

INAFSM Position Paper

MAINTAIN INTEGRITY OF, IMPROVE AND ENFORCE INDIANA STATE STORMWATER QUALITY GENERAL NPDES PERMIT PROGRAM

INAFSM Position Summary

Maintain the existing NPDES Stormwater General Permit program in Indiana since it represents a solid middle ground to processing regulatory permits. The general permit presents no difference when compared to an individual permit for protecting water quality in the end and avoids an unreasonable expectation of resources and level of activity.

Background of the State NPDES General Permit Program

Significant progress has been made in controlling water pollution since the 1972 amendments to the Clean Water Act (CWA) authorized the National Pollutant Discharge Elimination System (NPDES) program. Most of the progress to date has come from controlling industrial wastewater and municipal sewage discharges. However, studies on water quality show that pollution from diffuse sources such as runoff from agriculture, urban areas, and construction sites is still causing water quality impairments. To address this problem, the 1987 CWA amendments required the United States Environmental Protection Agency (USEPA) to publish regulations to control storm water discharges under the NPDES program. These regulations, considered Phase I of a two-phased approach, were published on November 16, 1990. Facilities with a “storm water discharge associated with industrial activity” including those with five acres or more of land disturbing activities were required to apply for a permit. Discharges from municipal separate storm sewer systems (MS4s) serving a population of 100,000 or more have also been regulated. The State of Indiana was delegated by the USEPA to regulate the NPDES program. Therefore, in 1992 the State of Indiana developed its own Storm Water regulations, which by Indiana law were required to become part of the Indiana Administrative Code (IAC) On December 8, 1999, USEPA published the final rule, which implemented Phase II of the NPDES Storm Water program.

Entities subject to various NDPEs permitting requirements have been required by USEPA to obtain either “individual” or “general” permits. The first permits issued were individual, “tailor written by the agency for each individual permittee” permits. Later, USEPA developed the general, “one size fits all” permit program as a means to streamline federal and state permitting efforts in situations where all entities have common elements and must implement the same requirements. Over the years, the decision on which type of permit to issue has been widely debated. There are pros and cons for both methods so various challenges to the method utilized by the permitting authority have been raised by various groups.

Phase II of the NPDES Stormwater Regulations

The final Phase II rule was published in the Federal Register (40 CFR Parts 9, 122, 123, and 124) on December 8, 1999. Since the State of Indiana is the NPDES permitting authority for the State, the Indiana Department of Environmental Management (IDEM) was required, like other permitting authorities, to issue general permits for Phase II regulated small MS4s and construction activity. In 2003, Indiana revised the existing State Storm Water Regulations by amending the Indiana Administrative Code

Who Is Required To Apply And What Are The Requirements

Most state regulations for Storm Water, in Indiana 327 IAC 5-4-6, address the three main categories of regulated dischargers: industrial, construction, and municipal. Indiana developed three NPDES general permit rules to help in the permitting process: Storm Water Runoff Associated with Construction Activity, 327 IAC 15-5 (Rule 5), Storm Water Discharge Associated with Industrial Activity, 327 IAC 15-6 (Rule 6), and Storm Water Runoff Associated with MS4 Conveyances, 327 IAC 15-13 (Rule 13). These State general permit rules contain the storm water discharge permit requirements. As part of each of the general permits, regulated entities must develop and implement a Storm Water Pollution Prevention Plan.

Issues and Recommendations

Issue No. 1: In the NPDES permitting program, there is a huge difference in the process between obtaining a general permit versus an individual permit.

Concerns:

- Individual permits must be tailor-written to an individual entity and take a large amount of time and resources from IDEM as well as the regulated entity.
- IDEM must contact locally affected persons, allow them to submit written comments, and hold public hearings for every individual permit that is issued.
- Permit requirements could drastically vary between individual permits resulting in program inconsistencies which would reduce the overall effectiveness of the program.

Recommendations:

- The General Permit Program is the best utilization of time and resources for IDEM as well as the regulated community.
- IDEM responds to public input and complaints through the detailed compliance evaluations and enforcement actions through the General Permit Program.
- Individual NPDES permit requirements are subject to negotiation between IDEM and the regulated entity. As such, Individual NPDES permits can possibly contain less stringent requirements than the General Permit conditions. Therefore, a minimum standard such as the General Permit outlines is more desirable for protection of the State's waterways.

Issue No. 2: Unreasonable, burdensome approaches are in direct opposition to beneficial initiatives such as economic development.

Concerns:

- The process of issuing Individual NPDES permits costs taxpayers and regulated communities more money than complying with a General Permit.
- Issuing Individual NPDES permits takes valuable resources away from higher priority agency and state needs with no added benefit.

Recommendations:

- Utilize streamlined, simple permitting processes to allocate resources in a more efficient manner and to provide timelier permit coverage.
- Promote cooperation between IDEM, the regulated entities, and the public.
- A more rigorous enforcement of existing programs and rules with adequate agency staffing.

Issue No. 3: General permits maintain overall water quality goals.

Concerns:

- If properly enforced, the General Permit requirements result in no difference overall in achieving water quality goals versus Individual permits.
- Focusing agency time on the permitting process detracts from performing activities that make programs work better for the environment.

Recommendations:

- Continue IAC provision for not allowing problematic entities to continue in the General Permit program and penalize “bad actors”.
- Continue IDEM and EPA practice of a tiered enforcement structure taking harm to the environment and water quality into consideration.
- Encourage the focus of agency time on the coordination of water quality programs (e.g. stormwater quality, TMDL, watershed planning, etc.) based on the overall watershed to enhance water quality goals.

Issue No. 4: Improvements to the general permit program should be encouraged by taking an active role with the Water Pollution Control Board (WPCB).

Concerns:

- Communication needs to be coordinated between the WPCB, the regulated community, and the public.
- Need for public meetings to discuss solutions to challenging water quality issues.

Recommendations:

- The INAFSM Legislative and IDEM Liaisons could serve as a conduit for communication on water quality issues.
- WPCB members should be involved in INAFSM activities.
- INAFSM could facilitate discussion forums between its membership and the WPCB such as “gut check” sessions on how effectively NPDES programs are working.

Issue No. 5: Enforcement of existing regulations must be equitable yet reasonable.

Concerns:

- Need for adequate notification and response time by IDEM on compliance and enforcement actions.
- Need to identify compliance problems early as well as proactively consider and assist regulated entities with common pitfalls.

Recommendations:

- Continue to focus on voluntary compliance and self audits by regulated entities.
- Continue working with regulated entities and focus on developing assistance tools.
- Produce guidance early, share lessons learned, and enhance information sharing.
- Use the INAFSM Stormwater Quality Subcommittee as a resource to reach regulated MS4 communities.