

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

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1. Background

The previous General Stormwater Permit No. ARR040000 for MS4s became effective on August 1, 2019 with an expiration date of July 31, 2024. The Arkansas Department of Energy and Environment – Division of Environmental Quality (DEQ) is proposing to re-issue this five-year permit in order to renew general permit coverage for Phase II MS4s, which will extend eligibility for current permittees through another 5-year permit cycle ending on July 31, 2029.

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:

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

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) Rule 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 Rule No. 2. Administrative procedures may be found in APC&EC's Rule No. 8. Information on applicable permit fees may be found in APC&EC's Rule No. 9.

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.

4. Permit Condition Justification

- A.** Conditions in Parts II through V 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.
- B.** Definitions in Part VI 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.

5. Permit Coverage

Facilities covered by this general permit include small MS4s, including non-traditional MS4, fully or partially located within an urban area with a population of 50,000 or more people, as described at 40 CFR § 122.32.

- A.** This general permit shall not apply to:
 - a.** 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 VI of the permit to waters of the United States;
 - b.** Stormwater discharges associated with industrial activity as defined in 40 CFR § 122.26(b)(14)(i)-(x) and (xi);
 - c.** Stormwater discharges associated with construction activity as defined in 40 CFR § 122.26(b)(14)(x) or 40 CFR § 122.26(b)(15);
 - d.** Stormwater discharges currently covered under an individual or other general NPDES permit;
 - e.** 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.
- B.** Notice of Intent (NOI) to be Covered
 - a.** An MS4 operator seeking authorization to discharge under this general permit shall submit a completed Notice of Intent (NOI) form and completed Stormwater Management Program (SWMP), covering all applicable requirements of Part III, to the Division for review and approval in accordance with the deadlines listed in Part II.2 of this permit. The NOI form, obtained from the Division, includes the

information and attachments required in Part II.3 of this permit. The NOI must be signed and dated in accordance with Part V.7 of this permit. An initial permit fee of \$200.00 must accompany the NOI under the provisions of APC&EC Rule No. 9 (for new applications only), and an invoice will be sent to the Permittee for the annual fee each year.

- b.** A new discharger, who meets the eligibility requirements in Part I of this permit, and submits a complete NOI by following the information and attachment inclusions as outlined in Part II.3, submits a complete SWMP, covering the requirements in Part III of this permit, submits a payment of \$200.00, and completes the public notification process outlined in Part II.5 of the permit is authorized to discharge stormwater from a small MS4 under the terms and conditions of this general permit once the Division 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.
- c.** A current discharger, who meets the eligibility requirements of Part I 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 II.3, who submits a complete SWMP, covering the requirements in Part III of this permit, and completes the public notification process outlined in Part II.5 of the permit is authorized to discharge stormwater from a small MS4 under the terms and conditions of this general permit once the Division 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.

C. Per 40 CFR § 122.32, the Division has allowed waivers for the following:

MS4s serving a population of less than 1,000 and

- a.** are not contributing to pollutant loadings of an interconnected MS4;
- b.** do not discharge any pollutant(s) with reasonable potential to cause or contribute to an impairment of any waterbody to which it directly discharges; and
- c.** any pollutant that is discharged does not require additional controls per a wasteload allocation.

6. Discharge Characterization

A. 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.

B. Allowable Non-Stormwater Discharge from an MS4

In accordance with 40 CFR § 122.34(b)(3), certain 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 I.2.B for a complete listing of these non-stormwater discharges.

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.

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.

- A.** The Division may require an application for an individual NPDES permit to authorize discharges of stormwater from any activity that the Division determines to cause or makes a contribution to exceed a water quality standard or that the Division determines to cause or contribute to the loss of a designated use of receiving waters. These criteria include:
- a.** The discharge(s) is a significant contributor of pollution;
 - b.** The discharger is not in compliance with the terms and conditions of the general permit;
 - c.** A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
 - d.** Effluent limitation guidelines are subsequently promulgated for the point sources

- covered by the general permit;
- e. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
 - f. The requirements listed in 40 CFR § 122.28(a) for general permits and identified in the previous paragraphs are not met.
- B.** 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, the MS4 operator must include any assigned WLAs of the TMDL in the SWMP along with the permit requirements to implement the TMDL requirements for review and approval. The MS4 operator has three years in accordance with Rule 2.104 to comply with the limits or requirements specified in the approved SWMP. In the interim, the MS4 operator must comply with SWMP.

If the WLA has not been disaggregated, the Division may disaggregate the aggregate WLA for MS4s seeking coverage under this permit. Disaggregated WLAs may 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. Final determinations will be contained in the SWMP and/or NOC document on which ongoing permit compliance will be based on during the permit term.

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

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

Please see Part III.4.E of the general permit for specific details on the requirements for these discharges.

9. Remand Rule and Modifications to the SWMP (Historic Informational)

- A.** DEQ previously 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.
- B.** 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 II.5 of the permit.
- C.** 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, DEQ would not consider this to be a major modification. For instance, Part III.2.C.i 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 Division 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 Division to determine if a major modification to the SWMP is necessary.

10. Description of Permit Conditions and Changes from the Previous Permit

- A.** This renewal permit contains the same basic framework of requirements as the previous general permit and includes some formatting changes for clarity.
- B.** The terms, "Division of Environmental Quality" and "DEQ," were updated in the permit.
- C.** The previously used term defined by the Census Bureau, "urbanized area," was replaced with the phrase "urban areas with a population of at least 50,000 people," which was incorporated in Part I.2.
- D.** All language involving the census was updated to include the results of the latest census where appropriate.
- E.** Part I.2.B.b was revised to include the diverted stream flows in the list of non-stormwater discharges.
- F.** Conditions B, C, and E were revised in Part I.3 for the limitation on coverage.
- G.** The condition to obtain authorization was moved to Part II.1.
- H.** The existing MS4s must reapply for coverage no later than thirty (30) days prior to the effective date of this permit in Part II.2.
- I.** The requirement that the permittee must submit the application online through the DEQ's ePortal was added in Part II.3.
- J.** The co-permittees condition was revised in Part II.4.
- K.** The permit coverage termination was revised in Part II.7.
- L.** The topics for public education program were included in Part III.2.A.b.(4).
- M.** The water quality hotline was included in the public involvement program in Part III.2.B.b.(4).
- N.** The volume or mass of trash and litter removed was included in the annual reporting in Part III.2.B.
- O.** The condition for the discharge to impaired waters and TMDL requirements was

revised in Part III.4.E.

- P.** All required documents must be submitted online through the DEQ's ePortal in Part IV.3.
- Q.** Part V.7.B was revised for the clarity of duly authorized representative.
- R.** The list of approved TMDLs for the applicable MS4s was identified in Appendix A.

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 May 3, 2021. 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 Division for data gathering purposes. Monitoring results shall be submitted with the annual report. See Part III.5 of the general permit for specific details.

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.

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) 682-0650
water-permit-application@adeq.state.ar.us

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14. Economic Impact

The permit fee of \$200 is allowed by Arkansas Pollution Control and Ecology Commission Rule 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.

15. Public Notice

The public notice of the draft permit was published for public comment on July 23, 2023. The last day of the comment period was thirty (30) days after the publication date. No public comments were received on the draft permit.

A copy of the permit and public notice was sent via email to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Arkansas Department of Parks, Heritage, and Tourism, 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

16. Sources

- 16.1.** ARR040000, previous permit.
- 16.2.** APCEC Rule No. 2.
- 16.3.** APCEC Rule No. 6.
- 16.4.** APCEC Rule No. 8.
- 16.5.** APCEC Rule No. 9.
- 16.6.** 40 CFR Parts 122 and 124.