

FACT SHEET
FOR THE DRAFT MODIFICATION OF TIER A MUNICIPAL STORMWATER GENERAL
PERMIT NJ0141852

I. BACKGROUND

The Tier A Municipal Stormwater General Permit (Tier A Permit) for discharge to surface water and groundwater is one of four New Jersey Pollutant Discharge Elimination System (NJPDES) general permits that are part of the Municipal Stormwater Regulation Program established by the New Jersey Department of Environmental Protection (Department). This Program is the primary focus of the February 4, 2004 amendments to the NJPDES rules (N.J.A.C. 7:14A). Those amendments were prepared mainly in response to requirements mandated under the Federal Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq. The other three general permits are the Tier B Municipal Stormwater General Permit (Tier B Permit, NJ0141861), the Public Complex Stormwater General Permit (Public Complex Permit, NJ0141879), and the Highway Agency Stormwater General Permit (Highway Permit, NJ0141887). All four general permits were issued final on February 4, 2004. Authorizations under those permits were issued to municipalities, county, state, and interstate highway agencies, and regulated public complexes that discharge stormwater from municipal separate storm sewers (MS4s). A list of the permittees authorized under each general permit (including names and addresses) is available on the Department's web site at <http://www.state.nj.us/dep/dwq/municstw.html> and available in the administrative record.

The Municipal Stormwater Regulation Program is part of the Department's Statewide Stormwater Permitting Program, and is also referred to in the Federal context as a "Phase II" program since it includes most of the second phase of the National Pollutant Discharge Elimination System (NPDES) Stormwater Permitting Program. The Department is the issuing authority for NPDES permits in New Jersey, and issues those permits as part of the NJPDES program. The Department develops and administers much of the Statewide Stormwater Permitting Program within the framework of Section 402(p) of the CWA (33 U.S.C. §1342(p)) and related provisions of the NPDES rules, 40 CFR 122, 123, and 124. For additional background about the Municipal Stormwater Regulation Program, the four general permits and about the first phase (Phase I) and Phase II of the NPDES and State Stormwater Permitting Programs, see the Summary of proposed amendments to the NJPDES rules (35 N.J.R. 169(a)), the January 2, 2003 fact sheets for the draft general permits, the notice of adoption of amendments to the NJPDES rules (36 N.J.R. 813(a)), and the February 2, 2004 response to comments document for the general permits.

The Department is proposing to modify the four general permits by authority of the Water Pollution Control Act at N.J.S.A. 58:10A-1 et seq. Separate fact sheets are available for each of the four general permits. The draft modifications are intended to clarify, further develop, simplify and refine certain aspects of the four general permits to protect water quality and to assist municipalities and other permittees in complying with the permit's conditions. The modifications to the Tier A Permit include: (1) clarifying and temporarily expanding the scope of non-stormwater discharges authorized by the permit to include washwater from certain activities; (2) establishing a definition of "catch basin"; (3) revising requirements within the Post-

Construction Stormwater Management in New Development and Redevelopment Statewide Basic Requirement (SBR); (4) revising the Yard Waste Ordinance/Collection Program to provide Tier A municipalities with additional flexibility on yard waste collection; and (5) establishing an Equipment and Vehicle Washing SBR. In addition, the Department will, as a “minor modification,” reword the Street Sweeping SBR to clarify which municipally owned streets require monthly street sweeping. Pursuant to N.J.A.C. 7:14A-16.5 corrections of typographical errors and language changes that have no legal or substantive effect are “minor” modifications and are not subject to the procedures in N.J.A.C. 7:14A-15 and are therefore not open to public comment.

The Department will discuss each draft permit modification in more detail below. All proposed changes to the Tier A Permit are in the attached Draft Modification of Tier A Permit document.

II. TYPES OF DISCHARGES AUTHORIZED UNDER THE TIER A PERMIT

The Tier A Permit applies to all areas of the State of New Jersey, and is primarily intended to authorize and control new and existing stormwater discharges to surface water and groundwater from small MS4s owned or operated by municipalities assigned to Tier A under N.J.A.C. 7:14A-25.3(a)1 (Tier A Municipalities). The Department has currently authorized 462 municipalities under the Tier A Permit.

The Tier A Permit also authorizes certain non-stormwater discharges (e.g., potable water sources, uncontaminated groundwater, and irrigation water) from small MS4s owned or operated by Tier A Municipalities. The draft modification to the Tier A Permit includes a clarification to include flows from washing of fire fighting vehicles, and temporary expansion of authorized non-stormwater discharges to include vehicle and equipment wash water from municipal operations. Both changes are discussed in more detail in IV. below.

III. POLLUTANTS IN DISCHARGES FROM SMALL MS4s

The draft modifications to the Tier A Permit do not substantially affect the type and quantity of pollutants discharged from small MS4s. The January 2, 2003 fact sheet for the draft Tier A Permit identified the following pollutants in discharges from small MS4s: sediment, suspended and dissolved solids, nutrients (phosphorus and nitrogen), oil and grease, heavy metals and other toxic pollutants, pathogens, oxygen-demanding substances (organic material), and floatables.

IV. BASIS AND DESCRIPTION OF DRAFT MODIFICATION

The objective of this permit action is to MODIFY certain provisions of the Tier A Permit (NJ0141852) pursuant to N.J.A.C. 7:14A-16.

The Department worked closely with the Municipal Stormwater Advisory Group (representatives from the Department, municipal, county, and state officials, professional associations, and environmental groups), the BMP Subcommittee, and the NJ Department of Transportation's New Jersey Quality Initiative Group in developing the February 2, 2004 NJPDES rule amendments and the four general permits, including the Tier A Permit. To a substantial degree, it was input

from these advisory bodies that enabled the Department to develop a reasonable, workable Tier A Permit that provides substantial environmental benefit while minimizing the regulatory burden.

Since the adoption of the rule amendments and issuance of the general permits, the Department has continued to work closely with stakeholders, especially municipalities and the New Jersey State League of Municipalities. See, for example, Commissioner Bradley M. Campbell's April 11, 2005 letter to William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities, which discussed among other topics the possible modification of the Tier A and Tier B Permits to assist municipalities in complying with the stormwater program. The draft modifications discussed below are consistent with discussions held with stakeholders, and are also based on the Department's experience administering the Tier A Permit.

Part I, Section A.2.c. - Non-stormwater discharges from small MS4s

The Department proposes to make it clearer that flows from fire fighting activities include flows from the washing of fire fighting vehicles, and to temporarily expand the list of non-stormwater discharges authorized by the permit to include the discharge of vehicle and equipment wash water from municipal maintenance yard operations until February 28, 2009. The basis for authorizing the discharge of vehicle and equipment wash water from municipal maintenance yard operations is discussed in more detail below (Part I, Section F.8.e.).

Part I, Section C. – Definitions

The Department proposes to add a definition of "catch basin" to clarify which catch basins need to be inspected and cleaned annually in accordance with the Stormwater Facility Maintenance SBR in Part I, Section F.7.c. of the permit. The proposed definition of "catch basin" includes a cistern, vault, chamber or well that is usually built along a street as part of the storm sewer system. It has always been the Department's interpretation of the Tier A Permit that municipalities must annually inspect all catch basins and clean those with accumulated sediment, trash and debris. This definition ensures all municipalities interpret the Stormwater Facility Maintenance SBR consistently.

Part I, Section F.3. – Post-Construction Stormwater Management in New Development and Redevelopment

Part I.F.3.c.ii of the Tier A Permit requires that municipalities adopt a Municipal Stormwater Management Plan (or adopt amendments to an existing Municipal Stormwater Management Plan) in accordance with N.J.A.C. 7:8-4. The Stormwater Management Rules at N.J.A.C. 7:8-4.2 require that a Municipal Stormwater Management Plan include a draft of the recommended implementing stormwater control ordinance(s). The model Municipal Stormwater Control Ordinance currently provided by the Department in the New Jersey Stormwater BMP Manual (April 2004) is not consistent with the New Jersey Pinelands Comprehensive Management Plan (Pinelands CMP, N.J.A.C. 7:50). The Department and the Pinelands Commission are drafting a model Municipal Stormwater Control Ordinance for municipalities within the State designated Pinelands Area as defined by N.J.S.A. 13:18A-11. The Department is proposing to modify the Tier A Permit to give municipalities within the Pinelands Area three (3) months, from the date the Department provides a draft model "Pinelands" Municipal Stormwater Control Ordinance, to adopt a Municipal Stormwater Management Plan.

The draft modification also makes it clear that municipalities partially within the Pinelands Area must adopt a Municipal Stormwater Management Plan within 12 months from the effective date of permit authorization for those areas of the municipality not within the Pinelands Area.

The Tier A Permit requires that within a specified timeframe, municipalities submit an adopted municipal stormwater management plan and ordinance(s) to the appropriate county review agency for approval. For consistency with the Pinelands CMP the Department proposes to modify the Tier A Permit to also require, where N.J.A.C. 7:50-3 is applicable, that the adopted municipal stormwater management plan and ordinance(s) also be submitted to the Pinelands Commission for certification. In addition, if the Pinelands Commission disapproved or conditionally certifies the plan and ordinance(s), Tier A Municipalities must submit a modified plan and ordinance(s) in accordance with N.J.A.C. 7:50-3. Municipalities do not begin enforcing their adopted ordinance(s) until it is certified by the Pinelands Commission.

The Department is also proposing that if a county review agency conditionally approves a municipal stormwater plan and ordinance(s), a municipality has 180 days to adopt the amendments specified by the county review agency and resubmit the amended municipal stormwater management plan and ordinance(s). Lastly, the Department is proposing that if a county review agency disapproves the adopted municipal stormwater management plan and ordinance(s) the Tier A Municipality must, within 180 days of the disapproval, resubmit an amended municipal stormwater management plan and ordinance(s) to the county review agency. These proposed changes are required to ensure that municipal stormwater management plans and ordinances are adopted, submitted for review, revised (where applicable) and approved in a timely manner. Failure of a municipality to fully implement any aspect of the Post-Construction Stormwater Management in New Development and Redevelopment SBR reduces the effectiveness of the overall stormwater program and is inconsistent with Federal regulations concerning small MS4s.

Part I, Section F.5.e. – Yard Waste Ordinance / Collection Program

The Yard Waste Ordinance/Collection Program SBR in the current Tier A Permit requires municipalities to adopt and enforce an ordinance that prohibits placing non-containerized yard wastes in the street or to develop a yard waste collection and disposal program. Municipalities that develop a yard waste collection program are required to conduct monthly yard waste pickups from October through December, once in the spring (“spring clean-up”), and on an “as needed” basis for the rest of the year. The yard waste collection program must also include the adoption and enforcement of an ordinance prohibiting all non-containerized yard wastes from being placed at the curb or along the street more than seven (7) days prior to scheduled collection or the placing of non-containerized yard waste closer than 10 feet from any storm sewer inlet.

Since the issuance of the Tier A Permit, the Department has met with representatives of numerous municipalities who have claimed that the implementation of the Yard Waste Ordinance/Collection Program SBR would result in significant increase in costs for both manpower and capital equipment. As a result of these meetings, the Department believes that by modifying the Yard Waste Ordinance/Collection Program SBR it can reduce the costs associated

with implementation, give municipalities greater flexibility with the pick-up schedule, while preserving the water quality benefits of the SBR.

The main purpose of this SBR is to reduce the amount of time loose leaves and grass clippings remain in the street. When loose leaves and grass clippings are placed in the street they can be carried away by stormwater and have several detrimental effects on receiving waters and water quality. Leaves and grass clippings can clog stormwater systems, causing flooding and requiring additional maintenance at the municipality's expense. When yard waste enters local waterways, it adds solids, and its decomposition removes oxygen from the water, and adds nutrients, which cause excessive plant and algal growth.

The Department's draft modification to the Yard Waste Ordinance/Collection Program SBR requires municipalities to adopt and enforce either an ordinance that prohibits placing non-containerized yard wastes in the cartway of the street, or an ordinance prohibiting all non-containerized yard wastes from being placed within the cartway more than seven (7) days prior to scheduled collection or the placing of yard waste closer than 10 feet from any storm sewer inlet along the street. This ensures that either all leaves and grass clippings are either bagged or otherwise containerized or that the amount of time loose leaves and grass clippings are in the cartway is minimized. The primary change to the SBR is if a municipality chooses the yard waste collection program, monthly yard waste pickups from October through December, once in the spring ("spring clean-up"), and on an "as needed" basis for the rest of the year are no longer mandated. Instead, the frequency of yard waste pickups shall be determined at the discretion of the Tier A Municipality. This change significantly reduces the burden on municipalities.

The proposed changes to the Yard Waste Ordinance/Collection Program SBR included the term "cartway" to better define what is meant by street. "Cartway" is defined in the January 20, 2004 Residential Site Improvement Standards (N.J.A.C. 5:21) "as the actual road surface area from curblineline to curblineline which may include travel lanes, parking lanes, and deceleration and acceleration lanes. Where there are no curbs, the cartway is that portion between the edges of the paved, or hard surface, width." In addition the proposed changes define, for the purposes of the SBR, "yard waste" as loose leaves and grass clippings. Both of these proposed changes clarify the Yard Waste Ordinance/Collection Program SBR and make implementation easier for municipalities.

Part I, Sections F.7.a. and F.9.a.ii. - Monthly Sweeping of Certain Streets in Predominantly Commercial Areas

The Department is re-titling the "Street Sweeping SBR" to "Monthly Sweeping of Certain Streets in Predominantly Commercial Areas" and is rewording the SBR to clarify which municipally owned streets require monthly street sweeping. These changes have no legal or substantive effect. Pursuant to N.J.A.C. 7:14A-16.5 these changes are "minor" modifications which are not subject to the procedures in N.J.A.C. 7:14A-15 and are therefore not open to public comment.

Part I, Section F.8.e. – Equipment and Vehicle Washing

The January 2, 2003 draft Tier A Permit contained a Statewide Basic Requirement (SBR) for Equipment and Vehicle Washing. This SBR required municipalities to eliminate the unpermitted

discharge of equipment and vehicle wash wastewater to the waters of the State from municipal maintenance facilities by installing a vehicle wash reclaim system, capturing and hauling the wastewater for proper disposal, connecting to sanitary sewer (where applicable and approved by local authorities), ceasing the activity or applying for a separate NJPDES permit. Municipalities had 12 months from the effective date of permit authorization (EDPA) to cease the discharge, or 15 months from EDPA to apply for a separate NJPDES permit, or 36 months to implement any of the other SBR options. The draft Highway and Public Complex Permits contained a similar SBR. As a result of comments from the New Jersey State League of Municipalities and others, this SBR was not included in the final Tier A, Highway and Public Complex Permits (see e.g., response to comment 144 at 36 N.J.R. 835 and response to comment 52-55 in the February 2, 2004 response to comments document for the general permits).

During the first year of permit implementation, many municipalities took a closer look at their public works operations. This resulted in numerous inquiries to the Department about the proper handling of equipment and vehicle wash water from these operations. The Water Pollution Control Act (at N.J.S.A. 58:10A-6) and NJPDES rules (at N.J.A.C. 7:14A-2.1) state that, with some exceptions, it shall be unlawful for any person to discharge any pollutant except in conformity with a valid NJPDES permit. Any unpermitted discharge of equipment and vehicle wash water (which contains pollutants) from municipal operations would be in violation of the Act and NJPDES rules.

To resolve this issue and protect municipalities from potential violations, the Department proposes to modify the Tier A Permit to specifically and temporarily authorize the discharge of equipment and vehicle wash water from municipal operations. The proposed Equipment and Vehicle Washing SBR requires that on or before February 28, 2009, Tier A Municipalities eliminate the unpermitted discharge of equipment and vehicle wash wastewater to the waters of the State from municipal maintenance yard operations. The permit modification outlines acceptable methods for eliminating the discharge, which includes installing a vehicle wash reclaim system, capturing and hauling the wastewater for proper disposal, connecting to sanitary sewer (where applicable and approved by local authorities), ceasing the activity and/or applying for and obtaining a separate NJPDES permit. The Department will continue to work with municipalities, counties, highway agencies, and state agencies to facilitate the construction of regional vehicle washing facilities to assist compliance with this permit requirement.

V. REQUESTED VARIANCES OR ALTERNATIVES TO PERMIT CONDITIONS

No such requests exist in regard to this permit modification, which was initiated by the Department.

VI. PROCEDURES FOR REACHING A FINAL PERMIT DECISION ON THE DRAFT PERMIT

Included in the public notice are the requirements for the submission of comments by a specified date, and other procedures for reaching a final permit decision in accordance with N.J.A.C. 7:14A-15, -16, and -17. The comment period will begin on June 15, 2005, and will end on July 16, 2005.

VII. DEPARTMENT CONTACT

Additional information concerning the proposed permit modification may be obtained between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday from: Bruce Friedman, Bureau of Nonpoint Pollution Control at (609) 633-7021 or (609) 292-0407.

VIII. ADMINISTRATIVE RECORD

- a. Tier A Municipal Stormwater General Permit (NJ0141852)
- b. List of names and addresses of permittees regulated under the Tier A Permit
- c. Draft Modification of Tier A Municipal Stormwater General Permit NJ0141852 (Tier A Permit)
- d. January 2, 2003 Fact Sheet for the Draft Tier A Permit
- e. February 2, 2004 Response to Comments Document for the Tier A, Tier B, Highway and Public Complex Permits
- f. Fact Sheet for the Draft Modification of Tier A Permit
- g. Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (NPI)*
- h. Section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471I (NPI)
- i. New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (NPI)
- j. Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. (NPI)
- k. N.J.A.C. 5:21, 7:8, 7:14A, and 7:50 (NPI)
- l. List of members of Municipal Stormwater Advisory Group and BMP Subcommittee
- m. Commissioner Bradley M. Campbell's April 11, 2005 letter to William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities
- n. April 2004 New Jersey Stormwater BMP Manual (NPI)
- o. All websites, New Jersey Register notices, and other documents cited in this Fact Sheet (but not listed in a. through n. above) (NPI)

*NPI indicates that the document is not physically included in the administrative record