

**FACT SHEET  
AND SUPPLEMENTARY INFORMATION  
FOR GENERAL PERMIT ARR040000  
REGULATED SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4)  
IN ARKANSAS**

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**1.1. Background**

The current General Stormwater Permit No. ARR040000 for MS4s became effective on August 1, 2014 with an expiration date of July 31, 2019. The Arkansas Department of Environmental Quality is proposing to issue a five-year permit in order to renew general permit coverage for Phase II MS4s.

This is a renewal of the General Municipal Separate Storm Sewer System (MS4) Stormwater permit. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended) and subjects the discharger to the penalties specified therein. Upon promulgation of the final general permit for this type of discharge, operators qualified for coverage must follow the following notification requirements:

- 1.1.1.** Operators of currently permitted MS4s are required to submit an NOI and the

Stormwater Management Program (SWMP) or apply for an individual NPDES permit no later than thirty (30) days prior to the effective date of the permit.

- 1.1.2. Operators of MS4s newly designated for permit coverage are required to submit a complete NOI and SWMP within 180 days of notice of designation.

## 1.2. Legal Basis

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards, and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370. The State of Arkansas has been authorized by the U. S. Environmental Protection Agency to administer the National Pollutant Discharge Elimination System (NPDES) Program in Arkansas, including the issuance of general permits to categories of dischargers under the provisions of 40 CFR 122.28, as adopted by reference in the Arkansas Pollution Control & Ecology Commission's (APC&EC) Regulation No. 6.

The Agency may issue "general permits" applicable to a class of similar dischargers within a discreet geographical area. See *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977) and 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits, but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, as supplemented by EPA regulations; e.g., 40 CFR 124.58. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or general NPDES permit.

Water Quality Standards guiding permitting decisions may be found in APC&EC's Regulation No. 2. Administrative procedures may be found in APC&EC's Regulation No. 8. Information on applicable permit fees may be found in APC&EC's Regulation No. 9.

## 1.3. Regulatory Background

NPDES permit coverage for small MS4s is required by the federal stormwater regulations contained in 40 CFR 122.26 and 40 CFR 122.30 through 122.37.

#### **1.4. Permit Condition Justification**

- 1.4.1.** Conditions in Parts 2 through 5 are self-explanatory and are incorporated in the permit based on 40 CFR 122.41, 40 CFR 122.43, 40 CFR 122.62, 40 CFR 124.5, 40 CFR 136, 40 CFR 122.44(d), best permitting judgement, and Appendix D of the Continuing Planning Process (CPP) in order to provide and ensure compliance with all applicable requirements of the CWA and regulations.
- 1.4.2.** Definitions in Part 6 are self-explanatory and have been included in the permit in order to provide and assure compliance with all applicable requirements of the CWA and regulations.

#### **1.5. Permit Coverage**

Facilities covered by this general permit include small MS4s within designated urbanized areas, as described at 40 CFR 122.32.

##### **1.5.1** This general permit shall not apply to:

- 1.5.1.1** Discharges mixed with sources of non-stormwater unless the non-stormwater discharges are determined not to be a significant contributor of pollutants as defined in Part 6 of the permit to waters of the United States;
- 1.5.1.2** Stormwater discharges associated with industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(x) and (xi);
- 1.5.1.3** Stormwater discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15);
- 1.5.1.4** Stormwater discharges currently covered under an individual or other general NPDES permit;
- 1.5.1.5** Stormwater discharges that will cause or contribute to non-attainment of water quality standards, including failure to protect and maintain existing designated uses of receiving waters.

##### **1.5.2** Notice of Intent (NOI) to be Covered

- 1.5.2.1** An MS4 operator seeking authorization to discharge under this general permit shall submit to the Department a completed Notice of Intent (NOI) form and completed Stormwater Management Program (SWMP) covering all applicable requirements of Part 3, in accordance with the deadlines listed in Part 2.1 of this permit. The NOI form, obtained from the Department, includes the information and attachments required in Part 2.2 of this permit. The NOI must be signed and dated in accordance with Part 5.7 of this permit. An initial permit fee of \$200.00 must accompany the NOI under the provisions of ADEQ Regulation No. 9, and an invoice will be sent to the Permittee for the annual fee each year.

**1.5.2.2** A new discharger, who meets the eligibility requirements in Part 1 of this permit, and submits a complete NOI by following the information and attachment inclusions as outlined in Part 2.2, submits a complete SWMP, covering the requirements in Part 3 of this permit, submits a payment of \$200.00, and completes the public notification process outlined in Part 2.4 of the permit is authorized to discharge stormwater from a small MS4 under the terms and conditions of this general permit once the Department has issued a letter of coverage for the MS4. Upon review of the NOI, SWMP, and other available information, the Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

**1.5.2.3** A current discharger, who meets the eligibility requirements of Part 1 of this permit, seeking to renew coverage under this general permit, shall submit a complete NOI by following the information and attachment inclusions as outlined in Part 2.2, who submits a complete SWMP, covering the requirements in Part 3 of this permit, and completes the public notification process outlined in Part 2.4 of the permit is authorized to discharge stormwater from a small MS4 under the terms and conditions of this general permit once the Department has issued a Notice of Coverage (NOC) for the MS4. Upon review of the NOI, SWMP, and other available information, the Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

**1.5.3** Per 40 CFR 122.32, the Department has allowed waivers for the following:

**1.5.3.1** MS4s serving a population of less than 1,000 and

**1.5.3.1.1** are not contributing to pollutant loadings of an interconnected MS4, or

**1.5.3.1.2** any pollutant that is discharged does not require additional controls per a wasteload allocation

## **1.6. Discharge Characterization**

**1.6.1** Stormwater Discharge from a regulated small MS4

Stormwater discharged from a small MS4 has the potential to be composed of various constituents due to contact with streets, buildings, vehicles, lawns, etc. This runoff is then discharged to creeks, rivers, lakes, ponds, municipal stormwater drainage systems, etc. without treatment or cleaning.

**1.6.2** Allowable Non-Stormwater Discharge from an MS4

In accordance with 40 CFR 122.34(b)(3), non-stormwater discharges may be discharged unless they are identified as significant contributors of pollutants to or from the MS4. Please refer to the permit in Part 1.2.2 for a complete listing of these non-stormwater discharges. Splash pads have been added to the list of

approved discharges. Splash pads are not considered to be significant sources of pollution until determined otherwise by ADEQ.

### **1.7. Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT)**

National guidelines establishing BPT, BCT and BAT standards have not been promulgated for stormwater discharges from small MS4s. In accordance with 40 CFR 122.34, the general permit includes requirements to reduce the discharge of pollutants, to protect water quality, to satisfy the appropriate water quality requirements of the Clean Water Act, and the development and implementation of Stormwater Management Plans (SWMPs) to address each of the required Six Minimum Control Measures for small MS4s.

### **1.8. Water Quality Requirements**

In accordance with 40 CFR 122.44(d), the general permit must include any requirements necessary to achieve State Water Quality Standards as established under Section 303 of the Clean Water Act. Discussed below are the requirements based on State Water Quality Standards.

**1.8.1** The Department may require an application for an individual NPDES permit to authorize discharges of stormwater from any activity that the Department determines to cause or makes a contribution to exceed a water quality standard or that the Department determines to cause or contribute to the loss of a designated use of receiving waters. These criteria include:

- 1.8.1.1** the discharge(s) is a significant contributor of pollution,
- 1.8.1.2** the discharger is not in compliance with the terms and conditions of the general permit,
- 1.8.1.3** a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source,
- 1.8.1.4** effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit,
- 1.8.1.5** a Water Quality Management Plan containing requirements applicable to such point sources is approved, or
- 1.8.1.6** the requirements listed in 40 CFR 122.28(a) for general permits and identified in the previous paragraphs are not met.

**1.8.2** The regulations specify that if a TMDL has assigned a WLA to a facility, the issuance of coverage must be consistent with the assumptions and requirements of the WLA in TMDL (40 CFR 122.44(d)(1)(vii)(B)). Therefore, during the NOI review/approval process for MS4s seeking coverage under this permit, the assigned WLA in TMDL will be included as a limit in the permit coverage

(NOC). The MS4 operator has three years in accordance with Reg. 2.104 to comply with the limits. In the interim, the MS4 operator must comply with SWMP.

If the WLA has not been disaggregated, the Department will disaggregate the aggregate WLA for MS4s seeking coverage under this permit. Disaggregated WLAs will be assigned during the NOI review/approval process so that the WLAs can be adopted as measurable goals. Disaggregated WLAs will be determined proportionately based on each MS4's area within the watershed in accordance with information in TMDL.

Information regarding existing and proposed TMDLs can be obtained from the Water Quality Section of the ADEQ Office of Water Quality at (501) 682-0660 or from the ADEQ website at the following address:

<https://www.adeg.state.ar.us/water/planning/integrated/tmdl/>.

Please see Part 3.4.5 of the general permit for specific details on the requirements for these discharges.

## **1.9. Remand Rule and Modifications to the SWMP**

- 1.9.1** ADEQ has implemented a two-phase permit in order to be compliant with the remand rule. This makes the SWMP an integral and enforceable part of the permit.
- 1.9.2** In order to be compliant with the Remand Rule, Major Modifications to the SWMP will be required to be publicly noticed through the procedures laid out in Part 2.4 of the permit.
- 1.9.3** Where a permittee proposes to change a BMP that it is implementing, and the change does not require enforceable permit conditions to be changed in any way, but rather offers an alternative means of complying with the same permit conditions, ADEQ would not consider this to be a major modification. For instance, Condition 3.2.3.9 requires that dry weather screenings of all stormwater outfalls located in the MS4's coverage area be completed over the permit term. If the permittee changes its method of conducting such screenings described in its SWMP document, even though a revision to the SWMP document maintained by the permittee may be necessary, no major modification to the SWMP would be necessary because the requirement to inspect all stormwater outfalls is still in effect. By contrast, where a permittee proposes to substitute one of its BMPs for another one, and that change would alter the compliance expectations defined in the permit, the permittee will need to notify the Department before proceeding to determine if a permit modification is necessary. For example if the permittee's requirements specify in precise detail what screening methodology utilized for its outfalls, and the permittee indicates that it no longer intends to use this approach, this proposed change will need to

be evaluated by the Department to determine if a major modification to the SWMP is necessary.

### **1.10. Description of Permit Conditions and Changes from the Previous Permit**

- 1.10.1** This renewal permit contains the same basic framework of requirements as the previous general permit and includes some formatting changes and updates for clarity.
- 1.10.2** The terms “ADEQ,” “coverage area,” “Department,” “Impaired waters,” “Splash pad,” “Total Maximum Daily Load (TMDL),” and “uncontaminated” have been added to the definitions in Part 6.
- 1.10.3** All language involving the census has been updated to include the results of the 2020 census where appropriate.
- 1.10.4** The terms “coverage area,” “Department,” “operator,” “MS4,” and “impaired waters” have replaced some other terms in the permit to provide consistency.
- 1.10.5** A Stormwater Management Program has been included as a required item to be submitted as part of an application in Part 1.2.1 and 1.5.1.
- 1.10.6** In order to give the Department time to review NOIs and SWMPs, MS4s must submit the NOI and SWMP thirty days prior to the effective date.
- 1.10.7** Parts 1.2.1.1, 1.2.1.2, and 1.2.1.4 have been updated to define the coverage areas for each type of MS4.
- 1.10.8** The urbanized areas outlined in Part 1.2.1.1 have been changed from the 2000 and 2010 Decennial Census to the 2000, 2010, or 2020 Decennial Census.
- 1.10.9** “Or waters with completed TMDL” has been added to Part 1.2.1.2(1) and Part 3.5.1 to because although a stream may have a TMDL, it may not be listed on the 303(d) list of impaired waterbodies.
- 1.10.10** ESW and NSW have been added to Part 1.2.1.2(2).
- 1.10.11** Part 1.2.1.3 has been added to clarify the coverage area for MS4 entity for those who meet the requirements in both 1.2.1.1 and 1.2.1.2.
- 1.10.12** To be protective of water quality and to provide clarity, the term “uncontaminated” has been added to Part 1.2.2 subheadings a, g, l, and q and Part 3.2.3.6.
- 1.10.13** De-chlorinated discharges from splash pads have been added to the list of authorized non-stormwater discharges in part 1.2.2. Additionally these discharges have been as an item to be addressed in Part 3.2.3.6. See Section 1.6.2 of this Fact Sheet for details.
- 1.10.14** Part 1.4.1.2 was added to allow the Department to reopen a waiver to the permit.
- 1.10.15** Language has been added to Part 1.5.2 to be more specific about what information must be included in the Notice of Intent.
- 1.10.16** In order to be compliant with the Final MS4 Remand Rule, as incorporated into 40 CFR 122, the Stormwater Management Program (SWMP) has been added to the list of items to be publicly noticed listed in Part 2.4. Language has been clarified to include requests for a public hearing.
- 1.10.17** In order to be compliant with the Remand Rule, language has been added to

specify that the SWMP is an enforceable document.

- 1.10.18** In Part 3.1.1.5, “impaired waters or waters with an approved TMDL” has replaced “impaired waterbody,” and ERW, ESW, and NSW have been added to applicable waters for the condition.
- 1.10.19** Part 3.1.1.6 has been removed due to redundancies with Part 3.1.1.5.
- 1.10.20** Part 3.2.3.2 has been updated to include time for permittees with expanded coverage area due to the addition of Part 1.2.1.3.
- 1.10.21** Parts 3.4.2.1, 3.4.2.2, 3.4.3.4, and 3.4.4.2 have been updated to include guidelines on what constitutes a minor modification or major modification to the SWMP and therefore may be required to publicly notice changes to the SWMP in accordance with Part 2.4, accordingly with the Final MS4 General Permit Remand Rule, as incorporated into 40 CFR 122.
- 1.10.22** Part 3.4.2.3 was added to give examples of changes to the SWMP that qualify as minor modifications.
- 1.10.23** The phrase “without an approved TMDL” has been removed from Part 3.4.5.2 to ensure that requirements for impaired waters with an approved TMDL have requirements as least as stringent as impaired waters without an approved TMDL.
- 1.10.24** A clause in Part 3.2.3.2 has been added in order to give the permittee time to update the storm sewer system map as a result in change of coverage area.
- 1.10.25** For clarity, the term sensitive water bodies has been removed and replaced with “waters such as impaired waters, waters with an applicable TMDL, ERWs, ESWs, or NSWs” in Parts 3.2.3.7 and 3.2.5.5.3.
- 1.10.26** Language in 3.4.5 and 3.5.1 has been altered to include waters that are attaining water quality standards, but have an approved TMDL.
- 1.10.27** Language has been added to many conditions within Part 3.4.5.2 to allow time for the permittee to meet the requirements if it is a new permittee for which the condition is applicable, or upon release of an update to the 303(d) list or finalization of a new TMDL. Conditions 3.4.5.2.1.7, 3.1.5.2.2.7, and 3.4.5.2.2.4 have been added to clarify that permittees currently covered under this general permit should already be meeting the requirement based on the previous permit and will not be allowed additional time to implement the required BMPs.
- 1.10.28** Part 3.4.5.2.3 has been added to create more specific guidelines for an MS4 that discharges into waters impaired for turbidity.
- 1.10.29** In order to be compliant with the Remand Rule, Part 3.5.5 has been added to specify what changes to the SWMP involving sampling plans constitutes a major modification.
- 1.10.30** The language “with the terms and conditions of the permit and SWMP” has been added to Part 4.1 to specify how the permittee shall evaluate program compliance.
- 1.10.31** In order to be compliant with the NPDES Electronic Reporting Rule, Part 4.3.2 has been amended to include the requirement for annual reports to be submitted through ePortal after December 21, 2020.
- 1.10.32** Part 3.5.3 has been added to allow the Department to discretionarily require an MS4 to develop and implement a sampling plan. This has been done so that the



Department may gather data to determine causes of impairment or for the creation of a TMDL.

- 1.10.33** In Part 4.3.1, the annual report due date has been moved to March 31 of each year. For clarification, existing permittees must submit their annual reports to cover the previous twelve (12) months from January 1st to December 31st of a calendar year. This allows the permittee three months to create the annual report and allows the MS4 to receive feedback with enough time to begin implementing changes, as necessary, in the same year.
- 1.10.34** Parts 5.8 and 5.14 were combined.

### **1.11. Monitoring**

Monitoring requirements in this general permit are in accordance with the stormwater federal regulations contained in 40 CFR 122.26 and 40 CFR 122.30 through 122.37. This includes the method update rule, as established in 40 CFR 122.36 on September 27, 2017. No monitoring is required for outfalls discharging to waters not listed as impaired or without an approved TMDL. However, monitoring is required for outfalls discharging to 303(d) listed streams with stormwater as the cause of the impairment or streams with an approved TMDL. Additionally, monitoring may be requested by the Department for data gathering purposes. Monitoring results shall be submitted with the annual report. See Part 3.5 of the general permit for specific details.

### **1.12. Other Conditions**

- 1.11.1** Expiration Date. This general permit will expire 5 years from the effective date of the permit.
- 1.11.2** Continuation of Expired Permit. If this general permit expires prior to a renewal permit being issued, then MS4s covered under the expired general permit will remain under the expired general permit until such time that a new or renewal permit is issued.

### **1.13. Contact Information & Permit Preparer**

For additional information regarding this permit, please contact the General Permits Section of the Office of Water Quality:

Office of Water Quality  
5301 Northshore Drive  
North Little Rock, AR 72218-5317  
(501) 682-0623  
[water-permit-application@adeq.state.ar.us](mailto:water-permit-application@adeq.state.ar.us)

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#### **1.14. Economic Impact**

The permit fee of \$200 is allowed by Arkansas Pollution Control and Ecology Commission Regulation No. 9, and is continued from the previous permit.

There are no new requirements in the proposed permit that will have an additional economic impact.

#### **1.15. Public Notice**

The public notice of the draft permit was published for public comment on July 23, 2018. The last day of the comment period was thirty (30) days after the publication date. A summary of the comments that the ADEQ received during the public comment period can be found beginning on the last page of this document. The response to comments and any substantial changes from the draft permit are included.

A copy of the permit and public notice were sent via email to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health prior to the publication of that notice.

Additionally, upon renewal of this permit, each small MS4 covered under this permit will have to go through a 30 day public notice process for their NOI and SWMP. This public notice will be posted at the following website:

[https://www.adeq.state.ar.us/water/permits/npdes/stormwater/noi/ms4/p\\_arr040000\\_renewal.aspx](https://www.adeq.state.ar.us/water/permits/npdes/stormwater/noi/ms4/p_arr040000_renewal.aspx)

#### **1.16. Sources**

- 1.16.1** ARR040000, previous permit.
- 1.16.2** APCEC Regulation No. 2.
- 1.16.3** APCEC Regulation No. 6.
- 1.16.4** APCEC Regulation No. 8.
- 1.16.5** APCEC Regulation No. 9.
- 1.16.6** 40 CFR Parts 122 and 124.