



August 23, 2022

Dear Mayor:

Last month, the New Jersey Department of Environmental Protection issued a notice to all Tier B Stormwater Communities that based on water quality data, and a directive from the US. Environmental Protection Agency (EPA) and population growth in Tier B communities, that the NJDEP is doing away with Tier B designation for stormwater permits and moving all Tier B municipalities into Tier A category. The notices were issued on July 1, 2022 the NJDEP issued letters by certified mail and again via email the week of July 15.

The NJDEP has confirmed that all current 104 Tier B municipalities have been issued a Notice for Reassignment to Tier A. This effectively ends the Tier B permit program with the expiration of the current General Permits on December 31, 2022. Transition to the Tier A permit program will commence on January 1, 2023 with the scheduled renewal of the Tier A Master General Permit. The redesignation to Tier B compliance generates additional work and costs to meet the new mandates.

The NJDEP will be hosting an outreach session for Tier B municipalities being reassigned to Tier A, on August 24 from 1:00 p.m. to 3:00 p.m. This outreach session will include a presentation on the Department's evaluation of Tier B municipalities to determine their eligibility for the Tier A permit, as well as the reassignment process and the Department's assistance during the transition to Tier A. There will also be a presentation on the draft Tier A permit, which will include the identification of the changes being proposed in the new Tier A permit. Those wishing to attend the must RSVP to stormwatermanager@dep.nj.gov with your name, email, and municipal affiliation. A follow-up email will be sent with a link to join the session.

Definition of a Tier B Community

NJDEP established N.J.A.C. 7:14A-25 'Municipal Stormwater Regulation Program' in 2004 and issued the initial Master General Permits. The Tier A program regulated small MS4s pursuant to federal rules, while NJDEP describes the Tier B program as '*purely a creation of State law [covering] all other municipalities that are not designated Tier A.*' More specifically, NJDEP

granted the federal waiver to every municipality whose population in their urbanized area was between 1 and 1,000, assigning them as Tier B. These 33 waiver communities comprised 32% of the Tier B municipalities.

The remaining 71 municipalities not designated as Tier A were also designated as Tier B, upon the State's justification as being rural communities with zero (0) population in an urbanized area.

NJDEP Explanation of Reassignment of Tier B to Tier A:

The federal rules at 40 C.F.R. 123.35(b), require the NJDEP to regularly evaluate MS4 (municipal stormwater) designations. During recent discussions with the USEPA, the Department was instructed to review whether permit reassignments were necessary in this permit renewal. Since the Department was working on the Tier A permit renewal, it was necessary to re-evaluate all Tier B permittees across the State in order to determine whether that designation remained appropriate. Further, in its recent permit quality reviews performed by EPA (essentially an EPA audit of NJDEP program), EPA instructed the NJDEP to strengthen its requirements regarding TMDLs and impairments.

The exact reasons for reassignment vary based on municipality, but the reasons include:

1. population of 1000 or more in urbanized areas on the last census,
2. stormwater runoff from the municipality discharges pollutant(s) into a watercourse that is impaired or has a Total Maximum Daily Load (TMDL) for those pollutant(s), or
3. stormwater discharges into high quality classification surface waters, which mandate a higher level of protection.

Most municipalities have some combination of those reasons.

The NJDEP has indicated that 104 communities will be moved from Tier B to Tier A. Please see the link here for the list of tier assignments to see what municipalities were Tier B.

- https://www.nj.gov/dep/dwq/pdf/MS4_municipal_tier_list.pdf

Notification of Reassignment and Outreach to Municipalities by the NJDEP

The tier reassignment was discussed as part of the MS4 permit renewal outreach conducted by the NJDEP with municipalities. Two separate outreach efforts were conducted – in August 2021 before issuing the pre-draft permit and again in March 2022 just after issuing the pre-draft permit.

These preliminary outreach sessions were held to explain and gather feedback about potential new MS4 permit renewal conditions to address current water quality concerns, including TMDLs and water quality impairments. TMDLs and water quality impairments were thoroughly explained, and NJDEP stated that it was evaluating Tier assignments. Invitations to these sessions were emailed on August 6, 2021, to the Stormwater Program Coordinators of the 456 Tier A municipalities and 101 Tier B municipalities. These invitations were also open to each municipality's respective consultants as well.

The Department then prepared a pre-draft of the permit renewal, which was emailed on March 2, 2022, to the Stormwater Program Coordinators of the 456 Tier A towns, 101 Tier B towns, 63 interested parties, as well as the mayors for all Tier A and Tier B municipalities. Since NJDEP knew Tier B municipalities would have little interest in a Tier A permit meeting, they included the following statement in the emails to the stormwater coordinators:

“Although this preliminary draft renewal permit applies only to Tier A municipalities, it is being shared with all Tier B municipalities to provide them with opportunity to review and comment in the event of a reassignment from Tier B to Tier A. The Department is currently evaluating the Tier assignments for all municipalities pursuant to N.J.A.C. 7:14A-25.3(a) and the continuing applicability of the federal permit waiver pursuant to N.J.A.C. 7:14A-25.2(e).”

NJDEP also included the following, slightly expanded, message to the mayors:

“In accordance with N.J.A.C. 7:14A-25.3(a), all municipalities in the state are assigned either to Tier A or to Tier B.

See https://www.nj.gov/dep/dwq/pdf/MS4_municipal_tier_list.pdf for a list of the current municipal Tier assignments. Although this preliminary draft renewal permit applies only to Tier A municipalities, it is being shared with all Tier B municipalities to provide them with opportunity to review and comment in the event of a reassignment from Tier B to Tier A. The Department is currently evaluating the Tier assignments for all municipalities pursuant to N.J.A.C. 7:14A-25.3(a) and the continuing applicability of the federal permit waiver pursuant to N.J.A.C. 7:14A-25.2(e).”

In addition to the outreach sessions, each reassigned municipality received a letter from NJDEP describing the reassignment, including a listing and map of all their HUC-14s and the impairments and TMDLs associated with them as well as an explanation of the pollutants of concern. The letters were sent via certified mail and regular mail to the mayors and by email to the mayors and stormwater coordinators.

Financial Assistance from the NJDEP

The Department is planning a grant program to help reassigned municipalities with this transition. It is planned to be similar in nature to the grants that were offered to Tier A municipalities in 2004 when the program was first created. It is anticipated to be available later this year. There are also grants currently available for stormwater projects and technical assistance available for resilience planning and for stormwater utilities. <https://nj.gov/dep/wlm/grants/swgrant.html>

The next steps can be ascertained during the NJDEP reachout meetings, by contacting NJDEP staff and with your professionals.

Sincerely,



Mayor Janice S. Mironov
President, NJ Conference of Mayors



Kerry Kirk Pflugh
Executive Director, NJ Conference of Mayors

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