

MS4 Permit Screening Checklist

Maximum Extent Practicable (MEP) is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. MEP is not defined but is intended to allow flexibility in MS4 permit implementation. Whether a requirement is practicable must be determined on a location-by-location basis considering factors such as receiving waters, specific local concerns, size, climate, community affordability and other aspects of the MS4. Each Owner must evaluate the permit's implementation schedule, implementation costs, and rate of any cost/rate increases for their system to determine whether the requirements are practicable. The following assessment of the permit is just one tool that can assist in that evaluation.



The following permit analysis and recommendations relate to legal issues associated with National Pollutant Discharge Elimination System (NPDES) permits for municipal separate storm sewer systems. AquaLaw PLC is assisting with implementation of this program under contract with NACWA. This analysis does not constitute legal advice and should not be construed as legal advice from AquaLaw or NACWA. This analysis does not replace an independent legal evaluation. It is provided "as is" and any express or implied warranties, including, but not limited to, the implied warranty of fitness for a particular purpose are disclaimed. Neither NACWA nor AquaLaw assume any liability resulting from the use or reliance upon any information, guidance, suggestions, conclusions, or opinions in this analysis. In no event shall NACWA or AquaLaw be liable for any direct, indirect, incidental, special, or consequential damages as a result of use.

STATE:

TYPE OF MS4 PERMIT:

PERMIT AUTHORITY:

FEDERAL REGISTER NOTICE DATE:

DRAFT PERMIT NUMBER:

PUBLIC COMMENT DEADLINE:

1. WATER QUALITY STANDARDS (WQS)

- a. Does permit require compliance with WQS? Yes No
- b. Does permit prohibit exceedance of WQS? Yes No
- c. Does permit prohibit "causing or contributing" to a WQS exceedance? Yes No
- d. Does permit apply an antidegradation review of MS4 expansion? Yes No

Comments: _____

2. AUTHORITY TO IMPOSE BEYOND MEP REQUIREMENTS

- a. Does state law prohibit the imposition of permit conditions that are more stringent than federal requirements? Yes No
- b. Is state law silent on the limits of the state's authority? Yes No

Comments: _____

3. TOTAL MAXIMUM DAILY LOADS (TMDL)

- a. Does permit require compliance with TMDLs or TMDL WLAs? Yes No
- b. Does permit require development of TMDL or WLA implementation plans? Yes No
- c. Does permit establish milestones or deadlines for compliance with or implementation of TMDLs or WLAs?
Yes No
- If yes to any of the above (a-c), Owners should evaluate practicability for their respective systems (See MEP below)**
- d. Are any TMDL requirements limited to the permit's regulated area (i.e., the area actually served by the MS4)? Yes No
- e. Does the permit note that TMDL implementation plans developed under the permit subsequent to its issuance are unenforceable and subject to change (See Remand Rule)? Yes No

Comments: _____

4. IMPAIRED WATERS (PRE-TMDL ALLOCATION OF RESPONSIBILITY TO MS4)

- a. Are permit obligations triggered by existing impaired water listings? Yes No
- b. Are permit obligations triggered mid-permit term by any new impaired water listings? Yes No

Comments: _____

5. TRADING AUTHORIZATION

- a. If numeric pollutant load reductions are required, is water quality trading appropriate for the pollutant and waterbody and, if so, does the permit authorize use of water quality trading for compliance purposes?
Yes No
- b. If the permit does not pre-authorize trading, does it at least contain a general opportunity to propose and, upon approval, utilize water quality trading to comply with appropriate requirements? Yes No

Comments: _____

6. WASTEWATER

- a. Does the MS4 permit regulate sanitary sewer system (SSS) operations in any respect? Yes No
- b. Does the MS4 permit require SSS investigations or management programs? Yes No
- c. Does the MS4 permit require SSS capital improvements? Yes No

Comments: _____

7. THE BOTTOM LINE: "MAXIMUM EXTENT PRACTICABLE" (MEP) STANDARD

- a. Are there any requirements that are objectively impracticable or impossible regardless of cost and schedule (e.g., 100% "elimination" of trash discharges by a date certain)? Yes No

Comments: _____

Other Comments: _____

