Ohio Stormwater Association Outreach for MS4s Considering Commenting on Ohio EPA's Draft Small MS4 Permit (OHQ000004)

Draft Permit Comments Due by September 8, 2020
Ohio EPA Public Hearing on Draft MS4 Permit: September 1, 2020 3:00 PM
Ohio EPA Website: https://epa.ohio.gov/dsw/storm/index

The Ohio Stormwater Association (OSWA) has coordinated with Ohio EPA during early stakeholder outreach and permit development activities over the course of the past year. On July 15, 2020, Ohio EPA submitted a public notice that the draft Small MS4 permit was available for comment until September 8, 2020. The current Small MS4 permit expired on September 10, 2019, but permittees are still held to permit requirements until a new permit is issued. A new Small MS4 permit is typically issued once every five years. The Small MS4 permit can drive the bulk of many municipal stormwater programs, setting required activities and performance standards.

OSWA has decided not to submit comments to Ohio EPA pertaining to the draft Small MS4 permit. However, OSWA has identified the following key changes in the draft permit that we believe have the highest potential to affect our members and the communities that they work with. OSWA is providing the following comments to inform members of the most significant proposed permit changes as well as to provide possible comment approaches if individual MS4s would like to provide comments to Ohio EPA. We highly recommend that each MS4 review the draft permit and these discussion points to prepare MS4-specific comments to Ohio EPA during this limited comment period.

Part III.A.2, Part III.B.4.c.i, Part III.B.5.f.i:
The draft permit changes the deadline for updated Storm Water Management Program (SWMP) documents and revised MS4 ordinances associated with construction activities and post-construction BMPs from two years to 180 days from the effective date of the permit. Municipal codes and policies should be reflected in the updated or new SWMPs. 180 days may not be enough time for MS4s to update municipal code and SWMP documents considering potential municipal review processes. OSWA recommends that MS4s comment to Ohio EPA if 180 days is an insufficient time period to make all anticipated updates. OSWA recommends that Ohio EPA allow flexibility where-by a small MS4 can provide documentation if they are unable to meet the 180-day deadline and allow them to provide a schedule with steps included and anticipated dates.

Part III.B.3.b:
Comprehensive storm sewer mapping data shall include post-construction BMPs identified by type. The previous small MS4 permit required BMPs to be mapped, but the new permit adds the requirement to identify the type. OSWA agrees with Ohio EPA's intent to map the BMP type; however, MS4s should be aware of this potential update to their mapping requirements, especially if BMP type is not already known for existing post-construction BMPs within the MS4.

Part III.B.j.i:
The draft permit includes a new requirement to perform dry-weather screening of 100% of MS4 outfalls or 1,000 total outfalls over the 5-year permit term. The previous permit required that dry-weather screening was completed but did not set a frequency for repeat inspections as a performance standard. OSWA agrees with Ohio EPA's intent to perform regular dry-weather screening at outfalls; however, MS4s should be aware of the potential increased costs associated with regular outfall inspections.

Part III.B.3.j.v:
The draft permit requires MS4s to ensure (through ordinance or regulatory mechanism) that salt piles at commercial, institutional and non-NPDES permitted industrial facilities shall be covered, stored on impervious surfaces, and implement exposure reduction practices. This requirement was not included in Ohio EPA's early stakeholder outreach. It is likely that MS4s will not have the authority to regulate the safety practices (salt storage and application) of private entities. No minimum standard is provided for the size of salt storage that would be covered under potential local ordinances. Also, discharges from salt has not been identified as a pollutant of concern by any TMDL report covering urbanized areas within Ohio. OSWA believes that MS4s can use their IDDE programs (instead of regulations) to identify illicit discharges from private salt piles. OSWA recommends that Ohio EPA implement improvements in salt storage practices of non-permitted entities by educational outreach rather than mandating local regulation.

Part III.B.3.j.vii:
The draft permit requires MS4s with certain TMDL pollutants of concern (nutrients, E. coli, Bacteria, and Dissolved Oxygen) to include water quality testing of all observed dry-weather flows through their IDDE programs, unless the source is known. Existing IDDE programs may rely on field observations such as visual, odor, and/or presence/absence of floatables or benthic growth to determine if a dry-weather flow may be something other than groundwater and require follow-up testing. Ohio EPA does not define what they mean by "water quality testing." Some MS4s test dry-weather flows for E. coli in a laboratory, but only for samples that meet an observation trigger in the field to look for the presence of possible sanitary flows. Depending on the type of testing, conducting testing of all clean-looking dry-weather flows could add significant costs to an MS4's IDDE program, especially MS4s with high groundwater levels. OSWA recommends that Ohio EPA allow MS4s the flexibility to defer water quality testing for dry-weather flows that meet field observational criteria to indicate clean groundwater flows.

Part III.B.5.f.v:
The draft permit requires MS4s with certain TMDL pollutants of concern (TSS and Nutrients) to include **one** of the following performance standards:

- Retrofit an existing peak-discharging storm water practice
- Perform a stream restoration project
- Update local stormwater post-construction control requirements to require Table 4b practices (bioretention or infiltration) or green infrastructure instead of detention basins

OSWA agrees with Ohio EPA's intent to improve stormwater quality and decrease runoff volumes from developed areas; however, MS4s should be aware of the increased program costs associated with this proposed new permit requirement.

Part III.B.6.e.iv(First Paragraph):
The draft permit requires that MS4s stabilize ditch maintenance performed within 50 feet of a surface water within 2 days of reaching final grade. OSWA agrees with Ohio EPA's intent to stabilize soils and ditch spoil material after ditching activities within two days. Failure to stabilize bare ditches after a ditching operation can lead to significant erosion and sediment runoff. However, OSWA would like to make sure that MS4s are aware of this requirement since it could alter existing ditching practices.

Part III.B.6.e.iv (Second Paragraph):
The draft permit states: "For areas of soil disturbance caused by the small MS4, soil stabilization shall be applied within 7 days of reaching final grade or within the first 7 days if a disturbed area will remain inactive for over 14 days." OSWA agrees with Ohio EPA's intent to decrease eroding soils, but no minimum area is applied to this standard. Therefore, a small MS4 would be required to apply soil stabilization to every disturbance, no matter how small and with no consideration of whether runoff from small disturbed area would reach the small MS4's conveyance system or a stream. This proposed regulation would seem to require quick remediation of small MS4 activities such as tire ruts and mowers accidentally scalping grass on uneven terrain. OSWA recommends that Ohio EPA provide a minimum area to eliminate the need for applying soil stabilization for MS4 activities that may inadvertently disturb small areas. Ohio EPA could make this requirement consistent with the Construction General Permit to require timely initiation of stabilization for areas disturbed by the small MS4 that are equal to or greater than one acre. Or Ohio EPA could provide a different minimum soil disturbance area.

OSWA agrees with Ohio EPA's intent to stabilize soils associated with ditching activities, even for areas with small total disturbance, due to the high potential for erosion. OSWA recommends that Ohio EPA change the language to focus on applying stabilization to soils within the MS4's conveyance system instead of maintenance activities with less likelihood of sediment laden stormwater discharges to streams.

Part III.B.6.e.v:
The draft permit requires that MS4s "develop and implement a storm water outfall and drainage system maintenance program to ensure that stable outfalls and conveyances are provided." OSWA agrees with Ohio EPA's intent to stabilize outfalls and conveyances to reduce sediment in runoff; however, MS4s should be aware that this is a new permit requirement that could add costs to their program. Ohio EPA does not define or give examples of a stable outfall or ditch, and the open language of the requirement leaves MS4s susceptible to interpretation disagreements with Ohio EPA during future audits. Even if a clear definition of stability is agreed upon, an inventory assessment of all erodible parts of an MS4's conveyance system could add significant costs to a stormwater program.