

US EPA ARCHIVE DOCUMENT



December 8, 2009

Final QLP Incentives:

Incentive #1: Construction General Permit fee split with QLP

Coverage equivalent to coverage under the construction general permit (CGP) may be obtained from a QLP. If a construction site is within the jurisdiction of and has obtained a notice of coverage from a QLP, the operator of the construction activity is authorized to discharge storm water associated with construction activity under the CGP without the submittal of an NOI to the division.

CGP permit coverage fees are specified in the TDEC Rules, Chapter 1200-4-11, and range from zero for sites less than 1 acre to \$7,500 for sites greater than or equal to 150 acres. Our goal with this incentive is to change the Rule such that seventy (70) percent of the total permit coverage fee would be paid to the coverage issuing QLP for costs associated with plan review, coverage review and issuance, inspections, enforcement, program administration and database management. The remaining thirty (30) percent would be paid to TDEC for costs associated with the administration and oversight of the QLP program. In the event that the QLP waives the right to collect the 70% portion of the fee, the entire fee amount must be paid to TDEC.

TDEC is currently evaluating available Rule change options. If successful, TDEC will draft the rule change and propose it to the Water Quality Control Board for approval. Once approved by the Board, the final rule change will be submitted to Attorney General's office for legal review and then the Secretary of State's office for authorization. Our experience has been that this process can take up to 18 months to complete, depending on the complexity of the proposal.

Incentive #2: Standardized TDEC/ QLP Enforcement Protocol

MS4s are required to develop and implement an Enforcement Response Plan (ERP) that includes policies and procedures for stormwater ordinance enforcement. An MS4 that attains the status of a Qualified Local Program (QLP) may include steps in the ERP that allow for cooperative enforcement with TDEC. Our expectations are that this approach will increase construction activity compliance and establish a cooperative partnership between TDEC and the QLP.

When a QLP has proceeded through their ERP and the construction site activity remains in non-compliance, the QLP will be able to submit an Enforcement Assistance Request (EAR) form to the local TDEC Environmental Field Office (EFO). After a review for completeness, the EFO will submit this EAR to the Enforcement Section and an Order may be expeditiously issued using the documentation submitted by the QLP. The enforcement will be based upon the facts, photographs, and enforcement actions and assessed penalties documented by the QLP and issued under TDEC's authority to assess penalties up to \$10,000 a day as well as require corrective action.



The EAR will be a form approved by the State's Forms Committee and will include guidance.

Incentive #3: QLP status considered equivalent to program effectiveness monitoring

MS4's are required to implement a Storm Water Management Program (SWMP) that will reduce the discharge of pollutants to the maximum extent practicable and not cause or contribute to violations of state water quality standards. MS4's that discharge to stream segments identified as impaired are required to monitor and evaluate SWMP effectiveness. Monitoring protocols and methodologies are pollutant specific. For the purposes of the QLP program, the main pollutant of concern is siltation. Monitoring for stream segments identified as siltation impaired must, at a minimum, include the following, or equivalent:

1. Biological stream sampling utilizing the Semi-Quantitative Single Habitat (SQSH) Method as identified in the Division's Quality System Standard Operating Procedure for Macroinvertebrate Stream Survey, revised October 2006. The goal of this monitoring is to collect historical water quality trend analysis data for the purposes of documenting the improvement or deterioration of an impaired stream segment.
2. Visual Stream Surveys and Impairment Inventories, performed in an effort to identify and prioritize MS4 stream impairment sources. At a minimum, a survey must be performed immediately upstream and downstream of each MS4 outfall that discharges into an impaired stream segment. The goal of this monitoring is to evaluate if the pollutant of concern is being conveyed through the stormwater system, or if the general condition of the system itself is generating the pollutant of concern.

QLP programs are expected to be beneficial to long term water quality by effectively minimizing the discharge of construction activity related siltation through the stormwater system. Therefore, TDEC will consider an appropriately maintained QLP status as equivalent to the biological stream sampling referenced above. However, QLP's will still be required to perform the visual stream survey and impairment inventory referenced above to evaluate if non-construction related sources of siltation are being conveyed through the stormwater system, or if the general condition of the stormwater system itself is generating siltation.

Incentive #4: MS4's applying for QLP Status will have to show that the necessary resources will be provided.

MS4's applying for QLP Status will have to complete the LOS exercise to show the resources necessary for their program to support, at a minimum, the following requirements in their jurisdiction:



1. 2. Procedures for site inspection and enforcement: The MS4 must have procedures in place for its inspectors to evaluate construction site compliance. The ERP must include specific enforcement steps to ensure construction sites are in compliance with the MS4's program.
2. 3. Recognition of priority construction activity, including at a minimum, those construction activities discharging directly into, or immediately upstream of, waters the state recognizes as impaired or Exceptional Tennessee Waters; Pre-construction meetings with construction-site operators for priority construction activities; and Inspections by the MS4 of priority construction sites at least once per month.
3. 4. Specific procedures for SWPPP review and approval: These procedures must include an evaluation of SWPPP completeness and overall BMP effectiveness.
4. 9. Procedures for managing public input on projects: The MS4 must have mechanisms for providing notice of projects and receiving and considering comments from the public.
5. 10. Procedures for the issuance, tracking and reporting of Notice of Coverage for construction activities performed within the QLP jurisdiction.

The QLP application will contain the results of this exercise along with a signature blank for the Mayor (or responsible party) to sign, signifying that he/she is committing that the MS4 guarantees that the resources to support the minimum requirements for QLP Status will be provided.

Incentive #5: QLP Status requirements guaranteed static.

QLP Status requirements beyond the requirements for an MS4 program shall remain static for the duration of the contract between the QLP and TDEC.

Incentive #6: Streamlining QLP procedures.

As an incentive for MS4 participation, QLP program requirements have been streamlined where possible.