

Phase II Small MS4 Permit: Section A. Application Requirements - General Information

Any small MS4s designated under the Phase II Small MS4 Permit must electronically file an NOI, Phase II permit boundary map and guidance document via SMARTS by July 1, 2013. The submission of the application documents will generate a fee statement that must be paid to the State Water Board.¹ A wet signature is required for any Legally Responsible Person (LRP) that may submit a report to the State Water Board and for verification reasons. Wet signatures are also required for any Duly Authorized Representative (DAR) that may submit a report to the State Water Board. If the wet signature form is not received within 90 days from SMARTS account creation or if staff cannot validate the wet signature, the user account will be deactivated. If the account is deactivated, notify the State Water Board to reactivate the account (per Environmental Protection Agency (EPA) Cross-Media Electronic Reporting Regulation (CROMERR)). (Figure 1)

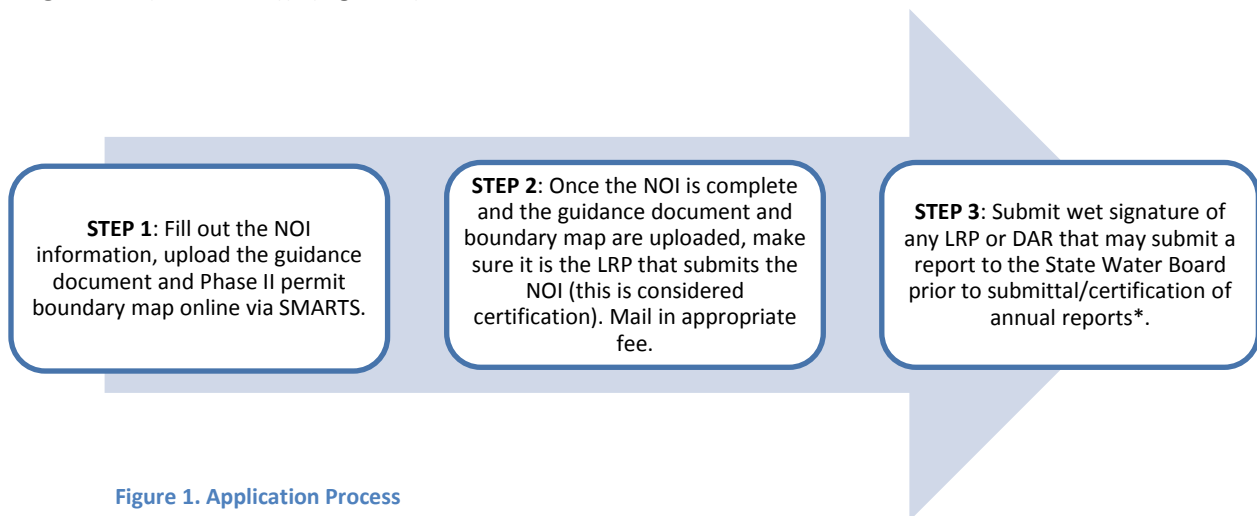


Figure 1. Application Process

The following sections provide descriptions of the different signatories, when a wet signature is required and explains separate implementing entities and co-permittees.

Section I. Signatories and Wet Signatures

Per 40 CFR 122.22, this permit requires the LRP to certify the NOI and allows the option of the LRP to appoint authorized individuals to submit reports and enter report information via SMARTS. Prior to submittal of Annual Reports, any LRP and/or DAR that may submit a report must submit a wet signature. The LRP is required to submit a wet signature for verification purposes even if they do not plan on submitting reports.

¹The fee must be paid in accordance with the fee statement within 60 days of submittal of NOI. After 60 days the submitted application documents will be deemed incomplete and returned.

* The LRP is required to submit a wet signature for verification purposes even if they do not plan on submitting reports.

What are the different types of signatories and examples of each type?

(Per 40 CFR 122.22)

- Discharger’s Legally Responsible Person (LRP) – principal executive officer or ranking elected official that submits and certifies Notice of Intent (NOI) application documents. The LRP may certify submittals of annual reports. Through the SMARTS application process the LRP may assign one or more Duly Authorized Representatives (DAR) and/or one or more Data Entry Person (DEP). Please note: the assignment of DEP may be done by the DAR instead of the LRP. *Examples:* county administrator, county executive officer, town or city manager, high level staff person with authority over staff responsible for Phase II MS4 permit compliance
- Duly Authorized Representative (DAR) – appointed by the LRP to certify submittals of annual reports, if desired. Please note: LRP can appoint more than one DAR. *Examples:* storm water program manager, public works director resource management director, senior level storm water staff, etc.
- Data Entry Person (DEP) – appointed by the LRP or a DAR to enter annual report data and information only (i.e., a DEP cannot certify submittals of annual reports). Please note: LRP/DAR can appoint more than one DEP. *Examples:* storm water department staff, storm water department intern/student, consultant/contractor, maintenance crew staff...etc.

When are wet signatures required?

Per 40 CFR 122.22 of the federal regulations, any LRP or DAR that may potentially submit a report to the State Water Board must have a wet signature on file with the State Water Board. A wet signature must be on file with the State Board prior to submittal/certification of annual reports. The wet signature can be filed after the NOI is submitted via SMARTS, but must be received prior to submittal/certification of annual reports. Wet signatures can be submitted by signing in to your individual SMARTS account, clicking on the eAuthorization form, then, printing, signing and mailing it to the following address:

**SWRCB
Storm Water Section
PO Box 1977
Sacramento, CA 95812-1977**

PLEASE NOTE: *The LRP is required to submit a wet signature for verification purposes even if they do not plan on submitting reports.*

Section II. Separate Implementing Entity (SIE) and Co-permittee

Permittees have the option of choosing a SIE or co-permittee to implement some or all of their permit provisions. The purpose of relying on an SIE or participating in a joint program as co-permittees is to

promote a regional approach to storm water management that is coordinated on a watershed basis. Options include:

- Taking advantage of existing local or State programs (i.e., relying on another entity [SIE]); or
- Sharing responsibility for storm water management program development with a neighboring Phase II Small MS4 Permittee as a co-permittee;
- Participating in the implementation of an existing medium or large Phase I MS4's storm water management program as a co-permittee.

The following subsections describe the different options and provide examples of each. In short, an SIE can be any entity (including a Phase I or II Permittee, non-designated entity, etc.). Co-permittees, on the other hand, can only be other Phase II Permittees, and less commonly, Phase I and II Permittees.

Each co-permittee is ultimately responsible for the implementation of each program element requirement, even if another co-permittee is performing the required program element, whereas an SIE is not ultimately responsible. The options are provided so that each Permittee has the flexibility to choose a collaborative avenue that works best for them.

What is an SIE?

A Separate Implementing Entity (SIE) is an entity that the Permittee relies on to perform a particular provision(s) of the Phase II storm water permit. The SIE performs the activity(ies) described in the permit provision(s) on behalf of the Permittee but the Permittee is still ultimately responsible for its effective implementation, while the SIE itself is not ultimately responsible. An SIE can be another permitted entity named in a Phase I permit, a non-permitted entity or more rarely, another Phase II Permittee (generally considered co-permittees, see discussion below). Examples of SIEs that are not permitted are: governmental agencies, non-profits, regional organizations, or county storm water agencies (if they are not also permitted entities). Example of SIE that is permitted is: Phase I Permittee implements provisions on behalf of a Phase II Permittee without including the Phase II Permittee in their Phase I permit.

If a Phase II Permittee wishes to utilize an SIE they must name the SIE and identify the program elements that the SIE will implement in their guidance document.

SIE Example #1- SIE is also a permitted entity: A County (either a Phase I or Phase II) already has an illicit discharge detection and elimination (IDDE) program in place and is willing to allow a Phase II Permittee (a city for example) within the county's jurisdiction to utilize the County's IDDE program instead of implementing an individual program. In this case, the City would not need to implement its own IDDE program but would rely on the County to implement this provision. The city is still ultimately responsible for its effective implementation. For this reason, it is recommended that the City enter into a legally binding agreement with the County for the performance of this provision.

SIE Example # 2 – SIE is not a permitted entity: Because schools provide a large audience for water education, a municipality and the schools may coordinate an education program. An individual school or a school district may agree to provide a one-hour slot for all the fifth grade classes during which the city would make its own storm water presentation. Additionally, the school and the city may arrange to have the school's maintenance staff attend the city's training sessions. In this instance, the city would name the school district as an SIE and indicate on the Guidance Document which sections of the permit the school district is performing.

What is a co-permittee?

Co-permittees are permitted entities that implement a coordinated and joint storm water program and share the responsibility of storm water program compliance. Phase II Permittees can apply as co-permittees with other Phase II Permittees, or, can join with medium and large municipalities as co-permittees under the Phase I MS4 permit. The Phase II co-permittees indicate in the guidance document that another Permittee is performing one or more of its required program element requirements. The Phase II Permittee must also identify the other Phase II co-permittees in their NOI (this can be accomplished in the guidance document). It is important to note that because Permittees will be applying through SMARTS, each co-permittee must file an individual NOI. SMARTS will identify and link Phase II co-permittees to allow the option of filing a joint annual report. Each co-permittee is ultimately responsible for the implementation of each program element requirement, even if another co-permittee is performing the required program element.

If a Phase II Permittee joins as a co-permittee in an existing medium/large Phase I permit, the Phase II Permittee must comply with the terms and conditions of the applicable Phase I permit rather than the Phase II permit requirements. The Phase I Permittee would have to wait until the next permit reissuance or request the Regional Water Board re-open their permit to include the Phase II Permittee(s).

Co-permittee Example #1: Phase II Permittees are co-permittees: County A and Cities 1 -5 are Phase II co-permittees. County A implements the industrial inspection program countywide for Cities 1 -5.

Co-permittee Example # 2: Phase II Permittee and Phase I Permittee are co-permittees: A Phase I Permittee agrees to allow a Phase II Permittee to join their storm water program.

If I am an SIE, can I submit Annual Reports on behalf of the permittees?

No. Annual Reports must be certified and submitted by a Phase II Permittee, a lead co-permittee or the joint powers authority, or equivalent, for a group of co-permittees. However, if the SIE is itself a regulated MS4 and the Phase II Permittee has indicated in its guidance document that it is relying on the SIE to implement *all* of its permit obligations, including the

obligation to file annual reports, the SIE may submit the annual reports on the Phase II Permittee's behalf.

If I am a co-permittee, do I have to submit a joint annual report?

The submittal of one joint annual report or individual annual reports is up to the Permittee's discretion. Each co-permittee structure and organization will differ from the next. To illustrate, there may only be one component that the co-permittees share responsibility for. In such a case, it may make sense to submit individual reports. On the other hand if one co-permittee is responsible for implementation of most of the program elements, it may make sense for that co-permittee to submit the joint annual report and coordinate with the remaining co-permittees for their specific reports.