

**NPDES  
Storm Water Program  
Question and Answer Document  
Volume II**

Contains Data for  
Postscript Only.

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Office of Wastewater Enforcement and Compliance  
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**July 1993**

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## USEFUL ACRONYMS

BAT	Best Available Technology
BCT	Best Conventional Technology
BMP	Best Management Practice
CFR	Code of Federal Regulations
CSO	Combined Sewer Overflow
CWA	Clean Water Act
CZARA	Coastal Zone Act Reauthorization Amendments
DMR	Discharge Monitoring Report
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
FR	Federal Register
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
NRDC	Natural Resources Defense Council
OMB	Office of Management and Budget
POTW	Publicly Owned Treatment Works
RCRA	Resource Conservation and Recovery Act
RQ	"Reportable Quantity" release
SIC	Standard Industrial Classification
TSDF	Treatment, Storage or Disposal Facility (hazardous waste)
TSS	Total Suspended Solids
WQA	Water Quality Act
WRDA	Water Resources Development Act

## STORM WATER QUESTIONS AND ANSWERS PART 11

### I. General Applicability

1. What kinds of storm water discharges are required to obtain an NPDES permit under Phase I of the storm water program?
  - A. The National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations, promulgated by the U.S. Environmental Protection Agency (EPA), require that the following storm water discharges apply for an NPDES permit: (1) a discharge associated with industrial activity; (2) a discharge from a large or medium municipal separate storm sewer system; or (3) a discharge which EPA or the State determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. The permit application deadlines are specified in EPA's regulations.

2. What is a "storm water discharge associated with industrial activity?"

- A. The term "storm water discharge associated with industrial activity" means a storm water discharge from one of the eleven categories of industrial activity defined at 40 Code of Federal Regulations (CFR) 122.26(b)(14)(i) through (xi). Five of these categories are identified by Standard Industrial Classification (SIC) code and the other six categories provide narrative descriptions of the industrial activity. The complete definition is included in Section XIII of this document.

If any activity at a facility is covered by one of the five categories which provide narrative descriptions, storm water discharges from that activity of facility are subject to storm water permit application requirements. If the primary SIC code of the facility is identified in one of the remaining six categories, the facility is subject to the storm water permit application requirements. Note that only those facilities/activities described above having point source discharges of storm water to waters of the United States or to a municipal separate storm sewer system or other conveyance are required to submit a storm water permit application. The definition of "point source" is provided at 40 CFR 122.2. The definition is included in Section XIII of this document.

3. What are SIC codes and how can a facility find out its proper SIC code?

- A. SIC codes are four-digit industry codes that were created by the Office of Management and Budget (OMB) for statistical purposes. Other governmental organizations sometimes use these codes when classifying business establishments. To find the correct SIC code, an applicant might check his or her unemployment insurance forms or contact the appropriate State unemployment services department. In addition, applicants may consult the Standard Industrial Classification Manual (SIC Manual), published by OMB in 1987. This manual is available in the resource section of most public libraries. Questions regarding assignment of particular codes can be addressed to your State permitting authority. A list of telephone numbers and addresses for State storm water contacts is provided as an attachment to this document.

4. What SIC code should a facility use when there are multiple activities occurring at the site?

- A. For the purposes of the storm water program, a facility must determine its primary SIC code based on the primary activity occurring at the site. To determine the primary industrial activity, the SIC Manual recommends using the value of receipts or revenues. If such information is not

available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. For case-specific determinations, contact the permitting authority for your State.

5. How is a facility regulated when multiple activities conducted by different operators are occurring on the same site (airports, for example)?
  - A. When multiple activities are conducted by different operators at a single location, each industrial activity is assigned its own SIC code. At an airport, for example, a passenger airline carrier will receive one SIC code, but an overnight courier located in the same hanger may receive another SIC code. Whereas the SIC codes may differ, if both are regulated industrial activities, EPA generally encourages these operators to become co-applicants (submit storm water permit application forms together) when they are located at the same site and when industrial areas/drainage basins are shared. When a permit is issued (or if the operators are filing for a general permit) the co-applicants will become co-permittees and share responsibility of permit compliance.
6. If a facility's primary SIC code is not listed in the regulations, but an activity that occurs on site is described in one of the narrative categories of industrial activity, does that facility have to apply for a permit?
  - A. If a facility conducts an activity on the site identified in the narrative descriptions of categories (i), (iv), (v), (viii), (ix) or (x), then the facility would be required to submit a storm water permit application for discharges from those portions of the facility where the activity occurs. Such narrative activities/facilities include: (i) activities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; (iv) hazardous waste treatment storage, or disposal facilities including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); (v) landfills, land application sites and open dumps that receive or have received industrial wastes; (vii) steam electric power generating facilities; (ix) sewage treatment works with a design flow of 1.0 mgd or more; and (x) construction activity disturbing five or more acres of land.
7. Do storm water discharges from non-industrial areas at an industrial facility (employee parking lots, rental car operations at an airport) have to be addressed in an NPDES permit?
  - A. No. Only storm water discharges from those areas that are associated with industrial activity, as defined at 40 CFR 122.26(b)(14) must be addressed in the permit. However, if storm water runoff from a nonindustrial area commingles with runoff from a regulated industrial area, the combined discharge would require permit coverage.
8. How are off site facilities (such as distribution centers, storage facilities, vehicle maintenance shops) regulated under the storm water program?
  - A. To determine the regulatory status of off site facilities, first the operator of a facility must determine if that off site operation can be classified according to its own SIC code. If there is no SIC code which describes the off site facility independently, then it would assume the SIC code of the parent facility it supports. However, certain off site facilities that fall within the categories of auxiliary facilities described in Section XiV of this document (or which are specifically described in the SIC code description) would, in most cases, be classified according to the parent facility

they support. Such supporting establishments include central administrative offices, research and development laboratories, maintenance garages, and focal trucking terminals.

EPA has determined that off site vehicle maintenance facilities that service trucks used for local transportation of goods or for local services are generally considered supporting establishments which would not be assigned a transportation SIC code; rather, such facilities are classified according to the SIC code of the facility they support. Please refer to Section II of this document for a discussion of off-site vehicle maintenance facilities.

9. Can authorized NPDES States be more expansive in their use of the assignment of SIC codes? For example, can they make the rule applicable to secondary activities?
  - A. Yes, State storm water regulations can be more expansive and cover more activities than the Federal regulations.
10. Are all storm water discharges to sanitary sewers exempt from storm water permitting requirements? What about discharges to combined sewer systems?
  - A. Any storm water discharge to a Publicly Owned Treatment Works (POTW) or to a sanitary sewer is exempt from storm water permit application requirements. However, it may be subject to EPA's pretreatment program under Section 307(b) of the CWA. Discharges to combined sewer systems are also exempt from NPDES permitting but may be subject to pretreatment requirements.
11. Is a storm water permit application required for an industrial facility that has constructed a holding pond that usually does not discharge storm water, but could in the event of a large enough storm?
  - A. All point source discharges of storm water associated with industrial activity that discharge to waters of the U.S. or through a municipal separate storm sewer system must be permitted. Therefore, if an industrial facility does not have a storm water discharge from its holding pond during typical storm events but has a storm water discharge in the event of a large storm, that discharge must be covered under an NPDES permit. In NPDES authorized States (a list is provided in Section XII of this document), facilities should consult their permitting authority for State-specific determinations on such "potential discharges.
12. If a facility is not engaged in industrial activity as defined under 40 CFR 122.26(b)(14)(i)-(xi), but discharges contaminated flows comprised entirely of storm water into a nearby municipal separate storm sewer system, is the facility required to obtain a storm water permit?
  - A. No, unless EPA or the State designates the discharge as contributing to a violation of a water quality standard or as significantly contributing pollutants to waters of the United States. However, industrial dischargers should note that large and medium municipalities (population 100,000 or more) are currently designing storm water management programs that will control contaminated storm water discharges from entering their separate storm sewer systems. Additional storm water discharges may be regulated under Phase II of the storm water program. EPA is currently in the process of developing Phase II.
13. Are activities associated with industrial activity that occur on agricultural lands exempted from storm water permitting requirements?

A. No. If a storm water discharge is associated with industrial activity as defined at 40 CFR 122.26(b)(4), it is subject to permit application requirements regardless of the location of the industrial activity. For example, if a gravel extraction activity occurred on land leased from a farm, the activity would be classified as mining under SIC code 1442 or 1446 and therefore would be considered a storm water discharge associated with industrial activity and require a permit.

14. Are NPDES permits transferable from one facility owner to the next?

A. Individual NPDES permits may be transferred to a new owner or operator if the permit is modified. These procedures are described at 40 CFR 122.61. Under the general permits for storm water discharges, issued by EPA in the September 9, 1992 and September 25, 1992, *Federal Register* notices (57 *FR* 41176 and 57 *FR* 44412), the new operator can submit an NOI two days prior to the change of ownership but must include the facility's existing general permit number on the NOI form. Many NPDES authorized States have similar provisions in their general permits.

15. How does storm water permitting differ in States with approved State NPDES programs compared to States without NPDES State permit programs?

A. While Federal storm water regulations (i.e., the November 16, 1990, storm water permit application regulations) establish minimum requirements nationwide. State permitting authorities may impose more stringent requirements or decide to expand the scope of its program to meet State priorities. EPA Regional offices are the permitting authorities for 12 States and most Territories; the remaining 38 States and the Virgin Islands administer their own storm water programs and issue permits to regulate municipalities and industries in their States. Regulated facilities in these States should contact the appropriate State permitting authority for guidance, application forms, general permits and other materials. Please note that some of the NPDES States do not issue permits for Federal facilities located in their States.

For regulated facilities in the 12 non-delegated States (MA, NH, ME, FE, TX, OK, LA, NM, SD, AZ, AK, ID), the Territories (all except the Virgin Islands), the District of Columbia, and for facilities located on Indian lands (in most, if not all, delegated States and in all non-delegated States), and for Federal facilities in the States of DE, CO, IA, KS, NH, NY, OH, SC, VT and WA, the storm water program is administered through EPA Regional offices. Such facilities may be eligible for coverage under the general permits issued by EPA in the September 9, 1992, and September 25, 1992, *Federal Register* notices (57 *FR* 41176 and 57 *FR* 44412).

## **II. Definition of Storm Water Discharge Associated With Industrial Activity**

Category (i): Facilities subject to storm water effluent limitations guidelines, new source performance standards or toxic pollutant effluent standards under 40 CFR subchapter N.

16. What are toxic pollutant effluent standards?

A. 40 CFR 122.26(b)(14)(i) includes facilities that are subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards. The phrase "toxic pollutant effluent standards" refers to the standards established pursuant to CWA section 307(a)(2) and codified at 40 CFR Part 129. Part 129 applies only to manufacturers of six specific pesticide products which are defined as toxic pollutants. Please note that the phrase "facilities

subject to toxic pollutant effluent standards" does not refer to those industries subject to effluent limitation guidelines for toxics under 40 CFR subchapter N.

Category (iii): Mining and oil and gas operations classified as SIC codes 10-14.

17. What constitutes "contamination" at an oil and gas facility?
  - A. Oil and gas facilities classified as SIC code 13 are required to apply for a storm water permit if the facility has had a release of a Reportable Quantity (RQ) in storm water for which notification has been required any time since November 16, 1987, or if the discharge contributes to a violation of a water quality standard. RQs for which notification is required are defined at 40 CFR Parts 110, 117, and 302. An RQ for oil is defined at 40 CFR 110 as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or a discoloration of the water surface or at joining shorelines, or causes a sludge or emulsion to be deposited beneath the water surface or upon ad joining shorelines. For other substances, RQ levels are expressed in terms of pounds released over any 24 hour period and are listed at 40 CFR 117.3 and 40 CFR 302.4. A list of these RQ levels is available from the Storm Water Hotline at (703) 821-4823.
18. Do EPA's industrial storm water general permits apply to discharges from mine sites that are subject to storm water effluent limitations guidelines, but which are not covered by an existing NPDES permit?
  - A. No, storm water discharges from mine sites that are subject to storm water effluent limitation guidelines are not authorized by industrial storm water general permits issued by EPA in the September 9, 1992, and September 25, 1992, *Federal Register* notices (57 FR 41176 and 57 FR 44412). In States without NPDES permitting authority, the mine operators submit an individual application to address those storm water discharges, or could have participated in a group application prior to October 1, 1992 (note: any facility which did not submit an individual application prior to October 1, 1992 or participate in a timely group application missed EPA's regulatory deadline and may be subject to enforcement action). However, certain authorized States may issue general permits authorizing such storm water discharges from mine sites provided that those permits contain the applicable guideline requirements.
19. Can point source discharges of contaminated ground water from mine edits and seeps at active or inactive mine sites be permitted under the storm water program?
  - A. Point source discharges of non-storm water to waters of the United States must be authorized by an NPDES permit. Point source discharges of either contaminated ground water from a mine edit or seep that are not related to specific storm events would not be considered to be storm water. Discharges that are composed in whole or in part of non-storm water cannot be addressed solely by the permit applications for storm water (Forms 1 and 2F), and cannot be authorized by NPDES permits that only authorize discharges composed entirely of storm water. Rather, Forms and 2C or 2D (and Form 2F if the discharge is mixed with storm water) must be used when applying for a NPDES permit for non-storm water.

Category (iv): Hazardous waste treatment, storage or disposal facilities.

20. If the primary SIC code of a facility is not covered under the regulations, but there is a hazardous waste treatment, storage or disposal facility (TSDF) on site, is the TSDF subject to storm water permitting requirements?



- A. Yes. If the hazardous waste TSDF is or should be operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), regardless of the facility's primary activity, the storm water discharges from that portion of the site are subject to the narrative definition of storm water discharges associated with industrial activity under category (iv). Even if a facility's SIC code is not included in the regulations, any activity described by one of the narrative categories of "industrial activity" that is occurring on the site would be regulated under the storm water program.

Category (v): Landfills, land application sites and open dumps that receive industrial waste.

21. At what point does an inactive, closed, or capped landfill cease being an industrial activity?

- A. An inactive, closed or capped landfill is no longer subject to storm water permit application requirements when the permitting authority determines the land use has been altered such that there is no exposure of significant materials to storm water at the site. For example, if an impervious surface (such as a parking lot or shopping center) now covers the closed landfill, the permitting authority could determine that storm water discharges from the area are no longer associated with the previous landfill activity. These determinations must be made by the permitting authority on a case-by-case basis.

22. If construction of cells at a landfill disturbs greater than five acres of land, is coverage under EPA's construction general permits required?

- A. No. EPA considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and five or more acres of land are being disturbed, such activity would need to be covered under EPA's construction general permit until the time that initial construction is completed and industrial waste is received. Please note that NPDES authorized States may address this situation differently.

Category (viii): Transportation facilities

23. If all vehicle maintenance and equipment cleaning operations occur indoors at a transportation facility, as defined at 40 CFR 122.26(b)(14)(viii), is a permit application required for discharges from the roofs of these buildings?

- A. Yes. Storm water discharges from all areas that are "associated with industrial activity," described at 40 CFR 122.26(b)(14), are subject to the storm water permit application requirements. This would include discharges from roofs of buildings that are within areas associated with industrial activity. In addition, storage areas of materials used in vehicle maintenance or equipment cleaning operations and holding yards or parking lots used to store vehicles awaiting maintenance are also considered areas associated with industrial activity.

24. For a facility classified as SIC code 5171 (bulk petroleum storage), is the transfer of petroleum product from the storage tanks to the distribution truck considered "fueling", and therefore an industrial activity as defined by the regulations?

- A. No. The transfer of petroleum product from the storage tanks to the tanker truck is not considered fueling and would not require a storm water permit. However, fueling of the tanker truck itself at

the 5171 facility is considered to be part of routine vehicle maintenance, and storm water discharges from these areas must be covered under a storm water permit application.

25. Is a retail fueling operation that occurs at an SIC code 5171 petroleum bulk storage facility regulated?
- A. No. The provisions of 40 CFR 122.26(b)(14)(viii) apply to fueling operations conducted at petroleum bulk storage facilities where the vehicles being fueled are involved with the petroleum bulk storage operation. Retail fueling of vehicles at such sites does not constitute "vehicle maintenance" (as defined in the November 16, 1990 *Federal Register* page 48066), and a storm water permit is not required for the discharges from that area. Only those portions of the SIC code 5171 facility where vehicle maintenance operations (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning take place are required to be covered under a storm water permit application.
26. Are off site vehicle maintenance areas required to submit permit applications for their storm water discharges?
- A. As discussed in Section I of this document, to determine the regulatory status of off site vehicle maintenance operations, the operator of a facility must first determine if that off site operation can be classified according to its own SIC code. If there is no SIC code which describes the off site facility independently, then it would assume the SIC code of the parent facility it supports. However, please note that off-site facilities that fall within the nine categories listed on page 17 of the SIC Manual (or which are specifically described in the SIC code description) would, in most cases, be classified according to the parent facility they support. See Section XIII of this document for the complete list. Such supporting establishments include central administrative offices, research and development laboratories, maintenance garages, and local trucking terminals. EPA has determined that off site vehicle maintenance facilities that primarily service trucks used for local transportation of goods or for local services are generally considered supporting establishments which do not assume a transportation SIC code; rather, such facilities are classified according to the SIC code of the facility they support. Long-distance trucking centers, on the other hand, are generally classified as SIC code 4213, and are subject to regulation under 40 CFR 122.26(b)(14)(viii).

Category (x): Construction activity

27. Who must apply for permit coverage for construction activities?
- A. Under the NPDES storm water program, the operator of a regulated activity or discharge must apply for a storm water permit. EPA clarified that the operator of a construction activity is the party or parties that either individually or taken together meet the following two criteria: (1) they have operational control over the site specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions (9/9/92 *Federal Register* page 41190). If more than one party meets the above criteria, then each party involved must become a co-permittee with any other operators). For example, if the site owner has operational control over site specifications and a general contractor has day-to-day operational control of site activities, then both parties will be co-permittees.

When two or more parties meet EPA's definition of operator, each operator must submit an NOI, and either include a photocopy of the other operators' (NOI(s) or the general permit number that was assigned for that project. Under EPA's storm water construction general permits, the co-permittees are expected to join in implementing a common pollution prevention plan prior to submittal of the NOI, and in the retention of all plans and reports required by the permit for a period of at least three years from the date that the site is finally stabilized.

For individual storm water discharge permits, applications must be filed 90 days prior to the commencement of construction. If a contractor has not been selected at the time of application, the owner of the project site would initially file the application and the contractor should sign on when selected. Under an individual storm water permit for construction, multiple operators would have to sign onto the permit, instead of submitting a new application. Please note that authorized NPDES States may have varying NOI and/or permit requirements and should be contacted on this issue.

28. What are the responsibilities of subcontractors at the construction Site under EPA's storm water construction general permits?
- A. EPA storm water construction general permits require subcontractors to implement the measures stated in the pollution prevention plan and to certify that he/she understands the terms and conditions of the permit requirements. Under EPA's general permits, subcontractors are not required to submit NOIs.
29. What is meant by a "larger common plan of development or sale?"
- A. A "larger common plan of development or sale. is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than five acres by separate, independent builders, this activity still would be subject to storm water permitting requirements if the smaller plots were included on the original site plan.
30. Does construction activity encompass repaving of roads?
- A. Repaving is not regulated under the storm water program unless five or more acres of underlying and/or surrounding soil are cleared, graded or excavated as part of the repaving operation.
31. Is clearing of lands specifically for agricultural purposes regulated construction activity (40 CFR 122.2(b)(14)(x)) under the storm water program?
- A. No. Although the clearing of land may be greater than five acres, any amount of clearing for agricultural purposes is not considered an industrial activity under the storm water regulations. Section 402(l)(1) of the 1987 Water Quality Act exempts agricultural storm water discharges from NPDES permitting requirements including storm water permitting. This exemption only applies, however, if the clearing of land is solely for agricultural purposes. (See Question 13).

32. If a construction activity that disturbs five or more acres commences on a site covered by an existing industrial storm water permit, are the storm water discharges from the construction area covered by the existing permit or is a separate permit required?
- A. If the existing permit is an individual permit, then the operator must either request a modification of the existing permit to include the construction storm water discharges or apply for coverage under a separate permit that specifically addresses that construction activity. If the permittee decides to modify the existing individual permit, permit modifications must be approved prior to initiating any construction activity. If the existing permit is an EPA storm water industrial general permit, the operator should submit an NOI for coverage under EPA's storm water general permit for construction activities. States with NPDES permitting authority may have different requirements.
33. If a construction activity that disturbs less than five acres occurs on site of a regulated industrial activity currently covered by EPA's industrial storm water general permit, does the regulated industry have to modify its pollution prevention plan to include controls for the area of construction?
- A. Yes. Regulated industrial activities covered by EPA's storm water industrial general permit must revise their pollution prevention plan to address all new sources of pollution and runoff including those from construction activities disturbing less than five acres, that occurred on the site of the regulated industry. However, if less than five acres, a separate storm water permit for the construction activity is not required (see Question 32).
34. For projects such as a 100-mile highway construction project, what location should be provided on the NOI?
- A. The midpoint of a linear construction project should be used as the site location on EPA's NOI form. For construction projects that span across more than one State, the project must meet the application requirements of each State.
35. Are long-term maintenance programs for flood control channels (such as vegetation removal) or similar roadside maintenance programs subject to permitting if five or more acres are disturbed?
- A. If grading, clearing or excavation activities disturb five or more acres of (and either for an individual project or as part of a long-term maintenance plan, then the activity is subject to storm water permit application requirements.
36. For a construction activity that uses off site "borrow pits" for excavation of fill material or sand and gravel, should the number of disturbed acres at the borrow pit be added to the number of acres at the construction site to determine the total number of disturbed acres?
- A. No, off site borrow pits are not considered part of the on site construction activity. If a borrow pit is specifically used for the removal of materials such as sand, gravel, and clay, the pit is considered a mine and is classified under SIC code 14. Such sites would be regulated as industrial activity as defined at 40 CFR 122.26(b)(14)(iii). However, if the borrow pit is utilized for the removal of general fill material (e.g. dirt) and disturbs five or more acres of land, the pit would be considered a construction activity as defined at 40 CFR 122.26(b)(14)(x).

37. Would building demolition constitute a land disturbing activity and require a storm water construction permit application?
- A. The definition of land disturbing activity includes but is not limited to clearing, grading and excavation. At a demolition site, disturbed areas might include the site where building materials, demolition equipment, or disturbed soil are situated, which may alter the surface of the land. Therefore, demolition activities that disturb five or more acres of land would be subject to storm water construction permit application requirements.
38. What are the legal responsibilities and liabilities for construction activities disturbing less than five acres, pursuant to the Ninth Circuit U.S. Court of Appeals decision on June 4, 1992?
- A. In *NRDC v. EPA*, 966 F.2d 1292, the Ninth Circuit U.S. Court of Appeals remanded for further rulemaking, EPA's exemption of construction sites less than five acres which are not part of a larger common plan of development or sale. The Agency intends to undergo further rulemaking proceedings for construction sites less than five acres. Until further rulemaking is completed, permit applications for such activities need not be submitted to EPA. However, States with NPDES permitting authority may have more stringent requirements.
39. Do storm water construction general permits authorize non-storm water discharges?
- A. Under EPA's storm water construction general permits, issued on September 9, 1992, and September 25, 1992, the following non-storm water discharges are conditionally authorized (57 *FR* 41219) and (57 *FR* 44419): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust; potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents. These discharges, except for flows from fire fighting activities, must be identified in the pollution prevention plan and the plan must address the appropriate measures for controlling the identified non-storm water discharges. Other non-storm water discharges not listed above or not identified in the storm water pollution prevention plan, must be covered by a different NPDES permit.

Category (xi): Light manufacturing facilities

40. If oil drums or contained materials are exposed during loading or unloading at a category (xi) facility, are storm water discharges from this-area subject to the storm water regulations?
- A. The storm water regulations require category (xi) facilities to apply for a storm water permit where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery are exposed to storm water. If there is a reasonable potential for leaks or spills from these drums which could be exposed to storm water, discharges from that area would be subject to storm water permitting requirements. Completely covering loading and unloading activities may eliminate exposure. Note that permitting authorities may have more stringent interpretations with respect to exposure on industrial sites and should be consulted for case-by-case determinations. For a discussion on the 9th Circuit Court of Appeals decision (June 1992) and future EPA rulemakings on category (xi) facilities, please refer to Section IX of this document.

41. Does the storage of materials under a roof at a category (xi) facility constitute exposure?
- A. If materials or products at a light industrial facility are stored outside under a roof and there is no reasonable potential for wind blown rain, snow, or runoff coming into contact with the materials or product, then there may not be exposure at that area. However, if materials are stored under a structure without sides and storm water comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or industrial machinery, the discharge from that area must be permitted. The permitting authority should be contacted for specific issues related to exposure.

### **III. Individual Permits**

42. Will individual permits include requirements for storm water pollution prevention plans and monitoring?
- A. EPA anticipates that many individual permits will include storm water pollution prevention plans as a means of satisfying Best Available Technology (BAT/Best Conventional Technology (BCT) requirements established in the Clean Water Act (CWA). With regard to monitoring requirements under individual permits, such requirements will be determined by the permit writer on a case-by-case basis. At a minimum, all facilities with storm water discharges associated with industrial activity must conduct an annual site inspection as prescribed at 40 CFR 122.44(i)(4).
43. Do permitting authorities have the option of subjecting facilities that have submitted individual storm water permit applications to general permits?
- A. Yes, permitting authorities may subject facilities that have submitted individual permit applications to general permits. Facilities that are covered by a general permit may petition the permitting authority to be covered under an individual permit by submitting an individual permit application with reasons supporting the request to the permitting authority, pursuant to 40 CFR 122.28(b)(2)(iii).
44. What are the benefits/drawbacks of pursuing an individual storm water permit over a general permit?
- A. An individual storm water permit may be advantageous, as it is designed to reflect a facility's site-specific conditions, whereas general permits are much broader in scope, particularly in terms of monitoring requirements. However, the individual permit application is generally more difficult to prepare than submitting EPA's notice of intent (NOI) to be covered under a general permit (in part because the individual permit application requires sampling and EPA's NOI does not). General permits may be advantageous because regulated facilities know, in advance of submitting their NOI, the requirements of the permit. In addition, coverage under a general permit may be automatic (depending on how the permit is written), whereas the individual permitting process takes longer.
45. When does EPA anticipate that individual permits will be issued?
- A. Issuance of individual permits may vary on a State by State basis, as permitting priorities and resources allow. The December 15, 1992, *Federal Register* (57 FR 60447) established October 1,

1993, as the deadline by which individual permits are to be issued. Many authorized States are already issuing individual permits.

46. Can a facility that has submitted an individual permit application obtain general permit coverage upon issuance of a general permit in its State?
- A. Yes, an eligible facility may opt for coverage under a general permit (by submitting an NOI) up until the time that the permitting authority issues such facility its individual permit. Authorized States may require a written request for withdrawal from the individual permit application process. EPA recommends submitting such requests to the appropriate Regional office.

#### **IV. EPA General Permits (issued on 9/9/92 and 9/25/92)**

47. What is the difference between EPA's construction and industrial general permits?
- A. Because the nature of construction activity varies considerably from other industrial activities, EPA developed two separate general permits: one covering storm water discharges from construction activity and one for other storm water industrial discharges. Whereas the pollution prevention plan for the construction permit focuses on sediment and erosion controls and storm water management, the pollution prevention plan for industry emphasizes general site management. Note that some authorized States have industrial general permits that authorize storm water discharges from construction activity.

EPA's general permits for storm water discharges associated with industrial activity, issued on 9/9/92 (57 *FR* 41236) and 9/25/92 (57 *FR* 44438), authorize storm water discharges from all new and existing point source discharges of storm water associated with industrial activity, as defined at 40 CFR 122.26(b)(14), to waters of the U.S., except for ineligible storm water discharges that are listed at I.B.3. (9/9/92 *Federal Register* page 41305) and (9/25/92 *Federal Register* page 44444) in EPA's general permits.

EPA's general permits for storm water discharges associated with construction activity, which were issued on 9/9/92 (57 *FR* 41176) and 9/25/92 (57 *FR* 44412), authorize storm water discharges associated with construction activity, as defined at 40 CFR 122.26(b)(14)(x), except for ineligible discharges that are listed at I.B.3 (9/9/92 *Federal Register* page 41217) and (9/25/92 *Federal Register* page 44418) in EPA's general permits.

48. What is the procedure for applying for coverage under EPA's industrial or construction general permits?
- A. Dischargers of storm water associated with industrial activity located in non-NPDES States must submit a Notice of Intent (NOI) to be authorized to discharge under the general permit. The NOI form is a one-page document requesting basic information about the nature of the facility and the particular storm water discharge under consideration. Under EPA's general permits, monitoring is not required for submittal of the NOI. States with NPDES authority may have different requirements for their NOI and should be contacted directly.
49. Will a facility automatically be covered by an EPA general permit upon submittal of an NOI or will it have to cease operations until the Agency provides notification of acceptance?

A. Permit coverage begins two days after the postmark date on the NOI, provided the storm water discharges from the facility are eligible for coverage as established by the permit conditions (see 9/9/92 *Federal Register* page 41305 for limitations on coverage). The permitting authority can require the submittal of an individual application at any time. However, the facility may continue to discharge under the general permit until an individual permit is issued or denied.

50. What are the deadlines for compliance with EPA's general permits?

A. Individuals who intend to obtain coverage for a storm water discharge associated with industrial activity that commenced on or before October 1, 1992, were required to submit an NOI by October 1, 1992; however, EPA is accepting late NOIs. Regulated facilities wishing to obtain coverage under the general permit that have not yet submitted an NOI should do so immediately. EPA's storm water general permits require permittees to develop and implement a storm water pollution prevention plan. Deadlines for NOI submittal and development and implementation of plans are listed in the table below.

Facilities with salt storage or facilities that were not required to report under Emergency Planning Community Right to Know (EPCRA) Section 313 prior to July 1, 1992, (but must report after that date) must comply with the special requirements for section 313 facilities and salt storage (if applicable) within 3 years of the date on which the facility is required to first report under section 313. All other conditions in the permit must be met within the deadlines listed above. Plans do not have to be submitted to the Agency but must be kept on site and made available upon request.

<b>Type of Discharge</b>	<b>NOI Deadline</b>	<b>Pollution Prevention Plan Development Deadline</b>	<b>Pollution Prevention Plan Implementation Deadline</b>
Existing industrial activities (other than construction)	October 1, 1992	April 1, 1993	October 1, 1993
Industrial activities (other than construction) that begin on or after January 1, 1993	2 days prior to the start of industrial activity	Within 60 days of commencement of operations	Within 60 days of commencement of operations
Oil and gas facilities previously not required to be permitted that have an RQ after October 12, 1992	2 days prior to the start of industrial activity	Within 60 days of commencement of operations	Upon commencement of operations
Oil and gas facilities previously not required to be permitted that have an RQ after October 1, 1992	Within 14 days of first knowledge of the release	Within 60 days of first knowledge of the release	Within 60 days of first knowledge of the release



Municipally-owned or operated industrial activities that were rejected or denied from a group application	Within 180 days of the date of rejection or denial	Within 365 days of the date of rejection or denial	Within 545 days of the date of rejection or denial
Construction sites in operation on October 1, 1992	October 1, 1992	October 1, 1992	October 1, 1992
Construction sites that begin operation after October 1, 1992	2 days prior to the start of construction	Prior to the submittal of the NOI	With the initiation of construction activities

51. Is there a fee for NOI applications?

A. EPA's general permits do not require fees at this time. However, authorized NPDES States may levy fees and should be contacted directly.

52. Where should NOIs be submitted?

A. Facilities in States and Territories where EPA is the permitting authority submit NOIs to the central processing center at the following address:

Storm Water Notice of Intent  
P.O. Box 1215  
Newington, VA 22122.

All permittees in States with NPDES authority submit the NOI to their State permitting authority except those in New York, who submit to the processing center at the above address. Note that authorized NPDES States may develop NOI forms that are different from EPA's NOI form. Under EPA's general permits, the operator of any industrial activity that discharges storm water through a municipal separate storm sewer system in a medium or large municipality must also submit a copy of the NOI to that municipality. In addition, operators of construction activities must provide a copy of all applicable NOIs for a site to the local agency approving sediment and erosion plans or storm water management plans.

53. Is an operating regulated industrial facility required to submit a separate NOI for each outfall that discharges storm water associated with industrial activity at the site?

A. Under EPA's general permits, one NOI is generally sufficient for the entire site, provided there is one operator. In this case, the pollution prevention plan must address all discharges of storm water associated with industrial activity from the site. If there are multiple operators at the site, each operator must submit an NOI. In addition, if a facility that is covered under EPA's industrial storm water general permit undertakes a construction activity disturbing more than five acres of land, then the facility must submit an NOI for those construction-related storm water discharges for coverage under EPA's construction general permit (or submit an individual permit application).

54. Will a facility receive any notification from EPA after submitting an NOI under EPA's general permit?
- A. Yes, EPA confirms the receipt of NOIs and will provide the applicant with a permit number and explains how to get a summary of the guidance on preparing storm water pollution prevention plans.
55. Is an entire facility excluded from coverage under EPA's general permits if a single discharge at the site is excluded from coverage?
- A. No. Eligibility under EPA's general permits should be applied on a discharge-specific basis. Thus, a site with multiple discharges can be covered under two different permits: a general permit for some discharges and a separate NPDES permit for any discharges excluded from coverage under the general permit. NPDES States should be contacted for additional guidance on this issue.
56. Does an industrial facility operating under an EPA industrial general permit have to apply for a separate permit for all on site construction activities that disturb more than five acres of land?
- A. Storm water discharges from construction activities that disturb five or more acres of land must be covered under a separate NPDES permit that specifically addresses storm water discharges from construction activity. EPA's industrial storm water general permits do not provide coverage for storm water discharges from regulated construction activities. Construction activities that disturb less than five acres of land do not require a storm water permit at this time. The pollution prevention plan for the industrial facility must be modified to address site changes due to that amount of construction activity.
57. Can a facility submit one NOI for similar but separately located industrial facilities which are owned by the same corporation?
- A. No. One NOI must be submitted by the operator of each individual facility that intends to obtain coverage under a general permit, regardless of common ownership.
58. Does an asphalt/concrete batch plant have to submit a new NOI each time it changes location?
- A. Under EPA's general permits, an NOI must be submitted each time the plant moves to a new site of operation. However, some authorized States may have different requirements with respect to asphalt/concrete batch plants and, therefore, facilities in such States should contact their permitting authorities.
59. Who is required to monitor under the conditions of EPA's storm water general permits?
- A. EPA established tiered monitoring requirements in its final industrial storm water general permits based on the potential to contribute pollutants to storm water (4/2/92 *Federal Register* page 11394). Six classes of facilities are required to monitor semiannually and report annually, ten classes of facilities are required to monitor annually and keep the data on site, and all other classes of facilities are not required to monitor. All facilities authorized by general permits (including those facilities not otherwise required to monitor) must still conduct an annual site inspection, except for inactive mining sites where this may be impractical due to remote location and inaccessibility of sites (inspection no less than once in three years). The sixteen classes of facilities that are required to monitor are specified in EPA's industrial general permits (9/9/92 *Federal*

*Register* page 41248), which are available from the Storm Water Hotline. EPA's construction storm water general permits require periodic inspections in lieu of monitoring.

60. If an industrial facility that is required to monitor under EPA's industrial storm water general permits does not have any exposure of materials or activities to storm water, does it still have to conduct sampling?
- A. Under EPA's industrial storm water general permits, industrial facilities can provide a certification in lieu of monitoring results for a given outfall, that materials and activities are not presently exposed to storm water and will not be exposed during the certification period (see 9/9/92 *Federal Register* page 41314 for a more detailed description). This determination should be applied on outfall-by-outfall basis (e.g., permittees may elect to monitor certain outfalls while providing certification for others). The certification must be updated on an annual basis and retained in the pollution prevention plan. The six classes of facilities that are required to report monitoring results annually must submit this certification to the permitting authority in lieu of the Discharge Monitoring Report (DMR).
61. Within one drainage area leading to a single outfall, if a facility conducts two separate industrial activities that are subject to both semiannual and annual monitoring requirements, which set of monitoring requirements will apply?
- A. If the discharges cannot be segregated, the combined discharge would be subject to both sets of monitoring requirements. In effect, a combined discharge could be subject to annual monitoring requirements for certain parameters and semi-annual monitoring for others. If a facility can segregate the discharges from the different activities, separate monitoring requirements would apply to each discharge.
62. Is it possible to sample only one of several identical outfalls under the provisions of EPA's general permits?
- A. Yes. To reduce the monitoring burden on the facility, the permit allows an operator to sample one outfall where it is substantially identical to the other outfalls. Permittees that intend to use this provision must justify and document in writing why one outfall is substantially identical to the others. Criteria for making this determination are presented in the NPDES Storm Water Sampling Guidance Document. Facilities using this provision must include the written justification in their storm water pollution prevention plan. Facilities that are subject to semiannual monitoring requirements must submit the justification of why an outfall is substantially identical to the others with the Discharge Monitoring Report. Other facilities required to monitor under the permit are not required to submit the justification unless it is requested by the permitting authority.
63. If a facility had to report under section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) when its NOI was submitted but no longer uses the quantity of water priority chemicals that makes such reporting necessary, is that facility still subject to special requirements in EPA's industrial storm water general permits for facilities that handle EPCRA section 313 water priority chemicals?
- A. No. Such facilities are no longer subject to the special EPCRA requirements contained in EPA's industrial storm water general permit and should accordingly modify their pollution prevention plan to indicate the changes in industrial activity at the facility.

64. Under EPA's general permits, when and where must Discharge Monitoring Reports (DMR) be submitted for semi-annual monitoring facilities?
- A. DMRs must be submitted to the permitting authority according to the following schedule: a) certain EPCRA section 313 facilities and wood treatment facilities monitor from January to June and July to December and report no later than January 28 following the second monitoring period; b) Primary metal facilities, facilities with coal pile runoff, and battery reclaimers monitor from March to August and September to February and report no later than April 28; and c) land disposal facilities monitor from October to March and from April to September and report no later than October 28. For facilities in non-NPDES States, DMRs must be submitted to the EPA Regional office (Section XI of this document includes storm water list of contacts for addresses). In States with approved NPDES permit programs, DMRs must be sent to the location specified in the State's general permit. The general permits in such States may also have different schedules for submitting DMRs than the one specified above.
65. Under the industrial general permit, coal-fired steam electric facilities have annual monitoring requirements for storm water discharges from coal handling sites (other than from coal pile runoff). Are access roads considered coal handling sites?
- A. Coal handling sites include those areas of the facility where coal is either loaded or unloaded. Therefore, those portions of access roads where loading/unloading operations do not occur are not considered to be coal handling sites and, therefore, are not subject to annual monitoring requirements under EPA's general permits.
66. Are there specific numeric effluent limits in EPA's storm water general permits?
- A. EPA's general permits establish pollutant discharge limits for total suspended solids (TSS) and pH in coal pile runoff. In most other situations, EPA's industrial storm water general permits focus on storm water management and the implementation of facility-specific pollution prevention plans; however, EPA's industrial general permits also include State-specific conditions that may include additional numeric effluent limits.
67. What is a storm water "best management practice. (BMP)?
- A. A BMP (defined at 9/9/92 *Federal Register* page 41319) is a technique, process, activity or structure used to reduce the pollutant content of a storm water discharge. BMPs include simple, nonstructural methods such as good housekeeping and preventive maintenance. Additionally, BMPs may include sophisticated, structural modifications such as the installation of sediment basins. The focus of EPA's general permits is on preventative BMPs which limit the release of pollutants into storm water discharges. EPA has published guidance materials to assist in the selection of appropriate BMPs in the preparation of storm water pollution prevention plans, including: *Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices (PB-92-235969)* and *Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (PB-92-235951)*. These Manuals are available from NTIS at (703) 487-1650 and the Office of Water Resource Center at (202) 260-7786.
68. What should a facility do when the nature of its activities changes?

- A. When the nature of a facility's activities changes, the facility must modify the pollution prevention plan accordingly. If the facility is subject to new monitoring requirements as a result of the changes, sampling must begin at the start of the next monitoring period.
69. Is there a procedure for notifying EPA when a storm water discharge associated with industrial activity covered by EPA's general permit has been eliminated?
- A. Yes. EPA's general permits include procedures for filing a Notice of Termination (NOT) form when there is no longer a potential for storm water discharges associated with industrial activity to occur. Operators of construction activities can submit an NOT once they have finally stabilized all areas that were disturbed. For construction activity, final stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed with a density of 70% of the previously existing/ background cover for unpaved areas and areas not covered by permanent structures. A copy of the NOT can be found in *Federal Register* notices dated September 9, 1992 (57 FR 41232 and 41341), and September 25, 1992 (57 FR 44434 and 44469).
70. If a NPDES authorized State has general permitting authority but has not yet finalized an applicable general permit, can a facility still submit an NOI and assume general permit coverage?
- A. No, a facility cannot submit an NOI to obtain coverage under a general permit until that permit has been finalized. Furthermore, a facility located in an NPDES State cannot seek coverage under one of EPA's general permits.
71. Will State general permit requirements vary and to what extent?
- A. General permit requirements for authorized NPDES States may vary considerably because these States develop and issue permits independently from EPA. However, all NPDES permits must meet minimum technical and water quality-based requirements of the Clean Water Act. Permittees in NPDES authorized States should consult with their permitting authorities regarding particular State conditions. Under EPA's storm water general permits, State-specific requirements vary because of different water quality concerns in different States. Each of the 12 non-authorized States and Territories provided certification that EPA's general permits comply with State water quality standards, and added permit requirements where necessary to achieve compliance with those standards in the final general permits.
72. Can discharges from industrial areas at a construction site such as portable asphalt plants and/or concrete batch plants be covered under EPA's construction general permits?
- A. No. EPA's construction general permits only authorize discharges from the construction area; these permits do not authorize storm water discharges from industrial activities other than construction that are located on the construction site. Portable asphalt plants and/or concrete batch plants are considered to be "industrial activity," as defined 40 CFR 122.26(b)(141)(ii). Therefore, storm water discharges from such industrial activities must be in compliance with a general or individual storm water permit for industrial storm water discharges other than construction. At a construction site which disturbs less than 5 acres of land (and which is, therefore, not subject to storm water permit application requirements for the construction activity), the operator of the mobile asphalt or concrete plant still would be required to obtain storm water permit coverage for discharges from the plant. Please note that States with approved NPDES

permit programs may allow portable asphalt plants and/or cement batch plants to be covered under the State's construction general permit.

## **V. Group Applications**

73. How will group applicants be permitted?
- A. EPA is currently developing a model permit using information from Part I and Part II group applications, and other sources. This model permit will have sections which address a particular type of industrial activity. When the model permit is completed, the permitting authority (EPA or NPDES States) then has the option to propose and issue final permits to cover group members within their state based upon the model permit.

## **VI. Sampling**

74. For what parameters does a facility have to sample under the individual or group application?
- A. Applicants are required to obtain quantitative data from samples collected during storm events from all outfalls that discharge storm water associated with industrial activity for the following parameters: (1) any pollutant limited in an effluent guideline to which the facility is subject; (2) Any pollutant listed in the facility's permit for its process wastewater [if the facility is operating under an existing NPDES permit]; (3) Oil and grease, pH, BOD5, COD, TSS, total phosphorous, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; (4) certain toxic pollutants listed in Tables II and III of the Appendix D to 40 CFR Part 122 (also listed as Tables 2F-2 and 2F-3 in the instructions for Form 2F) that are expected to be present in the storm water.
75. For an individual or group application, how many aliquots (portions) of storm water are needed to obtain a flow-weighted composite?
- A. A flow-weighted composite may be taken as a combination of a minimum of 3 sample aliquots taken in each hour of discharge for the entire event or for the first three hours of the event, with each aliquot collection being separated by a minimum of 15 minutes. If the storm event lasts less than three hours, aliquots should be collected for as long as there is sufficient flow. Large and medium municipalities may use a different protocol with respect to time duration between collection of aliquots with approval of the permitting authority. EPA's *NPDES Storm Water Sampling Guidance Document* discusses several ways to estimate flows. [This manual is available from the Storm Water Hotline (703) 821-4823) and the Office of Water Resource Center (202) 260-7786).
76. How does a facility measure flow if there are numerous small outfalls?
- A. Applicants may provide either measurements or estimates of storm water flows. One possible method for estimating flow is to create a conveyance that would combine flows from many of the outfalls. Alternatively, where flows are similar, the flow at one outfall may be measured to calculate flows at the other outfalls, provided that the method of measurement is indicated to the permitting authority. EPA's *NPDES Storm Water Sampling Guidance Document* discusses several ways to estimate flows. [This manual is available from the Storm Water Hotline (703) 821-4823) and the Office of Water Resource Center (202) 260-7786.]

77. For what parameters is only a grab sample appropriate?
- A. When collecting storm water samples, grab samples are required for the following parameters: pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. Both grab and composite samples are required for all other pollutants.
78. Do both a grab and a composite sample have to be taken from a 24-hour holding pond?
- A. No. Only a minimum of one grab sample is required to be taken for effluent from holding ponds or other impoundments with a retention period of greater than 24 hours for the representative event.
79. Can composite and grab samples be taken from separate events?
- A. Grab and composite samples for a given outfall should be taken from the same storm event to provide a basis for comparing the data. If this is impossible, information describing each storm event used for sample collection should be recorded and submitted with sampling results. However, applicants are advised that the permitting authority may request data to be collected from only one storm event.
80. Is a facility required to sample all of its outfalls during a single storm event?
- A. No. Unless otherwise specified by the permitting authority, a facility may sample outfalls during different events provided that the storms meet the criteria established in the application regulations or in the applicable permit language. Information describing each storm event used for sample collection should be recorded and submitted with sampling results.
81. If a facility has two conveyances that join and leave the site as one combined discharge, where should a sample be collected?
- A. If the discharge is composed entirely of storm water, the sampling point should be at the outfall as it leaves the property. If the discharge is a combination of process wastewater and storm water, the storm water component of the discharge should be sampled before it commingles with the process waste water discharges. If sampling at an outfall at the property boundaries is impossible because of safety reasons, inaccessibility, or a poor conveyance, sampling may be done closer to the discharge source.
81. How long of a 'dry' period does a facility need before sampling?
- A. A 'dry' period needs to be at least 72 hours. More specifically, all samples must be collected from the discharge resulting from a storm event that occurs at least 72 hours from the previously measurable (greater than 0.1 inches) storm event.
82. If two or more outfalls at a facility have identical discharges, does each outfall have to be sampled?
- A. Where a facility has outfalls that discharge "substantially identical effluent," the permitting authority may allow the applicant to test only one outfall and report that the quantitative data are representative of the substantially identical outfalls. EPA's *NPDES Storm Water Sampling Guidance Document* (available from the Storm Water Hotline (703-821-4823)) provides

information on how to prepare this petition, or the applicant should contact their permitting authority to determine what information is required.

83. Do analyses for storm water need to be done by a certified lab?
- A. There is no Federal requirement to use a certified lab. However, certain States may require that a certified lab be used. Please note, analyses must comply with the analytical procedures set out in 40 CFR Part 136, as discussed below.
84. What analytical methods must be used for the pollutants for which sampling is required?
- A. EPA-approved methods must be used where a method for a pollutant has been promulgated. 40 CFR Part 136 discusses required methods. If there is no approved method, the applicant may use any suitable method, but must provide a description of the method in its application. Additional information on general sampling issues can be obtained through the EPA's *NPDES Storm Water Sampling Guidance Document*. The manual is available from the Storm Water Hotline (703-821-4823).

## **VII. Municipal Permit Applications**

86. Once a municipal separate storm sewer system (MS4) has submitted Part 2 of its storm water permit application, when does the term of the permit actually begin?
- A. The term of the permit begins when a permit is issued by the permitting authority. Pursuant to 40 CFR 122.26(e)(7), storm water permits for discharges from MS4s are to be issued within one year after submission of a complete application. Since applications for medium and large municipal separate storm sewer systems were due on May 17, 1993 and November 16, 1992, respectively, this results in permit issuance by November 16, 1993 for large municipalities and by May 17, 1994 for medium municipalities.
87. How is EPA incorporating 1990 census data into the storm water program?
- A. Most of the municipalities that meet the definition of either a large or medium MS4 based on the results of the 1990 Census have already begun to seek an NPDES permit. Headquarters is working with the Regions and States to determine the best way to incorporate the remaining municipal entities into the program.
88. How does EPA envision the relationship between large and medium MS4 operators and NPDES permitting authorities in terms of addressing industrial storm water discharges to MS4s?
- A. EPA envisions a partnership between NPDES permitting authorities and operators of large and medium municipal separate storm sewer systems in controlling pollutants in storm water discharges associated with industrial activity through MS4s. In addition, NPDES storm water permits provide a basis for enforcement actions directly against the owner or operator of the storm water discharge associated with industrial activity.

A second NPDES permit will be issued to the operator of the large and medium MS4. This permit will establish the responsibilities of the municipal operators in controlling pollutants from



storm water associated with industrial activity which discharges through their municipal system. Under this approach, municipal operators will be able so:

- Assist EPA in identifying priority storm water discharges associated with industrial activity through their system;
- Assist EPA in reviewing and evaluating storm water pollution prevention plans that industrial facilities are required to develop; and
- Assist EPA in compliance efforts regarding storm water discharges associated with industrial activity to their municipal system.

A more complete description of this policy is provided in the August 16, 1991 *Federal Register* (56 FR 40973).

### **VIII. The Intermodal Surface Transportation Efficiency Act of 1991 (Transportation Act)**

89. How did the Transportation Act affect permitting requirements for municipalities under 100,000?

A. Storm water discharges from certain industrial activities owned or operated by municipalities with a population of less than 100,000 people were granted a moratorium from the October 1, 1992 deadline for storm water permit applications. Exceptions to this moratorium include discharges from powerplants, airports and uncontrolled sanitary landfills.

90. How does the Transportation Act impact privately owned or operated industrial activities located in municipalities under 100,000?

A. The provisions of the Transportation Act specifically address publicly owned or operated industrial activities. Privately owned facilities that have storm water discharges associated with industrial activity, as defined at 40 CFR 122.26(b)(14), must submit a permit application regardless of the size of the population of the municipality in which they are located.

91. What is an "uncontrolled sanitary landfill?"

A. An uncontrolled sanitary landfill (discussed in the 4/2/92 *Federal Register*, page 11410) is a landfill or open dump, whether in operation or closed, that does not satisfy the runoff/runoff requirements established pursuant to subtitle D of the Solid Waste Disposal Act. However, landfills closed prior to October 9, 1991 are not subject to RCRA runoff/runoff requirements, and therefore need not submit storm water permit applications if they are located in municipalities of less than 100,000 population. Landfills closed after October 9, 1991 and others that meet the above definition would be subject to the storm water permit application requirements.

92. If a municipally-owned sewage treatment plant is located in a municipality with a population of less than 100,000 people, but the service population is greater than 100,000 people, is the facility subject to the permitting requirements?

A. Yes, because service populations are used in determining population for publicly-owned treatment works [POTWs] (April 2, 1992 *Federal Register* page 11394). Additionally, where one sewer district operates a number of POTWs, the entire service population of the district will be used to

determine the applicable population classification of all the POTWs operated by the district. For example, if a district with a cumulative service population of 160,000 operates two sewage treatment plants, one of which serves 120,000 and the other which serves 40,000, both plants will be considered to be owned or operated by a municipality with a population of 100,000 or more.

93. If a construction operation disturbing five or more acres is owned by a small municipality (a population of less than 100,000 people) but operated by a private contractor, is the activity regulated?

A. No. If the construction activity is either owned or operated by a municipality with a population of less than 100,000 it would not be required to obtain a storm water permit during Phase I of the storm water program. Some States, however, may require that an application be submitted.

**IX. 9th Circuit U.S. Court of Appeals Decision**

94. What is the current status of light manufacturing facilities without exposure and construction activities under five acres, pursuant to the 9th Circuit Court decision?

A. The 9th Circuit Court decision remanded two "exemptions" provided in the NPDES storm water permit application regulations for light manufacturing facilities without exposure and construction activities under five acres (11/16/90 *Federal Register* page 48066). Both exemptions were remanded for further proceedings. In response to these two remands, the Agency intends to conduct further rulemakings on both the light manufacturing and construction activities under five acres. In the December 18, 1992, *Federal Register*, the Agency stated that it is not requiring permit applications from construction activity under five acres or light industry without exposure until this further rulemaking is completed.

**X. Phase II of the Storm Water Program**

95. What is the difference between Phase I and Phase II of the NPDES storm water program?

A. In the Water Quality Act of 1987, Congress mandated that EPA establish storm water control programs in two phases. While the first Phase I was defined on November 16, 1990, Phase II regulations were to be promulgated by October 1, 1992. However, the Water Resources Development Act (WRDA) of 1992 extended deadlines for Phase II of the storm water program as follows: 1) EPA must issue Phase II regulations by October 1, 1993; and 2) permits for Phase II sources may not be required by EPA or the State prior to October 1, 1994. EPA is currently developing regulations that will implement Phase II of the storm water program. (See Question #1 for more information on Phase I).

96. Will all storm water discharges that are not regulated under Phase I be regulated under Phase II of the storm water program (e.g., service stations, retail and wholesale businesses, parking lots, municipalities with populations of less than 100,000)?

A. Not necessarily. Statutory provisions require that EPA, in consultation with State and local officials, issue regulations that designate additional Phase II sources for regulation to protect water quality. EPA is currently developing approaches to identify and control high risk Phase II sources. EPA requested initial public comments on a variety of Phase II issues on September 9, 1992 (57 *FR* 41344). As part of this process, EPA is considering all sources of storm water not regulated under Phase I for potential coverage under Phase II.

