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OFFICE OF THE ASSISTANT SECRETARY
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MAR 27 2002

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(ENVIRONMENT, SAFETY & OCCUPATIONAL HEALTH)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ENVIRONMENT, SAFETY & OCCUPATIONAL HEALTH)
DIRECTOR DEFENSE LOGISTICS AGENCY (CAAE)
DEPUTY CHIEF OF NAVAL OPERATIONS (LOGISTICS)
COMMANDANT OF THE MARINE CORPS (L)

Subj: DOD COMPLIANCE WITH STORM WATER PHASE II REGULATIONS

Encl: (1) DoD Clean Water Act Services Steering Committee Summary of Storm Water Phase II Requirements

The Storm Water Phase II Regulations (64 FR 68722, 8 December 1999) require permit coverage for regulated entities no later than 10 March 2003. Enclosure (1) provides a summary of requirements for compliance prepared by the Department of Defense (DoD) Clean Water Act Services Steering Committee (CWASSC). In order to ensure compliance with the deadline, please forward this summary as a reminder to all personnel involved in storm water management at DoD facilities.

If you have any questions or comments, the CWASSC points of contact for each of the services are:

Air Force - Mr. Jay Shah at (703) 607-0120, or email jayant.shah@pentagon.af.mil;
Army - Ms. Georgette Myers at (410) 436-1218, or email georgette.myers@aec.apgea.army.mil;
Navy - Ms. Kathy Ellis at (703) 602-2568, or email ellis.kathy@hq.navy.mil; and
Marine Corps - Ms. Kelly Dreyer at (703) 695-8302 x3331, or email dreyerka@hqmc.usmc.mil.

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# DoD Clean Water Act Services Steering Committee (CWASSC)
## SUMMARY OF STORM WATER PHASE II REQUIREMENTS

### BACKGROUND

- The Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) storm water program was established in 1985 to control storm water runoff from point sources. The storm water program was implemented in 2 phases promulgated in 1990 and 1999 (40 CFR 122.26).
- **Phase I** regulates large and medium municipal separate storm sewer systems (MS4s) serving or located in areas with populations of 100,000 or more, construction sites of 5 or more acres, and 10 industrial activities.
- **Phase II** regulates small MS4s serving populations of less than a 100,000 in urbanized areas, and construction sites of 1 or more acres and:
  - Provides a regulatory no exposure exemption provision for the 10 industrial activities currently regulated under Phase I and waivers for small MS4s and construction activities if certain conditions are met.
  - Allows NPDES permitting authorities to designate for regulation MS4s serving a jurisdiction with a population under 10,000 if it is determined that water quality is being compromised.
  - Requires NPDES permitting authorities to issue general permits by 9 December 2002.
  - Requires small MS4s and small construction activities designated by the rule to seek coverage no later than 10 March 2003 and those designated by a permitting authority to seek coverage within 180 days of receiving notice.
  - Allows NPDES permitting authorities to phase in permit coverage for MS4s serving a jurisdiction with a population under 10,000 no later than 8 March 2007.
- The following definitions apply:
  - **Point Source:** As defined in 40 CFR 122.2, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collecting system, or vessel or other floating craft from which pollutants are or may be discharged."
  - **Non-point Source (NPS):** Diffuse sources; caused by rainfall or snowmelt moving over and through the ground. The federal storm water regulations do not apply to non-point source discharges.
  - **Runoff:** Drainage or flood discharge that leaves an area as surface flow or pipeline flow, which has reached a channel or pipeline by either surface or sub-surface routes.
  - **Small Construction Activity:** An activity that involves land disturbance of equal to or greater than 1 and less than 5 acres.
  - **Small Municipal Separate Storm Sewer System (MS4):** Any MS4, including a Federally-owned MS4, that is not regulated under Phase I of the NPDES Storm Water Program. The definition of a small MS4 is based on its location within a Bureau of Census small urbanized area or population center, not on the population the system serves and includes Federally-owned systems, such as military bases and veterans hospitals.
  - **Storm Water:** Precipitation that accumulates in natural and/or constructed storage and storm water systems during and immediately following a storm event.

### APPLICABILITY TO DOD

- The **Storm Water Phase II** regulations include **Federal facilities** in the definition of "regulated small municipal separate storm sewer systems."
  - MS4s permitted under the NPDES Phase I storm water program, including MS4s serving less than 100,000 people, are not required to be permitted under the Phase II storm water program. **Note**: Many DoD facilities were permitted as "industrial activities" under Phase I, not as large or medium MS4s.
  - MS4s serving a jurisdiction with a population under 10,000 could be regulated if designated by a permitting authority as causing adverse impact to water quality.
- Except for construction activities, ALL other industrial activities permitted under the NPDES Phase I storm water program may be eligible for permitting exemption under the Phase II **"no exposure"** exclusion (40 CFR 122.26(g)). No exposure means protection from exposure to rain, snow, snowmelt, and/or runoff.
- Small MS4s and small construction activities regulated under Phase II may be eligible for a waiver if certain conditions are met (40 CFR 122.26(b)15).

### RECOMMENDATION/GUIDANCE

- Operators of DoD facilities should assess the applicability and requirements of the Storm Water Phase II Regulations to their facilities. For assistance, ***DoD Implementation Guidance for Storm Water Phase II Regulations*** contains step-by-step procedures to determine the applicability and requirements of the Phase II regulations. It is located on DENIX under the DoD Menu CWASSC Workgroup website (**https://www.denix.osd.mil/denix/DOD/Working/CWASSC/Comments/sw-guidance**).

- If a facility has a Phase I permit (as an "industrial activity"), it has several options:
  - Negotiate to combine the Phase I and Phase II permits.
  - Determine whether the "no exposure" exemption for Phase I industrial activities is applicable and whether a waiver is available for Phase II. (No exposure exemptions and waivers may be available only in states in which EPA is the permit authority. Check with your state to determine if they are allowing these options).
  - If the storm sewer system discharges to that of another public or private MS4, consider whether being a co-permittee offers any advantages (in consultation with counsel).
- If the Phase II regulations apply, permit coverage may be required:
  - For **MS4s**, no later than **10 March 2003** and a Storm Water Management Program is required.
  - For **NEW construction activities**, **2 days prior to beginning work**; for **EXISTING construction activities**, if necessary, no later than **10 March 2003**. A Storm Water Pollution Prevention Plan (SWPPP) is required.

## ADDITIONAL INFORMATION ON STORM WATER PERMITTING PROCESS

The first step of the Storm Water Phase II compliance process is the preparation and submittal of the storm water discharge permit application. A summary of the permitting process is provided below.

### 1. Small MS4s:

Operators of regulated small MS4s are required to first develop a **Storm Water Management Program** designed to reduce the discharge of pollutants from the small MS4 to the "maximum extent practicable." The Program must include the following six minimum control measures:

1. Public education and outreach
2. Public participation/involvement
3. Illicit discharge detection and elimination
4. Construction site runoff control
5. Post-construction runoff control
6. Pollution prevention/good housekeeping

For each control measure:

- Select the appropriate storm water management controls or best management practices (BMPs). EPA has a menu of BMPs for each control measure at **http://www.epa.gov/npdes/menuofbmps/menu.htm**; and
- Define the measurable goals. EPA has developed guidance on measurable goals, which is located at **http://www.epa.gov/npdes/stormwater/measurablegoals/**.

Then submit the appropriate permit application for NPDES permit coverage no later than **10 March 2003** using one of the following applications:

- A Notice of Intent (NOI) if seeking a general permit, OR
- An individual permit application if seeking an individual permit.

**Note:** a) If you are considering a co-permittee situation, please contact your legal counsel and headquarters because there could be issues involving liability and funding to consider.

b) Your permit application must include the BMPs selected and measurable goals defined for each control measure.

### 2. Small Construction Activity:

Under the Storm Water Phase II regulations, permit application requirements for a small construction activity are defined by the NPDES permitting authority on a State-by-State basis. However, EPA expects that permit application requirements for Phase II construction sites will be similar to the Phase I requirements, which require:

- A **Storm Water Pollution Prevention Plan (SWPPP)** to be developed prior to submitting the permit application, which is a **Notice of Intent (NOI)**. Submittal of the SWPPP to your NPDES permitting authority is not required; however, it should be accessible to the public.
- Submittal of an NOI, which must include general information and certification that the activity will not impact endangered or threatened species. This certification is ONLY required if EPA is the NPDES permitting authority. Under the Phase II regulations:
  - An NOI may or may not be required for EXISTING construction activities by the permitting authority. However, if an NOI is required, it must be submitted no later than 10 March 2003.
  - NEW construction activities are required to submit an NOI 2 days prior to beginning work.

**Note:** NPDES permitting authorities are required to develop and issue permits for small MS4s and construction activities by 9 December 2002. As of 11 March 2002, no permits for small MS4s or small construction activity have been issued. A listing of States permit issuance contacts can be found at **http://cfpub.epa.gov/npdes/contacts.cfm?program_id=1&type=STATE** and information on Phase I construction activity permitting requirements can be found at **http://cfpub.epa.gov/npdes/stormwater/cgplarge.cfm?program_id=6**.