



# **Construction Stormwater: Plan Review, Inspections, Compliance, and Enforcement**

Indiana Department of Environmental Management  
Office of Water Quality  
Stormwater Section



# Overview

- Permitting Mechanisms:
  - Construction Stormwater General Permit (CSGP)
  - Local MS4 stormwater ordinances
- State legislation (IC 13-18-27):
  - Effective July 1, 2019, Legislation adopted to clarify MS4 roles in relation to implementing local stormwater regulations
- Plan Review
- Inspection and Compliance
- Enforcement



# Permitting

- National Pollutant Discharge Elimination System (NPDES):
  - IDEM issues NPDES permits under the CSGP
- MS4s issue permit coverage based on a local ordinance and/or regulatory mechanism:
  - Provides flexibility to permit projects
  - Establish local criteria based on MS4 priorities
  - Not restricted by federal exclusions  
(Natural gas transmission, forest harvesting, etc.)



# MS4 Construction Plan Review

- Training in relation to IC 13-18-27 (applies to individuals conducting plan reviews for MS4s):
  - Staff employed and conducting plan reviews prior to 7/1/2019 are not required to meet the criteria on the next slide
  - Staff performing plan review must meet the definition of a trained individual or work under the direct supervision of a trained individual

# MS4 Construction Plan Review

- IC 13-18-27-13 "Trained individual"  
Sec. 13. As used in this chapter, "trained individual" means an individual who is trained and experienced in the principles of storm water management, including erosion and sediment control, as demonstrated by:
  - (1) the completion of course work;
  - (2) state registration;
  - (3) professional certification; or
  - (4) annual training; that enables the individual to make judgments concerning storm water management, storm water treatment, and storm water monitoring.

# MS4 Construction Plan Review

- Establish written procedures for submission and review:
  - Utilize a form, checklist, or alternative method (electronic option) to document plan reviews:
    - ◆ Plan review should be based on the local ordinance
    - ◆ Notification to the responsible parties of plan status
    - ◆ Once plans are accepted, the MS4 must direct the applicant to submit an NOI to IDEM using the Regulatory ePortal
    - ◆ Identification of the MS4 or MS4(s) for which the plan review is being conducted



# MS4 Construction Plan Review

- Time limitation for plan review (IC 13-18-27):
  - Preliminary determination if the plan is substantially complete by:
    - ◆ End of 10th working day after the day the plan is submitted for small (one acre, but less than five acres) or very small (less than one acre)
    - ◆ End of 14th working day after the day the plan is submitted for large construction sites (five acres or more)

# Plan Review

- Reviewing Construction Plans:
  - Construction Plan includes the stormwater pollution prevention plan (SWP3)
  - Plan review components:
    - General Plan Elements (Section A):
      - ◆ Information about the project that are essential to adequately assess the stormwater management activities at the project site
    - Erosion and sediment control (Section B)
    - Post-construction stormwater management (Section C)



# MS4 Construction Inspections

- Update regulatory process:
  - Establish written procedures for compliance/regulatory inspections of construction sites:
    - ◆ Utilize a form, checklist, or alternative method (electronic option) to document inspections
    - ◆ Identify priority sites which may based on:
      - Complaints
      - Threat to degradation of water quality
      - Nature and extent of construction activity (acreage)
      - Topography
      - Soil characteristics
      - Other

# MS4 Construction Inspections

- Inspection process/form should include:
  - Reference to the ordinance that establishes the authority of the MS4
  - A method to notify the permittee of compliance status including deficiencies and violations
  - Failure to implement appropriate measures
  - Focus on performance and not just the SWP3
  - Recognize positive performance



# MS4 Construction Inspections

- Inspection process/form should document:
  - Discharges to water resources, including wetlands, creeks, etc. (unnamed tributaries and/or named streams)
  - Off-site discharges  
(adjacent properties, public roads, etc.)
  - Requirements and expectations to return the project site to compliance including dates for corrective action

# MS4 Construction Inspections

- Initially the emphasis and permitting focuses on development of a construction/stormwater pollution prevention plan (SWP3)
- Compliance should focus on performance and not necessarily meeting the specific details contained in the SWP3 (SWP3 is a living document)
- Project site owner or their designated representative is required to comply with the requirements of the MS4 ordinance (or in IDEM's case the CSGP)
- Self-monitoring program:
  - Tool for the permittee to manage their project site
  - MS4 may request reports as part of compliance

# MS4 Construction Inspections

- Document deficiencies and/or violations:
  - Provide clear expectations to achieve compliance
  - Focus and highest priority should be on discharges that will impact water quality
  - Require and/or specify corrective action(s)
  - Establish specific dates for each required action

# MS4 Construction Inspections

- Document deficiencies and/or violations:
  - Removal of sediment discharges:
    - ◆ Removal of sediment from adjacent properties (permission should be obtained before entering another property)
    - ◆ Removal of sediment from a water of the state:
      - Consider the damage that the removal may cause
      - Request a plan in advance that outlines method/process of the removal
      - The removal method may require other permits (401/404)

# MS4 Construction Inspections/Compliance

- Compliance and inspection:
  - Always document inspection results
  - Provide reports to permittee and responsible parties
  - Copy appropriate parties associated with the project or those that may have contributed to violations
  - Verify notification has been received:
    - ◆ Email verification
    - ◆ Certified letter
    - ◆ Data management system to monitor compliance



# MS4 Construction Inspections/Compliance

- Compliance and inspection:
  - Establish a timeline for compliance and a process to track compliance
  - Measure compliance:
    - ◆ Track responses in response to the inspection
    - ◆ Schedule a follow-up inspection (announced or unannounced)



# MS4 Construction Compliance/Enforcement

- Compliance and enforcement:
  - Local procedures outlined in the ordinance and/or policy:
    - ◆ Understand the procedures and how to proceed if non-compliance persists:
      - Who are the decision makers within the MS4
      - Who has the ability to take action and to escalate non-compliance to the next level
  - Expedited enforcement:
    - ◆ Streamline process
    - ◆ Ensure corrective action occurs

# MS4 Construction Compliance/Enforcement

- Compliance and enforcement options:
  - Develop an enforcement strategy and policy:
    - ◆ Clear, measurable compliance, with a goal of environmental outcomes
    - ◆ Consider informal and formal enforcement
    - ◆ Escalate the severity of enforcement based on the degree of harm to the environment and/or public health



# MS4 Construction Compliance/Enforcement

- Compliance and enforcement options:
  - Develop a process that utilizes multiple options to achieve compliance:
    - ◆ Inspection reports
    - ◆ Violation and/or non-compliance letters
    - ◆ Penalties/monetary fines
    - ◆ Stop work orders
    - ◆ Compliance plan
    - ◆ Environmental project

# MS4 Construction Compliance/Enforcement

- Compliance and enforcement options:
  - Establish penalties including fines based on the severity of the violation:
    - ◆ Failure to obtain permit coverage
    - ◆ Discharge to a water of the state
    - ◆ Impact to infrastructure
    - ◆ Continuing uncorrected compliance
    - ◆ First time violator
  - Establish monetary penalties based on:
    - ◆ Violations occurring over a specific timeframe
    - ◆ Number of inspections conducted

# MS4 Construction Compliance/Enforcement

- Stop work orders (IC 13-18-27-18):
  - Work (land disturbance) has begun
  - Construction plan has been accepted
  - May not issue a stop work order:
    - ◆ For failure to implement appropriate erosion and sediment control measures, unless:
      - The permittee has been notified in writing
      - Inadequacies are not resolved within 72 Hours of notification
- May issue a stop work order if the permittee is creating a public health hazard or a safety hazard (when applying this standard – be cautious)

# MS4 Construction Compliance/Enforcement

- Other considerations:
  - Compliance plan:
    - ◆ A plan that formalizes expectations and outlines specific requirements prior to issuing monetary penalties (remediation, etc.)
  - Environmental project:
    - ◆ A program where a portion of a monetary penalty can be offset when the violator agrees to provide funds and/or participates in an environmental project within the local community



# Questions