

Meeting Notes
Quarterly Teleconference for Florida Phase II MS4 Permittees
Wednesday, December 14, 2016
1:30 - 2:30 pm EST

DEP Representatives:

- NPDES Stormwater Program

Next quarterly teleconference for Phase II NPDES Coordinators:

- TBT - 2017
- Submit agenda items at least 2 weeks prior to the teleconference to Candace.Richards@dep.state.fl.us.

NPDES Stormwater MS4 Contacts:

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Notes:

Federal Rule Updates

- Remand Rule:
Please see attached summary of Rule.
[EPA NPDES MS4 General Permit Remand Rule](#)
[EPA Website for NPDES Stormwater Final MS4 Remand Rule](#)

Q: Laura Rankins, City of Cocoa, Is DEP going to provide guidelines to define Maximum Extent Practicable (MEP)?

A: The Clean Water Act sets the standards for achieving MEP for Phase II MS4s. Guidelines to achieve are set through your BMPs/Measurable Goals in your NOI conjoined with permit rule. By meeting permit requirements permittees are providing the Department with reasonable assurance.

Q: Nick Mcray, Lake County: When will we have to implement the Remand Rule into our permit?

A: The implementation of the new rule will only effect permittees at the time of renewal.

- E-Reporting Rule:
Key components of the rule include:
 - Within one year after effective date of rule **(Phase I)**: authorized NPDES programs must start electronically transmitting to EPA, information will include: basic facility information, Discharge Monitoring Reports (DMRs), compliance monitoring, inspections and enforcement actions.
 - Within five years after effective date of rule **(Phase 2)**: authorized NPDES programs must begin electronically collecting, managing and sharing the remaining set of data

information. Including Generic permit reports, program reports and annual reports.
**Phase 2 of this rule will affect the Phase II MS4s program.

The Department adopted the E-Reporting Rule by reference on August 28, 2016. EPA work groups for MS4s is scheduled to begin in 2018. In addition, any municipalities that own or operate a facility or facilities that perform regulated industrial activities and are required to submit DMRs must do so electronically by 3/31/2017 to the Department's EzDMR system. The EzDMR system is an electronic reporting tool that is currently being utilized by Domestic and Industrial Wastewater and has been modified to collect stormwater data. Guidance for navigating this system is attached.

Q: Clay Black, Hernando County: When will permittees be required to renew electronically?
A: Permittees will not be required to report/renew electronically to the Department until 2020.

Audit schedule update

The list of permittees to be audited in 2017 are attached. It provides the tentative months of when you can be expected to be audited.

Audit notification will go out before every audit. Please be prepared with the supporting documentation noted in the audit notification.

We would like to see the specific materials that are being used, how inspections are being performed and documented, and how all elements are being tracked.

Q: Rick Baird, Osceola County: Will we receive prior notification of our audit?
A: We will touch base with you about two months in advance and send an Audit Notification.

Cycle 4 Renewal Process

There are currently no changes to the process for Permittees that are due to renew for Cycle 4. You will need to submit your Year 4 Annual Report along with your NOI for renewal and the associated fee.

Q: Rick Baird, Osceola County: Regarding public noticing requirements, does DEP anticipate the need to respond to many public comments resulting from responsibility?

A: We currently have a process in place called the Florida Administrative Register (FAR). Since we haven't experienced that yet, we do not anticipate a large volume of public comments going forward. However, the process may change and the permittees may adopt the notification process.

Q: Rick Baird, Osceola County: Would publishing through normal channels be accepted? (i.e. newspapers)

A: Yes.

10/2 Rule

Please see attached summary of 10/2 Rule.

319 Grants

The Non-Point Source administers the 319 Federal Non-Point source grant, as well as the state TMDL (Total Maximum Daily Load) Urban Stormwater grant. They also help to manage the state appropriation line item projects and the Water Management District Springs projects statewide.

The 319 grant is an annual nonpoint source, usually solicited for in late winter and early spring. Typically, FL, has gotten about 5.5 million/yr. in grant funds to allocate out.

New: Per EPA. The Non-Point source program reviews, scores, and evaluates the project applications. Once chosen, they are sent to the NPDES Stormwater Program to review to ensure/verify that there are no conflicts between the proposed 319 grant application and the approved MS4 permit. If there are conflicts or the criteria does not go above and beyond, the project will be deemed ineligible for 319 funding. The Stormwater Program has developed an extensive protocol for reviewing these projects.

For reference, Section VIII.B. of the 2013 NPS guidelines address the eligible stormwater activities fundable under Section 319. The guidelines clarify:

...States may use Section 319 funds for those urban stormwater activities that do not directly implement a final NPDES permit (e.g., not explicitly required in a permit or plan required by the permit) or an order applicable to regulated stormwater discharges under Clean Water Act Section 402(p). These include aspects of Phase I and II activities that may support but do not directly implement activities required by Phase I or Phase II permits, as well as activities that go above and beyond permit requirements. In addition, states may use Section 319 funds for stormwater management activities that are not subject to NPDES permitting requirement under either Sections 402(p)(2) or 402(p)(6).

Q: Rick Baird, Osceola County: In regards to educational programs funded by 319 grant would applications be rejected if they were listed in our MS4 Permit.

A: Yes, unless the scope of work is “above and beyond the requirements of the permit”.

Q: Matt Mitts, City of Vero Beach: If you are in a BMAP and your NOI says that you will comply with the BMAP, will that reject you for grant funding?

A: Generally speaking, no, however each proposed project would be evaluated on a case by case basis.

DEP INTERNAL SUMMARY PACKAGE
EPA's NPDES MS4 General Permit Remand Rule
December 15, 2016

EPA's Final Rule Status

- EPA's Final MS4 Remand Rule Published in the Federal Register on December 9, 2016
- Final Rule is Effective January 9, 2017

Background

EPA has revised its rules governing small MS4s in response to a remand from the U.S. Court of Appeals, resulting from litigation initiated by the Environmental Defense Center. The Court's decision rests on the following findings:

1. Regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing; and
2. EPA failed to require permitting authority review of the BMPs to be used by the regulated MS4 in the submitted NOIs.

NOTE: Neither of the courts findings above are applicable to Florida's existing Phase II (Small) MS4 general permits. DEP has provided adequate public notice and has historically reviewed proposed BMPs in submitted NOIs.

Outcome of EPA's Final Rule

EPA is selecting proposed Option 3 (the "State Choice Approach") for the final rule. Under this approach, the permitting authority may choose between two alternative means of establishing permit requirements in general permits for small MS4s, either the "Comprehensive General Permit" or the "Two-Step General Permit." The "Comprehensive General Permit" is essentially the "Traditional General Permit", or "Option 1", from the proposed rule. The "Two-Step General Permit" encompasses both the "Procedural Approach", or "Option 2" and the "Hybrid Approach" that was described as part of Option 3" from the proposed rule.

The Permitting Authority Choice Approach requires permitting authorities to choose between two alternative approaches to issue general permits for small MS4s as described below:

1. The Comprehensive General Permit requires the permitting authority to issue a small MS4 general permit that includes the full set of requirements necessary to meet the MS4 standard (MEP). All requirements are contained within the general permit, and no additional requirements are established after permit issuance. The associated NOI registers only the necessary information about the permittee. The permittee does not create its own BMPs and measurable goals for implementing the terms of the general permit; or
2. The Two-Step General Permit requires the permitting authority to complete a second permitting step which includes additional permit terms and conditions that are necessary to meet the MS4 permit standard, after issuing a base general permit. It is in the second permitting step where the permitting authority satisfies its obligation to review the NOI for adequacy, determine what additional requirements are needed for the MS4 to meet the MS4 permit standard, and provide public notice, the opportunity for public comment, and the opportunity for public hearing.
3. The final rule requires that the permitting authority indicate which type of general permit it is using for any small MS4 general permit.
4. The final rule does not establish any new substantive requirements for small MS4 permits.
5. DEP's existing Phase II MS4 program currently meets new requirements under the Permitting Authority Choice Approach conditional on minor changes in public noticing and other procedural issues.

Tentative Audit Schedule 2017

Permittee	Projected Month
1. Town of Malabar	February 2017
2. City of Melbourne	
3. City of Cocoa	
4. FDOT District 7	March 2017
5. FDOT District 1	
6. Arbor Greene CDD	
7. City of Holly Hill	April 2017
8. City of Port Orange	
9. City of Ormond Beach	
10. City of South Daytona Beach	
11. City of Flagler Beach	May 2017
12. Hurlburt Field	
13. Eglin Air Force Base	
14. City of Ft. Walton Beach	
15. Walton County	June 2017
16. Town of Sewall's Point	
17. City of Stuart	
18. Martin County	
19. City of Vero Beach	
20. Indian River County	
21. Town of Indian River Shores	July 2017
22. Osceola County	
23. University of Central Florida	
24. City of Kissimmee	August 2017
25. FDOT District 2 Jacksonville	
26. FDOT District 2 St. Augustine	
27. FDOT District 2 Gainesville	
28. Naval Station Mayport	
29. Town of Baldwin	
30. City of Green Cove Springs	September 2017
31. City of Gulf Breeze	
32. Naval Station Pensacola	October 2017
33. FDOT Turnpike	
34. FDOT District 4	November 2017
35. Volusia County	
36. FDOT District 5	
37. City of Deltona	
38. City of Eustis	

*All permittees in this list are required to be audited in 2017.

Constructing, Altering, or Modifying an Existing Stormwater Management System (10-2 Rule)
December 15, 2016

- A. Two sections of Florida Statutes were amended by the 2012 Legislature with the following consequences, now referred to as the “10-2 rule”:
1. Section 166.033, F.S., was amended as follows to forbid local government from approving local development decisions or building permits contingent on obtaining a state (such as ERP) or federal permits (such as CGP or Army Corp):

Section 3. Section 166.033, Florida Statutes, is amended to read (Key component noted below):

166.033 Development permits. When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term “development permit” has the same meaning as in s. 163.3164. For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

Source: See entire law with adopted changes at: Ch. 2012-205 LAWS OF FLORIDA, <http://laws.flrules.org/2012/205>

2. Section 403.814, F.S., was amended as follows to establish the general permit for the construction, alteration, and maintenance of a stormwater management system:

403.814 General permits; delegation was amended to read:

(12) A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres. When the stormwater management system is designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, there is a rebuttable presumption that the discharge for such system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, within 30 days after construction begins, an electronic self-certification is submitted to the department or water management district that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

(a) The total project area involves less than 10 acres and less than 2 acres of impervious surface;

- (b) No activities will impact wetlands or other surface waters;
 - (c) No activities are conducted in, on, or over wetlands or other surface waters;
 - (d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
 - (e) The project is not part of a larger common plan, development, or sale; and
 - (f) The project does not:
 1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
 2. Cause adverse impacts to existing surface water storage and conveyance capabilities;
 3. Cause a violation of state water quality standards; or
 4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086.
- Section 20.

Source: See entire law with adopted changes at: Ch. 2012-205 LAWS OF FLORIDA, <http://laws.flrules.org/2012/205>

B. Section 403.814, F.S. was further amended by the 2016 Legislature as follows (deletions or additions to the 2012 version are noted as a strike-through or underlined text):

- 12) A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres meeting the criteria of this subsection. ~~Such~~ When the stormwater management systems must be ~~system-is~~ designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373.; There is a rebuttable presumption that the discharge from ~~for~~ such systems complies-system will ~~comply~~ with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, ~~before within 30 days after~~ construction begins, an electronic self-certification is submitted to the department or water management district ~~which that~~ certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system will ~~to~~ meet the following additional requirements:
- (a) The total project area involves less than 10 acres and less than 2 acres of impervious surface;
 - (b) ~~No~~ Activities will not impact wetlands or other surface waters;
 - (c) ~~No~~ Activities are not conducted in, on, or over wetlands or other surface waters;

(d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(e) The project is not part of a larger common plan, development, or sale; and

(f) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
2. Cause adverse impacts to existing surface water storage and conveyance capabilities;
3. Cause a violation of state water quality standards; or
4. Cause an adverse impact to the maintenance of surface of surface or ground water levels or surface water flows established pursuant to s. 373.042 or work of the district established pursuant to s. 373.086.

Source: See entire law at (Page 4): <http://laws.flrules.org/2016/130>