Guidance for obtaining past municipal separate storm sewer system permit compliance costs

Audience. Regional Board staff requesting information on cost of permit compliance from municipal separate storm sewer system (MS4) Permittees.

See the Appendix for relevant legal requirements. This general guidance is not binding and does not change or otherwise affect the legal obligations of the Water Boards related to the adoption of waste discharge requirements. Rather, this guidance provides best practices for staff to conduct a thorough estimation of MS4 permit compliance costs to the extent that sufficient staffing resources exist.

We developed this guidance in part to respond to recommendations of the State Auditor.

Owner of this guidance. The Office of Research, Planning, and Performance (ORPP) is currently responsible for updates to this guidance. Please tell ORPP staff (ORPP@waterboards.ca.gov) about your experience using this guidance, including the time and resources required. ORPP staff are not experts in MS4 issues and are happy to work with you to revisit and revise this guidance as more information becomes available and as the guidance is applied. If needed, ORPP staff will lead efforts for make this guidance more formal.

Introduction. This guidance is for Regional Board permitting staff to follow when requesting information on costs of MS4 permit compliance from MS4 Permittees. The objectives are for the Boards and the public to obtain adequate, consistent, and comparable information on the stormwater management costs local jurisdictions incur and for the Boards to base decisions on that information.

Consistent and reliable cost information may also be critical for municipalities to manage their assets, programs, funding strategies, evaluations, credit programs, and stormwater utility fees.

Staff is aware that the development and implementation of new standardized cost-reporting or information requests will likely result in short-term costs as local jurisdictions transition cost-accounting practices and data systems.

Limitations and warnings. There are several potential pitfalls:

- Permittees may have incentives to over-report costs or report costs they would have incurred regardless of the permit. Only a portion of costs that are listed may actually be related to stormwater permit compliance and would not have been incurred regardless.
- Storm water pollution reduction approaches and their costs are difficult to standardize. There are appropriate grounds for differences among municipal storm water permits. What is practicable and prudent in one community may not work in other communities because of differences in population, hydrology, pollution sources, water uses, and municipal infrastructure, among other things. Consequently, this guidance is high-level.
- Analysis of cost data supplied by Permittees is complex and is not covered here.
- See the Appendix on legal considerations.

Guidance on cost reporting approaches

Encourage use of the categories below. Federal regulations generally require Permittees to report annually on their costs of complying with their permit. Therefore, Regional Boards can require cost information in a permit.[1] Things that don't apply in your region need not be added to your permits.

Eventually, the Division of Information Technology may develop a web-based form for data collection.

There is a tension between suggesting high-level categories that apply in most cases and using more specific cost drivers. ORPP will revisit this guidance periodically as more information becomes available and as it is applied.

[1] 40 C.F.R. 122.26(d)(2)(vi).

Categories suggested for use[2]

	Description of costs counted[3]	Total	Capital	Personnel and consultants	Number and classifications of personnel	Overhead	Land	Construction	O&M
		($)	($)	($)		($)	($)	($)	($)
1. Stormwater program management (overhead)									
2. TMDL development									
3. TMDL compliance									
4. Minimum control measures									
4.1. Public information, education, outreach, involvement, and participation									
4.2. Industrial and commercial facilities programs									
4.3. Planning and land development programs[4]									
4.4. Post construction stormwater management in new development and redevelopment									
4.5. Development construction program									
4.6. Construction site stormwater runoff control									
4.7. Public agency activities program									

[2] These categories may be of value (mainly based on Region 4's requirement for cost reporting by MS4 Permittees and the 2005 NPDES Stormwater Cost Survey, pages 63-68). If results are not adequate, more specific categories may eventually be included. As recommended in the 2005 Cost Survey, costs should be broken down according to cost for personnel, agency overhead, land acquisition/lease (if applicable), construction, and operation and maintenance.

[3] This is particularly important for the "Management" and "Other" categories, which have comprised the majority of expenditures for a number of Los Angeles County MS4 Permittees. For example, "Program Management" would ideally include costs for management plans, NPDES fees, reporting, mail, legal support, travel, conferences, printing, producing manuals and handbooks, and other non-labor costs (2005 Cost Survey).

[4] Including environmental review, development project approval and verification, and permitting and licensing.

	Description of costs counted[3]	Total	Capital	Personnel and consultants	Number and classifications of personnel	Overhead	Land	Construction	O&M
		($)	($)	($)		($)	($)	($)	($)
4.8. Pollution prevention and good housekeeping for municipal operations									
4.9. Illicit connections and illicit discharges program									
4.10. Illicit discharge detection and elimination									
4.11. Additional institutional best management practices / "enhanced" minimum control measures									
5. Projects									
5.1. Distributed projects, including green streets[5]									
5.2. Regional projects[6]									
5.3. Restoration projects[7]									
6. Monitoring									
6.1. Effluent/outfall and receiving water quality monitoring									
6.2. Best management practice effectiveness monitoring									
6.3. Data analysis[8]									

[5] Permittees should provide costs for individual green street/distributed projects as separate entries in the table. See also footnotes for Regional Projects and Restoration Projects.

[6] Costs for Regional Projects should be provided by project, i.e. if a permittee is implementing three projects include one row for each project. Details should also be provided on project design details in order to better understand unit costs (linear miles of green street, acre-feet of stormwater captured). Also, costs should be those incurred within the reporting year. If a Permittee is implementing a project collaboratively, the Permittee should only include the portion of project cost that it is assuming. Permittees should provide overall project cost for multi-year projects if available, but separately, in their routine report submittals.

[7] See footnote regarding Regional Projects.

[8] Some permits require the Permittee analyze the data for key trends and basic statistics.

	Description of costs counted[3]	Total	Capital	Personnel and consultants	Number and classifications of personnel	Overhead	Land	Construction	O&M
		($)	($)	($)		($)	($)	($)	($)
7. NPDES MS4 permit fees									
8. Watershed management planning									
9. Alternative compliance									
10. Reporting costs									
10.1. Information management systems									
10.2. Annual reporting									
11. Other									

Other guidance:

- In general, Permittees should put in reasonable effort to determine and report their costs.
- Permittees should include the sources of funding for permit compliance.[9] Grants from public agencies and other outside funding should be clearly identified.
- If you seek additional data, focus on data the Boards will use or that the public will want.
- Consider asking that supporting documentation be submitted or be available upon request for review. Examples include detailed Capital Improvement Plan budgets, Storm Drainage or Asset Management Plans. Supporting documentation may help you identify inappropriate costs. For example, inspection staff may have multiple responsibilities in addition to storm water inspections. It is not appropriate to count an entire inspector's time (i.e., full-time) as a storm water cost if the inspector is also doing building inspections.
- Required compensation for all costs should be identified if the Permittee conducted any enforcement actions related to remediation activities on its own related to elimination of a non-stormwater discharge, cleanup, or maintenance.
- Consider suggesting that Permittees account for stormwater expenditures separately from other expenditures.
- use of special accounting for stormwater-related expenditures.
- Regarding project costs, please see Guidance for Staff on TMDL Cost Compliance Estimation.

References

Boardman, A. *et al*., 1996. *Cost-benefit analysis: concepts and practice.* Prentiss Hall, Upper Saddle River, NJ.

California State University, Sacramento, Office of Water Programs, 2018. Toolkit to Support Financial Planning for Municipal Stormwater Programs. Prepared as product of the U.S. EPA Region 9 Environmental Finance Center at Sacramento State. *Draft*. August 2018.

California State University, Sacramento, Office of Water Programs, 2005. NPDES Stormwater Cost Survey.

Department of Water Resources, 2008. Economic analysis guidebook. The Resources Agency, State of California.

U.S. EPA, 2018. Stormwater Financing Strategy Training Course (*in development*).

U.S. EPA, 2000. Guidelines for preparing economic analysis. (EPA 240-R-00-003.)

Weimer, D. & Vining, A., 1992. *Policy analysis: concepts and practice.* Prentiss Hall, Englewood Cliffs, NJ.

[9] 40 C.F.R. 122.26(d)(1)(vi)(A).

Appendix: legal considerations

This general guidance is not binding and does not change or otherwise affect the legal obligations of the Water Boards related to the adoption of waste discharge requirements.

This general guidance is not binding and does not change or otherwise affect the legal obligations of the Water Boards related to the adoption of waste discharge requirements.

Federal regulations at 40 C.F.R. 122.26(d)(1)(vi)(A) pertaining to application requirements require Permittees to provide:

> A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

40 C.F.R. 122.26(d)(2)(vi) requires that as part of a Permittee's management program, they provide a fiscal analysis as follows:

> For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

In light of these requirements, for example, LA County MS4 Permit, Order No. R4-2012-0175 states, "each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order" (Part VI.A.3.a).

Glossary

Contact ORPP with proposed additions to this glossary.