

*** DRAFT - NOT YET FILED ***

3745-39-03

Ohio EPA NPDES requirements for small MS4s.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules and federal statutory provisions referenced in this rule, see rule 3745-39-01 of the Administrative Code.]

The rules in this chapter are written in a "readable rule" format. Also included, and identified as such, are comments. Comments are not legally binding and are recommendations only.

(A) Regulation by rule, designation, petition and waivers under the Ohio EPA storm water management program for small municipal separate storm sewer systems (MS4s).

(1) You are regulated under the Ohio EPA storm water management program for small MS4s if you operate a small MS4 including, but not limited to, systems operated by federal, state and local governments, including the Ohio department of transportation, and:

(a) Your small MS4 is located in an urbanized area as determined by the ~~2000~~latest decennial census by the United States bureau of the census, available at public libraries and on the United States bureau of the census web site www.census.gov; or

(b) You are designated by the director pursuant to paragraph (F) of this rule or are the subject of a petition to the director to require coverage under an Ohio NPDES permit for your discharge of storm water pursuant to paragraph (F) of this rule, and said petition is granted.

[Comment: Under paragraph (A)(1)(a) of this rule, you are deemed to be regulated by rule.]

(2) If you are required to obtain coverage under an Ohio national pollutant discharge elimination system (NPDES) permit, you must comply with the provisions of this chapter.

(3) The director shall waive the requirements otherwise applicable to you if you meet the criteria of paragraph (A)(4) or (A)(5) of this rule. If you receive a waiver under this rule, you may subsequently be required to seek coverage under an Ohio NPDES permit in accordance with this chapter if the director determines that circumstances for the granting of such waiver have changed.

- (4) The director shall waive permit coverage if your small MS4 serves a population of less than one thousand within the urbanized area and you meet the following criteria:
- (a) Your system is not contributing substantially to the pollutant loadings of a physically interconnected Ohio NPDES permitted MS4; and
 - (b) If you discharge any ~~pollutant(s)~~pollutant that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of a United States EPA approved or established total maximum daily load that addresses the identified ~~pollutant(s)~~pollutant. As used in this rule, "identified" means in the most recent final report submitted to the United States EPA by the director to fulfill the requirements of section 303(d) of the act (33 U.S.C. section 1313(d), ~~effective October 10, 2000~~).
- (5) The director shall waive permit coverage if your small MS4 serves a population under ten thousand and you meet the following criteria:
- (a) The director has evaluated all surface waters of the state that receive a discharge from your small MS4;
 - (b) For all such waters, the director has determined that storm water controls are not needed based on wasteload allocations that are part of a United States EPA approved or established total maximum daily load that addresses the ~~pollutant(s)~~pollutant of concern or, if a total maximum daily load has not been developed or approved, an equivalent analysis that determines to the satisfaction of the director, sources and allocations for the ~~pollutant(s)~~pollutant of concern;
 - (c) For the purpose of paragraph (A)(5) of this rule, the ~~pollutant(s)~~pollutant of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your small MS4; and
 - (d) The director has determined that future discharges from your small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

- (6) Reserved.
- (7) Ohio EPA will periodically review any waivers granted in accordance with paragraph (A)(5) of this rule to determine whether any of the information required for granting the waiver has changed. At a minimum, Ohio EPA will conduct such a review once every five years.
- (B) If I am an operator of a regulated small MS4, how do I apply for an Ohio NPDES permit and when do I have to apply?
- (1) If you operate a regulated small MS4 under paragraph (A) of this rule you must seek coverage under an Ohio NPDES permit issued by the director.
- (2) You must seek authorization to discharge under an Ohio NPDES general permit or an Ohio NPDES individual permit, as follows.
- (a) If you are seeking coverage under an Ohio NPDES general permit, you must submit a notice of intent with an addendum that includes the information on your best management practices, measurable goals and responsible person, as required by paragraph (C)(4) of this rule. You may file your own notice of intent, or you and other municipalities or governmental entities may jointly submit a notice of intent. If you want to share responsibilities for meeting the minimum control measures with other municipalities or governmental entities, you must submit a notice of intent that describes which minimum control measures you will implement and identify the entities that will implement the other minimum control measures within the area served by your MS4. The Ohio NPDES general permit will explain any other steps necessary to obtain permit coverage.
- (b) The following are applicable to Ohio NPDES individual permits.
- (i) If you are seeking authorization to discharge under an Ohio NPDES individual permit and wish to implement a program under paragraph (C) of this rule, you must submit an application to the director that includes the information required under rules applicable to Ohio NPDES individual permits and paragraph (C)(4) of this rule, an estimate of square mileage served by your small MS4, and any additional information that the director requires. A storm sewer map that satisfies the requirement of paragraph (C)(2)(c)(ii)(a) of this rule will satisfy the map requirement applicable to Ohio NPDES individual permit

applicants.

- (ii) If you are seeking authorization to discharge under an Ohio NPDES individual permit and wish to implement a program that is different from the program under paragraph (C) of this rule, you will need to comply with the permit application requirements applicable to applicants for Ohio NPDES individual permits.
 - (iii) If allowed by the director, you and another regulated entity may jointly apply under either paragraph ~~(B)(2)(a)(i)~~(B)(2)(b)(i) or (B)(2)(b)(ii) of this rule to be co-permittees under an Ohio NPDES individual permit.
- (c) If your small MS4 is in the same urbanized area as a medium or large MS4 with an Ohio NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of its MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with permit conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements applicable to applicants for Ohio NPDES individual permits rather than the requirements of paragraph (C) of this rule.

[Comment: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating storm water pollutant control activities in your small MS4, and detail the resources available to you to accomplish the plan.]

(3) If you operate a small MS4:

- (a) Regulated by rule under paragraph (A)(1)(a) of this rule, you must apply for coverage under an Ohio NPDES permit, or apply for a modification of an existing Ohio NPDES permit under paragraph (B)(2)(c) of this rule by March 10, 2003; or
- (b) Designated by, or a petition was granted under, paragraph (A)(1)(b) of this rule, you must apply for coverage under an Ohio NPDES permit, or apply for a modification of an existing Ohio NPDES permit under paragraph (B)(2)(c) of this rule within one hundred eighty days of

notice, unless the director grants a later date.

(C) As an operator of a regulated small MS4, what will my Ohio NPDES permit require?

(1) Your Ohio NPDES permit will require at a minimum that you develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from your small MS4 to the maximum extent practicable to protect water quality, and to satisfy the appropriate water quality requirements of Chapter 6111. of the Revised Code and the rules adopted thereunder. Your storm water management program must include all of the six minimum control measures described in paragraph (C)(2) of this rule unless you apply for an Ohio NPDES individual permit. For purposes of this rule, narrative effluent limitations requiring implementation of best management practices are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this rule and the provisions of the permit required pursuant to paragraph (B) of this rule constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." You will have up to than five years from the effective date of the permit to develop and implement your program.

(2) Minimum control measures.

(a) Public education and outreach on storm water impacts. You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

[Comment: You may use storm water educational materials provided by the federal, state or local government or agencies, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper operation and maintenance of home sewage treatment systems, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. Ohio EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. Ohio EPA

recommends the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling and watershed and beach cleanups. In addition, Ohio EPA recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.]

- (b) ~~Public involvement/participation~~ involvement and participation. You must, at a minimum, comply with state and local public notice requirements when implementing a public ~~involvement/ participation~~ involvement and participation program.

[Comment: Ohio EPA recommends the public be included in developing, implementing, and reviewing your storm water management program and the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, and participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)]

- (c) Illicit discharge detection and elimination.

(i) You must develop, implement and enforce a program to detect and eliminate illicit discharges into your small MS4. For illicit discharges to your MS4 via a neighboring MS4 outside your jurisdiction, you are only required to inform the neighboring MS4 and inform Ohio EPA of their existence through the routine reports required by your permit.

(ii) You must:

- (a) Develop, if not already completed, a storm sewer system map showing the location of all outfalls and the names and location of all surface waters of the state that receive discharges from those outfalls;
- (b) To the extent allowable under law, effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;
- (c) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and
- (d) Inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste.

- (iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. Discharges or flows from ~~fire fighting activities~~ fighting fires, not planned training exercises, are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to surface waters of the state.

[Comment: Ohio EPA recommends that the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge;

and procedures for program evaluation and assessment. Ohio EPA recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.]

(d) Construction site storm water runoff control.

- (i) You must develop, implement and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.
- (ii) Your program must include the development and implementation of, at a minimum:
 - (a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under the law;
 - (b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste at the construction site that may cause adverse impacts to water quality;
 - (d) Procedures for site plan review which incorporate consideration of potential water quality impacts;
 - (e) Procedures for receipt and consideration of information submitted by the public; and

- (f) Procedures for site inspection and enforcement of control measures.

[Comment: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements ~~and/or~~ and permit denials for non-compliance. Ohio EPA recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system.]

- (e) Post-construction storm water management in new development and redevelopment.

- (i) You must develop, implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

- (ii) You must:

- (a) Develop and implement strategies ~~which~~ that include a combination of structural, ~~and/or~~ non-structural, or both types of best management practices as you determine appropriate for your community;

- (b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law; and

- (c) Ensure adequate long-term operation and maintenance of best management practices.

[Comment: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. Ohio EPA recommends that the ~~BMPs~~best management practices chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate best management practices, Ohio EPA encourages you to participate in locally-based watershed planning efforts ~~which~~that attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, Ohio EPA recommends you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (~~e.g., adopt a combination of structural and/or non-structural best management practices~~), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural best management practices are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain ~~and/or~~ increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of per cent impervious area after development and minimization of directly connected impervious areas. Structural best management practices include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. Ohio EPA recommends that you ensure the appropriate implementation of the structural best management practices by considering some or all of the following: pre-construction review of best management practices designs; inspections during construction to verify that best management practices are built as designed; post-construction inspection and maintenance of best management practices and penalty provisions for the noncompliance with design, construction or operation and

maintenance. Storm water technologies are constantly being improved, and Ohio EPA recommends your requirements be responsive to these changes, developments or improvements in control technologies.]

- (f) Pollution ~~prevention/good~~prevention and good housekeeping for municipal operations. You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from the federal, state or local organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

[Comment: Ohio EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, ~~salt/sand~~salt or sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.]

- (3) If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (C)(2) of this rule, the director may include conditions in your Ohio NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (C)(2) of this rule. A qualifying local program is a local, state or municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (C)(2) of this rule.

- (4) Information to be submitted.

(a) In your permit application (either a notice of intent for coverage under an Ohio NPDES general permit or an Ohio NPDES individual permit application), you must identify and submit to the director the following information:

- (i) The best management practices that you or another entity will implement for each of the storm water minimum control measures at paragraphs (C)(2)(a) to (C)(2)(f) of this rule;
- (ii) For each best management practice so identified, statements indicating whether the small MS4 has the legal authority to implement said best management practice;
- (iii) The measurable goals for each of the best management practices including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and frequency of the action; and
- (iv) The person or persons, including position title or titles, responsible for implementing or coordinating your storm water management program.

[Comment: Ohio EPA has made available a menu of best management practices. You may choose best management practices from the menu or develop other best management practices to satisfy the minimum control measures.]

- (5) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load or equivalent analysis. The director may include such more stringent limitations based on a total maximum daily load or equivalent analysis that determines such limitations are needed to protect water quality.
- (6) You must comply with all requirements, standards terms and conditions established in the Ohio NPDES individual or general permit.
- (7) Evaluation; recordkeeping and reporting.
 - (a) You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The director may impose monitoring

requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

- (b) You must keep records required by the Ohio NPDES permit for at least three years from the date they are created or the term of the permit, whichever is longer. This period may be extended by request of ~~the~~ Ohio EPA at any time. You must submit your records to the director only when required to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours. You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.
- (c) Unless you are relying on another entity to satisfy your Ohio NPDES permit obligations under paragraph (D)(1)(a) of this rule, you must submit reports to the director in accordance with the requirement of your permit. Your report must include:
 - (i) The status of compliance with permit conditions, and an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;
 - (ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
 - (iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;
 - (iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and
 - (v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

(D) As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

- (1) You may rely on another entity to satisfy your permit obligations to implement a minimum control measure if:

- (a) The other entity, in fact, implements the control measure;
- (b) The particular control measure, or component thereof, is at least as stringent as the corresponding Ohio NPDES permit requirement; and
- (c) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under paragraph (C)(7)(c) of this rule, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under an Ohio NPDES permit to satisfy all of your permit obligations, including your obligation to file periodic reports required paragraph (C)(7)(c) of this rule, you must note that fact in your notice of intent and identify the ~~entity(ies)~~entity, but you are not required to file the periodic reports. If you are relying on another governmental entity regulated under an Ohio NPDES permit, or a non-governmental entity, to satisfy some of your permit obligations, you must note that fact in your notice of intent and identify the ~~entity(ies)~~entity, and you are required to file the periodic reports. In any of the above situations, you remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof).

[Comment: If you are relying on another entity to perform any of your permit obligations, you are encouraged to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.]

(E) As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements of this chapter?

- (1) Ohio NPDES permits are enforceable under Chapter 6111. of the Revised Code.
- (2) If you are covered as a co-permittee under an Ohio NPDES individual permit or under an Ohio NPDES general permit by means of a joint notice of intent, you remain subject to enforcement actions and penalties for the failure to comply with the terms of the permit.

(F) Small MS4 designation; petitions.

- (1) After providing for public notice and allowing for public comment, small MS4s shall be designated by the director to obtain Ohio NPDES permit coverage for discharges in any of the following circumstances:

- (a) When surface waters of the state within a county, township or municipality where a small MS4 is located are listed as impaired in the most recent final report submitted to the United States EPA by the director to fulfill the requirements of section 303(d) of the act (33 U.S.C. section 1313(d), ~~effective October 10, 2000~~), and the county, township or municipality:
 - (i) Has a population of at least ten thousand;
 - (ii) Has a population density of one thousand or more per square mile;
and
 - (iii) Is located outside of an urbanized area;
- (b) When a storm water discharge from the small MS4 results in or has the potential to result in an exceedance of Ohio water quality standards, including impairment of a designated use, or other significant water quality impacts including habitat and biological impacts to surface waters of the state; or
- (c) When a small MS4 contributes substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by Ohio EPA.

(2) Petitions.

- (a) Any person may petition the director for the designation of a small MS4. Any such petition must include a demonstration of the relevant criteria for designation set forth in paragraph (F)(1) of this rule and the petitioner must supply the subject MS4 a copy of the petition and supporting documentation. After providing for public notice and allowing for public comment, the director shall make a final determination on the petition within one hundred eighty days after its receipt.
- (b) Any person may petition the director to review any waiver issued by the director. Any such petition must include evidence that the information required for granting the waiver has substantially changed. Any final determination on such petition shall be made within ninety days after receiving the petition.

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Certification

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