

PA'S PHASE II NPDES STORMWATER PERMITTING STRATEGY

The Pennsylvania Department of Environmental Protection (DEP) has developed draft technical guidance for implementing the new Phase II NPDES Stormwater Permitting Program. The Phase II Stormwater Program: 1) expands NPDES permit requirements from the two (2) existing permittees in Phase I to approximately 700 municipal separate storm sewer systems (MS4s) in urbanized areas; 2) provides for some programmatic changes to the Phase I industrial stormwater regulatory program; and, 3) requires permits for stormwater discharges from construction activities disturbing more than one (1) acre. Once implemented, this policy will have impacts as described below.

Currently, the DEP requires a Phase I NPDES Permit for Stormwater Discharges Associated with Construction Activities that disturb five or more acres. This requires obtaining either a general permit for most activities or an individual permit if earth disturbance will occur in an Exceptional Value (EV) or High Quality (HQ) watershed. These permits do not have provisions for requiring installation, maintenance or operation of post construction stormwater Best Management Practices (BMPs). In enacting the Federal Phase II requirements, it is anticipated that this shortcoming will be addressed.

The Phase II stormwater regulations will address construction activities that disturb between 1 and 5 acres. All states operating an NPDES program will be required to implement these Phase II requirements by December 8, 2002. These requirements state that earth disturbance activities between 1 and 5 acres that include a point source discharge will need a general NPDES permit (unless activities are within EV or HQ watersheds, in which case an individual permit will be required). These permits will be

different from the Phase I permits in that they will also require post construction BMPs. According to the draft policy, infiltration BMPs must be evaluated and used for all watersheds unless stormwater quality or site-specific conditions limit their use. The DEP plans to update the 'Pennsylvania Handbook of Best Management Practices for Developing Areas' to include additional stormwater management BMPs. These water quality protective measures will be consistent with what is currently required under Act 167. (Act 167 required counties to develop watershed-based stormwater management plans). If a municipality has developed and implemented an Act 167 plan that includes Municipal Separate Storm Sewer Systems (MS4s), the NPDES requirements will be met.

The DEP currently has two options for permitting the post construction stormwater BMPs. The DEP will use either a Part II Water Quality Management general permit or add on

***PA's Phase II Stormwater
Permitting Strategy and Listing
of the 700 affected MS4s
is available on-line:
www.dep.state.pa.us/tech_guid.html
Select 'Draft Technical Guidance'***

the post construction requirements to the NPDES Permit for Stormwater Discharges Associated with Construction Activities. If added onto the NPDES Permit, the portion dealing with post construction will remain in force after construction activities cease. If the construction activities will take place in HQ or EV watersheds, the applicant will be required to calculate pre- and post construction water budgets during the stormwater permitting process. Post con-

struction infiltration will, in most cases, have to meet or exceed pre-construction conditions.

Requirements are currently being developed for a Phase II Municipal Stormwater NPDES Permitting process. In Pennsylvania, the Phase II program affects about 700 MS4s in 20 designated Urbanized Areas (UAs) and 17 Potential UAs. The Phase II regulation uses the US Bureau of Census defined term 'Urbanized Area' to identify permitting requirements. The political subdivisions affected by the rule are counties, townships and cities or boroughs. These new permit requirements must be implemented by MS4 discharges by December 2002. These requirements include:

- *Develop, implement and enforce a BMP based stormwater program;*
- *Implement a public education program;*
- *Include public involvement in decision making;*
- *Eliminate or treat discharges not composed entirely of stormwater;*
- *Require erosion and sedimentation controls for construction activities;*
- *Require BMPs to manage post construction stormwater for new development and redevelopment;*
- *Require pollution prevention/good housekeeping or municipal operations.*

The DEP's approach to achieving the above requirements is to use Act 167 as the centerpiece of the MS4 program. Municipalities that have developed and are implementing an Act 167 Plan on a watershed basis that includes the water quality protective measures, including MS4 requirements, will be able to meet

the new EPA MS4 NPDES requirements.

Changes are also proposed for dealing with industrial wastewater. Under the current Phase I program, light industrial users can file for a 'no exposure' exemption. This excludes them from developing a stormwater management program. Under the Phase II system, the 'no exposure' exception will be expanded to include all industrial categories except for construction activities disturbing 1 acre or more. The DEP plans to integrate the Federal 'no exposure certification'

with the DEP's existing 'Annual Self Inspection and Compliance Report.' This phase will be implemented gradually as the DEP examines samples taken over the last two permit cycles to determine stormwater impacts from industrial sites.

Limited funding will be available for stormwater management projects. PennVest will provide loans to 'government units' for stormwater projects. Generally, these have only been available to government units that are part of a Stormwater Management Plan devel-

oped and implemented under Act 167. Additionally, Act 167 authorizes funding for both the development and implementation of County Stormwater Management Plans developed on a watershed basis up to 75 percent of the project cost. To date, only the development phase of the projects have been funded. Finally, Growing Greener grants are available for certain watershed restoration projects, but not for Act 167 plan developments or updates.

STATEWIDE BUILDING CODE UPDATE - *Investigate Your Options Now!*

On November 10, 1999 Governor Ridge signed Act 45 of 1999, establishing a Uniform Construction Code (UCC), which is more commonly known as the Statewide Building Code. The Act is applicable to new construction, alteration, repair and occupancy of all buildings in the Commonwealth of Pennsylvania.

The Act provided for the adoption of the 1999 BOCA National Building Code, fourteenth edition for buildings and the International Fuel Gas Code (IFGC) for the installation of fuel gas piping systems and gas utilization equipment. One and two family dwellings that are not more than three stories in height shall have the option of being designed and constructed either in accordance with the International One and Two Family Dwelling Code, 1998 edition or in accordance with the requirements of the UCC. The act also provided for the adoption of succeeding codes. The subsequent updated versions of these codes are the 2000 International Building Code and the 2000 International Residential Code.

The Department of Labor & Industry (L&I) has developed regulations for *Training and Certification* and is developing regulations for *Administration and Enforcement*. The final rulemaking for the *Training and Certification* was published in the Pennsylvania Bulletin on April 13, 2002. The proposed rulemaking for *Administration and Enforcement* will undergo legal review prior to submission to the Legislative Committees and the Independent Regulatory Review

Commission. The proposed *Administration and Enforcement* regulations will then be published in the Pennsylvania Bulletin and there will be a 30-day comment period. The *Administration and Enforcement* regulations will not take effect until approved and published in the final-form in the Pennsylvania Bulletin.

Upon the publishing of the final regulations in the Pennsylvania Bulletin, municipalities will have 90 days to adopt the Uniform Construction Code. The publishing of the final rule making is anticipated by fall and the law will be effective late this year or early 2003.

Municipalities can choose to administer and enforce the UCC in a number of ways.

- *Utilize its own employees.*
- *Contract with a third-party agency.*
- *Jointly administer a codes program with one or more municipalities.*
- *Contract with another municipality to provide these services.*
- *Enter into an agreement with the L&I. This would be for all structures, except for one and two family dwellings.*

Municipalities can choose not to administer the UCC. The consequences are as follows.

- *No local control of building plan review and inspections in their municipality.*
- *You will not be authorized to issue building permits and no building permit fees can be charged.*

- *Residential inspections will be by third party agencies. There could be multiple agencies serving your community with no consistency in fees.*
- *L&I will review plans and inspect only non-residential construction.*

Communities should now be reviewing their options and not waiting till the final regulations are published. Communities who presently do not have building officials or departments should consider administering the UCC, even if plan review and inspection are contracted out, so they have control of building construction in their community. Small or rural municipalities may be eligible for matching grants for the start-up of a code enforcement program. For more information contact the Governor's Center for Local Government Services at 888-223-6837. Communities who intend to administer the codes should be reviewing staffing, fees, possible alliances with adjacent communities, the establishment of an Appeals Board, etc. Now is the time to plan for the Statewide Building Code.

A more detail report and the current status of the Statewide Building Code can be found on L&I's web site www.dli.state.pa.us The full text of the Act 45 is available on the web at www.legis.state.pa.us under Session Information/Electronic Bill Room/Senate Bill 647.

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Published by CET Engineering Services, Raymond H. Myers, P. E., Editor, rmyers@cet-inc.com