



Ohio Administrative Code

Rule 3745-39-03 Ohio EPA NPDES requirements for small MS4s.

Effective: February 1, 2019

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules and federal statutory provisions referenced in this rule, see rule 3745-39-01 of the Administrative Code.]

The rules in this chapter are written in a "readable rule" format. Also included, and identified as such, are comments. Comments are not legally binding and are recommendations only. Guidance documents for topics discussed in this rule can be found online at: <http://epa.ohio.gov/dsw/storm/index.aspx>.

(A) Regulation by rule, designation, petition and waivers under the Ohio EPA storm water management program for small municipal separate storm sewer systems (MS4s).

(1) An entity is regulated under the Ohio EPA storm water management program for small MS4s if said entity operates a small MS4 including, but not limited to, systems operated by federal, state and local governments, including the Ohio department of transportation, and either of the following conditions apply:

(a) The small MS4 is located in an urbanized area as determined by the latest decennial census by the United States bureau of the census, available at public libraries and on the United States bureau of the census web site www.census.gov.

(b) The small MS4 is designated by the director pursuant to paragraph (F) of this rule or is the subject of a petition to the director to require coverage under an Ohio NPDES permit for the discharge of storm water pursuant to paragraph (F) of this rule, and said petition is granted.

[Comment: Under paragraph (A)(1)(a) of this rule, the small MS4 is deemed to be regulated by rule.]

(2) If required to obtain coverage under an Ohio national pollutant discharge elimination system



(NPDES) permit, the small MS4 operator shall comply with the provisions of this chapter.

(3) The director shall waive the requirements otherwise applicable if the small MS4 meets the criteria in paragraph (A)(4) or (A)(5) of this rule. If the small MS4 receives a waiver under this rule, the MS4 may subsequently be required to seek coverage under an Ohio NPDES permit in accordance with this chapter if the director determines that circumstances for the granting of such waiver have changed.

(4) The director shall waive permit coverage if the small MS4 serves a population of less than one thousand within the urbanized area and meets both of the following criteria:

(a) The system is not contributing substantially to the pollutant loadings of a physically interconnected Ohio NPDES permitted MS4.

(b) If the small MS4 discharges any pollutant that has been identified as a cause of impairment of any water body to which the small MS4 discharges, storm water controls are not needed based on wasteload allocations that are part of a United States EPA approved or established total maximum daily load that addresses the identified pollutant.

[Comment: As used in this rule, "identified" means in the most recent final report submitted to the United States EPA by the director to fulfill the requirements of section 303(d) of the act (33 U.S.C. section 1313(d)).]

(5) The director shall waive permit coverage if the small MS4 serves a population under ten thousand and meets the following criteria:

(a) The director has evaluated all surface waters of the state that receive a discharge from the small MS4.

(b) For all such waters, the director has determined that storm water controls are not needed based on wasteload allocations that are part of a United States EPA approved or established total maximum daily load that addresses the pollutant of concern or, if a total maximum daily load has not been established or approved, an equivalent analysis that determines to the satisfaction of the director,



sources and allocations for the pollutant of concern.

(c) For the purpose of paragraph (A)(5) of this rule, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the small MS4.

(d) The director has determined that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(6) Reserved.

(7) Ohio EPA will periodically review any waivers granted in accordance with paragraph (A)(5) of this rule to determine whether any of the information required for granting the waiver has changed. At a minimum, Ohio EPA will conduct such a review once every five years.

(B) Requirements for obtaining permit coverage for regulated small MS4s.

(1) The operator of any regulated small MS4 under paragraph (A) of this rule shall seek coverage under an Ohio NPDES permit issued by the director.

(2) The operator of any regulated small MS4 shall seek authorization to discharge under an Ohio NPDES general permit or an Ohio NPDES individual permit, as follows:

(a) Both of the following are applicable to Ohio NPDES general permits:

(i) If seeking coverage under an Ohio NPDES general permit in accordance with paragraph (B)(4)(a) of rule 3745-38-02 of the Administrative Code, the small MS4 operator shall submit a notice of intent to the director, consistent with paragraph (E) of rule 3745-38-02 of the Administrative Code. The small MS4 operator may file their own notice of intent, or the small MS4 operator and other municipalities or governmental entities may jointly submit a notice of intent. If the small MS4 operator wants to share responsibilities for meeting the minimum control measures



with other municipalities or governmental entities, the small MS4 operator shall submit a notice of intent that describes which minimum control measures it will implement and identify the entities that will implement the other minimum control measures within the area served by the MS4. The Ohio NPDES general permit will explain any other steps necessary to obtain permit coverage.

(ii) If seeking coverage under an Ohio NPDES general permit in accordance with paragraph (B)(4)(b) of rule 3745-38-02 of the Administrative Code, the small MS4 operator shall submit a notice of intent to the director consisting of the minimum required information in paragraph (B)(4)(b)(ii) of rule 3745-38-02 of the Administrative Code, and any other information the director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of paragraph (C) of this rule, such as the information required under paragraph (B)(2)(b) of this rule. The general permit will explain any other steps necessary to obtain permit coverage. Regarding co-permittees, if at any time one or more MS4 decides not to continue as a co-permittee, such MS4 shall submit an NOI application and SWMP to Ohio EPA. Such MS4 shall continue to operate under the existing co-permittee SWMP until their NOI application and SWMP is approved.

(b) The following are applicable to Ohio NPDES individual permits:

(i) If seeking authorization to discharge under an Ohio NPDES individual permit to implement a program under paragraph (C) of this rule, the small MS4 operator shall submit an application to the director that includes the information required under rules applicable to Ohio NPDES individual permits in Chapter 3745-33 of the Administrative Code, and the following:

(a) The best management practices (BMPs) that the small MS4 or another entity proposes to implement for each of the storm water minimum control measures described in paragraphs (C)(2)(a) to (C)(2)(f) of this rule.

(b) The measurable goals for each of the BMPs including, as appropriate, the months and years in which the small MS4 undertakes required actions, including interim milestones and the frequency of 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.

(e) Any additional information that the director requests.

(f) A storm sewer map that satisfies the requirement of paragraph (C)(2)(c)(ii)(a) of this rule will satisfy the map requirement applicable to Ohio NPDES individual permit applicants.

(ii) If seeking authorization to discharge under an Ohio NPDES individual permit to implement a program that is different from the program under paragraph (C) of this rule, the small MS4 operator shall comply with the permit application requirements applicable to applicants for Ohio NPDES individual permits.

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

(c) If the regulated small MS4 is in the same urbanized area as a medium or large MS4 with an Ohio NPDES storm water permit and that other MS4 is willing to have the small MS4 operator participate in its storm water program, the parties may jointly seek a modification of the other MS4 permit to include the small MS4 operator as a limited co-permittee. As a limited co-permittee, the small MS4 operator will be responsible for compliance with permit conditions applicable to its jurisdiction. If the small MS4 operator chooses this option it shall comply with the permit application requirements applicable to applicants for Ohio NPDES individual permits in Chapter 3745-33 of the Administrative Code, rather than the requirements of paragraph (C) of this rule.

[Comment: In referencing an MS4's storm water management program, the small MS4 should briefly describe how the existing program will address discharges from the small MS4 or would need to be supplemented in order to adequately address the discharges. The small MS4 should also explain the small MS4's role in coordinating storm water pollutant control activities in the small MS4, and detail the resources available to accomplish the program.]



(3) If the regulated small MS4:

(a) Is regulated by rule under paragraph (A)(1)(a) of this rule, the regulated small MS4 shall apply for coverage under an Ohio NPDES permit, or apply for a modification of an existing Ohio NPDES permit under paragraph (B)(2)(c) of this rule.

(b) Is designated by, or a petition was granted under, paragraph (A)(1)(b) of this rule, the regulated small MS4 shall apply for coverage under an Ohio NPDES permit, or apply for a modification of an existing Ohio NPDES permit under paragraph (B)(2)(c) of this rule within one hundred eighty days of notice of such designation, unless the director grants a later date.

(C) Permit requirements for regulated small MS4s.

(1) General requirements. For any permit issued to a regulated small MS4, the director shall include permit terms and conditions 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 Chapter 6111. of the Revised Code and the rules adopted thereunder. Terms and conditions that satisfy the requirements of this section shall be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or BMPs, BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).

(a) For permits providing coverage to any small MS4s for the first time, the director may specify a time period of up to five years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs.

(b) For each successive permit, the director shall include terms and conditions that meet the requirements of this section based on its evaluation of the current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information.

(2) Minimum control measures. The permit shall include requirements that ensure the permittee



implements, or continues to implement, the minimum control measures in paragraphs (C)(2)(a) to (C)(2)(f) of this rule during the permit term. The permit shall also require a written storm water management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure.

(a) Public education and outreach on storm water impacts. The permit shall identify the minimum elements and 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.

(b) Public involvement and participation. The permit shall identify the minimum elements and require implementation of a public involvement and participation program that complies with state and local public notice requirements.

(c) Illicit discharge detection and elimination.

(i) The permit shall identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges into the small MS4.

(ii) At a minimum, the permit shall require the permittee to complete the following:

(a) Develop, if not already completed, a storm sewer system map showing the location of all outfalls and the names and location of all surface waters of the state that receive discharges from those outfalls.

(b) To the extent allowable under 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.

(c) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system.



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

(iii) The permit shall also require the permittee to address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if the permittee identifies them as a significant contributor of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, 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 fighting fires, not planned training exercises, 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 surface waters of the state.

(d) Construction site storm water runoff control.

(i) The permit shall identify the minimum elements and require the development, implementation, and enforcement of 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 shall 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.

(ii) At a minimum, the permit shall require the permittee to develop and implement the following:

(a) An ordinance or other regulatory mechanism to require erosion, sediment, and non-sediment pollutant controls, as well as sanctions to ensure compliance, to the extent allowable under the 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 and storm water pollution prevention plan (SWP3) implementation.

(e) Procedures for receipt and consideration of information submitted by the public.

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

(e) Post-construction storm water management in new development and redevelopment.

(i) The permit shall identify the minimum elements and 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 shall ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) At a minimum, the permit shall require the permittee to develop and implement the following:

(a) An ordinance or other regulatory mechanism to require post-construction runoff controls/BMPs from new development and redevelopment projects, as well as sanctions to ensure compliance, to the extent allowable under state or local law.

(b) Requirements for construction site operators to implement appropriate post-construction runoff controls/BMPs. These shall include strategies that are structural, non-structural, or a combination of both types of best management practices as determined appropriate for the community.

(c) Requirements to ensure adequate long-term operation and maintenance of best management practices.

(f) Pollution prevention and good housekeeping for municipal operations.



(i) The permit shall identify the minimum elements and 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 the federal, state or local organizations, the program shall 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.

(3) Other applicable requirements. As appropriate, the permit shall include the following:

(a) More stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved or established total maximum daily load or equivalent analysis; or where the director determines such terms and conditions are needed to protect water quality.

(b) Other applicable NPDES permit terms and conditions established in the Ohio NPDES individual or general permit.

(4) Evaluation and assessment requirements.

(a) Evaluation. The permit shall require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its storm water management program, and the status of achieving the measurable requirements in the permit. The director may impose monitoring requirements in accordance with monitoring plans appropriate to the watershed. Participation in a group monitoring program is encouraged.

(b) Recordkeeping. The permit shall require the permittee to keep records required by the Ohio NPDES permit for at least three years from the date the records are created or the term of the permit, whichever is longer. This period may be extended by Ohio EPA at any time. The permittee shall submit such records to the director when required to do so. The permit shall require the permittee to make the records, including a written description of the storm water management program, available to the public at reasonable times during regular business hours. 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.

(c) Reporting. Unless the permittee is relying on another entity to satisfy the Ohio NPDES permit obligations under paragraph (D)(1)(a) of this rule, the permittee shall submit annual reports to the director in accordance with the requirement of the permit. The director may require electronic reporting. The report shall include the following:

(i) The status of compliance with permit terms and conditions.

(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 proposes to undertake to comply with the permit during the next reporting cycle.

(iv) Any changes made during the reporting period to the permittee's storm water management program.

(v) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations (if applicable).

(5) Qualifying local program. If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of paragraph (C)(2) of this rule, the director may include conditions in the Ohio NPDES permit that direct to permittee to follow that qualifying program's requirements rather than the requirements of paragraph (C)(2) of this rule. A qualifying local program is a local, state or municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (C)(2) of this rule.

(D) May the operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?

(1) The permittee may rely on another entity to satisfy the NPDES permit obligations to implement a



minimum control measure if the following apply:

- (a) The other entity, in fact, implements the control measure.
- (b) The particular control measure, or component thereof, is at least as stringent as the corresponding Ohio NPDES permit requirement.
- (c) The other entity agrees to implement the control measure on the permittee's behalf. In the reports the permittee is required to submit under paragraph (C)(7)(c) of this rule, the permittee shall also specify that it is relying on another entity to satisfy some of the permit obligations. If the permittee is relying on another governmental entity regulated under an Ohio NPDES permit to satisfy all of the permit obligations, including the obligation to file periodic reports required paragraph (C)(4)(c) of this rule, the permittee shall note that fact in the notice of intent and identify the entity, but the permittee is not required to file the periodic reports. If the permittee is relying on another governmental entity regulated under an Ohio NPDES permit, or a non-governmental entity, to satisfy some of the permit obligations, the permittee shall note that fact in the notice of intent and identify the entity, and the permittee is required to file the periodic reports. In any of the above situations, the permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

[Comment: If the permittee is relying on another entity to perform any of the permit obligations, it is encouraged to enter into a legally binding agreement with that entity if the permittee wants to minimize any uncertainty about compliance with the permit.]

(E) As an operator of a regulated small MS4, what happens if compliance with the application or permit requirements of this chapter is not achieved?

(1) Ohio NPDES permits are enforceable under Chapter 6111. of the Revised Code.

(2) If the operator of the small MS4 is covered as a co-permittee under an Ohio NPDES individual permit or under an Ohio NPDES general permit by means of a joint notice of intent, the small MS4 operator remain subject to enforcement actions and penalties for the failure to comply with the terms of the permit.



(F) Small MS4 designation; petitions.

(1) After providing for public notice and allowing for public comment, small MS4s shall be designated by the director to obtain Ohio NPDES permit coverage for discharges in any of the following circumstances:

(a) When surface waters of the state within a county, township or municipality where a small MS4 is located are listed as impaired in the most recent final report submitted to the United States EPA by the director to fulfill the requirements of section 303(d) of the act (33 U.S.C. section 1313(d)), and the county, township or municipality meets the following requirements:

(i) Has a population of at least ten thousand.

(ii) Has a population density of one thousand or more per square mile.

(iii) Is located outside of an urbanized area.

(b) When a storm water discharge from the small MS4 results in or has the potential to result in an exceedance of Ohio water quality standards, including impairment of a designated use, or other significant water quality impacts including habitat and biological impacts to surface waters of the state.

(c) When a small MS4 contributes substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by Ohio EPA.

(2) Petitions.

(a) Any person may petition the director for the designation of a small MS4. Any such petition shall include a demonstration of the relevant criteria for designation set forth in paragraph (F)(1) of this rule and the petitioner shall supply the subject MS4 a copy of the petition and supporting documentation. After providing for public notice and allowing for public comment, the director shall make a final determination on the petition within one hundred eighty days after its receipt.



(b) Any person may petition the director to review any waiver issued by the director. Any such petition shall include evidence that the information required for granting the waiver has substantially changed. Any final determination on such petition shall be made within ninety days after receiving the petition.