

# EPA's Proposed Stormwater Permitting and Rulemaking

TURP CE Conference  
Session F: Regulatory Updates  
November 3, 2010



David Gray, P.E.  
U.S. EPA, Region 1  
617-918-1577; [gray.davidj@epa.gov](mailto:gray.davidj@epa.gov)  
<http://www.epa.gov/NE/topics/water/stormwater.html>

# Existing, Draft, Proposed ...

1. Industrial – Existing 2008 MSGP
2. Construction – Turbidity Limits ~ Jun. 2011
3. Dewatering – Existing 2008 DGP
4. Remediation – Effective Sep. 2010
5. Urbanized Municipalities (MS4s) – Draft
6. Select Upper Charles Municipalities – Draft
7. Federal Development Projects – EISA s. 438
8. National Proposed Stormwater Rulemaking
9. Pesticide Use – Issuance ~ Jan. 2011

# Does my facility need an NPDES Permit for an Industrial Activity?

- Facility's primary industrial activity is described in a regulated SIC Code, or subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N
- The industrial activity is exposed to stormwater that discharges to a Waters of the U.S. (*either directly or indirectly*)

# Allowable Non-Stormwater Discharges

(Allowed under 2008 MSGP)

- Potable water (including line flushings), uncontaminated ground or spring water, and uncontaminated water from foundation/footing drains
- Uncontaminated condensate
- Irrigation drainage and landscape watering (if all related chemicals applied in accordance with labeling)
- Pavement and building wash waters (if no detergents used and no spills/leaks of toxic or hazardous materials have occurred)
- Discharges from fire-fighting activities

# Non-Stormwater Discharges

Specified benign flows are allowed, but must eliminate or seek alternative permit coverage for other flows, e.g.:

- Floor/Sink Drains - seal or route to sanitary sewer
- Vehicle Washwaters (e.g., collect in holding tank for reuse or disposal, discharge/infiltrate to ground, route to sanitary sewer, or apply for individual NPDES permit)

# No Exposure Certification for Exclusions from Stormwater Permitting

A NPDES permit authorization is not required where an Operator certifies to a condition of no exposure, i.e.,:

- All industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff
- Available on a facility-wide basis only (not by individual discharges)
- New certification due every five years
- Must file an NOI if exposure conditions change

# Storm Resistant Shelter

Certification not required for:

- Non-industrial areas (e.g., parking lot)
- Adequately maintain vehicles (e.g., fork lift)
- Sealed drums or tanks without taps or valves
- Most above ground storage tanks (ASTs)
- Materials/Activities with little threat of stormwater pollution (e.g., adequately maintained vehicles)
- Dumpsters with lids that cannot leak

# Construction General Permit

- Required for soil disturbances of >1-acre
- Reissuance by June 30, 2011
  - Turbidity limitation & passive treatment for discharges from large sites consistent with C&D Rule/Effluent Limitation Guideline
  - Courts recently remanded EPA's 2010 turbidity ELG of 280 NTU; but not the rule requiring a limit
  - Limit may be phased in (e.g., by 2011 for sites >20-acres; 2014 for sites >10-acres)



# Dewatering General Permit

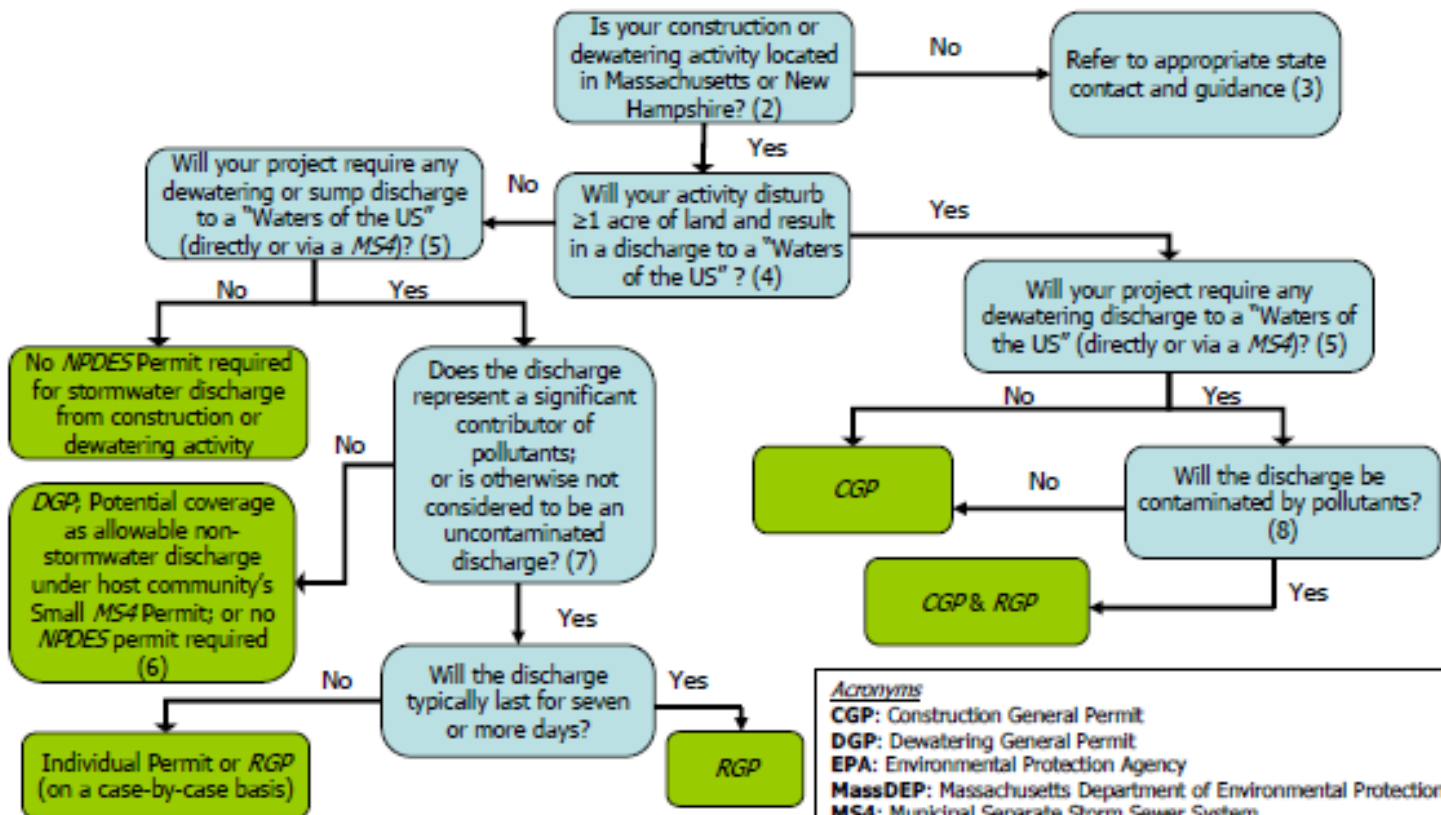
- Existing 2008 DGP authorizes:
  - Construction dewatering of groundwater intrusion or storm water accumulation; and,
  - Short-term and long-term dewatering of foundation sumps
- Monitoring:
  - Report flow and numeric limits for TSS, pH, O&G, TRC, (and toxicity if required)
  - If groundwater – select metals
- Discharges into certain waters ineligible

# Remediation General Permit

- Reissued effective September 2010
- Authorizes discharges from:
  - site remediation related to petroleum and nonpetroleum contamination
  - contaminated construction site dewatering
  - miscellaneous contaminated discharges
- EPA now considering coverage for short-term (i.e., <7 days) contaminated discharges on a case-by-case basis

# CGP/RGP/DWG Flow Chart

Do I need NPDES Permit Coverage for Discharges Related to my Construction or Dewatering Activity and Which General Permits are Available?<sup>(1)</sup>

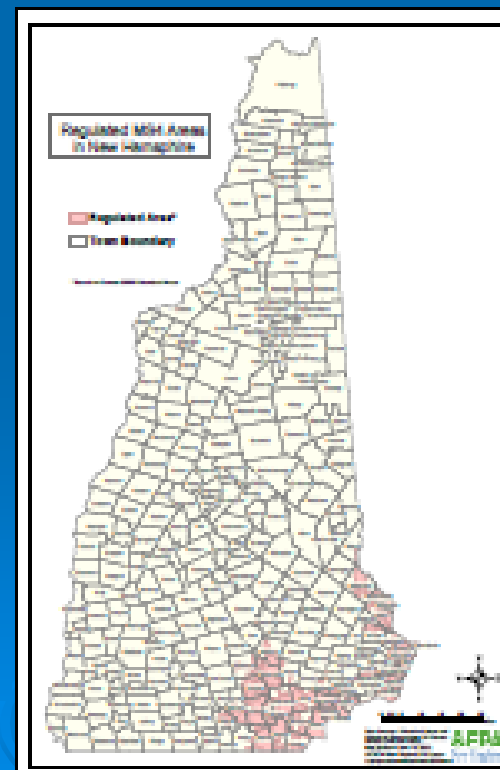
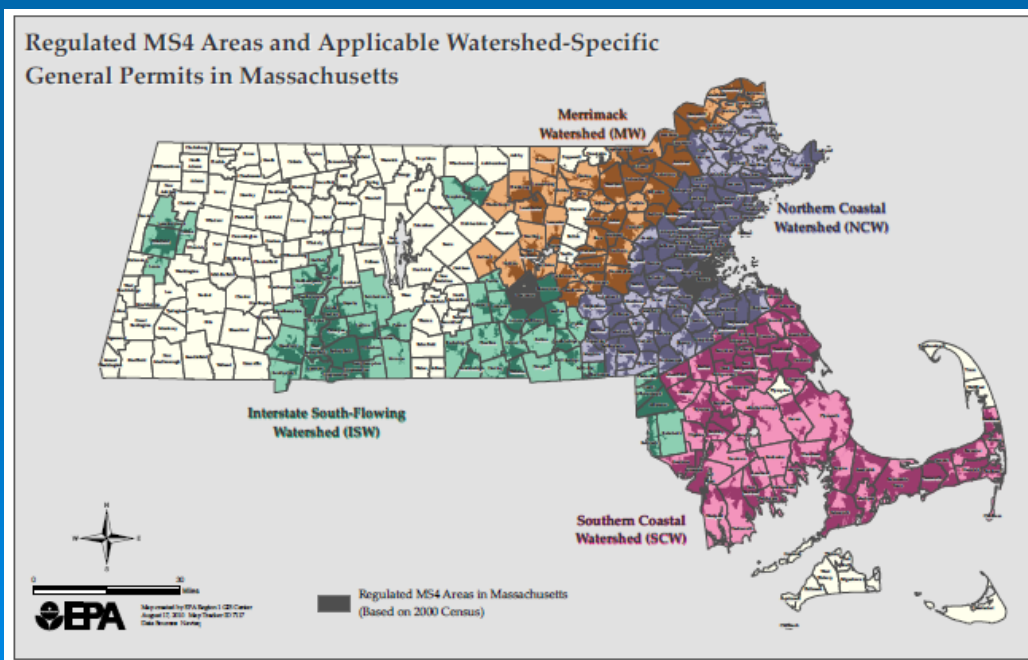


Contact: Jessica Hing; [hing.jessica@epa.gov](mailto:hing.jessica@epa.gov); 617-918-1560  
 Available at: <http://www.epa.gov/boston/nodes/stormwater/index.html>  
 Updated as of: 8/17/10

**Acronyms**  
**CGP:** Construction General Permit  
**DGP:** Dewatering General Permit  
**EPA:** Environmental Protection Agency  
**MassDEP:** Massachusetts Department of Environmental Protection  
**MS4:** Municipal Separate Storm Sewer System  
**NHDES:** New Hampshire Department of Environmental Services  
**NPDES:** National Pollutant Discharge Elimination System  
**RGP:** Remediation General Permit

# Urbanized Municipal Separate Storm Sewer Systems (MS4s)

- Currently Draft or Near-Draft Permits:
  - Large MS4s – Worcester & Boston
  - Small MS4s – Urbanized portions of >300 cities, towns, and government entities



# Urbanized Municipal Separate Storm Sewer Systems (MS4s)

- Draft Permits Require:
  - Enhanced investigation and elimination requirements for illicit discharges into the drainage system
  - Essentially extends MassDEP Stormwater Management Standards for new development to upland areas
  - Deicing management requirements on private properties for chloride impaired streams in New Hampshire
  - MS4s located in the Charles River Watershed have specific phosphorus reduction targets and requirements as specified in the Lower Charles Nutrient TMDL

# Upper Charles River Watershed Draft Residual Designation & Permit

- Public Comment Period ended Sep. 30, 2010
- Designated Discharges (DD) include those from:
  - existing and future single or contiguous parcels with **≥2 acres impervious surfaces** located in **Milford, Bellingham, or Franklin**; and discharging within the Charles River watershed
  - **Excludes** Federal, state, local properties covered by an NPDES permit; single-family homes; multi-family properties with  $\leq 4$  units; RV Parks; sports and recreation camps

# Upper Charles River Watershed Draft Residual Designation & Permit

- Requires Baseline Performance Standards
  - Begin implementing a SWMP within 30 days
- Requires 65% reduction in effective annual phosphorus loading to the Charles River and its tributaries using:
  - enhanced non-structural BMPs,
  - infiltration practices where feasible, and
  - other structural BMPs if infiltration is not feasible; or
  - participate in a Certified Municipal Phosphorus Program (CMPP;  
- in the host or upstream community)
- Interim & Final Deadlines
  - Year 2 – Preliminary Phosphorus Reduction Plan
  - Year 3 – Final Phosphorus Reduction Plan
  - Year 4 – Design plans and local permits for any structural BMPs
  - Year 5 – Construct and inspect BMPs
  - Year 10 – Participation in a CMPP

# Federal Development Projects

- Energy Independence and Security Act (EISA) of 2007, Section 438:
  - **“Storm water runoff requirements for federal development projects.** The sponsor of any development or redevelopment project involving a Federal facility\* with a footprint that exceeds 5,000 square feet shall use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow.”
  
- \* “Federal facility’ means any building that is constructed, renovated, leased, or purchased in part or in whole for use by the Federal Government.”



# Federal Development Projects

- Per Presidential E.O., EPA developed technical guidance (12/09) for implementing EISA 438 that provides two design options for maintaining pre-development hydrology:
  - Option 1: Retain the 95th Percentile Rainfall Event
  - Option 2: Site-Specific Hydrologic Analysis
- Retain required stormwater volume to the Maximum Extent Technically Feasible (METF) through:
  - Use of Green Infrastructure (GI)/Low Impact Development (LID) practices; or conventional controls when site specific constraints dictate

# Proposed National Rulemaking to Strengthen the Stormwater Program

- During 2010, EPA held stakeholder listening sessions and accepted comments on the following preliminary considerations:
  - Expand the area subject to federal stormwater regulations
  - Establish specific requirements to control stormwater discharges from new development and redevelopment
  - Develop a single set of consistent stormwater requirements for all MS4s
  - Require MS4s to address stormwater discharges in areas of existing development through retrofitting the sewer system or drainage area with improved stormwater control measures
  - Explore specific stormwater provisions to protect sensitive areas

# Proposed National Rulemaking to Strengthen the Stormwater Program

- EPA Initiated Stormwater Information Collection Request (ICR) in **September 2010** to:
  - help EPA assess whether it should revise its existing stormwater requirements; and if so,
  - how and to what extent it should revise these requirements.
  
- ICR consists of six separate surveys to:
  1. Regulated MS4s
  2. Non-Regulated MS4s
  3. Transportation MS4s
  4. Long Owners/Developers
  5. Short Owners/Developers
  6. NPDES Permit Authorities (EPA Regions and States)

# Proposed National Rulemaking to Strengthen the Stormwater Program

- EPA will use the information to characterize, among other things:
  - current stormwater practices and requirements,
  - environmental impacts of stormwater discharges,
  - costs associated with controlling and regulating stormwater discharges, and
  - financial capability of those that could be subject to revisions to the Federal stormwater requirements.

# Pesticide General Permit

- Court vacated EPA's 2006 Rule establishing that NPDES permits were not required for applications of pesticides to, over or near U.S. waters when in compliance with the FIFRA label
- Court mandated discharges from application of pesticides into or near waters of the U.S. will require NPDES permits beginning on **April 10, 2011**
- Draft PGP covers discharges to waters of the U.S. from the application of biological or chemical pesticides for:
  - mosquito and other **flying insect pest control**;
  - aquatic weed and algae control;
  - aquatic nuisance animal control; and
  - **forest canopy pest control**

# Pesticide General Permit

- Applies to both the property owner and the operator/applicator
- Requires permittees to minimize (or optimize) pesticide discharges to or near waters of the U.S.
- If annual treatment area/mileage thresholds exceeded:
  - Submit NOI
  - Implement Integrated Pest Management (IPM)
- Individual permit required for other types of pesticide applications; or where discharge is to pesticide-impaired or outstanding resource waters