

**Vermont Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division**

Procedure for Designation of Regulated Small MS4s

I. Introduction

- (a) On December 8, 1999, the U.S. Environmental Protection Agency (E.P.A.) adopted its Stormwater Phase II Final Rule (64 FR 68722) to address stormwater discharges from small municipal separate storm sewer systems (small MS4s), which are municipal separate storm sewer systems (MS4s) serving less than 100,000 people. Pursuant to 40 C.F.R. §§ 122.26, 122.32, and 123.35, there are four ways by which a small MS4 may be designated as a “regulated small MS4” requiring coverage under Vermont’s federally-delegated National Pollutant Discharge Elimination (NPDES) program for stormwater:
- (1) Automatic designation. Pursuant to 40 C.F.R. § 122.32(a)(1), small MS4s located within an urbanized area, as determined by the latest Decennial Census by the U.S. Bureau of the Census, are automatically designated as regulated small MS4s. If a small MS4 is located only partially within an urbanized area, only that portion located within the urbanized area is automatically designated as a regulated small MS4.
 - (2) Designation through evaluation. Pursuant to 40 C.F.R. § 123.35(b), the State shall develop a process, as well as criteria, to designate small MS4s that are not automatically designated and shall apply those criteria, at a minimum, to any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000.
 - (3) Designation of interconnected small MS4s. Pursuant to 40 C.F.R. § 123.35(b)(4), the State shall designate a small MS4 as a regulated small MS4, if the State finds that the small MS4 contributes substantially to the pollutant loadings of a physically interconnected regulated small MS4.
 - (4) Designation by petition. Pursuant to 40 C.F.R. §§ 122.26(f)(4) and 123.35(c), any person may petition the State to designate a small MS4 as a regulated small MS4 and the State must make a final determination on such a petition within 180 days from receipt of the petition.
- (b) This Procedure sets for the process and criteria the Department shall use to designate regulated small MS4s.

II. Purpose

- (a) This Procedure supersedes the "Procedure for Designation of Regulated Small MS4s," adopted January 20, 2010.
- (b) The purpose of this Procedure is to satisfy the requirements of federal law and to clarify and expand upon the process and criteria adopted under the 2010 Procedure.

III. Automatic Designation

- (a) Pursuant to 40 C.F.R. § 122.32(a)(1), the Secretary shall automatically designate a small MS4 located within an urbanized area. If a small MS4 is located only partially within an urbanized area, the Secretary shall automatically designate only that portion located within the urbanized area as a regulated small MS4.
- (b) Upon the release by the U.S. Census Bureau of the urbanized area information in the Decennial Census, the Department shall review the data and determine if there are any new urbanized areas not presently regulated as regulated small MS4s. If there are any new urbanized areas not presently regulated as regulated small MS4s, the Secretary shall automatically designate such areas as regulated small MS4s, and shall issue notice of such designations within 180 days of the release of the Decennial Census and pursuant to Section VIII. of this Procedure.

IV. Designation through Evaluation

- (a) Pursuant to 40 C.F.R. § 123.35(b), when evaluating whether a small MS4 shall be designated as a regulated small MS4, the Secretary shall give a balanced consideration of the following criteria applied to, at a minimum, small MS4s located outside of urbanized areas and serving jurisdictions with a population density of at least 1,000 people per square mile and a population of at least 10,000.
 - (1) Whether the small MS4 discharges to a water of the State or tributary to a water of the State with an approved total maximum daily load (TMDL) for stormwater or for pollutants conveyed by stormwater, including sediment, phosphorus, e.coli, and metals,
 - (2) Whether the small MS4 discharges to a water of the State or tributary to a water of the State that is listed as impaired on the State's 303(d) List, Part A by stormwater or by pollutants conveyed by stormwater, including sediment, phosphorus, e.coli, and metals,
 - (3) Whether the small MS4 discharges to a Class A water, an outstanding resource water, a Class I wetland, or a water designated as a National Wild and Scenic River,

- (4) Whether the municipality with a small MS4 has a population of at least 8,000 people,
 - (5) Whether the small MS4 is located partially within, or contiguous to, an urbanized area as determined by the latest Decennial Census by the U.S. Bureau of the Census,
 - (6) Whether the small MS4 is a significant contributor of pollutants to waters of the State, and
 - (7) The extent of impervious surface within the municipality with a small MS4 that is currently regulated under a stormwater permit.
- (b) Upon the release of the Decennial Census by the U.S. Bureau of the Census, the Department shall review the data and determine if there are any small MS4s not presently regulated as regulated small MS4s, which are located outside of urbanized areas and which, due to population growth, now serve jurisdictions with a population density of at least 1,000 people per square mile and a population of at least 10,000. If any such small MS4s exist, the Secretary shall evaluate, at a minimum, those small MS4s using the foregoing criteria. If the Secretary determines that a small MS4 shall be regulated as a regulated small MS4, the Secretary shall issue notice pursuant to Section VIII. of this Procedure.

V. Designation of Interconnected Small MS4s

- (a) Pursuant to 40 C.F.R. § 123.35(b)(4), the Secretary shall designate a small MS4 as a regulated small MS4, if the Secretary makes a finding that the small MS4 contributes substantially to the pollutant loadings of a physically interconnected MS4 that is already regulated by the NPDES stormwater program.
- (b) If the Secretary determines that a small MS4 shall be regulated as a regulated small MS4, the Secretary shall issue notice pursuant to Section VIII. of this Procedure.

VI. Designation by Petition

- (a) Any person may petition the Secretary to designate a small MS4 as a regulated small MS4.
- (b) A petition shall include a narrative statement as well as supporting data for why the small MS4 should be designated.
- (c) When evaluating a petition, the Secretary shall apply the standards and criteria established pursuant to Sections III., IV., and V. of this Procedure.

- (d) The Secretary shall make a final determination on a petition within 180 days from receipt of the petition and shall issue notice pursuant to Section VIII. of this Procedure.

VII. Waiver

- (a) Pursuant to the requirements of 40 C.F.R. § 123.35(d), the Secretary may waive the requirements otherwise applicable to small MS4s that are automatically designated pursuant to Section III. of this Procedure.
- (b) If, pursuant to 40 C.F.R. § 123.35(d), the Secretary waives the requirements that would otherwise have been applicable to a small MS4 that would have been automatically designated pursuant to Section III.(b) of this Procedure, the Secretary shall issue notice pursuant to Section VIII. of this Procedure.
- (c) The Secretary shall review a waiver granted pursuant to this Section once every five years from the original date of issuance of the waiver to determine whether any of the information required for granting the waiver has changed. If the basis for granting the waiver is no longer applicable, the Secretary shall designate the small MS4 as a regulated small MS4 and issue notice pursuant to Section VIII. of this Procedure.
- (d) A list of those small MS4s that have been issued waivers is available on the Department's website at <http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/ms4-permit>

VIII. Public Process for Designations

- (a) Public notice and comment.
 - (1) The Secretary shall place all proposed designation decisions and waivers on public notice for 30 days.
 - (2) The Secretary shall maintain a list of interested persons, who have requested to receive public notice of all designation and waiver decisions made pursuant to this Procedure.
 - (3) The Secretary shall provide notice of a proposed designation or waiver decision to the owner or operator of a small MS4. The Secretary shall also provide public notice of the proposed designation or waiver decision on the Department website and to the list of interested persons.
 - (4) The Secretary shall take written comments on the proposed designation or waiver decision during the 30-day notice period.

(5) At the close of the 30-day notice period and after the public meeting, if one is held under subsection (b) of this Section, the Secretary shall consider all of the public comments received and shall prepare a written response to comments.

(6) The Secretary shall provide the final designation or waiver decision and the written response to comments to the owner or operator of a small MS4 and to the list of interested persons. The Secretary shall also post those documents on the Department's website.

(b) Public meetings.

(1) During the 30-day notice period required by subsection (a) of this Section, any member of the public may request a public meeting.

(2) Upon request or at the Secretary's discretion, the Secretary shall hold a public meeting or meetings to take comments on the proposed designation or waiver decision.

(3) The meeting(s) shall be held in or convenient to the small MS4(s) that are the subject of the proposed decision.

(4) In its response to comments, required under subsection (a) of this Section, the Secretary shall respond to all comments received at the public meeting.

(c) Information regarding regulated small MS4s. A list and maps of those small MS4s that are regulated small MS4s are available on the Department's website and may also be obtained from the Department upon request.

(d) Appeals. Pursuant to 10 V.S.A. Chapter 220, any appeal of a designation or waiver must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry St.; 2nd Floor, Suite 303; Burlington, VT 05401 (Tel. # 802-828-1660).

IX. Definitions

- (a) "Department" means the Department of Environmental Conservation.
- (b) "Municipal separate storm sewer" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:
 - (1) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State;
 - (2) Designed or used for collecting or conveying stormwater;
 - (3) Which is not a combined sewer; and
 - (4) Which is not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.
- (c) "Physically interconnected" means that one MS4 is connected to a second MS4 in such a way that it allows for direct discharges to the second system.
- (d) "Regulated small municipal separate storm sewer system" or "regulated small MS4" means an MS4 that, pursuant to 40 C.F.R. § 122.32(a)(1), is automatically designated because of its location within an urbanized area or that is designated by the NPDES permitting authority for inclusion in the Phase II stormwater permitting program.
- (e) "Secretary" means the Secretary of the Agency of Natural Resources or his or her authorized representative.
- (f) "Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:
 - (1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of State.

- (2) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 C.F.R. §§ 122.26(b)(4) and (b)(7).
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
- (g) “Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.
- (h) “Urbanized area” is defined by the U.S. Bureau of the Census in the most recent Decennial Census.

Dated this 16th day of May 2016 at Montpelier, Vermont.



Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

