

NEBRASKA ADMINISTRATIVE CODE

Title 119 - Nebraska Department of Environmental Quality

Chapter 10 - NPDES REGULATIONS APPLICABLE TO STORM WATER DISCHARGES

001 Definitions see Chapter 1.

002 Permit Requirement

002.01 No person shall discharge storm water containing any pollutant except as authorized by a NPDES permit or this Chapter.

002.02 The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

002.02A The location of the discharge with respect to waters of the State as defined in Chapter 1.

002.02B The size of the discharge;

002.02C The quantity and nature of the pollutants discharged to waters of the State; and

002.02D Other relevant factors.

002.03 The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw

material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

002.04 Large and medium municipal separate storm sewer systems.

002.04A Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

002.04B The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

002.04C The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

002.04C1 Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

002.04C2 Submit a distinct permit application which only covers discharges from the municipal

separate storm sewers for which the operator is responsible; or

002.04C3 A regional authority may be responsible for submitting a permit application under the following guidelines:

002.04C3(a) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence;

002.04C3(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

002.04C3(c) Each of the operators of Large and Medium municipal separate storm sewers within the systems as defined in Chapter 1 that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph 004 of this chapter.

002.04D One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

002.04E Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different

discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

002.04F Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

002.05 Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the other requirements of this chapter, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

002.06 Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

002.07 Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his or her discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the state; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

002.07A All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the state, with each discharger to the non-municipal conveyance a co-permittee to that permit.

002.07B Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

002.07C Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

002.08 Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of Chapter 5 and are not subject to the provisions of this chapter.

002.09 Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under any other law.

002.10 A small MS4 is subject to storm water regulation as follows:

002.10A A small MS4 is subject to the NPDES storm water discharge permit requirement if it is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, or designated by the Director under a comprehensive watershed plan, on the basis that the MS4 contributes

substantially to the pollutant loadings of a physically interconnected municipal separate storm water sewer subject to NPDES regulation, or on the basis of a petition under section 006 of this chapter.

002.10B If upon petition under section 006 of this chapter, an MS4 is determined to be in need of a permit, the provisions of this chapter apply to the MS4.

002.10C The Director may waive the requirements otherwise applicable to a small MS4 if the MS4 meets the criteria of paragraph 002.10D or 002.10E of this section. An MS4 in receipt of a waiver may subsequently be required to seek coverage under an NPDES permit if circumstances change.

002.10D The Director may waive permit coverage if an MS4 serves a population of less than 1,000 within the urbanized area and the MS4 does not contribute substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES program. Storm water controls may be waived, even in the event that a discharge contributes to impairment of a water body, with respect to pollutants for which the EPA has approved or established a "total maximum daily load" (TMDL) that addresses the pollutant of concern.

002.10E The Director may waive permit coverage if a small MS4 serves a population of less than 10,000 and meets the following criteria:

002.10E1 The Director has evaluated all waters of the State, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;

002.10E2 For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

002.10E3 For the purposes of a waiver determination, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

002.10E4 The permitting authority has determined that future discharges from the MS4 do not have the potential to result in exceedences of water quality standards, including impairments of designated uses, or other significant water quality impacts, including habitat and biological impacts.

002.11 A small MS4 subject to the storm water NPDES discharge permit requirement of this chapter must seek authorization to discharge as follows:

02.11A If the NDEQ has issued a general permit applicable to the MS4's discharge and the MS4 seeks coverage under the general permit, the MS4 shall submit a Notice of Intent (NOI), that includes the information on its best management practices and measurable goals required by 002.12H. An MS4 may file its own NOI, or it may jointly submit an NOI with

other municipalities and government entities. If the MS4 intends to share responsibilities for meeting the minimum measures with other municipalities and government entities, it must submit an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4.

002.11B A small MS4 may also apply for an individual permit.

002.11B1 If a small MS4 seeks authorization to discharge under an individual permit and desires to implement a program that is different from the program under 002.12 of this chapter, the MS4 must submit an application to NDEQ that includes the information required under paragraph 005 of chapter 5 and 002.12H of this chapter and an estimate of square mileage served by the MS4, and any other additional information that the NDEQ requests.

002.11B2 If the MS4 seeks authorization to discharge under an individual permit and wishes to implement a program that is different from the program under 002.12 of this chapter the MS4 must comply with the permit application requirements of section 004 of this chapter. Both parts of the application required by 004 must be submitted. The information regarding the MS4's legal authority is not required unless the MS4 intends that the NDEQ take the information into account when developing the permit conditions.

02.11B3 The NDEQ may in its discretion allow an MS4 and another regulated entity to apply jointly for an individual permit.

002.11C A small MS4 that is in the same urbanized area as a medium or large MS4 with an NPDES storm water discharge permit and that other MS4 is willing to have the small MS4 participate in its storm water program, The small MS4 and the other MS4 may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee. The limited co-permittee will be responsible for compliance with the permit's conditions applicable to its jurisdiction. A small MS4 that chooses this option must make a permit application according to section 004 of this chapter rather than section 002.11. In such case the provisions of 004.01C, 004.01D, and 004.02C are not applicable and the requirement for identification of a management program may be satisfied by referring to the other MS4's storm water management program.

002.11D If a small MS4 that is not otherwise subject to the requirement for an NPDES storm water permit discharge permit becomes designated by the Director or petition under section 006 of this chapter as an MS4 that requires a permit, then the MS4 must apply for coverage under an NPDES permit within 180 days of notice, unless NDEQ grants a later date.

002.11E NDEQ may establish a phasing schedule for small MS4s serving jurisdictions with a population under 10,000, in which case an MS4 shall meet the application deadlines of the NDEQ phasing schedule.

002.12 Content of small MS4 permits. The content of small MS4 permits shall be as follows:

002.12A A small MS4 permit will require at a minimum that the permittee develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent possible (MEP), to protect water quality, and

to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program must include the minimum control measures described in paragraphs 002.12B through 002.12F of this chapter, unless the MS4 applies for a permit under section 004 of this chapter. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the to the maximum extant practicable) and to protect water quality. Implementation of best management practices consistent with this section and the provisions of the MS4's permit constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The Director will specify a time period of up to 5 years from the date of permit issuance for the MS4 to develop and implement its program. The content of the small MS4 permit shall be as follows:

002.12B Minimum control measures related to public education and outreach on storm water impacts will be required by the permit. The MS4 must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

002.12C The permit will require that the MS4 develop, implement a program to detect, implement and enforce a program to detect and eliminate illicit discharges as defined in Chapter 1 into the small MS4.

002.12C1 The MS4 must develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and

location of all waters of the state that receive discharges from these outfalls;

002.12C2 To the extent allowable under state or local law, the MS4 must effectively prohibit, through ordinance or other regulatory mechanism, non-storm water sewer system and implement appropriate enforcement procedures and actions;

002.12C3 The MS4 must develop and implement a plan to detect and address non-storm water discharges, including illegal dumping to the MS4 system; and

002.12C4 The MS4 must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

002.12C5 The MS4's program need not address the following categories of non-storm water discharges or flows and illicit discharges if the MS4 correctly identifies them as not significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground water, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water, discharges or flows from fire fighting activities.

002.12D The permit will require that the MS4 develop, implement, and enforce a program to reduce pollutants in any storm water runoff to its small MS4 from construction activities that result in a land

disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the MS4 program if that activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Director waives requirements for storm water discharges associated with small construction activity in accordance with the definition in Chapter 1 the MS4 is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The program related to construction activities must include the development and implementation of, at a minimum:

002.12D1 An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;

002.12D2 Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

002.12D3 Procedures for site plan review which incorporate consideration of potential water quality impacts;

002.12D4 Procedures for site inspection and enforcement of control measures.

002.12E The MS4's permit will require that the MS4 address post-construction development in new development and redevelopment. The MS4 must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects less one acre that are part of a common plan of development or sale. The program must ensure that

controls are in place that would prevent or minimize water quality impacts and must include:

002.12E1 Development and implementation strategies which include a combination of structural and/or best management practices (BMPs) appropriate for the MS4's community;

002.12E2 Use of an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law; and

002.12E3 Provision for adequate long-term operation and maintenance of BMPs.

002.12F The MS4 permit will require pollution prevention and good housekeeping. The MS4 must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

002.12G If an existing qualifying local program required the MS4 to implement one or more of the minimum control measures of paragraphs 002.12B through 002.12F of this section, the NPDES permitting authority may include conditions in an MS4's NPDES permit that direct the MS4 to follow that qualifying program's requirements rather than the requirements of 002.12B through 002.12F. A qualifying local program is a local, or State municipal storm water management

program that imposes, at a minimum, the relevant requirements of 002.12B through 002.12F.

002.12H In the MS4's permit application (either a notice of intent for coverage under a general permit or an individual permit application), the MS4 must identify and submit to its NPDES permitting authority the following information:

002.12H1 The best management practices (BMPs) that the MS4 or another entity will implement for each of the storm water minimum control measures at paragraphs 002.12B through 002.12F of this section;

002.12H2 The measurable goals for each of the BMPs including, as appropriate, the months and years in which the MS4 will undertake required actions, including interim milestones and the frequency of the action; and

002.12H3 The person or persons responsible for implementing or coordinating the MS4's storm water management program.

002.12I If the MS4 obtains coverage under a general permit, it is not required to meet any measurable goal (s) identified in the MS4's notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs 002.12B through 002.12F of this section unless, prior to submitting the Notice of Intent (NOI) EPA or the State has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, the MS4 must comply with the minimum measures.

002.12J The MS4 must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit.

002.12K Evaluation and assessment of the small MS4 storm water program will be required in the following manner:

002.12K1 The MS4 must keep records required by the NPDES permit for at least 3 years. The MS4 must submit its records to the NPDES permitting authority only when specifically asked to do so. The MS4 must make its records, including a description of its storm water management program, available to the public at reasonable business hours.

002.12K2 Unless the MS4 is relying on another entity to satisfy its NPDES permit obligations under 002.12L of this chapter it must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the MS4 must submit reports in year two and four unless the NDEQ requires more frequent report. The reports must include:

002.12K2(a) The status of compliance with permit conditions, an assessment of the best management practices and progress towards achieving identified measurable goals for each of the minimum control measures;

002.12K2(b) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

002.12K2(c) A summary of the storm water activities that the MS4 plans to undertake during the next reporting cycle;

002.12K2(d) A change in any identified best management practices or measurable goals for any of the minimum control measures;

002.12K2(e) Notice that the MS4 is relying on another government entity to satisfy some of its permit obligations (if applicable).

002.12L Satisfaction of small MS4 requirements through shared responsibility with other entities. An MS4 may rely on another entity to satisfy its NPDES permit obligations to implement a minimum control measure if:

002.12L1 The other entity, in fact, implements the control measure;

002.12L2 The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

002.12L3 The other entity agrees to implement the control measure on behalf the MS4. In the reports the MS4 must submit under 002.12K2, it must also specify that it relies on another entity to satisfy some of its permit obligations. If the MS4 is relying on another governmental entity to satisfy all of its permit obligations, including its obligation to file periodic reports required by 002.12L3, the MS4 must note that fact in its Notice of Intent (NOI), but it is not required to file the periodic reports. The MS4 remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof).

002.12M Effect of shared responsibility on permit content. In the event that one or more the minimum control measure that would otherwise apply to an MS4 and that control measure(s) is expressly made the responsibility of some other entity in an NPDES permit issued to the MS4 or such other entity, then the small MS4 is not required to include the particular control measure(s) in its storm water management program. The MS4's permit is subject to modification if the surrogate entity fails to implement the control measure.

003 Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

003.01 Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Director is evaluating for designation and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of Chapter 5 as modified and supplemented by the provisions of this paragraph.

003.01A Except as provided in 003.02, 003.03, and 003.04, the operator of a storm water discharge associated with industrial activity subject to this chapter shall provide:

003.01A1 A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge

structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under Title 128 - Nebraska Hazardous Waste Regulation); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

003.01A2 An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a

description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

003.01A3 A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

003.01A4 Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

003.01A5 Quantitative data based on samples collected during storm events and collected in accordance with Chapters 4 and 5 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

003.01A5(a) Any pollutant limited in an effluent guideline to which the facility is subject;

003.01A5(b) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

003.01A5 (c) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

003.01A5(d) Any information on the discharge required concerning effluent characteristics under Chapters 4 and 5;

003.01A5(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

003.01A5(f) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

003.01A6 Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Chapter 10, 001.02 through 001.05

003.01A7 Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph 003.01E of this chapter instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph 003.01F of this chapter within two years after commencement of

discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Chapter 8, 001.04B, 001.04C, and 001.06.

003.02 An operator of an existing or new storm water discharge that is associated with industrial activity solely of clearing, grading and excavation that result in disturbance of less than 5 acres of total land area or is associated with small construction activity solely under paragraph 001.15 of this chapter, is exempt from the requirements of Chapter 6 on permit applications for existing manufacturing and paragraph 003.01A of this chapter. Such operator shall provide a narrative description of:

003.02A The location (including a map) and the nature of the construction activity;

003.02B The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

003.02C Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

003.02D Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

003.02E An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

003.02F The name of the receiving water.

003.03 The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph 003.01 of this chapter, unless the facility:

003.03A Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required.

003.03B Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required.

003.03C Contributes to a violation of a water quality standard.

003.04 The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

003.05 Applicants shall provide such other information the Director may reasonably require under Chapters 5 and 6 to determine whether to issue a permit and may require any

facility subject to paragraph 003.02 of this chapter to comply with paragraph 003.01A of this chapter.

004 Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director pursuant to this chapter, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated in this chapter shall include;

004.01 Part 1. Part 1 of the application shall consist of;

004.01A General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

004.01B Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in this chapter, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

004.01C Source identification.

004.01C1 A description of the historic use of ordinances, guidance or other controls which

limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

004.01C2 A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

004.01C2(a) The location of known municipal storm sewer system outfalls discharging to waters of the State;

004.01C2(b) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

004.01C2(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

004.01C2(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

004.01C2(e) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

004.01C2(f) The identification of publicly owned parks, recreational areas, and other open lands.

004.01D Discharge characterization.

004.01D1 Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

004.01D2 Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

004.01D3 A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

004.01D3(a) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

004.01D3(b) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the Clean Water Act that is not expected to meet water quality standards or water quality goals;

004.01D3(c) Listed in State Nonpoint Source Assessments required by section 319(a) of the Clean Water Act that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

004.01D3(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the Clean Water Act (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

004.01D3(e) Designated estuaries under the National Estuary Program under section 320 of the Clean Water Act;

004.01D3(f) Recognized by the applicant as highly valued or sensitive waters;

004.01D3(g) Defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

004.01D3(h) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

004.01D4 Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136 pertaining to analytical methods are hereby adopted and incorporated by reference, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either

major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

004.01D4(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

004.01D4(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

004.01D4(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

004.01D4(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

004.01D4(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

004.01D4(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

004.01D4(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs 004.01D4(a) through 004.01D4(f) of this chapter, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls

(medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

004.01D5 Characterization plan. Information and a proposed program to meet the requirements of paragraph 004.02C of this chapter. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph 004.02C1 of this chapter, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns of this chapter to the extent practicable.

004.01E Management programs.

004.01E1 A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

004.01E2 A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

004.01F Fiscal resources.

004.01F1 A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

004.02 Part 2. Part 2 of the application shall consist of:

004.02A Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

004.02A1 Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

004.02A2 Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

004.02A3 Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

004.02A4 Control through interagency agreements among co applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

004.02A5 Require compliance with conditions in ordinances, permits, contracts or orders; and

004.02A6 Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

004.02B Source identification. The location of any major outfall that discharges to waters of the United States that was not reported under paragraph 004.01C2 (a) of this chapter. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

004.02C Characterization data. When "quantitative data" for a pollutant are required under paragraph 004.02C1(c) of this chapter, the applicant must

collect a sample of effluent in accordance with paragraph 001.07 of Chapter 6 and analyze it for the pollutant in accordance with analytical methods approved by NDEQ. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

004.02C1 Quantitative data from representative outfalls designated by the Director (based on information received in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

004.02C1(a) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at 001.07 of Chapter 6 (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

004.02C1(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the

previous measurable (greater than 0.1 inch rainfall) storm event;

004.02C1(c) For samples collected and described under paragraphs 004.02C1(a) and 004.02C1(b) of this chapter, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122. Appendix D 40 CFR part 122 pertaining to these pollutants is hereby adopted and incorporated by reference. Also for the following pollutants:

Total suspended solids (TSS) Total dissolved solids (TDS) COD BOD5 Oil and grease Fecal coliform Fecal streptococcus pH Total Kjeldahl nitrogen Nitrate plus nitrite Dissolved phosphorus Total ammonia plus organic nitrogen Total phosphorus

004.02C1(d) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representiveness);

004.02C2 Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls

during a storm event of greater than 0.1 inch of rainfall for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

004.02C3 A proposed schedule to provide estimates for each major outfall identified in either paragraph 004.02B or 004.01C2(a) of this chapter of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph 004.02C1 of this chapter; and

004.02C4 A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

004.02D Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-

applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

004.02D1 A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

004.02D1(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

004.02D1(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing

construction site runoff are addressed in paragraph 004.02D4 of this chapter;

004.02D1(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

004.02D1(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

004.02D1(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph ~~004.02D3~~ of this chapter; and

004.02D1(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational

activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

004.02D2 A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

004.02D2(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only

where such discharges or flows are identified as significant sources of pollutants to waters of the State;

004.02D2(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

004.02D2(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

004.02D2(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

004.02D2(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

004.02D2(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

004.02D2(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

004.02D3 A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

004.02D3(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

004.02D3(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph 004.02D3 of this chapter, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any

pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR part 122.21(g)(7) (vi) and (vii) which pertains to these pollutants and is hereby adopted and incorporated by reference.

004.02D4 A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

004.02D4(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

004.02D4(b) A description of requirements for nonstructural and structural best management practices;

004.02D4(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

004.02D4(d) A description of appropriate educational and training measures for construction site operators.

004.02E Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

004.02F Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs 004.02C and 004.02D of this chapter. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

004.02G Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

004.03 Where requirements under paragraph 004.01D5, 004.02B, 004.02C2 and 004.02D of this chapter are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph 002.02 of this chapter from such requirements.

005 Permit application; Permit issuance or denial, when due.

005.01 Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May

18, 1992 shall submit a new application within 180 days before the expiration of such permits.

005.02 For any discharge from a regulated small MS4, the permit application made under 002.11 of this chapter must be submitted to the Director within 180 days of notice, unless the NPDES permitting authority grants a later date.

005.03 Discharges associated with small construction activity at oil and gas sites require permit authorization by March 10, 2005.

005.04 The Director shall issue or deny permits for large and medium municipal separate storm sewer systems no later than one year after receipt of a complete permit application.

006 Petitions.

006.01 Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

006.02 Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

006.03 The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined storm water and sanitary sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may

be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

006.04 Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph 001.04D, 001.07D, or 001.16 of this chapter.

006.05 The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

007 Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs 007.01 through 007.04 of this chapter. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

007.01 Qualification. To qualify for this exclusion, the operator of the discharge must:

007.01A Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;

007.01B Complete and sign a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph 007.02 of this chapter;

007.01C Submit the signed certification to the NPDES permitting authority once every five years;

007.01D Allow the Director to inspect the facility to determine compliance with the "no exposure" conditions;

007.01E Allow the Director to make any "no exposure" inspection reports available to the public upon request; and

007.01F For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operators.

007.02 Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

007.02A Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

007.02B Adequately maintained vehicles used in material handling; and

007.02C Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

007.03 Limitations.

007.03A The following storm water discharges from construction activities are not eligible for this conditional exclusion;

007.03A1 Small construction activities including clearing, grading and excavating that result in disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

007.03B This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

007.03C If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances

should apply for and obtain permit authorization prior to the change of circumstances.

007.03D Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

007.04 Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

007.04A The legal name, address and phone number of the discharger;

007.04B The facility name and address, the county name and the latitude and longitude where the facility is located;

007.04C The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

007.04C1 Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

007.04C2 Materials or residuals on the ground or in storm water inlets from spills/leaks;

007.04C3 Materials or products from past industrial activity;

007.04C4 Material handling equipment (except adequately maintained vehicles);

007.04C5 Materials or products during loading/unloading or transporting activities;

007.04C6 Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

007.04C7 Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

007.04C8 Materials or products handled/stored on roads or railways owned or maintained by the discharger;

007.04C9 Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

007.04C10 Application or disposal of process wastewater (unless otherwise permitted); and

007.04C11 Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

007.04D All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of Chapter 13 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an

exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph 007.02 of this chapter.) I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Enabling Legislation: Neb. Rev. Stat. §81-1505

Legal Citation: Title 119, Chapter 10, Nebraska Department of Environmental Quality