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EPA National Storm Water Updates

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Presentation Outline

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- Stormwater Permitting Update
- eReporting Update
- Long-Term Stormwater Planning



3 Stormwater Permitting Update

Construction Stormwater

Industrial Stormwater

MS4s – MS4 General Permit Remand Rule

Construction Stormwater

- The 2012 CGP expired on Feb. 16, 2017 and the new 2017 CGP went into effect the same day

- 2017 CGP is similar to 2012 CGP: includes effluent limitations in the form of requirements for erosion and sediment controls, and pollution prevention controls, and requirements for self-inspections, corrective actions, staff training, and a SWPPP

- Other notable changes:
 - Requires cover or appropriate temporary stabilization for all inactive stockpiles
 - Requires waste containers to have lids or cover when not in use
 - Requires controls to minimize exposure of building materials containing PCBs to precipitation and stormwater
 - Requires more stringent stabilization deadlines for sites that disturb more than 5 acres at any one time

Construction Stormwater

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- The National Association of Homebuilders (NAHB) petitioned for review of the 2017 CGP in February, followed by the Chesapeake Bay Foundation (CBF) in May
 - ▣ Petitions consolidated in the DC Circuit
 - ▣ Issues:
 - All operators relying on shared control to comply with the permit are jointly and severally liable for CWA violations
 - Stabilization requirements

- Resources update:
 - ▣ New [flow-chart](#) for determining permit coverage
 - ▣ Updated [SWPPP template](#)
 - ▣ Updated [inspection](#) and [corrective action report](#) templates

Industrial Stormwater

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- Current EPA MSGP went into effect on June 4, 2015

- A group of environmental NGOs filed a permit appeal in June 2015; two industry groups intervened to defend the permit
 - ▣ Petitions consolidated in the Second Circuit
 - ▣ Settlement agreement reached in July 2016

- As part of settlement agreement, EPA is funding a study by the National Research Council (NRC)
 - ▣ Suggest improvements to the current MSGP benchmarking monitoring requirements
 - ▣ Evaluate the feasibility of numeric retention standards (such as volumetric control standards for a percent storm size or standards based on percentage of imperviousness)
 - ▣ Identify the highest priority industrial facilities/subsectors for consideration of additional discharge monitoring

MS4 General Permit Remand Rule

Background

- EDC v. EPA (Ninth Circuit, 2003)
 - Found deficiencies in Phase II Stormwater regulations regarding procedures for providing coverage to small MS4s under general permits
 - The court remanded to EPA to fix these deficiencies:
 - Lack of permitting authority review
 - Lack of public participation in the permit process
- NRDC/EDC petition to Ninth Circuit (2014)
 - Petitioners asked the Ninth Circuit to require EPA to take the actions addressed in the 2003 ruling
 - Culminated in a settlement agreement requiring EPA to promulgate changes to Phase II stormwater regulations
- EPA proposed 3 rulemaking options:
 - Traditional General Permit Approach
 - Procedural Approach
 - Permitting Authority Choice Approach

MS4 General Permit Remand Rule

Establishing the Rule

- Permitting Authority Choice Approach
- The permitting authority determines what type of general permit to use for its small MS4s
 - **Comprehensive** general permit – § 122.28(d)(1)—all necessary permit terms and conditions are established up front in the general permit itself
 - **Two-step** general permit – § 122.28(d)(2)- necessary permit terms and conditions are established in two steps; Issue the base general permit and then propose for comment and finalize additional requirements that apply to individual MS4s covered under the general permit.
- Permitting authority is free to choose whichever type of permit works best for its needs, and can change approaches in subsequent permit terms.

MS4 General Permit Remand Rule

Key Aspects of Final Remand Rule

- ❑ Permitting authority is required to indicate which general permit type it uses for any particular permit
 - This statement may be included in the permit itself or the fact sheet
- ❑ The permitting authority is responsible for determining what is needed to meet the statutory and regulatory standard
 - “To reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA”.
 - Terms and conditions must be expressed in terms that are “**clear, specific, and measurable**”
- ❑ Permit requirements must be re-evaluated for each subsequent permit term to ensure they are adequate to meet the MS4 permit standard (§ 122.34(a)(2)).
- ❑ State permitting authorities are required to comply with the MS4 Remand Rule when their small MS4 General Permit is reissued.

MS4 General Permit Remand Rule

Clear, Specific, and Measurable Requirements

- Avoid permit requirements with caveat language, such as “if feasible”, “if practicable”, “to the maximum extent practicable”, and “as necessary”
- Use mandatory words such as “must”, and avoid non-mandatory words such as “should” or “the permittee is encouraged to ...”
- Permitting authority has discretion as to the level of specificity in the permit
 - Verbatim adoption of minimum control measure requirements would not be considered specific
 - Specificity may change in subsequent permits
 - Increased specificity does not necessarily mean that the permit is more stringent - a permit can be specific and still leave flexibility to the MS4 to determine exactly how it will fulfill permit requirements

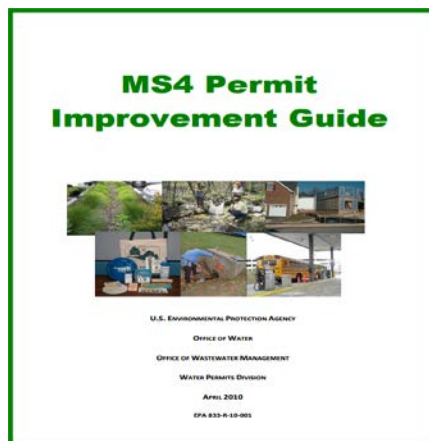
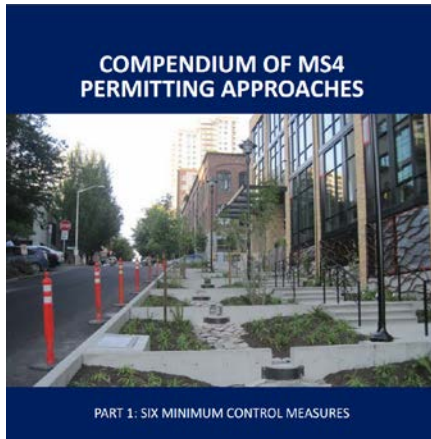
MS4 General Permit Remand Rule

Clear, Specific, and Measurable Requirements

- Measurable requirements will typically need an objective parameter to define the necessary level of effort, result expected, performance standard, or similar measurement – but does not mean that the requirement needs to be expressed as a numeric effluent limit

- Examples:
 - Conduct inspections of active construction sites once per week until final stabilization is met
 - Clean 25 % of the catch basins in your service area every year
 - The first 1 inch of precipitation must be retained on site

MS4 General Permit Remand Rule



<https://www.epa.gov/npdes/municipal-sources-resources>

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eReporting Update

eReporting Rule

- OECA published eReporting rule in October 2015
 - ▣ Purpose is to replace NPDES paper-based reporting with electronic reporting directly from permittees or from the permitting authority, such as Discharge Monitoring Reports, information from permit applications for individual permits and NOIs for general permits, and annual reports
 - ▣ This data will be incorporated into EPA's national NPDES data system (Integrated Compliance Information System)

- eReporting Rule includes data elements for both Phase I and II MS4s
 - ▣ State and EPA permitting authorities have until December 2020 to start electronically submitting required MS4 data elements

- The Phase II MS4 data elements were based on the pre-MS4 Remand Rule regulations
 - ▣ Now that the MS4 Remand Rule has been promulgated, the corresponding Phase II MS4 data elements no longer reflect the current regulations
 - ▣ States cannot rely on the current set of Phase II MS4 data elements to comply with both eReporting Rule and Remand Rule requirements

- EPA has initiated work on a rule to modify the eReporting rule data elements to be consistent with the MS4 Remand Rule

Other Updates on eReporting

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- EPA is forming an EPA-State MS4 Technical Workgroup to assist in defining the applicable MS4 “data elements”
 - ▣ Currently soliciting interested state participants
 - ▣ Also, will collect feedback on the draft changes to the eReporting data elements to reflect the new MS4 Remand Rule

- EPA is exploring how to make its NPDES eReporting Tool (NeT) for the CGP and MSGP available to states
 - ▣ Interested states should contact Amanda Pruzinsky at pruzinski.amanda@epa.gov

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Long-Term Stormwater Planning

What Is A Long-Term Stormwater Plan

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A proactive strategy to address flooding and stormwater pollution by synchronizing stormwater projects with the community's long-term vision and plans.

- Efficiently synchronize stormwater management with capital improvement plans, comprehensive plans, and master plans
- Use green infrastructure to treat stormwater as a resource to water landscaping and recharge drinking water supplies
- Explore asset management programs, sustainable financing and other strategies that build capacity to support reliable infrastructure



EPA's Three-Pronged Approach

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“Guide”

Outline key elements and process for developing long-term stormwater plans so communities invest in development that aligns with their community identity, sustainability and resiliency to reduce costs.



“Toolkit”

Provide an online stormwater planning toolkit to help communities develop long-term stormwater plans. Help communities identify federal resources and tools that can help them develop their plans.



“Technical Assistance”

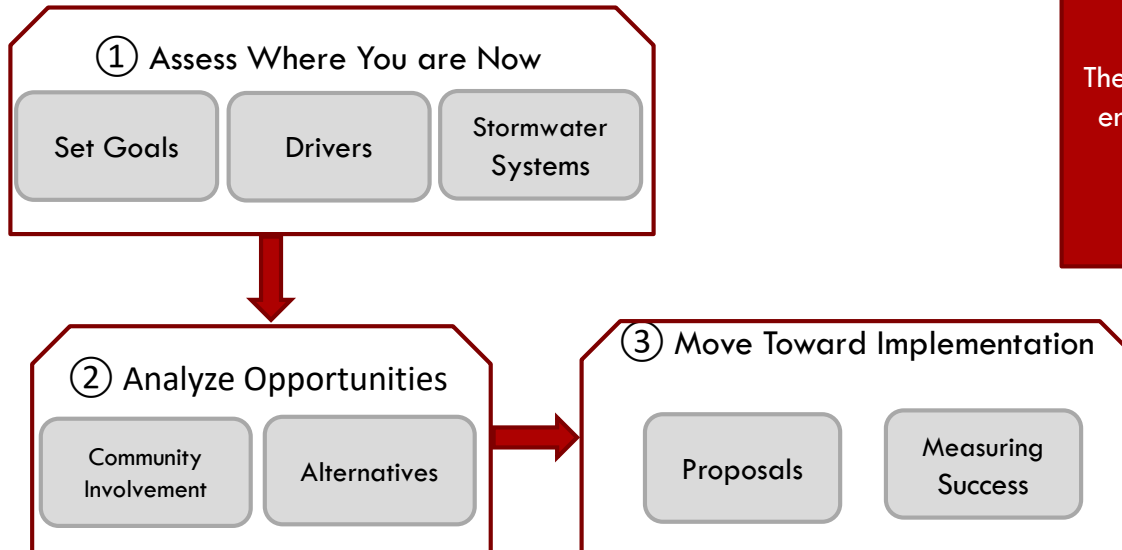
Provide Technical Assistance to Communities – work with 5 communities to test tool and develop plans.

Guide for Voluntary Long-Term Planning (Draft)

Draft Guide developed based on sustained engagement with key partners including states, communities, business/industry groups, academia and nongovernmental organizations.



It includes 3 steps:

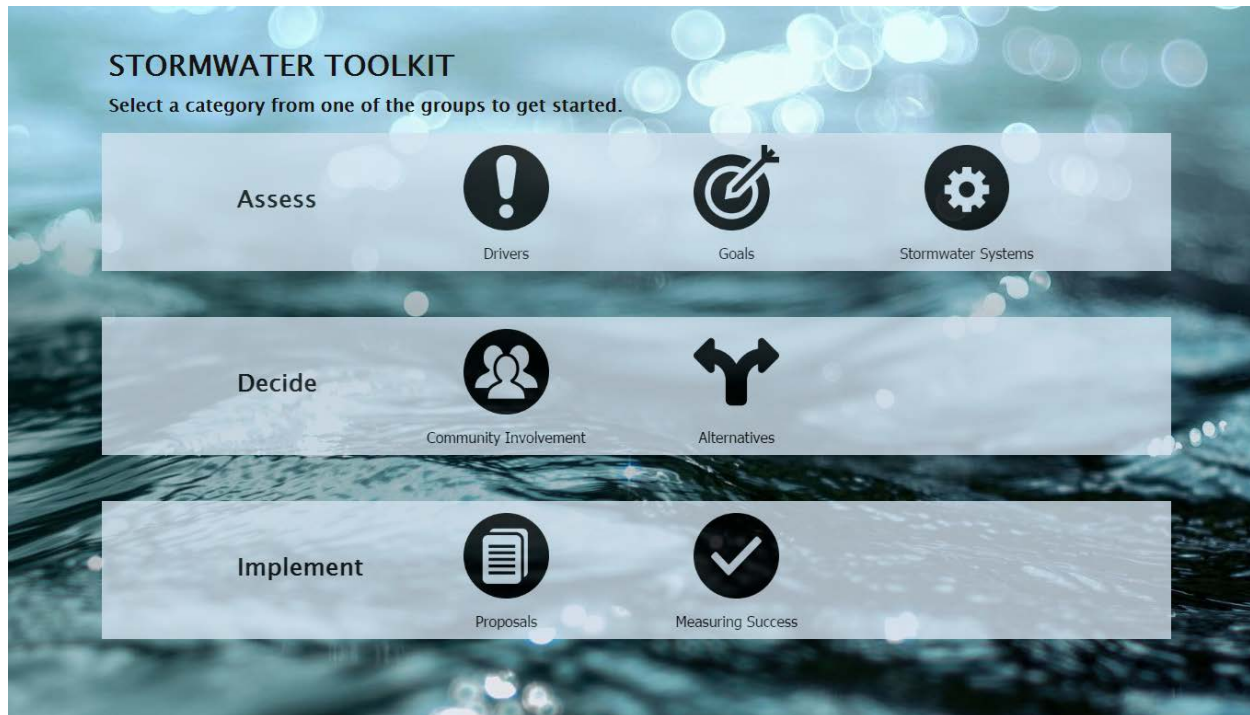


The draft guide is available online to encourage continued dialogue and feedback.

Initial Mockup of Toolkit

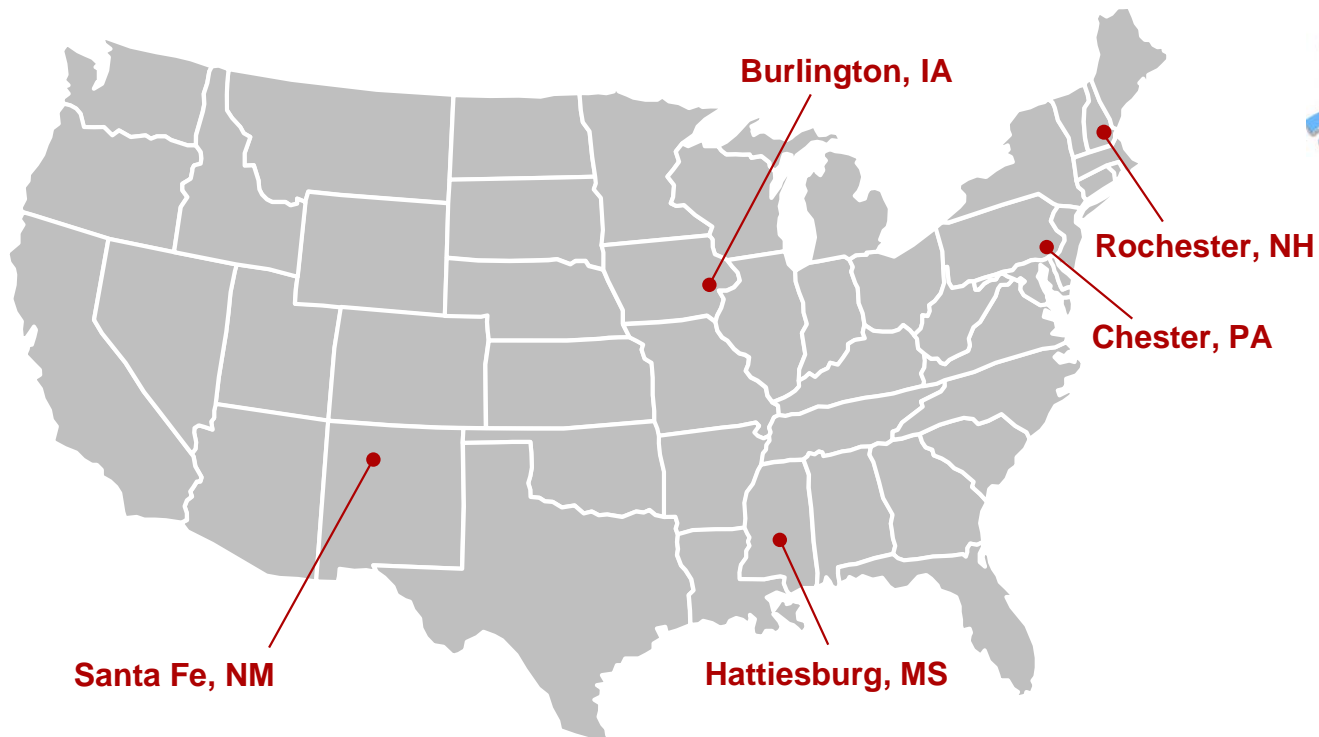
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The Stormwater Toolkit walks the user through the steps to develop a long-term stormwater plan. The steps correspond to those outlined in the Guide.



Building Capacity in Communities

EPA is collaborating with five communities to help develop long term plans.



Example Community Goals

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The five communities were interested in pursuing similar goals for their long term stormwater plan.

- ❑ Develop Asset Management Program
- ❑ Manage Flooding
- ❑ Sustainably Finance a Stormwater Program
- ❑ Create and Implement Stormwater Development Standards and educate developers
- ❑ Integrate Stormwater into Downtown Redevelopment areas and other Economic Development Plan
- ❑ Pursue Stormwater Opportunities in Transportation Projects
- ❑ Improve Water Quality and Manage Water Holistically
- ❑ Increase Collaboration Throughout the Local Watershed
- ❑ Increase the resiliency to urban heat and water demand

THANK YOU!

QUESTIONS?

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Websites:

MS4s

www.epa.gov/npdes/stormwater-discharges-municipal-sources

Construction Stormwater

www.epa.gov/npdes/stormwater-discharges-construction-activities

Industrial Stormwater

www.epa.gov/npdes/stormwater-discharges-industrial-activities