

# **Nebraska Department of Environmental Quality**

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## **Wastewater Section**

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### **Fact Sheet General NPDES Permit Authorizing Small Municipal Separate Storm Sewer System Discharges Entire State of Nebraska NPDES General Permit Number NER310000**

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## **A. General Information**

This permit authorizes Small Municipal Separate Storm Sewer System (sMS4) discharges from a municipality sMS4 as defined in NDEQ Title 119, Chapter 10 002.10A to waters of the state. The Bureau of Census latest Decennial Census was used to identify the eligible municipalities.

## **B. Authority and Purpose**

1. This draft general permit was developed according to the Nebraska Department Environmental Quality Title 119 – *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*. This regulation was promulgated pursuant to the Nebraska Environmental Protection Act (Neb. Rev. Stat. §§ 81-1501 et seq.) and the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.). The National Pollutant Discharge Elimination System (NPDES) is authorized in Section 402 of the Federal Clean Water Act.
2. The NPDES permit contains required “best management practices” (BMPs) to regulate the pollutant discharges from a sMS4. These BMPs are intended to enable the municipality to improve water quality from sMS4 discharges. Permit requirements must be expressed in clear, specific, and measurable terms. The water quality improvements will be measured using the standards established in NDEQ Title 117 – *Nebraska Surface Water Quality Standards* and Title 118 – *Ground Water Standards*.
3. The regulations set forth in 40 CFR Part 122.34(a) require that SWMPs be designed to reduce pollutants discharged from the MS4 “to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.” One provision of the MEP standard is that it needs to be determined for each new permit term. A foundational principle of MS4 permits is that from permit term to permit term iterative progress will be made towards meeting water quality objectives, and that adjustments in the form of modified permit requirements will be made where necessary to reflect current water quality conditions, BMP effectiveness, and other current relevant information.
4. On December 9, 2016 EPA published the *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule* (EPA-HQ-OW-2015-0671, Federal Register Vol. 81 No. 237). This rule was issued to provide for adequate public notice and opportunities for comments and hearings. The rule established two approaches for the issuance of MS4 general permits. The first approach is to set forth all MS4 requirements and terms in one comprehensive permit. The second approach is to have a two-step process. Some terms and conditions would be issued in a base permit, and additional permit requirements would be established with individual MS4 communities after public notice and/or hearing. The NDEQ is utilizing the second approach. Terms, base requirements, and conditions are established in this permit, and then individual permittee will have its proposed storm water management plan publically noticed.

## **C. Description of the Discharges**

The primary function of this permit is to reduce and/or control pollutant discharges from a sMS4. The development and implementation of BMPs accomplishes the reduction/control of pollutant discharges. These BMPs are to be designed to prevent and reduce the amount of pollutants entering the storm water drainage system. The following pollutants, among others, may be present in storm water discharges:

1. Suspended solids (sediment and other sources) from home and industrial sites, municipal infrastructure maintenance and construction sites;
2. Fertilizer (primarily phosphorus and nitrogen compounds) and pesticides from lawns, parks, golf courses, and similar green spaces;
3. Salt, oil and grease from parking lots and streets;
4. A variety of pollutants from the improper storage and disposal of waste material;
5. Bacteria from the improper storage and disposal of pet wastes, sanitary excursions, and other sources;
6. Floatables including litter, plastic bags, cigarette refuse, and other debris;

7. Temperature or thermal pollution;
8. Oxygen Demand from organic materials such as grass clippings, leaves, etc.; and
9. Metals from roof surfaces, vehicles, galvanized surfaces, etc.

**D. Area of Application or General Permit Program Area (GPPA)**

Application is appropriate for municipalities located within the State of Nebraska because it encompasses all municipalities with small Municipal Separate Storm Sewer Systems (sMS4) as defined in NDEQ Title 119, Chapter 10 002.10A. This permit would cover the urbanized areas as determined by the latest Decennial Census by the Bureau of Census or the extent of the sMS4 on a jurisdiction wide basis or the area determined during the application process. The permit proposes coverage for storm water discharges and certain authorized dry weather discharges from these sMS4s.

**E. Permit Term**

The draft permit is to be issued for a five-year term. This is the maximum time period allowed pursuant to NDEQ Title 119, Chapter 16 002. Part VII sets forth procedures for the municipality to propose amendments to the Storm Water Management Plan (SWMP), monitoring requirements, and reporting requirements.

**F. Anti-degradation Review**

An anti-degradation review was performed for purposes of developing the permit pursuant to 40 CFR § 131.12. The results of the evaluation indicate that the receiving water bodies for the discharges addressed by the permit likely have habitat for aquatic life. The designated uses of the receiving water bodies were considered during permit development. The limitations in the draft permit are protective of the Clean Water Act § 101(a)(2) goals, and ensures the existing quality of water in the receiving streams is not lowered.

**G. Proposed Changes Between this Permit and Existing Permit**

This permit replaces an existing NPDES permit for sMS4 discharges, NPDES General Permit NER300000. The format of the reissued General Permit for sMS4 discharges in the State of Nebraska has been modified to align more closely with the USEPA MS4 Permit Improvement Guidance [EPA 833-R-10-001, April 2010]. Significant changes to the permit include:

1. Part I.B.1 clarifies the minimum required conditions for applying for coverage under the terms of the General Permit.
2. Part II.A.2 clarifies the Notice of Intent information required for MS4s electing to partner with each other.
3. Part II.A has been modified to include the requirements of being co-permittees or coordinated programs.
4. Part III.B is revised to reflect the EPA guidance issued November 26, 2014 – Establishing TMDL Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs. The revisions clarify how MS4s may use BMPs to address water quality based effluent limitations when required.
5. Part III.C and D have been revised to include a review of TMDL or impairment changes in the annual report and review.
6. Part IV clarifies the following requirements of the SWMP
  - a. The revision and submittal timelines are clarified.
  - b. Minimum control measure recommendations set forth in 40 CFR Part 122.34 have been updated.
  - c. Adequate legal authority requirements as well as enforcement measures and tracking requirements for all MCMs are centralized in one location.
  - d. Minimum Control Measures requirements are brought up to date with recommended enforceable language recommendations in EPA 833-R-10-001, April 2010.
7. Part VI updates the minimum Annual Reporting requirements in order to improve consistency of reported information provided to the NDEQ. Semi-annual reporting requirements have been removed. The reporting requirements will include:

- a. A summary report on a template provided by NDEQ
  - b. A detailed report of descriptive SWMP compliance information.
8. Part VI has been changed to include Evaluation and Assessment Requirements regarding program effectiveness to be consistent with EPA 833-R-10-001, April 2010. MS4s will utilize evaluation and assessment information through performance and effectiveness measures to evaluate overall program effectiveness. This replaces wet weather monitoring requirements which have been removed. Wet weather monitoring requirements were added in error originally and have not proven to be beneficial to water quality standards or the MS4 requirements. The evaluation and assessment requirements are designed to better meet water quality and MS4 requirements.

## **H. Permit Requirements and Conditions**

The content of each section is summarized in the following paragraphs. An explanation of the basis is provided when appropriate. The draft permit consists of authorization page, table of contents, main parts, two Appendices, and seven attachments.

### 1. Permit Authorization Page

This is the first page of the permit has the following information:

- a. The Federal and Nebraska State laws that authorize sMS4 discharges under this NPDES permit;
- b. The NPDES Permit Number;
- c. The issuance and expiration dates; and
- d. The Director or a delegated representative prior to permit issuance shall sign this page.

### 2. Table of Contents

This is a list of the individual Parts, Appendices, and Attachments of the permit. This is intended as an aid in reviewing and using the permit.

### 3. Part I – Applicability

- a. This part describes the eligible sMS4 discharges authorized to discharge under the terms and conditions of this permit. This permit has applicability to sMS4s located within the State of Nebraska.
- b. This portion explains those discharges that are authorized by this permit.
- c. The limitations on coverage are set forth in this part of permit.

### 4. Part II – Notice Intent Requirements

This part sets forth the following procedures:

- a. How to obtain a discharge authorization (Section A);
  - 1) Any permittee wishing authorization to discharge under the terms and conditions of this general permit must submit a Notice of Intent (NOI). The permit specifies minimum and additional information requirements for potential applicants. This permit section specifically spells out what is required in an NOI. It also contains information that may aid applicants in completing and submitting the NOI. The NDEQ may request additional information in order to make an informed decision. This information may include, but is not limited to, the information required under 40 CFR Part 122.33(b)(2)(i).
  - 2) Any permittee must submit accompanying SWMP documents with the NOI. These documents are meant to detail BMPs in the SWMP and may include spill response plans, storm water pollution prevention plans, facility maintenance plans related to storm water, etc. These documents may be submitted electronically.
  - 3) The Department must review the NOI to ensure that includes adequate information to determine if the proposed BMPs, timelines, and any other actions are adequate to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, and to satisfy the water quality requirements of the Clean Water Act.

- 4) Once the NDEQ is satisfied with the submitted NOI and SWMP, the NDEQ will be required to incorporate the proposed BMPs and measurable goals in the NOI as permit requirements. The NDEQ is then required to public notice the NOI and provide opportunity to submit comments or request a hearing in accordance with 40 CFR Part 124.10 through 124.13. With certain exceptions, authorization to discharge is granted the Department has completed the public notice period for the submitted SWMP. Authorization is granted unless the notice period is extended or the municipality has received prior authority to discharge.
  - b. Part II of the permit outlines the contents of the Notice of Intent for existing dischargers/previously permitted entities as well as new dischargers (Section A);
  - c. This section allows the NDEQ to designate other eligible cities after the permit has been issued (Section B); and
  - d. The permit informs the applicant where to submit the Notice of Intent (Section E).
5. Part III – Legal Authority
- Permittees must establish adequate authority to implement and enforce most parts of the SWMP (40 CFR Part 122.26(d)(2)(i) and 40 CFR Part 122.34(b)). Legal authority is a requirement of both traditional and non-traditional sMS4 communities.
- A major difference between a traditional MS4 and a non-traditional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-traditional MS4 permittees often cannot pass ordinances nor do they have enforcement authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language. Non-traditional MS4 permittees also do not generally have the authority to impose a monetary penalty. Although these differences exist, just like traditional MS4s, non-traditional MS4s must have the legal authority to develop, implement, and enforce the program. Non-traditional permittees may, for example, have authority over contracts. They may also develop an coordinated permit with a neighboring MS4 and utilize the coordinated enforcement in a program or plan designated in the SWMP.
6. Part III – Special Conditions
- Changes to the Storm Water Management Plan may be required:
- a. If the sMS4 discharges into impaired waters or are a potential threat to protect threatened and endangered species and their habitats.
  - b. Where a Total Maximum Daily Load has been developed for sMS4 receiving waters. Guidance is included for how to achieve Water Quality Based Effluent Limitation requirements in TMDLs using BMPs. Monitoring may be required by the NDEQ or by the determination of the permittee.
7. Part IV – Storm Water Management Plan Requirements (Approval process)
- This part of the permit contains the following provisions taken from 40 CFR Part 122:
- a. The permittee must meet the six minimum control measure requirements;
  - b. The permittee must develop, implement, and enforce a storm water management plan;
  - c. Implement best management practices for each of the six minimum control measures;
  - d. Implement clear, specific, measurable goals for each of the best management practices;
  - e. Develop or maintain adequate legal authority, enforcement tools, and tracking mechanisms to enforce local compliance with SWMP requirements; and
  - f. Minimum Control Measures – This part outlines the permit requirements for each of the six minimum control measures. In addition, it outlines the decisions that are required to implement these requirements. EPA guidance set forth in 40 CFR Part 122.34 is also included along with minimum control measure requirements. The six minimum control measures are:
    - 1) Public Education and Outreach on Storm Water Impacts;
    - 2) Public Involvement/Participation;
    - 3) Illicit Discharge Detection and Elimination;

- 4) Construction Site Storm Water Runoff Control;
  - 5) Post- Construction Site Storm Water Management in New Development and Redevelopment; and
  - 6) Pollution Prevention/Good Housekeeping for Municipal Operations.
8. Part V – Sharing Responsibility  
These are provisions that allow a municipality to share responsibilities with another municipality.
9. Part VI – Reporting Requirements
- a. This part of the draft permit sets forth the reporting requirements.
    - 1) Annual Report meets the requirements of NDEQ Title 119, Chapter 10 002.12K2 and is intended to include an annual review and assessment of the SWMP. The Annual Reports would be due on or before April 1<sup>st</sup> of each year.
    - 2) Amendment of Reporting Requirements – There are provisions included in the draft permit for making changes to Reporting Requirements (Also see NPDES Permit Part VII. - Amendment Procedures and Requirements).
    - 3) Immediate Reporting Requirements – There are also some immediate, non-routine reporting requirements for event-related circumstances.
  - b. Comprehensive Evaluation and Assessment Program – MS4 compliance will be evaluated using narrative effluent limitations requiring implementation of BMPs. The evaluation and assessment program is intended to assess compliance with the permit, measure effectiveness of the SWMP using performance and effectiveness measures, evaluate appropriateness of identified BMPs using appropriate assessment indicators, and assess progress towards achieving measurable goals.
  - c. Evaluation of Overall Program Effectiveness – On an annual basis permittees will evaluate the SWMP as a whole using appropriate environmental and administrative indicators in addition to documenting progress towards achieving stated measurable goals. This information is intended to provide rationale for modifications and improvement to the SMWP.
  - d. MS4s are encouraged to utilize shared information when available to help support the Evaluation and Assessment program.
  - e. Attachment 4 of the sMS4 permit is the sMS4 Report Form. This is an optional format for annual reports. It is a methodology for reporting program details, work performed, and effectiveness. It is one possible method for reporting and assessing program effectiveness, a requirement of the permit.
10. Part VII – Amendment Procedures and Requirements
- a. Amendment Procedures – This part contains provisions for making mutually agreeable (i.e., to the NDEQ and the Municipality) changes to the SWMP, the monitoring requirements, and/or reporting requirements. It is anticipated that improvements will be recognized as implementation experience is gained. This part would allow efficient implementation of such changes.
  - b. Endangered or Threatened Species – This part also recognizes the possible need to change or modify provisions of the SWMP, the monitoring requirements, and/or reporting requirements to address endangered and threatened species.
  - c. Total Maximum Daily Loads (TMDL) - This part also recognizes the possible need to change or modify provisions of the SWMP, the monitoring requirements, and/or reporting requirements to address TMDL issues.
  - d. Coordination of Information – The requirement of the permittee to share and coordinate relevant monitoring data is set forth in NDEQ Title 119.
  - e. Additional Monitoring by Permittees – The conditions under which the Department may require increases in monitoring frequencies and monitoring for additional parameters are in accordance with NDEQ Title 119.

- f. Electronic Reporting – On October 22, 2015, EPA published the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which requires electronic reporting of NPDES information rather than the currently required paper based reports from the permitted facilities. Facilities must submit electronic information required in Appendix A of 40 CFR Part 127, 40 CFR 122.26(b)(15), and 40 CFR 122.26(b)(14)(x).
11. Appendix A – Standard Conditions – This part presents the General Conditions and includes the requirements set forth in NDEQ Title 119. These are standard conditions which must be included in all NPDES permits.
    - a. Signatory Requirements are explained in this section. It includes the requirements set forth in NDEQ Title 119. These are standard requirements for NPDES permits.
    - b. Monitoring and Records keeping requirements are explained in this section. It includes the requirements set forth in NDEQ Title 119. These are standard conditions for all NPDES permits.
    - c. Reporting requirements, these are standard conditions for all NPDES permits.
    - d. Bypass, these are standard conditions for all NPDES permits.
    - e. Upset, these are standard conditions for all NPDES permits.
    - f. Operation and Maintenance, these are standard conditions for all NPDES permits.
    - g. Definitions – This part sets forth definitions for terms used (or potentially used) in the permit. Some of the definitions may be part of a list included in all NPDES permits, and definitions for storm water, construction storm water, and MS4 discharges have been added.
    - h. Abbreviations – Numerous acronyms and abbreviations are used throughout the permit and associated documents. This section provides definitions for those acronyms and abbreviations. Some of the acronyms and abbreviations may be part of a list included in all NPDES permits.
  12. Attachments  
There are four documents and forms which are included as attachments to this permit. These attached documents and forms are subject to modification by the Department.
    - a. Notice of Intent (sMS4 – NOI) for previously unpermitted sMS4s;
    - b. Notice of Intent (sMS4 – NOI – Reapplication) for previously permitted sMS4s;
    - c. Signatory Authorization Form
    - d. sMS4 Report Annual Format
    - e. The NDEQ is required to provide a menu of storm water BMPs according to requirements set forth in 40 CFR Part 123.35(g). This menu will be posted on the Department website.

#### **I. Supporting Documentation**

1. NDEQ Title 117 - Nebraska Surface Water Quality Standards (Revised December 13, 2014);
2. NDEQ Title 118 - Ground Water Quality Standards and Use Classifications (Revised March 26, 2006);
3. NDEQ Title 119 - Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (Revised May 16, 2005);
4. Technical Support Document for Water Quality-based Toxic Control (EPA 505/2-90-001 PB91-127415, March, 1991);
5. 40 CFR, Part 122, 124, and 125, NPDES Regulations;
6. Nebraska Non-game and Endangered Species Conservation Act (Neb. Rev. Stat. §§ 37-430 through 317 – 438);
7. NPDES Municipal Separate Storm Sewer System General Permit Remand Rule [EPA-HQ-OW-2015-0671; FRL-9955-11-OW; RIN 2040-AF57, December 9, 2016]
8. USEPA MS4 Permit Improvement Guidance [EPA 833-R-10-001, April 2010];

9. USEPA Memorandum – Establishing TMDL Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, November 11, 2002; and
10. NDEQ, *2016 Surface Water Quality Integrated Report*, April 1, 2016.

**J. Information Requests**

Inquiries concerning the draft permit, its basis or the public comment process may be directed to:

Lisa Giesbrecht    Tel. (402) 471-8830 or (402) 471-4220                      Fax: (402) 471-2909

Individuals requiring special accommodations or alternate formats of materials should notify the Department by calling (402) 471-2186. TDD users should call (800) 833-7352 and ask the relay operator to call the Department at (402) 471-2186.

Copies of the application and other supporting material used in the development of the permit are available for review and copying at the Department's office between 8:00 A.M. and 5:00 P.M. on weekdays.

Office Location:    The Atrium, 1200 N Street, Suite 400, Lincoln, NE

Mail Address:        NPDES Permits Unit, Nebraska Department of Environmental Quality, PO Box 98922;  
Lincoln, Nebraska 68509-8922

**K. Submission of Formal Comments or Requests for Hearing**

The date on which the public comment period ends is specified in the public notice. During the public notice period, the public may submit formal comments or objections, and/or petition the Department to hold a public hearing concerning the issuance of the draft permit. All such requests need to: be submitted in written form, state the nature of the issues to be raised, and present arguments and factual grounds to support them. The Department shall consider all written comments, objections and/or hearing petitions, received during the public comment period, in making a final decision regarding permit issuance.

Formal comments, objections and/or hearing requests need to be submitted to:

Lisa Giesbrecht;    NPDES Permits Unit

Mailing Address:    Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln, Nebraska 68509-8922

Location Address:   Nebraska Department of Environmental Quality  
The Atrium, 1200 N Street, Suite 400  
Lincoln, Nebraska