

NPDES Phase II Stormwater Program

Phase II News and Updates

Program Background

In 1972, the National Pollutant Discharge Elimination System (NPDES) program was established under the authority of the Clean Water Act. Phase I of the NPDES stormwater program was established in 1990. It required NPDES permit coverage for large or medium municipalities that had populations of 100,000 or more. In North Carolina, there are six Phase I communities. The Phase II program extends permit coverage to smaller (< 100,000 pop.) communities and public entities that own or operate a municipal separate storm sewer system (MS4).

Program Authority and Implementation

Phase II of the NPDES Stormwater program was signed into law in December 1999. This regulation builds upon the existing Phase I program by requiring smaller communities and public entities that own and operate an MS4 to apply and obtain an NPDES permit for stormwater discharges. The program was first implemented in the State by temporary rulemaking. During the process to make permanent rules, both the temporary rules and the permanent rules were rejected by the Rules Review Commission in early 2004. In response to the legal issues surrounding Phase II implementation, the NC State Legislature passed [Session Law 2004-163 \(Senate Bill 1210\)](#) in July of 2004. The Bill now provides the Environmental Management Commission (EMC) the authority and guidelines for implementing the Phase II program in NC. A [summary](#) of the Bill has been provided by NC-DENR. The Bill references the [Temporary Rule Section 10](#) for regulations regarding the post-construction minimum measure.

Who is designated for coverage in the Phase II program?

Federal law ([40CFR 122.32](#)) requires communities and public entities that own or operate an MS4 and that satisfy either of the following two conditions to obtain an NPDES Phase II stormwater permit:

1. The MS4 is located in an urbanized area as determined by the latest Decennial Census of the Bureau of the Census. (If the MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated). To see detailed maps of the urbanized areas in North Carolina follow this [link](#).
2. The community or public entity is designated by the NPDES permitting authority (in NC, the EMC).

Currently, [Session Law 2004-163 \(Senate Bill 1210\)](#) provides the guidelines for how the EMC can designate communities and public entities in NC.

In the rulemaking process, counties with urbanized areas in their jurisdiction and other counties with large populations were required to obtain Phase II permits and implement throughout their jurisdiction. These counties were designated because of the rapid development that is occurring in these counties and the potential for adverse water quality impacts. However, in North Carolina the Department of Transportation owns all of the county roads and the associated MS4s. Several stakeholders argued that the counties should not be required to obtain Phase II permits for the county's entire jurisdiction. Those stakeholders felt the program should only be applied in the US Census urbanized areas where the county owned an MS4.

As a result the Bill delineates a 'municipal sphere of influence' (MSI) where the post-construction minimum measure will be implemented by the EMC. The MSIs extend 1-3 miles beyond the jurisdiction of permitted municipalities. A [statewide map](#) has been prepared that shows the statewide urbanized areas and the MSIs where the program is to be implemented.

What is required under a Phase II permit?

EPA regulation ([40CFR 122.34](#)) requires permittees at a minimum to develop, implement, and enforce a stormwater program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable. The stormwater management program must include these six minimum control measures:

1. Public education and outreach on stormwater impacts
2. Public involvement/participation
3. Illicit discharge detection and elimination
4. Construction site stormwater runoff control
5. Post-construction stormwater management in new development and redevelopment
6. Pollution prevention/good housekeeping for municipal operations