



- 1. NAME AND ADDRESS OF APPLICANT:** Owners and operators of small municipal separate storm sewer systems (MS4s) located in the State of West Virginia who have satisfied the registration requirements and who have agreed to be regulated under the terms and conditions of this General WV/NPDES Water Pollution Control Permit to discharge stormwater into waters of the State.
- 2. GENERAL WV/NPDES PERMIT NO.:** WV0116025
- 3. COUNTY:** Any WV county **RECEIVING STREAM:** Any WV stream
- 4. PUBLIC COMMENT PERIOD:** FROM: April 17, 2025 TO: May 17, 2025
EXTENDED: TO: June 17, 2025

DWWM
Attention: Billy Shirley
601 57th ST SE
Charleston, WV 25304
Billy.T.Shirley@wv.gov (304) 926-0499 extension 43893
Please title Comments or Requests for Public Hearing: MS4 WV0116025

The Director of the Division of Water and Waste Management (DWWM) shall consider all comments prior to acting on the proposed permit.

Comments should include the name, address, and telephone number of the writer and a concise statement of the nature of the issues raised. Commenters are asked to list the permit number WV0116025 on their comments. Commenters may further participate in the final decision by requesting a public hearing be held for the purpose of addressing the items listed in this fact sheet for change, omission, or addition to the General Permit. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the proposed permit.

If information received during the public comment period appears to raise substantial new questions, the Director may reopen the public comment period.

The draft permit and Fact Sheet may be reviewed at:

<https://dep.wv.gov/WWE/Programs/stormwater/MS4/Pages/default.aspx>, or, may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:30 a.m. and 4:30 p.m. on business days.

Copies of the proposed permit and Fact Sheet or further information may be obtained upon request to Billy Shirley whose contact information is listed above.

5. REMAND RULE

The federal rule, 40 CFR 122.28(d), allows WV to pick one of two options for ensuring the GP meets federal requirements.

Under the comprehensive one-step approach, the GP document itself would include all required permit terms and conditions.

Under a two-step approach, the GP is issued, then the permittees submit their Stormwater Management Programs to the permitting authority, which if approved, become conditions of the permit.

In the past, WV has followed the two-step approach. In this draft permit WV has chosen the comprehensive one-step approach. As a result, the language in this draft permit is not simply an update to the language in the 2014 GP. Therefore, this fact sheet does not highlight specific updated or changed language of the permit as the entirety of this draft GP has been modified from the 2014 General Permit.

The Comprehensive One-Step Approach

Comprehensive General Permit – For this type of general permit, the permitting authority issues a small MS4 general permit that includes the full set of requirements necessary to meet the MS4 permit standard “to reduce pollutant discharges from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. The general permit contains all requirements, and no additional requirements are established after permit issuance, as is the case with the “Two-Step General Permit” described below. For this reason, to provide coverage to eligible small MS4s, the permitting authority can use a traditional general permit NOI as described in § 122.28(b)(2)(ii),

and does not need to require additional information from each MS4 operator concerning how they will comply with the permit, for instance the best management practices (BMPs) that will be implemented and the measurable goals for each control measure, as a prerequisite to authorizing the MS4 to discharge under the general permit.

Coverage, and authorization to discharge under this proposed Draft General Permit occur once the NOI has been approved.

Differences from the Two-Step Approach

As stated above, WV has used the two-step approach in the past. WVDEP would like to emphasize that the most significant change in the permitting process is that the SWMP's will no longer go through the approval process with the DEP. SWMP's may still be sent to the DEP for a courtesy review and suggestions, but this review does not constitute an approved SWMP.

Another significant difference from the Two-Step process is that modifications to any part of the MS4 program that is not a part of the NOI, do not require approval from the DEP.

6. BACKGROUND

Stormwater is the surface runoff that results from rain and snowmelt. Urban development alters natural infiltration capabilities of the land and generates a host of pollutants associated with urban activities that increase runoff volumes and pollutant loadings discharged to receiving waterbodies. Urban development increases impervious surfaces in a watershed when farmland, forests, and meadowlands with natural infiltration qualities are converted to parking lots, buildings, streets, and driveways that have little or no absorption characteristics.

Small municipal separate storm sewer systems (MS4s) found in West Virginia discharge polluted stormwater to local rivers and streams. This general permit is proposed to minimize the volume and pollutant loadings of these discharges. Federal regulations require West Virginia to permit stormwater discharges from small MS4s and to require permittees to implement best management practices (BMP) through an iterative process focused on six minimum control measures.

West Virginia issued the original GP Number WV0116025 on March 7, 2003, it was reissued on June 22, 2009, and reissued again on July 11, 2014. The draft permit subject to this Fact Sheet is intended to supersede the 2014 GP.

6.a. NPDES Permitting Process

Beginning in 2011, the Division of Water and Waste Management (DWWM), which is the Division of state government charged with implementation of NPDES stormwater permitting began processing permit applications using an online platform, called the Electronic Submission System (ESS). Several factors served as driving forces for the change from paper to electronic processing, not the least of which was the DWWM's focus on public participation. Through a portal called the Public Query, ESS offers everyone the means for viewing NPDES applications

deemed Administratively Complete. Hereinafter, this Fact Sheet will refer to the system utilized by DWWM as *ESS*.

By improving the the *ESS* system, DWWM is striving toward compliance with the EPA's eReporting Rule which is discussed in detail at:

[Federal Register :: National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule.](#)

This GP will expire five years after issuance, which will be past the December 21, 2025 deadline when DWWM must be in full compliance with the Rule. Applicants should therefore consider the fact that the *ESS* forms might change, based on EPA requirements.

6.b. General Permits

DWWM is utilizing a general WV/NPDES permit to authorize stormwater discharges from small MS4s. Under 47CSR10-13.6 of the WV Legislative Rules, a general permit can be used to regulate either separate storm sewer stormwater discharges or a category or other discharges if the sources all:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

6.c. Maximum Extent Practicable (MEP)

The Clean Water Act (CWA §402(p)(3)(B).) states that MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants ."

It is recognized that "pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process" (Federal Register, Volume 64, No. 235, page 68754, December 8, 1999.).

The draft permit requires each permittee to develop, implement, assess, and enforce a Stormwater Management Program, which outlines how the permittee intends to comply with the terms and conditions specified in the permit.

6.d. Waivers from Permit Coverage

The draft GP allows for permit coverage waivers for certain small MS4s. Jurisdictions eligible for permit coverage may apply for a waiver from permit coverage and may retain permit eligibility, provided the waiver is approved, by complying with the terms and conditions of the waiver or waiver order.

There are two options to obtain a waiver from permit coverage:

1. Jurisdictions with storm sewer systems that serve less than 1,000 people must:
 - ▶ Demonstrate that its stormwater discharges are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4,
 - ▶ Determine if its stormwater discharges to impaired waters, and if so that stormwater controls are not needed for pollutants of concern in the discharges, based on EPA approved or established wasteload allocations, as required by a Total Maximum Daily Load (TMDL).
2. Jurisdictions with storm sewer systems that serve less than 10,000 but greater than 1,000 must:
 - ▶ Submit an evaluation of receiving waters and show stormwater controls are not needed, based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or an equivalent analysis; and
 - ▶ Show that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards.

The Director retains the option to waive a portion or portions of the permit requirements.

The Director retains the option to either waive permit requirements or issue an Order directing the jurisdiction to conduct activities necessary for gathering evidence to support a waiver determination. This option refers to but is not limited to an Order to conduct sampling of MS4 discharges; to test for specified parameters; and to report test results for evaluation prior to a decision on a waiver application.

The Director retains the authority to conduct reviews and terminate waivers at any time during the waived period.

Waived jurisdictions must reapply for waiver approval with each permit reissuance.

DWWM has the duty of reviewing waivers periodically but no less than once every (5) five years.

Routinely, DWWM issues an Order to applicants who do not submit the determinations/evaluations required for waiver approvals. The orders frequently contain a monitoring plan, which if followed, may serve to support the request.

7. CONTACT INFORMATION

The DWWM's MS4 program relies almost exclusively on Email to relay mass updates and other important information to Permittees. The DWWM recognizes that over the term of the General Permit, the staff and contact information for each permittee is subject to change. It is the responsibility of each permittee to provide either a permanent Email address that will be monitored or updated Email addresses as the staff responsible for the MS4 changes. This information should be sent to the DWWM's MS4 Coordinator.

8. SECTION BY SECTION RATIONALE

PART I

Part I of the GP explains the coverage offered to those owners/operators who qualify for the permit and who submit a registration and obtain authorization to discharge. Eligibility for coverage and waivers from coverage are contained in the opening sections. Limitations on coverage are then described. As explained earlier in this Fact Sheet, stormwater discharges are the subject of the permit, however other non-stormwater discharges are also authorized provided it's been determined that they are not substantial contributors of pollutants to the small MS4 applying for coverage. These discharges are listed in Appendix C of the permit.

DWWM recommends that stormwater management programs include public education and outreach activities directed at reducing these discharges even if they are not substantial contributors of pollutants to your system.

This permit does not relieve entities that cause illicit discharges, including spills, of oil or hazardous substances, from responsibilities and liabilities under State and Federal law and regulations pertaining to those discharges.

B. Water Quality Requirements

- 1.** This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2) and West Virginia Ground Water Quality Standards (Title 47 CSR Series 58).

This added statement emphasizes that the MS4 permit does not grant permission to violate West Virginia's water quality standards (Title 47 CSR Series 2) or ground water quality standards (Title 47 CSR Series 58).

- (Title 47 CSR Series 2) - These standards outline the criteria for protecting the state's surface waters, ensuring they are suitable for designated uses like drinking water, recreation, and aquatic life.
- (Title 47 CSR Series 58) - These standards focus on protecting the quality of the state's groundwater.

PART II - A

ESS Applications

NOIs must be submitted electronically at: <https://apps.dep.wv.gov/eplogin.cfm> which can also be found by following these steps: go to dep.wv.gov; Electronic Submission System. Permittees that do not have an existing login may request one from this same website.

Under the proposed GP, existing permittees will have 90 days from the effective date to submit their NOI through the ESS.

Obtaining Coverage – New MS4s will have 180 days to submit their NOI from the date of receiving notification from DWWM that permit coverage is required.

Multiple permittees may apply for coverage under a single application, which should clearly define the roles and responsibilities of each of the co-permittees.

PART II - B

B.1. Preparation of New or Revised SWMP

“Existing Permittees. Each Permittee covered by General Permit No. WV0116025 as of the effective date of this general permit must update its SWMP to meet the requirements of this general permit. The updated SWMP may be submitted to the Department for a courtesy review. The Department may, in its discretion, provide comments and recommendations within 60 days of receipt of the updated SWMP. Until such time that the SWMP is updated in accordance with this subsection, the Permittee shall continue to implement the SWMP in effect as of the effective date of this general permit.”

West Virginia is now entering the fourth MS4 permitting cycle. Most permittees should already have a SWMP in place and operating under that SWMP. DEP would like to make it clear that these SWMP's should remain in full effect while updates are made to meet the requirements of this Draft General Permit. Updates to the SWMP do not require DEP approval and should be implemented as these changes are made.

PART II - D Subsequent Review and Revision of the SWMP

“Revisions to the SWMP are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this general permit as a result of the iterative process do not require modification of this permit. The Permittee shall summarize revisions to SWMP as part of the Annual Report as described in Part IV.B.”

This section is included in this fact sheet to make it clear that modifications to the SWMP do not require DEP approval. Changes to the SWMP are expected to improve upon existing BMP's or change BMP's to more effective ones to meet the MEP. These changes may happen at any point in the year and shall be highlighted in the annual report.

PART III - D

This section contains the Minimum Control Measures. Once the draft permit is effective, West Virginia will be in its 4th permit cycle, so existing permittees should already have SWMPs for each measure or be well on their way to developing strong programs.

This portion of the draft permit contains the requirements for the SWMP. It requires permittees to develop and implement Best Management Practices (BMPs) for six Minimum Control Measures. The EPA's NPDES approach for this type of permit is called the "iterative approach", which means that new permittees would begin building their Stormwater Management Programs shortly after approval, and over time conduct assessments to evaluate the effectiveness of the measures they've initially put in place. Ineffective controls are to be replaced or enhanced.

An important component of any SWMP is public participation. Permittees must engage their area residents/public in planning and development efforts to seek out the most effective measures for their communities for inclusion in the SWMP.

Permittees must have methods for enforcing their regulatory mechanisms/ordinances. Enforcement is a crucial component of the SWMP and permittees are expected to review these mechanisms on a regular basis to identify whether improvements are needed and revise accordingly. Regulatory mechanisms/ordinances that are found to be ineffective must be revised by seeking public input and by following the procedures established in local law. The Annual Report must provide clear descriptions of the procedures and time frames for revision.

DWWM is developing an online Annual Report form for permittees to use as an evaluation tool. By completing the form, permittees must examine their original plans and goals and answer whether those were met. If not, changes are appropriate. At the time of public noticing the draft permit, the Annual Report form is not currently available on ESS, however efforts have already started for automation. Permittees will be notified when the electronic Annual Report form is ready for use. Until the new electronic form is available, permittees should continue to use the same Annual Report form used in the past.

The six Minimum Control Measures are:

Public Education and Outreach – Permittees must identify target audiences and reach out to residents, the public, businesses, industries, elected officials, policy makers and others to educate these audiences about pollution prevention methods.

Public Involvement and Participation – Permittees must provide opportunities for the public to take part in stormwater pollution prevention efforts and provide for public notice and comment on aspects of the stormwater program.

Illicit Discharge Detection and Elimination – Discharges from MS4s should be composed of stormwater and/or non-polluting allowable non-stormwater discharges. Under this measure, permittees develop/update storm sewer system maps, conduct field screening activities, and other research approaches to find and eliminate sources of pollution. Examples are unauthorized sanitary sewer connections and improper dumping such as used oil poured into storm drains.

Controlling Runoff from Construction Sites – Permittees must implement programs to control sediment and other pollutants in stormwater discharges from construction sites when one or more acres of land are disturbed. The SWPPP's associated with each construction site incorporates the site plans, E&S plans, and post-construction SW plans.

Controlling Runoff from New Development and Redevelopment– When areas are redeveloped and new ones developed, pollution control measures are required after construction. This measure spells out the practices permittees should use to accomplish reductions. Permittees are required to ensure long-term maintenance of post-construction BMPs by maintaining an ordinance or other regulatory mechanism and verifying that inspections and any necessary repairs of BMPs are being performed.

Pollution Prevention & Good Housekeeping for Municipal Operations – For permittees with activities and facilities with the potential for pollution, this measure requires good housekeeping practices such as inspections, operating procedures such as proper storage of oils, salt, or other materials, and clean-up of areas that may pollute stormwater such as streets or maintenance facilities. Employees must receive initial and annual training in pollution reduction procedures, especially for facilities or activities with the potential to pollute stormwater. Monitoring may be appropriate for discharges from certain activities. When monitoring indicates there are no or very low pollutant concentrations in the discharges, permittees may apply for a Low Concentration Waiver. If approved, the permittee would then be expected to submit (within the annual report) a certification there hasn't been any significant changes in the activity or the BMPs in the area that drains to the outlet with waived sampling.

Discharge Compliance with Water Quality Standards

Full compliance with all the terms and conditions of this permit is considered an acceptable effort to reduce stormwater pollutants from the small MS4 to the maximum extent practicable. The Clean Water Act 301(b)(1)(C) provides that all NPDES permittees must achieve water quality standards. If a discharge has the reasonable potential to cause or contribute to a violation of water quality standards in the receiving water, additional controls are required. In 1987 Congress added the following provision in § 402(p)(3)(B) requiring State permitting authorities to require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or State determines appropriate for the control of such pollutants. Therefore, in addition to the six MCMs, this permit requires permittees to address discharges to impaired waters and/or waters subject to state or federal TMDLs. The Phase II Final Rule, published in the Federal Register on December 8, 1999, 64

F.R. 68722, required NPDES permit coverage for stormwater discharges from both small MS4s and smaller construction sites.

PART V. TMDL SPECIAL CONDITIONS

303(d) Impaired Water and TMDLs

When DWWM investigates and finds that a water body is polluted or impaired, a process takes place for listing the water body under section 303(d) of the Clean Water Act. Permittees are expected to reduce pollution in an effort to improve the health of the water body but sometimes a cleanup plan is needed and designed, with public input. The cleanup plan is called Total Maximum Daily Load or TMDL. The TMDL identifies pollutant sources or for the water body and determines how much of a given pollutant the water body can contain while still meeting water quality standards. The TMDL may also allocate the overall allowable load to the various sources; loads assigned to point sources are called waste load allocations (WLAs) and loads assigned to nonpoint sources are called load allocations (LAs). Sometimes an MS4 is named as a source of the pollutant and either given a specific (individual) WLA or is included in an aggregate WLA assigned to a group of sources.

EPA found the 2014 permit to be over burdensome on permittees because it instructed them to research and find out whether their stormwater outfalls discharged to 303(d) listed or TMDL waters when this should be done by the permit issuing authority. In addition to being burdensome, EPA found leaving it to the permittee to search for the information could lead to inconsistent and sometimes inaccurate information.

For this permit term, a list of list of 303(d) and TMDL waters in the area of each existing permittee is provided for them on the WVDEP website. For the convenience of the permittees and the public, maps of the approximate MS4 boundaries are overlaid on 303(d) / TMDL maps. These maps are not intended to represent the MS4 legal boundary. The draft permit requires the submittal of a MS4 boundary in a digital format. When a stream is listed as impaired in the future or when a TMDL is developed, DWWM will notify the affected permittee who must implement appropriate BMPs to reduce the pollutant of concern. The Annual Report must summarize the permittee's activities for the previous year and outline the coming year's plans for full implementation of pollution reduction plans for newly assigned 303(d) listings and/or TMDLs. The BMPs must be in place six months from the notification date.

At the time DWWM notifies potential new permittees of their designation as new MS4s, the 303(d)/TMDL lists, if any, shall be provided and any new listings will be furnished to new permittees just like existing permittees. The same implementation schedule applies to new and existing permittees, with full implementation within six months of notification.

Evaluation

In keeping with the iterative nature of the NPDES MS4 requirements, permittees must develop programs, then assess and evaluate their programs and practices to identify areas of improvement, which are to be amended, as necessary. To provide consistency to all the WV MS4 permittees, DWWM proposes in the draft GP to require this evaluation within the scope of the annual report. The questions guide the permittee toward a comprehensive report of the previous year's activities. The annual report will require permittees to identify their BMPs and will elicit responses from the permittees as to whether or not their chosen BMPs were effective. Any negative responses shall guide permittees to modify the SWMP and replace the ineffective BMPs.

DWWM is developing an online Annual Report form for permittees to use as an evaluation tool. By completing the form, permittees must examine their original plans and goals outlined in the SWMP and answer whether those were met. If goals and milestones were not met, changes are required. Until the new electronic form is available, permittees should continue to use the same Annual Report form used in the past.