



INDIANA ASSOCIATION FOR FLOODPLAIN AND STORMWATER MANAGEMENT

P.O. Box 30558
Indianapolis, IN 46230

(317) 643-8773
www.inafsm.net

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Submit Letter Electronically to Stormwat@idem.in.gov

Randy J. Braun, CPESC, CPMSM
Section Chief, Wetlands and Stormwater Programs
Office of Water Quality
100 North Senate Avenue
IGCN Room 1255
Indianapolis Indiana 46204

Dear Mr. Braun:

The Indiana Association for Floodplain and Stormwater Management (INAFSM) would like to respectfully offer the following comments on the October 26, 2020 draft of the IDEM Municipal Separate Storm Sewer System (MS4) General Permit (GP).

INAFSM OVERALL COMMENTS:

The INAFSM requests that more time is allowed for MS4s throughout the state of Indiana to not only thoroughly review and comment on the new MS4 GP but also the new Construction General Permit (CGP). It is important that additional time is given so that all MS4s can see how the new CGP requirements will affect their programs. Reviewing two detailed permits at the same time has been extremely difficult.

In order to help MS4s around the state, the INAFSM is willing to host weekly meetings for an additional 60-day comment period to help MS4s review and understand the draft permit language for both the MS4 GP and CGP. Our goal would be to make this time as productive as possible towards improving both permits.

At the very least, INAFSM would like to request that IDEM hold additional public meetings on the MS4 GP for the purpose of gathering additional comments and having further discussion on the permit requirements.

It is also the INAFSM's understanding that IDEM is working on guidance documents for both permits. The INAFSM requests that the draft guidance be issued at the same time as a revised draft permit to give MS4s an opportunity to also comment on it. Questions or misunderstandings that MS4s have on some of the permit language could be easily cleared up by the guidance which may eliminate the need for them to comment on and/or object to certain areas of permit language. Conversely, the guidance may raise additional concerns with certain permit language that MS4s may wish to comment on.

The INAFSM also requests a compliance schedule table be added to the permit so that all compliance deadlines are located in one spot. Since there are so many time deadlines for permit document submittals to IDEM and/or for completion of permit compliance items, such a table would greatly help MS4 entities. Also, there is a lack of consistency among those deadlines such as months, days, from the last X, etc. All compliance deadlines should have a timeframe expressed in the same way such as using days for all.

INAFSM requests that IDEM please provide a simple checklist of what is required for each MCM and an excel spreadsheet or similar tool that every MS4 uses for reporting. There is a LOT of new information and several new requirements are contained in this new permit. Small communities with limited resources will find it very difficult to comply with all the new guidelines. INAFSM still believes that IDEM should strongly consider adopting a tiered MS4 permit where MS4s of smaller sizes have fewer requirements than MS4s of larger sizes. For example, the state of Texas has such a permit which can be found at this link <https://www.tceq.texas.gov/assets/public/permitting/stormwater/txr040000-2019-issued-permit.pdf>.

Below is an excerpt from the TCEQ Texas State MS4 General Permit which defines 4 levels (based on population) of MS4s:

“The level of an MS4 is based on most the recent Decennial Census at the time of permit issuance. A national Census held during a permit term will not affect the level of an MS4 until the next permit renewal.

(a) Level 1: Operators of traditional small MS4s that serve a population of less than 10,000 within a UA;

(b) Level 2: Operators of traditional small MS4s that serve a population of at least 10,000 but less than 40,000 within a UA. This category also includes all non-traditional small MS4s such as counties, drainage districts, transportation entities, military bases, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of population served within the UA, unless the nontraditional MS4 can demonstrate that it meets the criteria for a waiver from permit coverage based on the population served;

(c) Level 3: Operators of traditional small MS4s that serve a population of at least 40,000 but less than 100,000 within a UA;

(d) Level 4: Operators of traditional small MS4s that serve a population of 100,000 or more within a UA. For the purpose of this section “serve a population” means the residential population within the regulated portion of the small MS4 based on the 2010 Census, except for non-traditional small MS4s listed in (b) above.”

Requirements in the above noted permit vary for each Level of MS4 and take into account the differences in the sizes of MS4s and their ability to comply with permit requirements. INAFSM believes this would be a great example for IDEM to follow.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 1.2(b)

Section 1.2(b) contains a list of 14 items that, when commingled with stormwater, would be considered authorized discharges. However, the accompanying General Permit Fact Sheet issued by IDEM for this permit contains a list of 16 items (Section D, Eligibility, of the Fact Sheet on pages 3 and 4).

INAFSM COMMENT: Update the MS4 General Permit as follows:

1. Add “discharges from potable water sources” to the list in Section 1.2(b).
2. Add “rising ground waters” to the list in Section 1.2(b).
3. Update Item 1.2(b)(6) from “uncontaminated ground water” to “uncontaminated pumped ground water”.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 1.3 (a)

In determining discharges that are not authorized by this permit, Section 1.3 (a) states “when IDEM determines the discharge will lower the water quality as defined under 327 IAC 2-1.3-2(50)”. However, the Fact Sheet includes the term “significantly lower” as in “when the commissioner determines that a discharge will significantly lower quality as defined under 327 IAC 2-1.3-2(50)...” Furthermore, 327 IAC 2-1.3-2(50) refers specifically to “Significant lowering of water quality”.

INAFSM COMMENT: Update the MS4 General Permit to be consistent with 327 IAC 2-1.3-2(50) as follows:

1. Add “**discharges from potable water sources**” to the list in Section 1.2(b).
2. Add “**rising ground waters**” to the list in Section 1.2(b).
3. Update text of Item 1.3(a) from “when IDEM determines the discharge will lower the water quality as defined under 327 IAC 2-1.3-2(50)” to “when IDEM determines the discharge will **significantly** lower the water quality as defined under 327 IAC 2-1.3-2(50)”.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 2.1 (a)(7)

This section references “subdivisions (A) through (H) above”. However, the subdivisions (A) through (H) are not identified in the text ‘above’ or prior to the reference.

INAFSM COMMENT: Clarify what is meant by the reference of “subdivisions (A) through (H) above.”

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 4.1 (b)(4)

This section references General Performance requirements for all MS4 Counties; including Counties must “Manage all facilities in accordance with the Pollution Prevention and Good Housekeeping minimum control measure (MCM) that are owned and/or operated by the MS4 entity in accordance with this permit, regardless of whether the facility is within the mapped UA.”

INAFSM COMMENT: Would this include any regulated drains or roads not in a County’s MS4 area? INAFSM suggests adding a definition for “**Facilities**”.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 4.1 (c)

“Maintain a list of individuals, including contact information, that are responsible for administering each minimum control measure and update as changes occur. A MS4 entity may elect to administer the program through legal agreements and/or memorandums of understanding. These entities include but are not limited to soil and water conservation districts (SWCDs), co-permitted MS4 entities, and other departments within the organizational structure of the MS4 entity.”

INAFSM COMMENT: If an MS4 hires a SWCD to administer any part of the MS4 program, would IDEM also be able to employ the SWCD for review and inspection of MS4 owned projects? This seems to be a conflict of interest. The understanding of the Stakeholder Group was that all references to SWCDs were to be removed from the permit.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 4.2 (a)(2)

This section references “all structural stormwater management measures as identified in Section 4.4 (b)(5), ...”. However, the referenced Section of 4.4 (b)(5) pertains to IDDE SOPs for investigating illicit discharges. Would a more appropriate reference be Section 4.4 (d) through (f)?

INAFSM COMMENT: Clarify if the reference to Section 4.4 (b)(5) is the intended reference.

PROPOSED MS4 GP REQUIREMENT

MS4 GP Sect. 4.3(c)

Must have a web page that at least includes:

- (1) A location for the public to report stormwater quality issues such as a polluter.*
- (2) Information and resources to educate visitors to the site.*
- (3) MS4 stormwater ordinances.*
- (4) Stormwater fees and rates (if applicable).*
- (5) MS4 program information, including the SWQMP, annual reports, and other information that informs citizens of activities of the MS4.*

INAFSM COMMENT:

Several MS4s already have websites that include their report-a-polluter program as well as information and resources to educate visitors to the site. Each entity's stormwater ordinance is either on their community's website or already made publicly available.

The INAFSM suggests that firstly this requirement be made more flexible so that MS4s will be able to comply. The INAFSM feels that requiring stormwater fees, rates, and MS4 program compliance information is not necessary and will be very difficult for MS4s to maintain. In addition, some of the partners have items such as their ordinances on their individual, local government websites. Would this be acceptable to IDEM? If so, then the requirement should state this.

Many communities have municipal code databases that codify the approved ordinances into the municipal code nomenclature that may have a different numbering system than the ordinance. Consider modifying the current draft language from “MS4 stormwater ordinances” to “MS4 stormwater ordinances **or links to municipal code database with appropriate section references.**”

Some MS4 stormwater staff have very little control over their entity's website content and find it to be a very difficult and slow process to add or update website content. This requirement must be more flexible to allow for each MS4s local policies and variations.

PROPOSED MS4 GP REQUIREMENT

Illicit Discharge Public Reporting – MS4 GP Sect. 4.4(b)(6)(B)

(Utilize a designated hotline, website, and/or a twenty-four (24) hour emergency phone number with voicemail and/or email account, which is checked daily at least once each business day.

INAFSM COMMENT:

The INAFSM is concerned that the requirement above is much more expansive than the current Rule 13 requirement. Potentially this requirement would mandate the need for additional staffing and be expensive to implement. The INAFSM suggests that this requirement be clarified to indicate whether using something like a website and email account only is sufficient to comply with this provision. Also, several MS4s require that complaints be filed in person so that the MS4 has an opportunity to educate on and mitigate issues promptly. This should be added as an acceptable manner in which to implement this requirement.

PROPOSED MS4 GP REQUIREMENT**MS4 GP Section 4.4(d)(2)**

"MS4 entities renewing permit coverage must review and update maps as changes occur to MS4 conveyances and as new collection and discharge systems are added. The MS4 entity must modify existing maps to identify all receiving waters in the MS4."

INAFSM COMMENT:

Should there be a time frame placed on this section? Some existing MS4s that obtain or annex in new area will need time to map the new area.

PROPOSED MS4 GP REQUIREMENT**IDDE Certification – MS4 GP Sect. 4.4(g)**

*"Develop or review and update a training program for employees. The program must include:
(1) Implementation no later than one hundred eighty (180) days after the initial IDDE certification has been submitted to IDEM."*

INAFSM COMMENT:

The proposed requirement above as written is intended for only newly designated MS4s but it does not give a timeline for implementation for existing MS4s. This requirement needs to be clarified since existing MS4s should not need to send in certification forms for their existing programs. INAFSM suggests rewording to add *"...or 180 days after the submittal of the updated SWQMP for existing MS4s."*

PROPOSED MS4 GP REQUIREMENT**MS4 GP Section 4.4(h)(2)**

Dry weather screening: "When the MS4 entity is made aware of non-stormwater discharges, the MS4 must continue screening of the discharge until that discharge is eliminated or is determined to be uncontaminated."

INAFSM COMMENT:

Please clarify this requirement by adding "from MS4 owned and operated outfalls";
*"When the MS4 entity is made aware of non-stormwater discharges **from its MS4 owned and operated outfalls**", the MS4 must continue screening of the discharge until that discharge is eliminated or is determined to be uncontaminated."*

PROPOSED MS4 GP REQUIREMENT

Construction & Post-construction – MS4 GP Sections 4.5(d)(3) & 4.6(f) - Inspections

- *Inspect a minimum of one hundred (100) percent of the actively disturbed construction sites quarterly.*
- *Inspect one hundred (100) percent of all post-construction measures owned and/or operated by the MS4 by the end of the permit cycle.*
- *Inspect post-construction measures that were installed since the MS4 ordinance (please note misspelling of ordinance) was originally adopted. MS4-owned measures are to be inspected annually or less frequently if defined in an operation and maintenance manual. All privately owned measures are to be inspected at a frequency to ensure that 100 percent of the measures are inspected within the 5-year permit cycle.*

INAFSM COMMENT:

Several MS4s throughout Indiana have not been conducting routine post-construction BMP inspections since Rule 13 does not require them. These MS4s will have to develop a new program for this requirement. The INAFSM suggests this requirement should begin with allowing MS4s time to develop an inventory of post-construction measures. For example, the first year of the permit and then they could inspect 25% each year for the last 4 years of the permit.

The 3rd bullet above is greatly expanded from a previous version of the permit which stated:

“Inspect existing post-construction measures as of the permit start date and operated by private entities at 20 percent annually with 100 percent completed by the end of during the permit cycle.”

By increasing this inspection requirement to begin when MS4s originally adopted their ordinance this places a huge burden on MS4s to go back in most cases to 2004. Requiring MS4s to locate and begin inspecting all privately-owned post-construction BMPs installed in the last 17 years will be very costly and time-consuming. Since Rule 13 only requires that records be retained for only 5 years, MS4s may not have any records of where these BMPs are located.

It was the understanding of IDEM’s MS4 Stakeholder group that reviewed the various drafts of the permit that this requirement would start with the effective date of the new MS4 permit. In addition, this requirement will penalize those MS4s who adopted their ordinances when they should have in 2004. What will the requirement be for MS4s who did not adopt their post-construction ordinance as required by the timeline contained in Rule 13?

Some MS4s may not have the ability to legally access private property to inspect privately owned post-construction BMPs so this ability would also need to be added to their existing programs. Similarly, if a post-construction inspection shows that a BMP or several BMPs need to be cleaned, the MS4 may not have the legal authority to require the private property owner to perform this maintenance.

PROPOSED MS4 GP REQUIREMENT

Construction & Post-construction – MS4 GP Sections 4.6(e & f) - Inspections

- (e) Develop and administer an inspection program to ensure that all post-construction measures are maintained and operational for those owned and/or operated by the MS4 entity and as appropriate for those measures operated by private entities.*

(f) Establish written procedures and internal processes to inspect post-construction measures to ensure the measures are maintained and operational for those owned and/or operated by the MS4 entity and as appropriate for those measures required to be installed at the direction of the MS4 entity and operated by private entities.

INAFSM COMMENT:

4.6(e & f) contain almost identical language and should be combined.

PROPOSED MS4 GP REQUIREMENT

Pollution Prevention & Good Housekeeping – MS4 GP Section 4.7(d – f) – SWPPPs & Inspections

- *Develop or update and revise a stormwater pollution prevention plan (SWPPP) for each MS4 owned and/or operated facility.*
- *Quarterly facility self-inspections will be required of each facility*

INAFSM COMMENT:

The requirement to have a SWPPP for each or every MS4 owned and/or operated facility is much too expansive. Why does a municipal office/administration building need a SWPPP? Purdue owns and operates hundreds of buildings and facilities. Does each and every residence hall need a SWPPP? IDEM must clarify this requirement to limit the scope of the types of facilities that have issues which justify the need for having a SWPPP.

For the new quarterly inspection of each facility, the INAFSM feels this mandated frequency is too much to apply to all facilities that would have SWPPPs. Since every facility is different with varying activities and items such as the amount and type of chemical storage, the frequency of inspections for each facility should be determined by the MS4.

The INAFSM recommends that these inspections should be conducted quarterly for facilities such as street and highway facilities or hot spots. In addition, IDEM should list facilities that are considered to be defined as hot spots. Park facilities such as maintenance areas should be treated differently than say park recreational facilities.

PROPOSED MS4 GP REQUIREMENT

Pollution Prevention & Good Housekeeping – MS4 GP Section 4.7(g)(3) – MS4 conveyance maintenance plan

A visual inspection of all catch basins, outfalls, and conveyance systems. The inspection to assess the system:

- (A) Must be prioritized in year one and visual inspections for the entire system completed by the end of year two (2).*
- (B) Must be documented as to the functionality of the system.*

INAFSM COMMENT:

The INAFSM supports flexible language for this requirement because it gives entities the ability to implement an assessment program that is tailored to the particulars of an entities' system as well as tailored to an entity's unique areas of concern. However, requiring that the visual inspection for the entire MS4

conveyance system be completed within 2 years is not realistic. The INAFSM suggests that this be completed once per 5-year permit term.

PROPOSED MS4 GP REQUIREMENT

Pollution Prevention & Good Housekeeping Procedures - MS4 GP Section 4.7(g)(5) – MS4 Streets & Parking Areas

- *Prioritization of streets, road segments, and parking areas that are to receive the highest priority for maintenance. based on the following:*
 - *A map of the streets, roads, and public parking lots.*
 - *Identification of the method(s) that will be used, including but not limited to street sweeping or.*
 - *A schedule (e.g. routine, seasonal, special event) to implement street sweeping or other equivalent stormwater measures for streets, roads segments, and public parking lots that are effective in addressing the discharge of pollutants.*
 - *Identification of community special events (e.g. fireworks, parades) that generate trash and a schedule to perform maintenance for these events.*
 - *Procedures to properly dispose of waste, including dewatering methods if applicable.*

INAFSM COMMENT:

The requirement for community special events identification and maintenance is too vague. This could apply to ALL events conducted in an MS4 area whether the MS4 has control over them or not.

PROPOSED MS4 GP REQUIREMENT

Water Quality – Based Effluent Limitations – MS4 GP Section 5.0

"It is expected that compliance with the conditions in this permit will result in stormwater discharges that will meet applicable water quality standards (327 IAC 2-1). If at any time, conditions associated with a discharge from a MS4 are observed that indicate a discharge that does not meet the applicable water quality standards, corrective action is required."

INAFSM COMMENT:

The above statement contradicts with Section 4.0 which states "All permittees must comply with this permit to demonstrate that all discharges authorized under this permit are managed to meet numeric and narrative water quality standards to the Maximum Extent Practicable (MEP)..."

The INAFSM partners suggest adding the same underlined text to Section 5.0 so that it reads:

"It is expected that compliance with the conditions in this permit will result in stormwater discharges that will meet applicable water quality standards (327 IAC 2-1) to the MEP. If at any time, conditions associated with a discharge from a MS4 are observed that indicate a discharge that does not meet the applicable water quality standards to the MEP, corrective action is required."

PROPOSED MS4 GP REQUIREMENT

Discharge Limitations for Impaired Waters and TMDL implementation – MS4 GP Section 5.1(c)(3)(C)

"Benchmarks and/or milestones should be established to facilitate assessment of progress towards meeting the water quality standards."

INAFSM COMMENT:

To be consistent with other areas of the permit the text above should be revised to state.... *"meeting the water quality standards to the MEP."*

PROPOSED MS4 GP REQUIREMENT

MS4 GP Section 6.2(a)(5)

This section addresses the NOI Content including "the population of the MS4 entity or when a co-permit, the population of each."

INAFSM COMMENT: How is a county MS4 to calculate the population? Based on the UA or the population of the entire county? If based on the UA, this is a very time-consuming exercise which is based on estimating so the end result may not be very accurate. Is MS4 population data something that IDEM really needs and uses? INAFSM suggests deleting this requirement.

In closing, we would like to thank you for your time and consideration of our comments and look forward to hearing back from you about our comments. Please feel free to contact me if you would like to discuss anything contained in this letter.

Sincerely,



Zachariah E. Beasley PS,MS,CFM
INAFSM Board of Directors Chair