Permit Compliance Interpretive Fact Sheet – Non-Standard Permittee Participation Agreement Flow Chart

Takeaway: Part I.I.1 and 2.b of the non-standard MS4 general permit (COR070000), effective 11/1/2021, requires permittees to notify the division if another entity will implement some or all of the requirements of the permit. In order to implement these requirements, there are several different participation agreements that can be used. These agreements include, but are not limited to, Memorandum of Understandings (MOUs), Intergovernmental Agreements (IGAs), or Standard Operating Procedures (SOPs). However, both parties should consider a number of factors before deciding what agreement to use. This flow chart can be used as a tool to help decide what agreement is most appropriate.

This document is not intended to replace the division's non-standard MS4 permit implementation approaches document, instead it seeks to clarify what participation agreements can be used for each alternative. For reference, the non-standard MS4 permit implementation approaches document has been included in this interpretive fact sheet.

Participation agreements mentioned in this document (IGA, MOU, and SOP) are not defined in the non-standard or standard permits and permittee preference can dictate choices between MOUs and SOPs. However, IGAs should be used in cases where jurisdictional authority is needed.

Participation Agreement

Does the standard MS4 have jurisdictional authority over the non-standard MS4?

Standard permittee includes non-standard in permit area.*

Standard must implement all aspects of the standard MS4 program. This is usually done through an IGA with the nonstandard.

The standard is responsible for compliance.

The non-standard permittee will not have a Permit certification under COR070000.

Option 1: Standard and non-standard permittee must have a participation agreement to allow "full authority" (this includes enforcement authority). The standard will implement the standard program requirements for construction and post-construction in the non-standard area.

Yes

This can be done through an IGA, MOU, SOP or other written agreement.

Both the standard and non-standard will have Permit certifications under their respective permit numbers.

Option 2: Non-standard can choose Option 2 and sign an agreement/contract with a standard or a consultant to implement some of their program. The standard or consultant will have to comply with the non-standard permit requirements Please see Implementation by Other Parties section of the non-standard permit.

Standard
permittee cannot
include nonstandard permittee
until an IGA is
signed to give
standard
jurisdictional
authority.

Standard must implement all aspects of the standard MS4 program, including full enforcement authority. This is usually done through an IGA with the nonstandard.

The standard is responsible for compliance.

The non-standard permittee will not have a certification under COR070000.

Option 1: Standard and non-standard permittee must have a participation agreement to allow "full authority" (this includes enforcement authority) and jurisdictional authority. The standard can implement the standard program requirements for construction and post-construction in the nonstandard area.

No

This can be done through an IGA, MOU, SOP or other written agreement.

Both the standard and non-standard will have certifications under their respective permit numbers. Option 2: Non-standard can choose Option 2 and sign an agreement with a standard or a consultant to implement some of their program. The standard will have to comply with the non-standard permit requirements

The non-standard can also sign a contract with a consultant. Please see Implementation by Other Parties section of the non-standard permit. Non-standard is responsible for compliance.

*This is for when a nonstandard seeks coverage under a standard's program

COR070000 - Non-standard MS4 permit implementation approaches

This graphic outlines the 4 different approaches a Non-standard MS4 permittee can use to implement their permit. It is important to note that there are two choices a Non-standard can choose on how to implement the newly designated MS4 location areas (i.e. elementary schools), and these two choices apply to Alternative 1-3 and only choice 2 applies to Alternative 4.

Alternative 1

Non-standard permittee responsible*

Non-standard permittee implements and performs all the program activities necessary to comply with the permit.

- No agreements necessary unless Non-standard permittee has new MS4 locations and is using Choice 2 below*.
- Non-standard permittee has ability to tailor their program to their needs and meet permit requirements, and is responsible for permit compliance.
- Non-standard permittee is responsible for all program activities, recordkeeping and reporting.

Alternative 2

Non-standard permittee responsible - supported*

Non-standard permittee contracts with another entity (contractor or other MS4 permittee) for implementation of some or all program activities.

- Contracts or other binding agreements with the contractor(s) or other MS4 doing the activities on behalf of the Non-standard.
- Non-standard permittee ensures the work completed meets the Non-standard permit requirements and is documented. Non-standard remains responsible for overall permit compliance.
- Non-standard permittee is responsible for all program activities, recordkeeping and reporting.

Alternative 3

Partial program deferral to another MS4*

Non-standard permittee defers entirely to another MS4's permit coverage for implementation of construction and/or post construction programs, and implements and performs the remaining permit activities.

- Agreements necessary with the Standard/Phase I MS4(s) for the deferred program activities and permit requirements (construction/post construction only).
- Non-standard permittee is responsible for all program activities (except construction and/or post construction), recordkeeping (receive documentation from other MS4 for deferred programs) and reporting.

Alternative 4

Entire permit deferral to another MS4 permit*

Non-standard permittee defers entirely to another MS4 for permit coverage and does not hold their own Non-standard MS4 permit.

- Agreement necessary with another MS4 to include the Non-standard MS4 area as part of the other MS4 permit implementation area and the other MS4 permit requirements.
- The other MS4 permittee states in their application they are including the Non-standard area in their permit. No application is required from the Non-standard.
- The Non-standard has no permit compliance or reporting responsibilities as they are not an MS4 permittee; the other MS4 is the permittee.
- The other MS4 would include the newly designated Non-standard MS4 area locations in their permit implementation area, if not already included and/or could utilize *Choice 2.

*A non-standard permittee has two choices on how to handle newly designated MS4 locations.

Choice 1 - Permittee applies non-standard permit requirements to new MS4 area locations.

Choice 2 - Permittee doesn't apply any permit requirements to new MS4 area locations. New MS4 area locations should already be subject to local program requirements stemming from another MS4 permit (Standard/Phase I). Non-standard needs an agreement if using this option and does not need to get program activity records.

Alternative 1

Standard or Phase I permittee has NO agreements with the Non-standard permittee.

Alternative 2

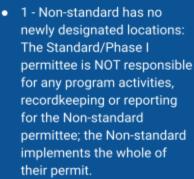
Standard or Phase I
permittee has a contract or
other binding agreement with
the Non-standard permittee
to do specified program
activities on behalf of the
Non-standard permittee per
the Non-standard permit
requirements.

Alternative 3

Standard or Phase I
permittee has agreement to
do construction and/or post
construction program
activities for the
Non-standard permittee
under the Standard or Phase
I's permit requirements.

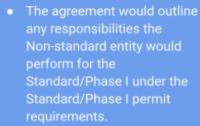
Alternative 4

Standard or Phase I permittee has an agreement to include the Non-standard permit area as part of the Standard or Phase I implementation area under the Standard or Phase I's permit requirements.



 2 - Non-standard has a newly designated locations: Standard/Phase I permittee may have agreements per Choice 2 above to treat the new MS4 locations like private locations and would implement the Standard/Phase I construction/post-constructi on requirements at those locations.

- Ex: Non-standard hires a Standard/Phase I to do const. inspections on their behalf.
- The Standard/Phase I is responsible for providing any inspection reports/ documentation for work done for the Non-standard. This would be outlined by the Non-standard per the contract.
- The Standard/Phase I permittee is responsible for program activities they were contracted to conduct; they are NOT responsible for ensuring permit recordkeeping or reporting or ensuring permit compliance.
- Standard/Phase I permittee
 would provide the
 documentation required per
 the Standard/Phase I permit
 to the Non-standard permittee
 for their records. This would
 be outlined per the
 agreement.
- The Standard/Phase I
 permittee is responsible ONLY
 for Standard/Phase I
 construction/
 post-construction program
 activities and compliance;
 they are NOT responsible for
 ensuring permit
 recordkeeping or reporting or
 ensuring permit compliance
 with the other program
 activities or the Non-standard
 permit.



- Ex: Non-standard does certain public education activities for their audience.
- The Standard/Phase I would be the permittee, as such the Non-standard would have no permit, no permit recordkeeping, reporting or compliance.
- Newly designated
 Non-standard locations would
 be included in the agreement,
 if not already, either under the
 Standard/Phase 1 or Choice 2.