

new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with §125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then

applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under §122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38048, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 50 FR 6941, Feb. 19, 1985; 65 FR 30908, May 15, 2000]

#### **§ 122.30 What are the objectives of the storm water regulations for small MS4s?**

(a) Sections 122.30 through 122.37 are written in a "readable regulation" format that includes both rule requirements and EPA guidance that is not legally binding. EPA has clearly distinguished its recommended guidance from the rule requirements by putting the guidance in a separate paragraph headed by the word "guidance".

(b) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Because the storm water program is part of the National Pollutant Discharge

## § 122.31

## 40 CFR Ch. I (7-1-11 Edition)

Elimination System (NPDES) Program, you should also refer to §122.1 which addresses the broader purpose of the NPDES program.)

(c) Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(d) EPA strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

[64 FR 68842, Dec. 8, 1999]

### **§ 122.31 As a Tribe, what is my role under the NPDES storm water program?**

As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under §§123.31 through 123.34 of this chapter. (If you do not have an authorized NPDES program, EPA implements the program for discharges on your reservation as well as other Indian country, generally.);

(b) Be classified as an owner of a regulated small MS4, as defined in §122.32. (Designation of your Tribe as an owner of a small MS4 for purposes of this part is an approach that is consistent with EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small MS4, you are subject to the requirements under §§122.33 through 122.35. If you are not designated as a regulated small MS4, you may ask EPA to designate you as such for the purposes of this part.); or

(c) Be a discharger of storm water associated with industrial activity or small construction activity under §§122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is generally EPA, unless you are authorized to administer the NPDES program.

[64 FR 68842, Dec. 8, 1999]

### **§ 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?**

(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and:

(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

(2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§123.35(b)(3) and (b)(4) of this chapter, or is based upon a petition under §122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with §§122.33 through 122.35.

(c) The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with §122.33(a) if circumstances change. (See also §123.35(b) of this chapter.)

(d) The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

(1) Your system is not contributing substantially to the pollutant loadings