

copying. You may require a member of the public to provide advance notice.)

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under §122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

- (i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;
- (ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
- (iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;
- (iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and
- (v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

[64 FR 68843, Dec. 8, 1999]

**§ 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?**

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

- (1) The other entity, in fact, implements the control measure;
- (2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and
- (3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under §122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another

governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by §122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of §122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

[64 FR 68846, Dec. 8, 1999]

**§ 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?**

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water