



## Fact Sheet for the Issuance of the AZPDES Small MS4 General Permit

December 19, 2002

**Facilities:** AZPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (small MS4s) in Arizona, except for those in Indian Country.

**Background:** Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which required the Environmental Protection Agency (EPA) to develop a phased approach to regulate stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for stormwater discharges from large and medium municipal separate storm sewer systems.

EPA has issued Phase I MS4 permits to the Cities of Phoenix, Mesa, Tempe, Glendale, Scottsdale, Tucson, Pima County and the highway system operated by the Arizona Department of Transportation. EPA has issued two general permits for storm water discharges associated with industrial activity. One general permit covers construction sites disturbing five or more acres (63 Fed. Reg. 7858, February 17, 1998), and a multi-sector general permit (MSGP) has been issued for other discharges associated with industrial activity (65 Fed. Reg. 64746, October 30, 2000). As of December 5, 2002, ADEQ was authorized to implement the AZPDES program in Arizona. Therefore, these permits are now considered state permits under the AZPDES program. Additionally, ADEQ intends to issue a construction general permit in February 2003 that covers construction sites disturbing one or more acres.

Final Phase II storm water regulations were promulgated by EPA on December 8, 1999 (64 Fed. Reg. 68722). These regulations set forth the additional categories of discharges to be permitted and the requirements of the program. The additional discharges to be permitted include small MS4s.

A draft AZPDES Small MS4 General Permit was developed in the fall of 2002 in conjunction with EPA Region 9. Region 9 and ADEQ jointly public noticed the draft Small MS4 General Permit in the Federal Register on September 18, 2002. ADEQ also public noticed a draft of the AZPDES Small MS4 General Permit in the Arizona Administrative Register on September 27, 2002. While the jointly noticed permit and the permit noticed by ADEQ had nearly identical requirements, the federal version of the permit varied in that it contained eligibility requirements pertaining to the Endangered Species Act, National Historic Preservation Act and Essential Fish Habitat. The AZPDES permit did not contain these eligibility requirements because the issuance of an Arizona state AZPDES permit is not a federal action.

A public meeting was held in Phoenix by EPA on October 16, 2002 to discuss both versions of the draft Small MS4 General Permit. The comment period for both permits ended on October 30, 2002. Comments were received by both EPA and ADEQ from interested parties including regulated MS4s and county associations of government. A response to comments has been issued concurrently with this permit and fact sheet.

The following provides a fact sheet for the AZPDES small MS4 general permit for discharges in Arizona except for Indian Country. Hereinafter, the terms "permit" or "small MS4 general permit" will be used. Note

also that the permit references various federal regulations. These regulations have been incorporated by reference into the state AZPDES rules in the Arizona Administrative Code (A.A.C.) R18-9-A905. As an aid to reviewers, however, the permit cites the federal regulations where specific regulatory language can be found.

**I. Introduction**

ADEQ is issuing the small MS4 general permit that authorizes the discharge of pollutants in municipal stormwater to waters of the United States.

**II. Coverage Provided by General Permits**

Section 402(p) of the Clean Water Act (CWA) states that stormwater discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. The term “discharge” when used in the context of the NPDES/AZPDES program means the discharge of pollutants (A.R.S. § 49-255 and 40 CFR 122.2).

**III. Permitted Facilities**

**A. Regulated Small MS4s.** The following four categories of small MS4s are potentially subject to permitting under Phase II of the storm water program (A.A.C. R18-9-A905 which incorporates 40 CFR 122.32 by reference):

- ! MS4s operated by municipalities in urbanized areas as defined by the Census Bureau based on the 1990 or 2000 census. These MS4s must be permitted unless they receive a waiver based on the criteria discussed in Part III, Section B of this fact sheet. An urbanized area is basically a core city and urban fringe with a population of 50,000 or more. There were six Urbanized Areas defined in Arizona in the year 2000 Census. These Urbanized Areas were named for the core city and include Avondale, Flagstaff, Phoenix, Prescott, Tucson and Yuma.

Regulated county and city MS4s subject to permitting under this condition include:

<b>Cities</b>	<b>Counties</b>
<i>Apache Junction</i>	<i>Coconino</i>
<i>Avondale</i>	<i>Maricopa</i>
<i>Cave Creek</i>	<i>Pinal</i>
<i>Chandler</i>	<i>Yavapai</i>
<i>El Mirage</i>	<i>Yuma</i>
<i>Flagstaff</i>	
<i>Gilbert</i>	
<i>Goodyear</i>	
<i>Guadalupe</i>	
<i>Litchfield Park</i>	
<i>Marana</i>	
<i>Oro Valley</i>	
<i>Paradise Valley</i>	
<i>Peoria</i>	
<i>Prescott</i>	
<i>Prescott Valley</i>	
<i>South Tucson</i>	
<i>Surprise</i>	
<i>Tolleson</i>	
<i>Youngtown</i>	
<i>Yuma</i>	

- ! Designated MS4s are outside urbanized areas. These MS4s can be designated

according to “designation criteria” established by the permitting authority. The permitting authority is required to apply designation criteria to municipalities which have a population of 10,000 or more and population density of 1,000/mi<sup>2</sup> or more. An MS4 may also be designated when it has a smaller population and/or less density based on the designation criteria. Permitting of these MS4s is required on a case-by-case basis based on factors such as rapid growth, high population density or adverse water quality impacts.

Designated criteria were developed jointly by ADEQ and Region 9. On November 27, 2002, Region 9 sent notification to all of the cities listed below of their inclusion in the NPDES program based on designation criteria. The designation criteria had to be applied to the four cities with a population greater than 10,000 people and a density greater than 1,000/mi<sup>2</sup> located outside of the Urbanized Areas. These cities included Douglas, Nogales, Fountain Hills and Florence. The 1990 Census showed that Douglas had a population greater than 10,000 people and a density greater than 1,000/mi<sup>2</sup>. The 2000 Census added Nogales, Florence and Fountain Hills. Of these four cities, *Douglas, Nogales and Fountain Hills* were designated due to designation criteria.

Region 9 and ADEQ elected to apply the designation criteria to additional cities based on Arizona’s growth and water quality concerns. Additional cities that have been designated include *Camp Verde, Cottonwood, Lake Havasu, Sedona and Sierra Vista*. The Designation Criteria document provides further information regarding the decision to designate these cities.

- ! MS4s which contribute substantial pollutant loads to regulated MS4s through interconnections.

No small MS4s in Arizona were designated under this condition. ADEQ reserves the right, however, to require a permit of any small MS4 which is found to be a significant contributor of pollutants to any neighboring MS4.

- ! MS4s designated by petition.

Neither ADEQ nor EPA received any petitions to designate any small MS4s. Should ADEQ receive a petition, it has 180 days in which to determine whether the facility will need to apply for coverage under a permit.

**B. Waivers for Small MS4s in Urbanized Areas.** The Phase II regulations at 40 CFR 122.32(d) and (e), incorporated by reference into state rules at R18-8-A905, provide permitting waivers for small MS4s in urbanized areas under the following circumstances:

- ! **MS4s with a Population Less than 1,000** if the MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program; and if discharges include any pollutant(s) that have been identified as a cause of impairment of any receiving water body, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established “total maximum daily load” (TMDL) that addresses the pollutant(s) of concern.
- ! **MS4s with a Population of 1,000 to 10,000** if the permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4 and if for all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of

concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. Pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that receives a discharge from the MS4; and

For such waivers, the permitting authority must determine that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. ADEQ does not have such information for any of these MS4s; hence, this type of waiver will not be granted and the MS4s must seek permit coverage for their discharges.

- ! ADEQ is authorized to, and will be granting waivers to, MS4s with a population less than 1,000, unless information is available showing that the discharges are a threat to water quality. The population (within an urbanized area) of all MS4s that are eligible to apply for coverage under this permit is over 1,000, except for the Town of Cave Creek. Thus, Cave Creek has been waived from the requirement to obtain permit coverage at this time.

- C. **Non-traditional Small MS4s.** The definition of a small MS4 in the Phase II regulations (40 CFR 122.26(b)(16)(iii), incorporated by reference in A.R.S. R18-9-A905) includes storm sewers at facilities operated by the federal or state government (or other public entities such as a sewer or port district) such as military bases, universities, hospitals and prisons. The definition does not include facilities which consist of very discrete areas, such as an individual post office. ADEQ has termed these publicly-owned facilities that are neither counties nor cities as “non-traditional small MS4s.”

Most non-traditional small MS4s would be subject to permitting by virtue of being located within urbanized areas. The Census Bureau ([www.census.gov](http://www.census.gov)) provides maps of urbanized areas which may be used by potentially affected facilities to determine if they are located within an urbanized area. ADEQ is not aware of any facilities of this nature which are outside an urbanized area and which have the population and population density by themselves to be potentially designated for permitting. Non-traditional small MS4s located within counties or cities that are regulated MS4s are subject to permitting, provided they have a population size greater than 1,000 people.

The Phase II regulations do not provide guidance on how to determine population for these facilities. ADEQ believes that a reasonable method to determine population is to combine the total resident population and the number of full-time workers. To determine the need to apply for coverage, facility operators should use this method to determine their population, and consider the applicability of the Phase II regulations to their specific facilities. Unless otherwise advised by ADEQ, facility operators should assume the following:

1. A permit application is required for all facilities with a population of 1,000 or more.
2. A permit application is not required for facilities with a population less than 1,000.

The non-traditional small MS4s listed below have been identified by ADEQ and Region 9 to exist within urbanized area boundaries. These facilities have been contacted by Region 9 regarding the potential applicability of Phase II stormwater rules to their stormwater discharges.

*Arizona State University  
Northern Arizona University*

*University of Arizona  
Arizona Department of Corrections  
Yuma Marine Corps  
Davis Monthan Air Force Base  
Arizona State Hospital  
Maricopa Community Colleges  
Pima Community Colleges  
Central Arizona College  
Arizona Western College  
Yavapai College  
VA Medical Centers in Tucson and Phoenix*

**D. Non-traditional Small MS4s owned or operated by a regulated city or county.** County or city facilities (such as hospitals or prisons) within a permitted area for the same county or city would not need a separate permit. The discharges from these facilities would be need to be incorporated into the Stormwater Management Program implemented by the county or city as part of its permit requirements. However, if a county or city operates a facility outside its permitted area (for example, Maricopa County operates a county hospital in Chandler), the facility would need separate permit coverage.

**E. Permitting Options for Small MS4s.** The Phase II regulations provide three options for storm water permitting for small MS4s:

- ! Apply for coverage under the proposed general permit discussed in this fact sheet (or an alternate general permit if one were to be issued).
- ! Apply for an individual permit.
- ! Seek coverage as a co-permittee under an existing Phase I MS4 permit via a permit modification.

ADEQ believes that most small MS4s in Arizona will seek coverage under the general permit. However, the other options are also available to small MS4s which may believe that the terms and conditions of the general permit are not appropriate for them.

#### **IV. Environmental Impacts of Discharges from Small MS4s**

The 1987 decision by Congress to require NPDES permitting for the storm water discharges discussed above was based on a growing awareness of the environmental significance of nonpoint sources of pollutants. For example, EPA's report entitled "National Water Quality Inventory, 1998 Report to Congress" (EPA, 2000) shows that nonpoint sources, including storm water runoff, are the leading causes of existing water quality impairments.

The Nationwide Urban Runoff Program (NURP), which was sponsored by EPA in the years 1978 through 1983, also showed that storm water runoff is a significant source of pollutants (EPA, 1983). The study identified 77 priority toxic pollutants in storm water runoff discharged from residential, commercial and light industrial areas. Of these toxic pollutants, heavy metals such as copper, lead and zinc were detected most frequently and at levels of greatest concern.

For Arizona, the state's latest 305(b) Water Quality Report (Arizona Department of Environmental Quality, 2000) provides an assessment of the significance of storm water discharges in Arizona. The report shows that urban runoff is a significant contributor of pollutants in Arizona.

#### **V. NPDES Delegation to Arizona**

Region 9 approved ADEQ's NPDES delegation request on December 5, 2002. The delegation covers all discharges within the State of Arizona except for discharges in Indian country lands. The final general permit as issued by ADEQ includes references to Arizona regulations rather than EPA

regulations. The permit also does not include eligibility restrictions related to endangered species, historic properties and essential fish habitat since these requirements are based on requirements for federally-issued permits but not state-issued permits. ADEQ is the permitting authority, therefore, NOIs and other information will be required to be sent to ADEQ rather than Region 9. Region 9 will continue to have oversight of the AZPDES program including all permitting and enforcement actions.

## VI. Summary of Permit Conditions

This section has been written in an informal style that does not reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any confusion or conflicts exist between this summary and the actual permit language, the permittee must comply with the permit as written. The response to comments may also serve to clarify the conditions of this permit. For additional information, please contact Karyn Moldenhauer, ADEQ Surface Water Permits Unit at (602) 771-4449.

### Part I. Coverage Under This General Permit

**Introduction:** This permit authorizes stormwater discharges from small municipal separate storm sewer systems into waters of the U.S.. Note the AZPDES authorizing statute uses the term “Navigable Waters” which is defined as equivalent to the waters of the U.S. However, because the term ‘navigable waters’ can be confusing to the general public (i.e., the definition of ‘navigable waters’ also includes ephemeral washes, intermittent streams, playas, and wetlands, that may not be able to be traveled by conventional vessels), this permit generally references discharges to waters of the U.S. In accordance with the Federal Register December 8, 1999, the goal of this permit is to reduce or eliminate stormwater pollution from municipal activity through development and implementation of a municipality-specific Stormwater Management Program (SWMP).

- A. Permit Area.** This permit will be for all municipal stormwater discharges in the state of Arizona, except for those in Indian Country. ADEQ does not have authority for such discharges and applicants must pursue permitting through EPA Region 9 or other appropriate permitting authority.

Each permittee operating under this permit will be assigned an Authorization Number when his or her Notice of Intent (NOI) is processed. Note that the assigned number is not an AZPDES Permit Number; rather, the assigned number is for tracking purposes only. The actual permit number is AZG2002-002.

- B. Eligibility and Allowable Stormwater Discharges.** This permit authorizes all discharges of stormwater from small MS4s except those excluded under Limitations on Coverage (Part I, Section D) of the permit. Coverage under this permit is authorized for:

MS4 discharges originating from the municipalities that are regulated according to the condition listed above in Part III, Permitted Facilities.

- C. Allowable Non-Stormwater Discharges.** This permit allows municipalities to decide whether or not they will prohibit certain non-stormwater discharges from entry or release through their MS4. If the MS4 specifies which of these non-stormwater discharges they consider “allowable,” ADEQ will in most cases, accept the municipality’s decision that these allowable non-stormwater discharges are not causing or contributing to a violation of water quality standards. The permit provides a list of non-stormwater discharges that the municipality can decide whether or not to prohibit. This list came from the federal regulations. A second list may be developed by the municipality if additional occasional, incidental non-stormwater discharges are considered not to be causing or contributing to a water quality violation. If ADEQ does not object to non-stormwater discharges listed by the municipality, the

municipality will not be required to prohibit the listed types of non-stormwater discharges into its MS4. All non-stormwater discharges must be addressed in the municipality's SWMP.

- D. Limitations on Coverage.** Not all stormwater discharges from MS4s are authorized by this permit. Specifically excluded are:

***Discharges Mixed With Non-Stormwater.*** Stormwater discharges that are mixed with non-stormwater sources, other than those identified in and in compliance with the permit are prohibited. Non-stormwater discharges that are authorized under a different NPDES/AZPDES permit may be commingled with discharges authorized under this permit.

***Discharges Covered by Another Permit*** Stormwater discharges associated with construction activity, industrial activity or that are covered under an individual permit or discharges required to be covered under an alternative general permit are prohibited.

***Discharging into Impaired Waters.*** Eligibility for permit coverage is dependant upon the inclusion of provisions in the SWMP that are consistent with the assumptions and requirements of the TMDL, or are protective of water quality. Also, in cases where a TMDL has not been established for a 303(d) listed water that receives municipal stormwater, the permittee must address control of pollutants of concern such as oil, grease, sediment, pesticides and metals and any other contaminants known to be common in municipal stormwater runoff.

***Discharges Causing Degradation.*** A discharge is not allowed to be inconsistent with Arizona's anti-degradation policy. This policy addresses the degradation of waters that occurs due to a discharge. In the future, determination of consistency with this policy may involve ambient water monitoring or discharge monitoring.

## **Part II. Authorization Under this General Permit**

- A. General.** Any municipality that is required to obtain coverage must submit a Notice of Intent to operate under the conditions of this general permit. ADEQ believes that this general permit will be used by most municipalities that require coverage. Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless ADEQ specifically notifies the discharger that an individual permit application must be submitted.

Only NOI forms provided by ADEQ (or reproductions thereof) are valid. Applicants must be aware that by signing and dating the form they certify that they understand and are willing to comply with all terms and conditions of the AZPDES Small MS4 General Permit. Each operator must submit an NOI. For each municipality, there should be only one NOI submitted.

The SWMP must be submitted with the NOI form in order for the NOI to be considered complete. If an NOI is found to be incomplete, ADEQ will require more information before authorization to discharge under this permit is granted. A municipality will be considered authorized to discharge 30 days after the NOI is submitted. This does not guarantee that an NOI or SWMP has been reviewed by ADEQ. Therefore, although the permittee is authorized to discharge under this permit, ADEQ may review the NOI or SWMP materials at any time and require changes.

- B. Termination of Coverage.** Permittees must submit a completed Notice of Termination (NOT) that is signed according to Part VI, Section L of the permit when discharge ceases from the municipality or the operator has been changed or is no longer the operator. NOTs must be submitted using the form provided by ADEQ, or a reproduction thereof, and sent to the address specified on the form.

The operator may face enforcement action if a NOT is submitted without meeting one of the requirements of the permit unless there has been authorization under an alternative permit or a waiver for coverage under this permit has been approved.

### **Part III. Notice of Intent Requirements**

This part of the permit covers the timing of submittal of the NOI and the information that must be provided. The general due date for the NOI is March 10, 2003. By this day, the permittee must have applied for coverage under a stormwater permit. The March 10, 2003-deadline applies to all regulated municipalities that are in the program because of their location within an Urbanized Area. The date may be different for municipalities that have been designated after December 9, 2002 or municipalities that have been given a different due date by ADEQ.

Information required as part of the NOI is indicated on the NOI form. The applicant must fill out the entire NOI form and also submit the SWMP. The information provided on the NOI form gives ADEQ information about the location of the municipality and any area-specific details that ADEQ should consider when evaluating the application materials. The SWMP that must be attached should be considered to be a description of the program that will be implemented. The detail of this description is found in Part V, Section B describing the requirements for minimum control measures.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22, incorporated by reference in A.A.C. R18-9-A905. A complete description of these signatory requirements is provided in Part VI, Section L of the permit.

As provided by NPDES regulations at 40 CFR 122.33(b)(1), incorporated by reference in A.A.C. R18-9-A905, if permit responsibilities are being shared with another MS4 (such as a neighboring small MS4 or a neighboring large MS4), this information must be provided in the NOI and SWMP. The SWMP is to describe the activities that are being developed or implemented by the other entity. If the small MS4 is partnering with a large MS4, the activities that will be conducted by the large MS4 on behalf of the small MS4 must be incorporated into the permit for the large MS4.

### **Part IV. Special Conditions. TMDLs established after Permit Issuance**

This special condition is different from the TMDL condition of Part I, Section D because it addresses TMDLs that are established after permit coverage has been granted. In order to maintain permit coverage, a municipality would need to comply with this provision. This provision basically requires that a municipality incorporate any new TMDL requirements or provisions into its SWMP.

### **Part V. Stormwater Management Programs (SWMPs)**

Applicants must submit SWMPs that develop and implement the six minimum control measures listed in Part V, Section A of this fact sheet. The permittee has five years to fully implement the management practices that will be used by the municipality to reduce or eliminate pollution from the municipal stormwater discharge.

- A. Minimum Control Measures and BMPs.** The permit requires that all dischargers covered by the permit develop and implement a SWMP. The SWMP is the means through which dischargers comply with the CWA's requirement to control pollutants in the discharges to the maximum extent practicable (MEP), and comply with the water quality related provisions of the CWA. MEP is considered to be an iterative process in which an initial SWMP is proposed and then periodically upgraded as new BMPs are developed or new information becomes available concerning the effectiveness of existing BMPs (64 Fed. Reg. 68754). The Phase II regulations at 40 CFR 122.34 set forth the following six minimum pollution control measures to be included in SWMPs.



1. Public Education and Outreach on Storm Water Impacts.
2. Public Involvement/Participation.
3. Illicit discharge detection and elimination.
4. Construction Site Storm Water Runoff Control.
5. Post-Construction Storm Water Management in New Development and Redevelopment.
6. Pollution Prevention/Good Housekeeping for Municipal Operations.

The permit includes nearly verbatim the required program elements for each minimum measure. The permit also includes additional requirements for minimum measures which were derived from the recommendations of the regulations. These provisions are included in the permit as requirements rather than recommendations to clarify and make certain the responsibilities of the permittee.

Each minimum control measure contains requirements to include descriptive information about the SWMP. The descriptive information is expected to clarify the MS4's methods for achieving pollutant reduction to the maximum extent practicable.

EPA has also developed a menu of BMPs for small MS4s which is available on EPA's website at <http://www.epa.gov/npdes/menuofbmps/menu.htm> to assist in the development of SWMPs. The menu provides detailed descriptions of BMPs which may be included in SWMPs to satisfy the requirements of the six minimum measures. As the permit requirements for Phase I MS4s are quite similar to those for Phase II MS4s, Phase II MS4s may wish to contact Phase I MS4s to gain additional insight from the experiences of Phase I MS4s.

- B. Measurable Goals.** The Phase II regulations at 40 CFR 122.34(d)(1) and the proposed general permit require that measurable goals be included with the SWMP which is submitted by small MS4s with their NOIs. The measurable goals become permit requirements once the MS4 has requested and has been granted coverage under the general permit.

Measurable goals are quantifiable measures of progress in implementing the various BMPs which comprise a SWMP. Measurable goals may consist of specific one-time only objectives such as the development of a storm water ordinance by a certain date, or they may consist of numeric objectives for the frequency of implementation of a given BMP (such as the frequency of street sweeping or catch basin cleaning). Measurable goals may also consist of specific objectives for water quality improvement over a given time period.

Measurable goals must be included for each specific BMP which is proposed to be included in the SWMP. Measurable goals were included in the Phase II regulations to ensure that the public can better evaluate the level of effort proposed by MS4s in controlling pollutants in the discharges and to ensure accountability of the MS4s.

EPA has developed a measurable goals guidance which is available on EPA's website at <http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm>. Example measurable goals are provided for each of the six minimum measures to assist MS4s in the development of their own measurable goals. ADEQ recommends that this guidance be reviewed by MS4s in developing their measurable goals.

- C. Qualifying Programs.** The Phase II regulations at 40 CFR 122.34(c) recognize that state, tribal or local programs may already exist that meet the requirements of one or more of the six minimum measures. In such a case, the regulations and Part V, Section C of the permit provide that the MS4 may include the local qualifying program in the SWMP instead of developing a new program in accordance with the requirements of the minimum measure. A local qualifying program must include, at a minimum, the relevant requirements of the six

minimum measures described in the regulations at 40 CFR 122.34(b).

- D. Sharing Responsibility.** As stated above in Part III of this fact sheet, a municipality may partner with another municipality operating a small or large MS4 to implement some or all components of its SWMP. This portion of the permit addresses that right and notifies the permittee that it will be ultimately responsible for the implementation of any management practices conducted to achieve compliance with the minimum control measures, regardless of the entity actually implementing the program.
- E. Reviewing and Updating SWMPs.** This portion of the permit addresses the permittee's rights and responsibilities involved in maintaining a compliant SWMP. As stated before, the BMPs are meant to be part of an iterative process designed to reduce or eliminate pollutants. As such, the management practices selected to address each of the minimum control measures should be re-evaluated at regular intervals for effectiveness. Revision of the SWMP is an expected outcome of frequent re-assessment of the SWMP.

Updates to the SWMP may be proposed by the permittee or required by ADEQ. The permittee is not allowed to remove any BMPs from its SWMP in a modification request. However, if a permittee wishes to replace a BMP with a suitable, like BMP, the permittee may request to do so at any time, provided the supporting information is submitted as required by Part V, Section E.2.b of the permit. A permittee may at any time add a BMP to its SWMP upon written notification to ADEQ. ADEQ could require modifications to the SWMP in order to address water quality concerns. Specific requirements regarding the deadlines for complying with ADEQ's required changes are provided in Part V, Section E.4 of the permit. ADEQ reserves the right to require changes to the permit in accordance with the duties of a permitting authority as established in A.A.C. R18-9-A905 which incorporates 40 CFR 122.

Transfer of Ownership provisions address changes to the SWMP that would need to be made as the result of new management of the facility. For example, a county hospital could lose funding to operate its facility and could be handed over to a private party.

- F. Monitoring.** The Phase II storm water regulations at 40 CFR 122.34(g) require that small MS4s evaluate program compliance, the appropriateness of the BMPs in their SWMPs and progress towards meeting their measurable goals.

In complying with these requirements, ADEQ is not currently focusing on the traditional end-of-pipe monitoring which is commonly found in most NPDES permits (64 Fed. Reg. 68769). Instead, ADEQ is encouraging a mix of physical, chemical, biological, or programmatic indicators such as described in Claytor and Brown (1996).

The nature of the monitoring activities which will be implemented by permittees will largely depend on the measurable goals selected by the permittees. As discussed above, measurable goals may be measures of the level of effort of an MS4 in implementing a given BMP (such as frequency of street sweeping), or they may be measures of water quality improvement. ADEQ considers that for the initial five-year term of the general permit, most small MS4s will opt for measurable goals which consist of a given level of effort in implementing a particular BMP. As such, the monitoring activities will largely consist of keeping track of these efforts. This information must be submitted to ADEQ in the annual report described below. If stormwater monitoring is conducted by the permittee, Part V, Section F of the permit includes requirements related to representative monitoring, test procedures and reporting of results.

A permittee must evaluate the effectiveness of its SWMP on a yearly basis that corresponds with the reporting period and annual report submittal. It is expected that during this review process, the permittee will make revisions to the SWMP, propose new BMPs, and address

these revisions in the annual report. ADEQ intends to evaluate these proposals and provide the municipality with feedback regarding the appropriateness of the proposed modifications.

- G. Annual Reports.** In accordance with 40 CFR 122.34(g)(3), each permittee is required to submit a report to ADEQ on an annual basis. This report must include the information required by Part V, Section G.1 of the permit. The information required summarizes the success of BMPs at reducing or eliminating pollutants, revisions necessary to achieve reduction to the MEP, new areas of the municipality that will be subject to the SWMP and plans for the upcoming reporting period. Revisions made to the SWMP in annual reports will be reviewed by ADEQ, however, ADEQ cannot guarantee that it will be able to quickly respond to municipalities regarding the content of their revised SWMP. The revisions stated in the annual reports are therefore subject to the terms of Part II, Section A.4 of the permit which addresses the need to revise the NOI or SWMP based on ADEQ requirements. As stated before, these requirements will be based on water quality concerns.

ADEQ has established the reporting period according to the schedule for most municipal fiscal years (July 1 - June 30). ADEQ has also provided three months after the reporting period in which time the permittee will review the effectiveness of the SWMP and assemble the report that must be submitted on September 30 of each year. Therefore, each annual report must contain the required information for the period of July 1 to June 30.

#### **Part VI. Standard Permit Condition**

Although some of these conditions may not appear directly related to the small MS4 general permit, the federal regulations require all AZPDES permits to contain the standard conditions specified at 40 CFR 122.41. This section of the permit describes those conditions.

- A. Duty to Comply.** The permittee must comply with all conditions of this permit. An operator not fulfilling his or her obligations, as agreed upon by signing the NOI, is considered in violation of the permit, state statutes and the Clean Water Act and is grounds for injunctive relief, substantial monetary penalties, incarceration, changes or terminations to the permit, or denial of permit renewal.
- B. Duty to Reapply.** For general permits, this requires the permittee to comply with the instructions of the permit that would be reissued to replace this permit, in order to continue permit coverage.
- C. Continuation of the Expired General Permit.** The permit specifies procedures for continued coverage under a general permit if the permit expires prior to a replacement permit being issued. In short, the expired permit would remain in full force and effect. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:
- ! The permit being reissued or replaced;
  - ! The permittee terminating coverage by submitting a NOT;
  - ! Issuance of an individual permit for the permittee's discharges; or
  - ! A formal decision by ADEQ not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit. However, should the permit expire prior to a replacement permit being issued, the existing permit will only cover those operators that submitted a complete and accurate NOI and met all the eligibility requirements prior to the expiration date of the permit.

Upon re-issuance of a new general permit, the permittee shall file an NOI, within 60 days of the effective date of the new general permit.

- D. Need to Halt or Reduce Activity Not a Defense.** The permittee facing enforcement action may not use as a defense the reasoning that compliance could only be achieved by halting or reducing the permitted activity.
- E. Duty to Mitigate.** The permittee is required to take all reasonable steps to prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- F. Proper Operation and Maintenance.** The permittee must properly operate and maintain all equipment and treatment systems used by the permittee for compliance with the terms of the permit. This includes all BMPs used to achieve compliance with the terms of the permit and the SWPPP. The permittee must provide appropriate laboratory controls and quality assurance procedures as necessary. Backup systems are required when needed to ensure compliance.
- G. Permit Actions.** The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation, reissuance, termination, or a notification of planned changes or anticipated noncompliance does not halt any permit condition.
- H. Property Rights.** An operator of a small MS4 does not convey his or her property rights or privileges through issuance of this permit or coverage of activity under this permit. Injury to private property or invasion of personal rights are also not authorized under this permit nor is any infringement of federal, state, or local laws or regulations.
- I. Duty to Provide Information.** The permittee must transmit any information needed to determine compliance with the permit or to modify the permit.
- J. Inspection and Entry.** The permittee must, upon presentation of valid credentials by ADEQ or its representative, allow entry into the premises where the regulated activity and/or records are present. ADEQ must have access to view and to be able to make copies of any required records, inspect facilities, practices, operations, and equipment, and sample or monitor at reasonable times.
- K. Recordkeeping.** Any samples taken must be representative of the monitored activity. Records must be retained for three years or for the term of the permit (whichever is longer) subject to extension by ADEQ. Falsification of results is a violation. This part of the permit also requires the permittee to make the NOI and SWMP available to the permitting authority and to the public.
- L. Signatory Requirements.** Applications, reports, NOIs, NOTs, or other information submitted to ADEQ must be signed and certified by a responsible officer, a general partner or proprietor of a partnership, or a principal executive officer or ranking elected official for a municipality, state, federal, or other public agency. Knowingly making false statement, representations, or certifications is subject to penalties. Other than for applications and NOIs, these reports may be signed by a duly authorized representative. A person is considered a duly authorized representative only if the authorization is made in writing by such person and submitted to ADEQ. A duly authorized representative may be either a named individual or any individual occupying a named position. The duly authorized representative is not the same as an operator, but the legally bound representative of the operator.
- M. Reporting.** The permittee must orally report to ADEQ's Water Quality Compliance staff at (602) 771-4841 any anticipated noncompliance activity that may endanger health or the environment within 24 hours. Also, if the permittee becomes aware that there was incorrect information on the NOI that was submitted, he must contact ADEQ Water Quality Permits staff

at (602) 771-4449 and report that information.

- N. Severability.** This provision establishes that any change in a part of the permit will not affect any other part of the permit or cause it to be invalidated.
- O. Requiring Coverage Under an Individual Permit.** An operator may apply for an individual permit rather than apply for coverage under this general permit. An individual application must be submitted for coverage under an individual permit with reasoning supporting the request. An individual permit can be issued by ADEQ provided that the requirement to obtain the individual permit is substantiated and the applicant has submitted a complete individual permit application for municipal stormwater discharges according to the requirements of R18-9-B901(B).

If an individual permit or alternative AZPDES permit is issued to the permittee currently covered under this general permit, coverage under the general permit is terminated on the effective date of the new permit. Alternatively, if a permittee, currently covered under the general permit, seeks coverage under an individual or alternative AZPDES permit and is denied, coverage under the general permit is terminated on the date of such denial, unless otherwise specified by ADEQ.

- P. Request for an Individual Permit.** If a permittee wishes to be covered by an individual permit, he or she must request coverage and submit a complete application as provided in R18-9-B901(B) to ADEQ by March 10, 2003.
- Q. Other Environmental Laws.** Compliance with this permit does not authorize any person to violate other environmental rules or statutes.

#### **Part VII. Penalties for Violation of Permit Conditions**

This part advises the regulated community of the appropriate legal authorities and potential penalties for non-compliance with this permit.

#### **Part VIII. Definitions**

The permit contains definitions of statutory, regulatory and other terms important for understanding the permit and its requirements.