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SUBCHAPTER 25. MUNICIPAL STORMWATER REGULATION PROGRAM

7:14A-25.1 Scope

(a) This subchapter sets forth requirements applicable to the Municipal Stormwater Regulation Program, which regulates discharges to surface water and groundwater of stormwater from large, medium, and small municipal separate storm sewer systems.

(b) For purposes of this subchapter, "municipality" means a "municipality" as defined in the Municipal Land Use Law at N.J.S.A. 40:55D-5, that is, any city, borough, town, township, or village.

7:14A-25.2 Identifying municipalities, public complexes, and highways or other thoroughfares regulated under the small MS4 program

(a) A NJPDES permit is required for the stormwater discharges to surface water or groundwater identified in (a)1 through (a)4 below. The operating entities for those discharges shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-25.4(a) and 25.5(a).

1. Tier A municipalities: All stormwater discharges from small MS4s that are owned or operated by and located in a municipality that is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1;

2. Public complexes: All stormwater discharges from small MS4s that are owned or operated by a county, State, interstate, or Federal agency at a "public complex" located entirely or partially in a municipality that is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1, or in a municipality that receives a waiver under (d) below. For purposes of this subsection, a "public complex" is a single lot (or two or more lots that are contiguous or on a college or university campus) which contains at least two buildings owned or operated by the same governmental entity, and:

i. Is at a campus of a college or university which Statewide has a combined total of at least 1,000 employees (usually present at least six hours per day on weekdays) or full-time students; or

ii. Is at any other public facility (for example a military base, hospital, prison, or general administration facility), and has a combined total of at least 1,000 employees, military personnel, or residents (including patients or prisoners) usually present at least six hours per day on weekdays.

3. Highways or other thoroughfares: All stormwater discharges from small MS4s that are owned or operated by a county, State, interstate, or Federal agency at a highway or other thoroughfare (including a maintenance or service facility or rest area for such a thoroughfare). For purposes of this subsection, a "highway or other thoroughfare" does not include:

i. Any thoroughfare confined to the grounds of a single building, or of two or more buildings that are not a "public complex" as described under (a)2 above (unless that building(s) is a maintenance or service facility for a highway or other thoroughfare not confined to such grounds);

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ii. Any thoroughfare confined to the grounds of a "public complex" (each such thoroughfare is instead considered part of the "public complex"); or

iii. Any thoroughfare (other than the Palisades Interstate Parkway) confined to an officially designated park, forest, recreational area, natural area, wildlife management area, or area set aside for water supply protection.

4. Special designations: All of the following stormwater discharges from municipal separate storm sewers (which for purposes of this paragraph does not include "large" or "medium" municipal separate storm sewer systems, or separate storm sewers in very discrete areas, such as individual buildings):

i. All stormwater discharges from municipal separate storm sewers that the Department designates as "small MS4s that contribute substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that requires a NJPDES permit" under this subsection, or under N.J.A.C. 7:14A-24.2(a)5, 7 or 9;

ii. All stormwater discharges that are from municipal separate storm sewers, and that are designated under N.J.A.C. 7:14A-24.2(a)7 or 9;

iii. All stormwater discharges that are from municipal separate storm sewers, and that are determined to require a NJPDES permit in response to a petition under N.J.A.C. 7:14A-24.3;

iv. All stormwater discharges whose operating entity is granted a waiver under (d) below, but that are subsequently determined to require a NJPDES permit under (e) below; and

v. All stormwater discharges from municipal separate storm sewers designated by USEPA under 40 C.F.R. 123.35(b).

(b) Each municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2, and that operates a small MS4 that discharges to surface water or groundwater, shall apply for the Tier B Municipal Stormwater General Permit under N.J.A.C. 7:14A-25.8.

(c) All stormwater discharges to surface water or groundwater that are from small MS4s but not identified under (a) or (b) above are exempt from the requirement to obtain a NJPDES permit from the Department, except as provided in N.J.A.C. 7:14A-8.3, Prohibition of underground injection.

(d) The duty to obtain a permit under section 402 of the Federal Act (33 U.S.C. §1342) is waived for all operating entities for each small MS4 that is:

1. Owned or operated by and located in a municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2; and

2. Located within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census.

3. This waiver applies solely to stormwater discharges from the small MS4s meeting the criteria at (d)1 and 2 above to surface waters of the State, and is subject to (e) below. This waiver does not exempt any Tier B municipality from the duty to obtain the Tier B Municipal Stormwater General Permit where required under (b) above.

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4. The Department shall publish in the New Jersey Register a notice of administrative change revising (as appropriate under this subsection or (e) below) the list of municipalities in the table below, and shall mail notice of such revision to the affected municipality(ies) and county(ies). Each notice under this subsection shall identify the reason for the revision. The list in this table is for informational purposes only. Any person may obtain the most current list of municipalities to which the waiver applies and which are assigned to Tier B from the Department's Division of Water Quality, Bureau of Nonpoint Pollution Control at PO Box 029, Trenton, New Jersey 08625, or from the Division's website (<http://www.state.nj.us/dep/dwq>).

Municipalities to which Waiver Applies and which Are Assigned to Tier B

Atlantic County

Estelle Manor City

Bergen County

Ridgefield Park Village
Rockleigh Borough
Teterboro Borough

Burlington County

Chesterfield Township
Fieldsboro Borough
Springfield Township

Camden County

Pine Valley Borough
Tavistock Borough

Cumberland County

Deerfield Township

Gloucester County

Elk Township
Woolwich Township

Hudson County

Hoboken City

Hunterdon County

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Bethlehem Township
Bloomsbury Borough
East Amwell Township
Franklin Township
Lebanon Township
Tewksbury Township
Union Township
West Amwell Township

Monmouth County

Interlaken Borough
Upper Freehold Township

Morris County

Harding Township

Salem County

Oldmans Township
Upper Pittsgrove Township

Somerset County

Far Hills Borough
Millstone Borough
Rocky Hill Borough

Sussex County

Andover Borough
Fredon Township

Warren County

Allamuchy Township
Harmony Township

(e) The waiver under (d) above is based on the fact that the small MS4s identified do not have any of the characteristics set forth in (e)1 or 2 below, and based on the presumption that those small MS4s are of such minimal extent and serve such a small population that none of their stormwater discharges have any of the characteristics set forth in (e)3i through iii below. An operating entity to which the waiver applies may subsequently be required to apply for a NJPDES permit under (a) above if circumstances change. The Department shall require any operating entity to which the waiver applies to apply for a NJPDES permit under (a) above for a stormwater discharge from that entity's small MS4 if:

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1. The municipality in which the small MS4 is located is reassigned from Tier B to Tier A in accordance with N.J.A.C. 7:14A-25.3(a)1 (for a reason other than the review under this subsection of the operating entity's waiver);
2. That stormwater discharge is identified under (a)4ii, iii, or v above (special designations); or
3. Information specific to the small MS4 demonstrates to the Department's satisfaction that the stormwater discharge from the small MS4:

- i. Contributes substantially to the pollutant loadings of a physically interconnected MS4 (see (a)4i above) that requires a NJPDES permit under (a) above;

- ii. Contains a pollutant(s) for which stormwater controls have been established as part of a USEPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern; or

- iii. Requires an individual UIC permit under N.J.A.C. 7:14A-8.5(d).

(f) Whenever a NJPDES permit is required under (a)4 above (special designations), or a municipality is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1v, the Department shall notify the operating entity in writing of the reasons for such a determination, and shall include instructions on how to apply for a NJPDES permit.

1. If the operating entity applies for an individual NJPDES permit in response to such notice, comment regarding the appropriateness of the initial determination may be received during the public comment period under N.J.A.C. 7:14A-15.11 and in any subsequent hearing, unless the reason for that determination was a decision made by USEPA under 40 C.F.R. 122.26(a)(9)(i)(C) or (a)(9)(i)(D), or under 40 C.F.R. 123.35(b) or (c).

2. If the operating entity is a municipality that has applied for or received authorization under the Tier B Municipal Stormwater General Permit (see N.J.A.C. 7:14A-25.8), the applicable requirements of N.J.A.C. 7:14A-6.13 shall also be followed.

7:14A-25.3 Assignment of municipalities to Tier A or Tier B

(a) All municipalities are assigned either to Tier A or to Tier B as follows:

1. An entire municipality is assigned to Tier A if that municipality:

- i. Is located entirely or partially within an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census or a subsequent and superseding Decennial Census, and has a population of at least 1,000 within an urbanized area as determined by that Census;

- ii. Has a population density of at least 1,000 per square mile, and a population of at least 10,000 as determined by that Census;

- iii. Has a stormwater sewer system discharging directly into the salt waters of Monmouth, Ocean, Atlantic, or Cape May counties (using the N.J.A.C. 7:22A-1.4 definitions of "stormwater sewer system" and "salt waters"). A municipality is deemed to have such a system if that municipality is one of the "Affected Municipalities" listed in N.J.A.C. 7:22A Appendix A, unless

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it is determined in response to a petition under N.J.A.C. 7:22A-3.2(b) or 4.9(b) that N.J.A.C. 7:22A Appendix A erroneously includes or omits the municipality;

iv. Requests Tier A assignment from the Department; or

v. Operates a stormwater discharge(s) identified under N.J.A.C. 7:14A-25.2(a)4 (special designations), provided that the Department determines that such identification warrants assignment of the municipality to Tier A. In making this determination, the Department may consider the following with respect to the identified stormwater discharge(s) and to other stormwater discharge(s) from small MS4(s), if any, operated by the municipality: the location or size of the discharge from the small MS4(s), the quantity and nature of pollutants reaching the water of the State, the quality of the receiving waters, or other relevant factors.

2. Every municipality not assigned to Tier A is assigned to Tier B.

3. The Department shall publish in the New Jersey Register a notice of administrative change revising the list of Tier A and Tier B municipalities in the table below, and shall mail notice of such revision to the affected municipality(ies) and county(ies). Each notice under this paragraph shall identify the reason for the revision. The list in this table is for informational purposes only. Any person may obtain the most current list of such municipalities from the Department's Division of Water Quality, Bureau of Nonpoint Pollution Control at PO Box 029, Trenton, New Jersey 08625, or from the Division's website (<http://www.state.nj.us/dep/dwq>).

| | <u>Tier A Municipalities</u> | <u>Tier B Municipalities</u> |
|-------------------|--|---|
| Atlantic County | All municipalities not listed under Tier B | Estell Manor City Hammonton Town Mullica Township |
| Bergen County | All municipalities not listed under Tier B | Ridgefield Park Village Rockleigh Borough Teterboro Borough |
| Burlington County | All municipalities not listed under Tier B | Bass River Township Chesterfield Township Fieldsboro Borough New Hanover Township North Hanover Township Springfield Township Washington Township Woodland Township Wrightstown Borough |
| Camden County | All municipalities not listed | Pine Valley Borough |

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| | | |
|-------------------|---|--|
| | under Tier B | Tavistock Borough |
| Cape May County | All municipalities not listed under Tier B | Woodbine Borough |
| Cumberland County | Bridgeton City Millville City Vineland City | All municipalities not listed under Tier A |
| Essex County | All municipalities | None |
| Gloucester County | All municipalities not listed under Tier B | Elk Township South Harrison Township Woolwich Township |
| Hudson County | All municipalities not listed under Tier B | Hoboken City |
| Hunterdon County | Clinton Town Clinton Township Flemington Borough High Bridge Borough Lebanon Borough Raritan Township Readington Township | All municipalities not listed under Tier A |
| Mercer County | All municipalities not listed under Tier B | Hopewell Borough |
| Middlesex County | All municipalities | None |
| Monmouth County | All municipalities not listed under Tier B | Interlaken Borough Roosevelt Borough Upper Freehold Township |
| Morris County | All municipalities not listed | Harding Township |

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under Tier B

Ocean County

All municipalities not listed
under Tier B

Plumsted Township

Passaic County

All municipalities

None

Salem County

Carneys Point Township
Penns Grove Borough
Pennsville Township
Pittsgrove Township

All municipalities not listed
under Tier A

Somerset County

All municipalities not listed
under Tier B

Far Hills Borough
Millstone Borough
Rocky Hill Borough

Sussex County

Andover Township
Byram Township
Hopatcong Borough
Newton Town
Sparta Township
Stanhope Borough

All municipalities not listed
under Tier A

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Union County

All municipalities

None

Warren County

Alpha Borough
Greenwich Township
Hackettstown Town
Independence Township
Lopatcong Township
Mansfield Township
Phillipsburg Town
Pohatcong Township

All municipalities not listed
under Tier A

7:14A-25.4 Deadlines to apply for NJPDES permits for small MS4s

(a) The deadline to apply for a NJPDES permit for all stormwater discharges identified under N.J.A.C. 7:14A-25.2(a) is March 3, 2004, except as provided in (a)1 through (a)3 below.

1. If notice from the Department is received that a municipality has been reassigned from Tier B to Tier A, or that a special designation has been made under N.J.A.C. 7:14A-25.2(a)4, the deadline is 180 days after receipt of that notice, unless the Department approves a later date.

2. The following is applicable to entities proposing new facilities or activities (for example, new small MS4s, or increasing the number of employees or students) that would result in any stormwater discharges identified under N.J.A.C. 7:14A-25.2(a):

i. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits.

ii. Entities submitting an individual permit application for such discharges shall submit an application at least 180 days before the date on which the activity is proposed to commence (unless the Department approves a later date), or by March 3, 2004, whichever is later.

3. Any entity planning to continue discharging from a small MS4 after the expiration date of its NJPDES permit for that discharge shall comply with N.J.A.C. 7:14A-4.2(e)3. General permits for stormwater discharges from small MS4s shall provide for automatic renewal of authorization when those general permits are renewed (see N.J.A.C. 7:14A-4.2(e)3 and 6.13(d)9).

(b) The deadline for Tier B municipalities to apply for the Tier B Municipal Stormwater General Permit is set forth in N.J.A.C. 7:14A-25.8(b).

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7:14A-25.5 Applying for a NJPDES permit for a small MS4

(a) All operating entities that are required under N.J.A.C. 7:14A-25.2(a) to apply for a NJPDES permit for stormwater discharges from small MS4s shall submit a request for authorization (RFA) under a general NJPDES permit in accordance with (a)1 below, or an application for an individual NJPDES permit under N.J.A.C. 7:14A-25.9.

1. An operating entity seeking authorization under a general NJPDES permit shall submit to the Department a written RFA. The RFA shall include a certification acknowledging the best management practices and measurable goals specified in the general permit and required by N.J.A.C. 7:14A-25.6, and shall also include information specified in the general permit in accordance with N.J.A.C. 7:14A-6.13(d)2.

(b) All Tier B municipalities that are required under N.J.A.C. 7:14A-25.2(b) to apply for the Tier B Municipal Stormwater General Permit shall submit a request for authorization in accordance with N.J.A.C. 7:14A-25.8(d).

7:14A-25.6 Content of NJPDES permits for small MS4s

(a) The NJPDES small MS4 permit shall require at a minimum that the permittee develop, implement, and enforce a stormwater program designed to reduce the discharge of pollutants from the permittee's small MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Federal Act and the State Act. The stormwater program required under a general permit shall include the Statewide Basic Requirements (SBRs) that are listed under (b)1 and (b)3 through 8 below (and that may be set forth in more detail in the NJPDES permit). The stormwater program shall also include any additional measures (AMs) required under (e) below, and any other control or evaluation measures specified in the NJPDES permit. At the permittee's discretion, the stormwater program may also include optional measures (OMs) in accordance with (i) below. Except as provided in N.J.A.C. 7:14A-25.8(e)1 and (g), this section and N.J.A.C. 7:14A-25.7 do not apply to the Tier B Municipal Stormwater General Permit.

1. Best management practice (BMP) requirements are generally the most appropriate form of effluent limitations when designed to satisfy technology-based requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of BMPs (other than OMs) consistent with the provisions of the stormwater program required pursuant to this section and the provisions of the NJPDES permit required pursuant to N.J.A.C. 7:14A-25.2(a) constitutes compliance with the standard of reducing pollutants to the maximum extent practicable.

2. The NJPDES permit shall specify (for the permittee's first permit term) a time period of up to five years from the date of notification of general permit authorization (or the date of individual permit issuance) for the permittee to fully develop and implement its stormwater program for SBRs, and for any other measures specified in the NJPDES permit. For an AM required under (e) below, the areawide or Statewide water quality management plan will specify a time period for the permittee to fully develop and implement its stormwater program for that AM, and that

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time period will be listed in the permit when the permit is issued or in a minor modification to the permit.

3. The permittee shall prepare and implement a written stormwater pollution prevention plan (SPPP) that describes the permittee's stormwater program, and identifies the person or persons responsible for implementing or coordinating that program (including, at the permittee's discretion, OMs). If the permittee wants to share responsibilities for implementing one or more control measures (other than OMs) with one or more other entities pursuant to N.J.A.C. 7:14A-25.7(a), the SPPP must describe which measure(s) the permittee will implement, and identify the entity(ies) that will implement the other measure(s) within the area served by the permittee's small MS4.

4. The Department shall include the requirements in N.J.A.C. 7:14A-25.4 through 25.7 in any NJPDES permit issued for small MS4s, or develop limits in an individual NJPDES permit based on a permit application submitted for a small MS4 under N.J.A.C. 7:14A-25.5 and 25.9.

5. The Department shall issue under N.J.A.C. 7:14A-6.13 one or more general NJPDES permits for stormwater discharges from small MS4s. The Department shall make guidance available to assist permittees in the design and implementation of stormwater programs.

(b) The Statewide Basic Requirements (SBRs) are as follows:

1. Public involvement/participation: The permittee shall, at a minimum, comply with applicable State and local public notice requirements when providing for public participation in the development and implementation of the permittee's stormwater program.

2. Construction site stormwater runoff control: This SBR applies to discharges to surface water only. Under N.J.A.C. 7:14A-25.7(b), any NJPDES permit issued for small MS4s shall recognize that the Department is responsible for developing, implementing, and enforcing a NJPDES permit program to reduce pollutants in stormwater runoff to small MS4s from construction activities that result in a land disturbance of one acre or more. Reduction of pollutants in stormwater discharges from construction activity disturbing less than one acre shall be included in the program if the construction activity is part of a larger common plan of development or sale that would disturb one acre or more. This program is part of the NJPDES permit program for stormwater discharges associated with construction activity addressed under N.J.A.C. 7:14A-24.10.

3. Post-construction stormwater management in new development and redevelopment:

i. To prevent or minimize water quality impacts, the permittee shall develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the permittee's small MS4. The permittee shall, in its program:

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- (1) Develop and implement strategies which include a combination of structural and/or nonstructural BMPs appropriate for the permittee's small MS4;
- (2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State law (or Federal law, if the permittee is a Federal agency); and
- (3) Ensure adequate long-term operation and maintenance of BMPs.

ii. The program under (b)3i above shall require compliance with the applicable design and performance standards established under N.J.A.C. 7:8 for major development as defined in N.J.A.C. 7:8-1, unless:

- (1) Those standards do not apply because of a variance or exemption under N.J.A.C. 7:8; or
- (2) Alternative standards are applicable under a water quality management plan adopted in accordance with N.J.A.C. 7:15.

iii. The program under (b)3i above shall also require compliance with standards set forth in the NJPDES permit to control passage of solid and floatable materials through storm drainage inlets. For purposes of this subsection, "solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids.

iv. If the permittee is a municipality, the municipality shall, in its program under (b)3i above:

- (1) Ensure that any residential development and redevelopment projects that are subject to the Residential Site Improvement Standards for stormwater management (N.J.A.C. 5:21-7) comply with those standards (including any exception, waiver, or special area standard that was approved under N.J.A.C. 5:21-3);
- (2) Adopt and reexamine a municipal stormwater management plan in accordance with N.J.A.C. 7:8; and
- (3) Adopt and implement a municipal stormwater control ordinance or ordinances in accordance with N.J.A.C. 7:8. The ordinance(s) shall control stormwater from non-residential development and redevelopment projects. Where necessary to implement the municipal stormwater management plan, the ordinance(s) shall also:
 - (A) Control aspects of residential development and redevelopment projects that are not preempted by the Residential Site Improvement Standards; and
 - (B) Set forth special area standards approved by the Site Improvement Advisory Board for residential development or redevelopment projects under N.J.A.C. 5:21-3.5.

4. Public education on stormwater impacts: The permittee shall implement a public education program about the impacts of stormwater discharges on surface water and groundwater, and

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about the steps that the public can take to reduce pollutants in stormwater runoff. As part of this education program, the permittee shall inform public employees, businesses, and the general public of hazards associated with illicit connections and improper disposal of waste.

5. Prohibiting improper disposal of waste:

i. The permittee shall develop a map, showing the location of the end of all MS4 outfall pipes (if any) that are operated by the permittee, and that discharge within the permittee's jurisdiction to a surface water body (for example, a lake or pond, the Atlantic Ocean or one of its estuaries, or a river or stream including an intermittent stream). This map shall also show the location (and name, where known to the permittee) of all surface water bodies receiving discharges from those outfall pipes. The permittee shall submit a copy of this map to the Department if requested.

ii. The permittee shall develop, implement and enforce a program to detect and eliminate illicit connections to the permittee's small MS4. The permittee shall, to the extent allowable under State law (or Federal law, if the permittee is a Federal agency), effectively prohibit, through ordinance or other regulatory mechanism, illicit connections to the permittee's small MS4, and implement appropriate enforcement procedures and actions.

iii. The permittee shall, to the extent allowable under State law (or Federal law, if the permittee is a Federal agency), effectively prohibit, through ordinance or other regulatory mechanism, other improper disposal of waste into the permittee's small MS4, and implement appropriate enforcement procedures and actions. "Improper disposal of waste" does not include any discharge that is regulated by a NJPDES permit other than the NJPDES permit for discharges from the permittee's small MS4.

iv. The permittee shall coordinate its programs under (b)5i, ii, and iii above with related components of the permittee's education program under (b)4 above.

6. Control of solid and floatable materials: The permittee shall develop and implement an operation and maintenance program that prevents or reduces the discharge of solid and floatable materials resulting from the permittee's small MS4. This program is applicable to areas owned or operated by the permittee (including roads).

7. Maintenance yards and highway service areas: The permittee shall develop and implement an operation and maintenance program that prevents or reduces pollutant runoff from maintenance yards and highway service areas owned or operated by the permittee.

8. Employee training: Using training materials that are available from USEPA, the Department or another State agency, or other organizations, the programs under (b)3, (b)5iii, (b)6 and (b)7 above shall include (where applicable) employee training to prevent and reduce stormwater-related pollution from activities such as park and open space maintenance, vehicle fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

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(c) For each of the SBRs listed under (b)1 and (b)3 through 8 above, BMPs and measurable goals shall be specified or identified as follows:

1. Any general NJPDES permit for small MS4s shall specify:

i. The BMPs that the permittee or another entity (see (a)3 above) will implement for each of those SBRs; and

ii. The measurable goals for each of those BMPs including, as appropriate, an implementation schedule specifying the month and year in which the permittee or another entity will undertake each required action, including interim milestones and the frequency of the action.

2. Individual NJPDES permit applications under N.J.A.C. 7:14A-25.9(d) shall identify the information in (c)1i and ii above. The individual NJPDES permit as issued may specify BMPs and measurable goals that are the same as or different from the BMPs and measurable goals identified in the application.

(d) If, at the time the NJPDES permit is issued, modified, revoked and reissued, or renewed, a qualifying State or local program requires the permittee to implement one or more of the SBRs (or SBR components) listed under (b) above, or of the AMs (or AM components) required under (e) below, the Department may include conditions in the NJPDES permit that direct the permittee to follow that qualifying program's requirements rather than the corresponding requirements under (b) above or (e) below. For purposes of this subsection, a qualifying State or local program is a State or local municipal stormwater program that imposes, at a minimum, the relevant requirements under (b) above or (e) below. This subsection does not apply to the requirements in (b)2 above (construction site stormwater runoff control), or to the requirements in (b)3 above for compliance with the Stormwater Management Rules, N.J.A.C. 7:8, and the Residential Site Improvement Standards (N.J.A.C. 5:21).

(e) The permittee's stormwater program shall include any additional measures (AMs) required under this subsection. AMs are non-numeric or numeric effluent limitations that are expressly required to be included in the stormwater program by an areawide or Statewide water quality management plan (WQM plan) adopted in accordance with N.J.A.C. 7:15. AMs may modify, or be in addition to, SBRs listed under (b) above.

1. AMs may be adopted in an areawide or Statewide WQM plan before or after the Department issues the NJPDES permit. The Department shall provide written notice of the adoption of the AM to each permittee whose stormwater program must include that AM, and shall list each adopted AM in the permit when the permit is issued or in a minor modification to the permit. For AMs other than numeric effluent limitations, the areawide or Statewide WQM plan shall specify the BMPs that the permittee or another entity (see (a)3 above and N.J.A.C. 7:14A-25.8(e)) will implement, and the measurable goals for each of those BMPs. AMs may be required by:

i. A TMDL approved or established by USEPA, or an equivalent analysis that determines such AMs are needed to protect water quality;

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ii. A regional stormwater management plan adopted under N.J.A.C. 7:8; or

iii. Other elements of areawide or Statewide WQM plans adopted in accordance with N.J.A.C. 7:15.

(f) Whenever a NJPDES permit specifies measures other than SBRs, AMs, or numeric effluent limitations, the NJPDES permit shall specify the BMPs that the permittee or another entity (see (a)3 above) shall implement, and the measurable goals for each of those BMPs.

(g) Permittees shall meet measurable goals specified under (c), (e) or (f) above in order to demonstrate compliance with SBRs, AMs, or other measures, respectively. The Department shall make guidance available for those measures prior to March 3, 2004 (for SBRs), when AMs are adopted in WQM plans, or when the Department issues the NJPDES permit (for other measures).

(h) The permittee shall comply with other applicable NJPDES permit requirements, standards and conditions established in the individual or general NJPDES permit.

(i) At the permittee's discretion, and to the extent allowable under law, the stormwater program may also include optional measures (OMs), which are BMPs that are not implemented for SBRs or AMs (or for other measures specified in the NJPDES permit), but that prevent or reduce the pollution of waters of the State. The SPPP shall specifically identify such BMPs (if any) as OMs, and identify actions to implement those OMs. Failure to implement an OM identified in the SPPP shall not be considered a violation of the NJPDES permit or this section.

(j) Requirements for evaluation, recordkeeping, and reporting are as follows:

1. The permittee shall evaluate compliance with NJPDES permit conditions, including progress towards achieving the measurable goals identified for BMPs under (c), (e), or (f) above.

2. The permittee shall keep records required by the NJPDES permit for at least five years from the date of the record. The Department may, at any time, extend this period through a written notice in accordance with N.J.A.C. 7:14A-6.6(a). The permittee shall submit these records to the Department if requested. The permittee shall make these records, including its SPPP, available to the public at reasonable times during regular business hours (see N.J.A.C. 7:14A-18 for confidentiality provisions).

3. The permittee shall submit an annual report to the Department unless the permittee is relying on another entity to satisfy all of its NJPDES permit obligations under N.J.A.C. 7:14A-25.7(a) (including its obligation to file the annual report required by this paragraph). The report, which shall be submitted on a form provided by the Department, shall include:

i. The status of compliance with NJPDES permit conditions, including progress towards achieving the measurable goals;

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ii. For those SBRs or AMs (if any) that give the permittee a choice of BMPs, identification of the BMP(s) chosen by the permittee (including any change in any BMP identified in the previous annual report), and a summary of the actions that the permittee intends to undertake during the next 12 months to implement the chosen BMPs;

iii. A summary of the actions undertaken to implement OMs, if any; and

iv. Notice that the permittee is relying on another entity to satisfy some of its NJPDES permit obligations (if applicable).

7:14A-25.7 Sharing of responsibility to implement control measures for a small MS4

(a) A permittee may rely on another governmental, private, or nonprofit entity (for example, a watershed association) to satisfy the permittee's NJPDES permit obligations to implement one or more control measures (or component(s) thereof) for that permittee's small MS4 if:

1. The other entity, in fact, implements the measure(s), or component(s) thereof;

2. The particular measure(s), or component(s) thereof, is at least as stringent as the corresponding NJPDES permit requirement; and

3. The other entity agrees in writing (or is required by law) to implement the measure(s), or component(s) thereof, on the permittee's behalf. The permittee is responsible for compliance with the permittee's NJPDES permit obligations if the other entity fails to implement the measure(s), or component(s) thereof. In the annual reports the permittee must submit under N.J.A.C. 7:14A-25.6(j)3, the permittee shall specify that it is relying on another entity to satisfy some of the permittee's NJPDES permit obligations. If the permittee is relying on another entity regulated under the NJPDES permit program to satisfy all of that permittee's NJPDES permit obligations, including that permittee's obligation to file annual reports required by N.J.A.C. 7:14A-25.6(j)3, the permittee shall notify the Department of this reliance in writing, and shall also note this reliance in the permittee's SPPP.

(b) In some cases, the Department may recognize, either in an individual NJPDES permit or in a general NJPDES permit, that a governmental entity other than the permittee in question is responsible under a NJPDES permit for implementing one or more of the control measures, or component(s) thereof, for that permittee's small MS4, or that the Department itself is responsible. Where the NJPDES permit provides such recognition, the permittee in question is not required to include such measure(s), or component(s) thereof, in that permittee's stormwater program. The permittee is not responsible for such measure(s), or component(s) thereof, but is responsible for all other measure(s), or component(s) thereof, in the stormwater program. Under N.J.A.C. 7:14A-16.4(b)21, the NJPDES permit may be reopened and modified to include the requirement to implement a measure(s), or component(s) thereof, if the other governmental entity or the Department does not implement it. At a minimum, any NJPDES permit issued for small MS4s shall recognize that under N.J.A.C. 7:14A-25.6(b)2, the Department is responsible for implementing the SBR for construction site stormwater runoff control.

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7:14A-25.8 Tier B Municipal Stormwater General Permit

(a) Each municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2, and that operates a small MS4 that discharges to surface water or groundwater, shall apply for the Department's Tier B Municipal Stormwater General Permit (Tier B Permit). The Department shall make this general NJPDES permit available to Tier B municipalities throughout the State. This general permit is not in any respect a permit under section 402 of the Federal Act (33 U.S.C. §1342).

(b) The deadline for Tier B municipalities to apply for authorization under this general permit is March 3, 2004 except as provided in (b)1 and 2 below.

1. If a municipality receives notice from the Department that the municipality has been reassigned from Tier A to Tier B, the deadline is 90 days after receipt of that notice.

2. If the municipality does not operate a small MS4 on March 3, 2004, but is proposing to operate a new small MS4 after that date, the deadline is 90 days before the date on which operation is proposed to commence, or March 3, 2004, whichever is later.

(c) The Tier B Permit shall provide for automatic renewal of authorization when the Department renews the general permit (see N.J.A.C. 7:14A-4.2(e)3 and 6.13(d)9).

(d) To apply, the municipality shall submit to the Department a written request for authorization (RFA). The RFA shall include a certification acknowledging the best management practices (BMPs) and measurable goals specified in this general permit and required by (f) or (g) below, and shall also include information specified in the general permit in accordance with N.J.A.C. 7:14A-6.13(d)2. After receiving the RFA, the Department shall notify the municipality in writing that the municipality is authorized to discharge under this general permit, or that the municipality is not authorized to discharge under this general permit because the municipality is assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1. The Department shall publish a list of municipalities that are authorized to discharge under this general permit on the Division's website (<http://www.state.nj.us/dep/dwq>).

(e) Each municipality that is authorized to discharge under the Tier B Permit shall develop, implement, and enforce a stormwater program that includes the Statewide Basic Requirements (SBRs) listed in (e)1 and 2 below (and that may be set forth in more detail in the general permit). The stormwater program shall also include any additional measures (AMs) required under (g) below. The municipality may share responsibilities for implementing any of these SBRs or AMs with one or more other entities. Nothing in this section shall be construed as preventing the municipality from also implementing other stormwater control measures as allowed by statute. Such control measures are not governed by the Tier B stormwater program. The SBRs are as follows:

1. Post-construction stormwater management in new development and redevelopment: To prevent or minimize water quality impacts, the municipality shall develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects. This program shall meet the requirements listed in N.J.A.C. 7:14A-25.6(b)3.

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2. Public education on stormwater impacts: The municipality shall implement a local public education program about the impacts of stormwater discharges on surface water and groundwater, and about the steps that the public can take to reduce pollutants in stormwater runoff.

(f) The Tier B Permit shall specify:

1. The BMPs that the Tier B municipality or another entity will implement for each of the SBRs listed under (e) above; and

2. The measurable goals for each of those BMPs including, as appropriate, an implementation schedule specifying the month and year in which the municipality or another entity will undertake each required action, including interim milestones and the frequency of the action.

(g) The Tier B municipality's stormwater program shall include any additional measures (AMs) required under this subsection. AMs are non-numeric or numeric effluent limitations that are expressly required to be included in the stormwater program by an areawide or Statewide water quality management plan (WQM plan) adopted in accordance with N.J.A.C. 7:15. AMs may modify, or be in addition to, SBRs listed under (e)1 and 2 above. AMs required under this subsection are subject to N.J.A.C. 7:14A-25.6(e)1.

(h) Tier B municipalities shall meet measurable goals specified under (f) or (g) above. The Department shall make guidance available to assist municipalities in the design and implementation of Tier B stormwater programs.

(i) Requirements for recordkeeping and reporting are as follows:

1. The Tier B municipality shall keep records required by this general permit for at least five years from the date of the record. The municipality shall submit these records to the Department if requested.

2. The Tier B municipality shall submit an annual report to the Department. The report, which shall be submitted on a form provided by the Department, shall evaluate progress towards achieving the measurable goals specified for BMPs under (f) or (g) above.

7:14A-25.9 Individual NJPDES permit applications for small MS4s

(a) An operating entity that is subject to N.J.A.C. 7:14A-25.5(a) shall apply for an individual NJPDES permit under (c) or (d) below for stormwater discharges from small MS4s if:

1. An application is required pursuant to N.J.A.C. 7:14A-2.4(c) or 6.13(e), in which case the Department shall specify whether (c) and/or (d) below is applicable; or

2. A general NJPDES permit applicable to the entity's small MS4 stormwater discharge is not available.

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(b) An operating entity that is not required under (a) above to apply for an individual NJPDES permit may on its own initiative apply for an individual NJPDES permit under (c) below for stormwater discharges from small MS4s.

(c) The following is applicable to an operating entity that seeks authorization to discharge under an individual NJPDES permit, and seeks to implement under the permit a stormwater program that is different from the stormwater program under N.J.A.C. 7:14A-25.6.

1. If the permit is for discharge to surface water, the operating entity shall submit to the Department a permit application that includes the information required by N.J.A.C. 7:14A-25.10(a). The entity does not need to submit the information required by 40 C.F.R.

122.26(d)(1)(ii) and (d)(2)(i) regarding the entity's legal authority, unless the entity intends for the Department to take such information into account when developing the entity's permit conditions.

2. If the permit is for discharge to groundwater, the operating entity shall submit to the Department a permit application that includes:

i. The information required by N.J.A.C. 7:14A-4.3 (except 4.3(a)11 and 15 through 24) and 7.9. In accordance with N.J.A.C. 7:14A-7.9(a)1, the entity shall submit the information required pursuant to N.J.A.C. 7:14A-7.9(d), except when, after consultation with the Department during a pre-application conference, it is determined that the information is not necessary to develop permit conditions for the small MS4;

ii. An 8.5 inch x 11 inch copy of a portion of a U.S. Geological Survey Topographic Map(s), 7.5 minute Quadrangle Series extending one mile beyond the area served by the small MS4 that is the subject of the permit application. The boundaries of that area shall be marked on the copy; and

iii. Any information required by the Department under N.J.A.C. 7:14A-8.17 (if an individual UIC permit is sought).

(d) An operating entity that seeks to implement a stormwater program under N.J.A.C. 7:14A-25.6 may seek authorization to discharge under an individual NJPDES permit only if the Department requires that entity to submit an application under (a)1 above and this subsection, or if an application is required under (a)2 above. The operating entity shall submit to the Department an application that includes:

1. The information required under N.J.A.C. 7:14A-4.3(a)1, 2, 3, 6 and 9, and 25.6(c);

2. An estimate of the area, in square miles, served by the entity's small MS4;

3. A map, showing the location of the end of MS4 outfall pipes, that satisfies the requirement for such a map in N.J.A.C. 7:14A-25.6(b)5i (if the entity operates any MS4 outfall pipes);

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4. Any information required under N.J.A.C. 7:14A-8.17 (if an individual UIC permit is sought); and

5. Other information required under N.J.A.C. 7:14A-4.3(e).

(e) If a small MS4 is in the same urbanized area as a medium or large MS4 with a NJPDES stormwater permit, and if the operating entity for the medium or large MS4 is willing to have the operating entity for that small MS4 participate in its stormwater program, both operating entities may jointly seek a modification of the medium or large MS4 permit to include the operating entity for the small MS4 as a limited co-permittee. As a limited co-permittee, the operating entity for the small MS4 will be responsible for compliance with the NJPDES permit conditions applicable to that entity's jurisdiction. If an operating entity for a small MS4 chooses this option for discharge to surface water, the entity shall comply with N.J.A.C. 7:14A-25.10(a) rather than N.J.A.C. 7:14A-25.6, except that the entity does not need to comply with 40 C.F.R. 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The entity may satisfy the requirements in 40 C.F.R. 122.26(d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the medium or large MS4's stormwater program.

7:14A-25.10 Requirements for large and medium municipal separate storm sewer discharges

(a) Application requirements for operating entities for discharges to surface water from large and medium municipal separate storm sewers are contained in 40 C.F.R. 122.26(d), which is incorporated into this chapter by reference. Also incorporated into this chapter by reference, for purposes of this subsection only, are the definitions at 40 C.F.R. 122.26(b)(5) and (6) of "major municipal separate storm sewer outfall" and "major outfall." References to a "NPDES permit" or "permit" in 40 C.F.R. 122.26(d) shall be understood to mean a NJPDES permit under this chapter, unless the context clearly indicates otherwise. References to an "illicit discharge" in 40 C.F.R. 122.26(d) shall be understood to mean an "illicit connection" as defined at N.J.A.C. 7:14A-1.2. Any operating entity for a discharge under this subsection is exempt from the requirements of N.J.A.C. 7:14A-4.3(a)11 and 15 through 24, (c) through (e) and 4.4(a) and (b)3 through 7.

(b) The operating entity for a large or medium municipal separate storm sewer system that discharges to surface water shall submit an annual report by the anniversary of the date of the issuance of the NJPDES permit for such system. The report shall include the information required under 40 C.F.R. 122.42(c), which is incorporated into this chapter by reference.