomas with the Department’s Nonpoint Source Management Section in Tallahassee. Dr. Thomas will determine

if your final draft or adopted ordinance is consistent with the Department's model ordinances, and his contact information is:

Mike Thomas Ph.D. P.E.
Nonpoint Source Management Section
Florida Department of Environmental Protection
2600 Blair Stone Rd. (MS 3570)
Tallahassee, FL 32399-2400 USA
Phone: (850) 245-7513
Fax: (850) 245-8434
Email: michael.thomas@dep.state.fl.us

Hopefully, by working with Dr. Thomas as the ordinance is drafted it will be consistent with the Department's Model Ordinance. Once the MS4 operator adopts ordinances, pursuant to Part 6 of Phase I NPDES permits, and submits the adopted ordinance with their Year 2 Annual Report (may submit with the Year 1 or 2 report), the NPDES Stormwater Section will review it one last time to confirm its consistency with the Department's model ordinance. If additional work is needed to attain consistency, then the NPDES Stormwater Section will refer the issue and the affected MS4 operator to Dr. Thomas for further modification. Florida-Friendly Fertilizer and Urban Landscape ordinances may be found at the following links, respectively:

<http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/dep-fert-modelord.pdf>

<http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/ffl-mo-ccr-1-09.pdf>

- **Status of DEP on-line training materials**

The Department is planning to implement online training programs by the beginning of 2013, germane to IDDE inspection, spill response, and good-housekeeping permit requirements for MS4 personnel and contractors hired by the MS4 to work in environments where the potential exposure to these events exists.