



# **DRAFT**

## **Storm Water Phase II Final Rule**

### **Permitting Options**

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#### **Municipal Permits – Permitting Options**

The Phase II program allows operators of regulated small MS4s to choose from as many as three permitting options as described below. RIPDES reserves the authority to determine, however, which options are available to the regulated small MS4s in their jurisdiction.

#### **General Permits**

- General permits are strongly encouraged by RIPDES. The Phase II program has been designed specifically to accommodate a general permit approach.
- General permits, drafted by RIPDES, then published for public comment before being finalized and issued, prescribe one set of requirements for all applicable permittees.
- A Notice of Intent (NOI) serves as the application for the general permit. The regulated small MS4 operator complies with the permit application requirements by submitting an NOI to RIPDES that serves as an application form along with the submittal of the storm water management program plan (SWMPP). The operator has the flexibility to develop an individualized storm water management program that addresses the particular characteristics and needs of its system, provided the requirements of the general permit are satisfied.
- For general permit coverage, the regulated small MS4 operator must follow the Phase II permit application requirements that are specified in the general permit.

#### **Individual Permits**

- Individual permits were required nationally for Phase I medium and large MS4s (Rhode Island did not have any medium or large MS4s), but are not recommended by RIPDES for Phase II program implementation.



- Individual permits prescribe a particular set of requirements for a particular permittee or a group of co-permittees. Individual permits require the submission of a more comprehensive permit application than an NOI that is submitted under a general permit. Once the permit application is received, an individual permit is drafted by RIPDES, then published for public comment before being finalized and issued.
- The Phase II rule allows a regulated small MS4 to submit an individual application for coverage under either the: Phase II MS4 regulation, refer to Rule 31(e)(1), or
- Phase I MS4 regulation, refer to Rule 31(e)(2).

#### **Co-permittee with Another Operator of a Regulated Small MS4**

Regulated small MS4 operators may choose to share responsibilities for meeting the Phase II program requirements with another regulated small MS4 operator under a general or individual permit. Those operators choosing to do so may submit jointly an NOI or individual permit application that identifies who will implement which minimum measures within the area served by the MS4s.

#### **Relying on Another Entity to Satisfy One or More of the Minimum Control Measures**

Under either a general or individual permit, the Phase II small MS4 permittee has the option of relying on other entities that are already performing one or more of the minimum control measures to implement the measure(s) on the permittee's behalf (refer to Rule 31(a)(5)(ii)). This is only allowable where the existing control measure, or component thereof, is at least as stringent as the Phase II rule requirements and the other entity has agreed to the arrangement. For example, a



university or a non-profit organization (the other entity does not necessarily need to be a governmental entity) may already have a public education program on environmental issues that may satisfy the public education and outreach minimum measure and may allow an operator of a regulated small MS4 to rely on them instead of formulating and implementing a new program. In such a case, the permittee would not need to implement the particular measure, but would still be ultimately responsible for its effective implementation. For this reason, RIPDES recommends that the permittee enter into a legally binding agreement with the other entity. If the permittee chooses to rely on another entity, they must note this in their permit application and subsequent reports.

A Phase II permittee also has the option to rely on another entity to satisfy all of the permittee's small MS4 permit obligations – but only if the other entity is a governmental entity permitted under the NPDES storm water program. Should this option be chosen, the permittee must note this in its NOI, but does not need to file the otherwise required periodic reports on the status of the program. Again, it is important to note that the permittee would remain ultimately liable under the small MS4 permit. This option is particularly beneficial for operators that serve a low population, have limited resources or legal authority, or are surrounded by a RIPDES regulated municipality.



For example, let's assume a college campus or a veteran's hospital are operators of small MS4s and they are located in the middle of a Phase II regulated city. Negotiating with the city to implement the storm water management program for them in their jurisdictions could be a cost-effective and less burdensome option than for each to implement their own programs.

Once a permit application is submitted by the operator of a regulated small MS4 and a permit is obtained, the conditions of the permit must be satisfied (i.e., development and implementation of a storm water management program) and periodic reports must be submitted on the status and effectiveness of the program.

## Sources

*Colorado's Phase II Municipal Guidance, A guide to application requirements and program development for coverage under Colorado's Phase II municipal stormwater discharge permit*, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246-1530  
[www.cdphe.state.co.us](http://www.cdphe.state.co.us)

*Storm Water Phase II Compliance Assistance Guide*, US Environmental Protection Agency, Office of Water, EPA 833-R-00-002, March 2000  
[www.epa.gov](http://www.epa.gov)

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