

M E M O R A N D U M

DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER DIVISION

SUBJECT: Guidance Memo No. 96-001
Storm Water Permitting

TO: Regional Directors

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COPIES: Regional Permit Managers, Martin Ferguson

We have been receiving various questions on storm water and how we should be handling the permitting of storm water dischargers. Thus, the purpose of this document is to provide you the status of our current efforts on storm water and guidance on how we recommend you consider permitting storm water dischargers.

To begin with we should define storm water to ensure we are all discussing the same issue. The federal NPDES Regulations and our proposed VPDES Regulation includes the following definitions:

"Storm water" means storm water runoff, snow melt runoff, and surface water runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the"

Our interpretation of the definitions, the other provisions of the federal NPDES Regulations and our proposed VPDES Regulation is that we would only regulate (i.e. permit) storm water discharges associated with industrial activity. Thus, in this document when we discuss VPDES permits for storm water, we are actually discussing VPDES permits for storm water discharges associated with industrial activity.

There are two options currently available for permitting storm water dischargers: (1) individual VPDES permits, and (2) General VPDES Permits. It is the Regional Office decision as to which of these options are selected. If it is the first time that you are permitting a storm water discharge and if it is a site where there is no other permitted discharge then we recommend use of one of the General VPDES Permits that are in place, if they are applicable.

If there is already a permitted discharge at the site and if the storm water is to be a new permitted outfall, then you also have the option of either a General Permit or inclusion in the individual permit. From an administrative point of view, it is generally easier if you only have one permit per facility. However, if this requires modifying the individual permit to incorporate the storm water discharge then we recommend giving them the General Permit. When the individual permit is reissued, you could include the storm water outfall in the individual permit at that time. If you elect to include the storm water outfall in an existing permit then we recommend similar permit conditions for the storm water outfall as are included in the General Permit.

The question of what permit conditions/limitations are appropriate for storm water discharges is still being discussed at the state as well as at the national level. If the facility is subject to promulgated storm water effluent limitations guidelines, or new source performance standards, then these must be included in the issued permits. However, if the conditions to be included in the permit are based on best professional judgement (BPJ) for technology limitations or water quality based effluent limitations (WQBELs) then there are still many questions as to how to make these decisions.

For example, some of the questions that need evaluation before including WQBELs in permits include, what critical conditions are applicable for storm events? As you know, WQBELs currently included in permits are based on "dry weather" 7Q10 drought flows for free flowing streams and generally a default dilution for tidal waters. Drought flows or default dilutions may not be appropriate for determining a WQBEL "wet weather" flow event. Also, what design storm event flow should be used (e.g. storm water flow and effluent). Currently, for some situations, we use the 25 year 24 storm event. This may not be appropriate for a very site specific storm event. There is also the question of how to sample a storm event, what is a representative sample, and how valid is the data that was collected?

In recognition of all of the questions that exist for storm water permitting, it is our recommendation that you not try to include WQBELs in VPDES permits. Instead, we recommend that VPDES permits for storm water include: (1) the development and implementation of best management practices (BMPs) to manage the pollutants in storm water and to minimize the potential for the storm water to adversely affect the receiving waters, and (2) the collection of storm event discharge monitoring information. These are the types of conditions that we included in the General VPDES permits for storm water that we have issued and we believe these type conditions are appropriate for the individual permits for storm water.

Of course, as with all guidance documents that we issue there will always be the potential exception. For this guidance there are at least two exceptions that I want to mention. One exception applies where a VPDES permit has been issued for a storm water discharge that includes effluent limitations. In this case, please keep in mind that to modify these limitations the issue of backsliding must be considered.

Another exception to this guidance may exist where the Regional Office has reliable data that was obtained using sound scientific defensible procedures that you believe indicates the need for an effluent limitation. If the Region believes a permit limitation is justified, and can be defended then you should proceed accordingly. In site specific situations we recommend the Region follow the existing procedures to establish permit limits. As always, this guidance does not preclude permit writers from developing or accepting alternative procedures other than those contained in previous documents. This would entail evaluating the site and determining what impact the discharge (the predicted/anticipated mixing scenario) may have on the receiving surface water.

If you have any suggestions or comments on how we can address the questions on storm water, or if you have any questions on the contents on this document, please feel free to contact me.

D I S C L A I M E R

This document provides technical and procedural guidance to the permit staff for permitting VPDES Storm Water discharges. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.