



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
Caribbean Environmental Protection Division
City View Plaza II, #48 Carr 165 Ste 7000
Guaynabo, Puerto Rico 00968-8073

0 2 2 8 1 8

Re: Guidance and Temporary Requirements for Post Hurricanes Recovery Efforts Applicable to Permittees with Coverage under the NPDES Small Municipal Separate Storm Sewer Systems General Permit for Stormwater Discharges Associated with Urban Storm Water Runoffs in Puerto Rico

Dear MS4 Permittee:

The purpose of this Notice is to advise permittees with coverage under the 2016 National Pollutant Discharge Elimination System (NPDES) Small Municipal Separate Storm Sewer Systems General Permit for Stormwater Discharges Associated with Urban Storm Water Runoffs (Small MS4 GP), located in the Commonwealth of Puerto Rico, that as a result of Hurricanes Irma and María (Hurricanes), the United States Environmental Protection Agency, Region 2 (EPA), is hereby providing temporary relief to permittees who are unable to meet certain requirements and conditions included in the Small MS4 GP. These Hurricanes caused, among other things, unprecedented damage and impairment to infrastructure, telecommunications (i.e., internet capability), electrical power services, drinking water distribution, and reduction in labor force. The EPA is the agency with the authority to administer the federal NPDES program within the Commonwealth of Puerto Rico. EPA maintains enforcement authority for violations of the federal Clean Water Act (CWA) and NPDES program regulations.¹

¹ Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System as the national program for, among other things, issuing and enforcing discharge permits. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant...upon condition that such discharge will meet . . . such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA]."

TO WHOM THIS NOTICE APPLIES:

This Notice applies to permittees with coverage under the Small MS4 GP. The EPA expects that permittees will continue to follow and comply with the Small MS4 GP requirements (i.e. update the stormwater management program (SWMP), implement minimum control measures (MCM)) and conditions (i.e. performance of illegal detection and discharge elimination inspections, outfall reconnaissance inventory and mapping) to the maximum extent practicable, and will continue to keep those records (i.e. inspection reports, annual reports) that are necessary to satisfy the record-keeping requirements of the Small MS4 GP.

EPA has developed a status list of entities with/without coverage under the Small MS4 GP and requirement deadlines. For further information, see Attachment I.

Permittees, to the best of their ability, are still expected to submit records, as required by the Small MS4 GP, to EPA and the Environmental Quality Board (EQB) of Puerto Rico, when applicable, using whatever services (i.e. mail, hand-delivery, electronic mail) are available. Permittees should have taken, and should continue to take, all reasonable steps to minimize and prevent any discharge of pollutants which had or has a reasonable likelihood of adversely affecting human health or the environment.

For those regulated Small Municipal Separate Storm Sewer Systems (MS4s) that have not sought coverage under Small MS4 GP as of the date of issuance of this Notice, EPA advises that those MS4s shall make every effort to submit a complete and accurate Notice of Intent for coverage under the Small MS4 GP as soon as practicable, as well as follow and comply with the Small MS4 GP requirements (e.g. develop and implement a SWMP and MCM) to the maximum extent practicable, and document progress with annual reports, outreach efforts and inspection assessments.²

GENERAL REQUIREMENTS:

In each instance where the permittee determines that it is necessary to submit information or required documents (as set forth below) later than the date set forth in the Small MS4 GP, such submission must include a certification that the late submission is a direct consequence of the Hurricanes, as well as an

² Part 1.7.2. of the Small MS4 GP requires operators of MS4 to submit the NOI by September 30, 2016.

explanation of why the requirement could not be met. All delayed submissions made pursuant to this Notice shall be in English, signed by an authorized official, and include the following certification:

“I certify under penalty of law that this document and all attachments are submitted late or after its due date because post-Hurricane conditions made it impracticable or unfeasible to meet the Permit requirements, notwithstanding having made every good-faith effort to meet such Permit deadlines. These documents were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

For those Small MS4 GP requirements that were not met because of the Hurricanes, permittees must submit to EPA a detailed description of the Small MS4 GP requirement, as well as a detailed justification of why the requirement was not met.

This Notice should not be construed as a no-action assurance by EPA. EPA retains its enforcement authority or any other authority pursuant to the CWA, which EPA shall exercise solely at its discretion, as provided for the CWA.

NON-NUMERIC EFFLUENT LIMITATION:

EPA recognizes that due to the extreme wind and flooding conditions caused by the Hurricanes, MS4s could have suffered direct and/or indirect damage to MCM and/or Best Management Practices (BMPs), such as structural controls, which are required to be implemented, inspected and maintained, to satisfy the requirements of Part 2 of the Small MS4 GP. In those instances, the permittee must evaluate and document the damage and operation status, and repair and/or replace the BMP in accordance with good engineering practices and manufacturer’s specifications.

In the situation in which the permittee will not be able to repair and/or replace the BMP by June 30, 2018, the permittee must send a notice to EPA describing the BMP in need of repair and/or replacement and an implementation schedule. EPA advises that any such implementation schedule shall not exceed December 31, 2018. In those instances in which the implementation schedule may exceed December 31, 2018, the

permittee shall contact EPA for further guidance, using the EPA contact information provided below in this Notice.

STORM WATER MANAGEMENT PROGRAM:

Permittees are required to modify/update their existing SWMP, and enhance the document to incorporate the Small MS4 GP conditions in accordance with Part 2 of the Small MS4 GP. This modified/updated SWMP is to be submitted within one (1) year of the date of authorization of coverage, as required in Part 2.3.1 of the Small MS4 GP. EPA recognizes that permittees have filed their Notice of Intent (NOIs) and have been granted coverage on different dates under the Small MS4 GP. As such, each permittee has a unique date to submit to EPA its modified/updated SWMP. Those permittees that were required to submit to EPA a modified/updated SWMP after the Hurricanes, during the period from September 6, 2017 to April 30, 2018, are allowed to submit the modified/updated SWMP by June 30, 2018.

Those first-time permittees that were granted coverage under the Small MS4 GP between September 6, 2017 and December 31, 2017, are also allowed to submit the SWMP by June 30, 2018.

ANNUAL REPORT:

Once permittees are covered under the 2016 Small MS4 GP, permittees must submit to EPA annual reports, as required by Part 3.4 of the Small MS4 GP. Permittees are required to submit the annual report to EPA by July 30th of each year. The annual report must contain information generated from July 1st to June 30th of the past calendar year, except that the first annual report covers additional time.³ This requirement is directly dependent on the performance and documentation of the implementation of the SWMP in Part 2.4 of the Small MS4 GP.

Based on the Small MS4 GP requirements set forth above in this Notice, EPA is extending the requirement to submit the annual report. The annual report, including the information obtained from the program implementation assessment performed from July 1, 2017 to June 30, 2018, is due by September 30, 2018.

³ Part 3.4.1 indicates that the reporting period will be a one-year period commencing on the authorization date, and subsequent anniversaries thereof, except that the first annual report shall also cover the period from November 6, [of the last report] to the authorization date.

RECORD KEEPING:

Part B of Appendix B.10 of the Small MS4 GP establishes the record keeping requirements that permittees must follow. EPA recognizes that records could have been lost and/or damaged due to the Hurricanes. In those instances in which the permittee suffered record loss and/or damages, the permittee must perform an evaluation of the records required to be maintained and document any loss or damage in the SWMP. This evaluation and documentation must be completed by June 30, 2018.

BY-PASS AND UPSET:

The EPA advises the permittees that the NPDES regulations at 40 C.F.R. §§ 122.41(m) and (n), as well as the Small MS4 GP, provide for “bypass” and “upset” conditions. The permittee must be aware of these regulatory and permitting requirements, and submit, where applicable, notices conforming to the regulations and permit requirements. EPA will be accepting complete and accurate notices and notifications concerning bypass and upset through May 31, 2018.

OTHER PERMIT CONDITIONS AND REQUIREMENTS:

In the event that a permittee did not meet or will not meet a condition or requirement of the Small MS4 GP between September 6, 2017 and June 30, 2018, the permittee shall submit to EPA a notice in accordance with 40 C.F.R. § 122.41(1)(7) and the Small MS4 GP no later than July 31, 2018. In those instances, or in the situation in which the permittee will not meet a condition or requirement of the Small MS4 GP beginning on July 1, 2018, the permittee shall submit a notice to EPA according to 40 C.F.R. § 122.41(1)(2).

NPDES PERMIT HOLDERS SUBJECT TO ENFORCEMENT ACTIONS UNDER SECTION 309 OF THE CWA, 33 U.S.C. § 1319:

Certain entities are currently subject to compliance and enforcement actions that incorporate compliance schedules and “Force Majeure” conditions. Those permittees must be aware of the “Force Majeure” requirements in the enforcement documents (i.e., administrative order on consent, Consent Decrees), and submit required notifications in accordance with the requirements of the actions. In those instances in which the permittee was unable to submit a non-compliance notification or force majeure notice in accordance with the requirements of the action, the entity shall contact José A. Rivera, BSCE, Team

Leader, Clean Water Act Team, at (787) 977-5842, or through electronic mail at rivera.jose@epa.gov, for further discussion.

RESERVATION OF RIGHT:

Notwithstanding the Guidance and Temporary Requirements described above, EPA reserves its right to exercise enforcement authorities where appropriate and pursuant to the provisions of the CWA.

FOR QUESTIONS, GUIDANCE AND COMMUNICATION:

If you have any questions concerning the above, please contact Sergio Bosques, Regional Storm Water Coordinator, Clean Water Act Team, at (787) 977-5838, through electronic mail at bosques.sergio@epa.gov, or visit the EPA's Caribbean Environmental Protection Division office located at City View Plaza, Torre II, Suite 7000, #48 Carretera 165, Km 1.2, Guaynabo, Puerto Rico.

More information about the Small MS4 GP and urban storm water discharges from municipal separate storm sewer systems is found at <https://www.epa.gov/npdes-permits/npdes-permits-phase-2-stormwater-program-puerto-rico>.

Sincerely,



Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

Attachment

ATTACHMENT I

MS4	Permit Number	NOI Date Received	Date of Coverage under GP	SWMP Due Date	Request Time Ext.	Relief Guidance Applicability
Caguas	PRR040001	09/01/16	12/23/2016	12/23/2017	Yes	Yes
Bayamón	PRR040002	09/28/16	12/12/2016	12/12/2017	Yes	Yes
Trujillo Alto	PRR040003	09/30/17	12/12/2016	02/17/17		No
UPR - Aguadilla	PRR040004	12/06/16	03/20/17	03/20/18		Yes
UPR - Arecibo	PRR040005	09/29/16	01/19/17	01/19/18		Yes
UPR - Bayamón	PRR040006	10/07/16	03/29/17	03/19/18		Yes
UPR - Carolina	PRR040007	09/30/16	04/11/17	04/11/18		Yes
UPR - Cayey	PRR040008	03/23/17	01/28/17	01/28/18		Yes
UPR - Humacao	PRR040009	09/29/16	01/28/17	01/28/18		Yes
UPR - Mayaguez	PRR040010	09/28/16	12/23/16	12/23/17		Yes
UPR - Ponce	PRR040011	09/29/16	01/10/17	01/10/18		Yes
UPR - Central Administration	PRR040012	10/04/16	03/29/17	03/29/18		Yes
UPR - Rio Piedras	PRR040013	10/03/16	01/19/17	01/19/18		Yes
Humacao	PRR040014	09/30/16	04/10/17	04/10/18		Yes
Aguadilla	PRR040015	09/28/16	12/23/16	12/23/17	Yes	Yes
Guaynabo	PRR040016	12/09/16	01/17/17	01/17/18	Yes	Yes
Gurabo	PRR040017	09/15/16	10/20/16	07/01/17		No
Carolina	PRR040018	09/30/16	02/17/17	02/17/18		Yes
Ponce	PRR040019	09/21/16	11/10/16	11/10/17		Yes
Cidra	PRR040020	04/19/17				No
Hormigueros	PRR040021	09/23/16	12/05/16	12/05/17	Yes	Yes
Juncos	PRR040022	09/28/16	12/20/16	12/20/17	Yes	Yes
Dorado	PRR040023	05/18/17	06/20/17	06/20/18		No
Naranjito	PRR040024	03/07/17	04/18/17	04/18/18		Yes
Moca	PRR040025	08/30/16	03/01/17	03/01/18		Yes
Vega Alta	PRR040026	09/29/16	02/14/17	02/14/18		Yes
Aguada	PRR040027	09/28/16	12/12/16	12/12/17		Yes
Aguas Buenas	PRR040028	09/30/16	02/14/17	02/14/18		Yes
Arecibo	PRR040029	03/15/17	04/18/17	04/18/18		Yes
Cabo Rojo	PRR040030	09/28/16	12/16/16	12/16/17	Yes	Yes
Camuy	PRR040031	04/17/17				No
Canóvanas	PRR040032	10/21/16	04/10/17	04/10/18	Yes	Yes
Cataño	PRR040033	01/23/17	03/19/17	03/29/18		Yes
Peñuelas	PRR040034	09/29/16	01/28/17	01/28/18	Yes	Yes
San Germán	PRR040035	03/20/17	04/22/17	04/22/18		Yes
San Juan	PRR040036	09/28/16	12/16/16	12/12/17		Yes

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San Lorenzo	PRR040037	09/28/16	12/19/16	12/19/17	Yes	Yes
Toa Baja	PRR040038	05/16/17				No
Vega Baja	PRR040039	09/30/16	04/11/17	04/11/18		Yes
Añasco	PRR040040	10/21/16	04/10/17	04/10/17		Yes
Aibonito	PRR040041	07/14/16	09/19/16	07/01/17		No
Manatí	PRR040042					No
Mayaguez	PRR040043	09/28/16	12/12/16	12/12/17	Yes	Yes
Naguabo	PRR040044					No
Hatillo	PRR040045	09/29/16	01/20/17	01/20/18		Yes
Morovis	PRR040046					No
Cayey	PRR040047	12/05/16	01/09/17	01/09/18		Yes
DNER	PRR004048	07/15/2016	09/19/16	10/28/16	N/A	Yes
Las Piedras	PRR040049					No
Río Grande	PRR040050					No
Loíza	PRR040051	06/26/17				No
Toa Alta	PRR040052					No
Fajardo	PRR040053	09/28/16	12/19/16	12/16/17		Yes
Arroyo	PRR040054					No
Barceloneta	PRR040055	04/12/17				No
Barranquitas	PRR040056	04/27/17				No
Ciales	PRR040057	06/06/17				No
Comerio	PRR040058	09/20/16	11/10/16	11/10/17		Yes
Corozal	PRR040059	09/28/16	12/06/16	12/06/17		Yes
Guánica	PRR040060					No
Guayama	PRR040061	03/24/17				No
Guayanilla	PRR040062	04/13/17	05/16/17	05/16/18		No
Isabela	PRR040063	04/13/17	05/16/17	05/16/18		No
Juan Díaz	PRR040064	05/15/17				No
Lajas	PRR040065	07/19/17				No
Luquillo	PRR040066	12/14/17	03/20/17	03/20/18		Yes
Maunabo	PRR040067	04/20/17				No
Orocovis	PRR040068					No
Quebadillas	PRR040069	10/28/16	03/29/17	03/29/18		Yes
Sabana Grande	PRR040070	05/05/17				No
Salinas	PRR040071					No
San Sebastián	PRR040072	10/03/16	02/21/17	02/21/18		Yes
Utua	PRR040073					No
Villalba	PRR040074					No
Ceiba	PRR040075	05/31/17	07/01/17	07/01/18		No
Rincón	PRR040076	07/28/17				No
Yauco	PRR040077	09/28/16	12/06/16	12/06/17		Yes

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Patillas	PRR040078	06/22/17				No
Coamo	PRR040079	09/28/16	12/12/2016	12/12/17		Yes
DTPW	PRR040080	12/15/16	01/20/17	01/20/18		Yes
Yabucoa	PRR040081					No
Lares	PRR040082	09/28/16	12/16/16	12/16/17	Yes	Yes
Las Marías	PRR040083					No
Florida	PRR040084					No
D.Army - Fort Buchanan	PRR04001F	09/29/16	02/21/17	02/21/18		Yes
Hospital de Veteranos	PRR04002F	10/04/16	02/14/17	08/14/17		No

Incomplete
NOI need
missing
information

NOI Comment
Period until
Feb. 26, 2018