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**National Pollutant Discharge Elimination System (NPDES)/**

**State Disposal System (SDS) Permit Program Fact Sheet**

**Permit Reissuance**

**Municipal Division**

**NPDES/SDS Permit MN R100001 for**

**Construction Activities**

**Current permit expiration date:** August 1, 2018

**Public comment period begins:** April 10, 2018

**Public comment period ends:** May 9, 2018, 4:30 p.m.

**Public informational meeting:** April 17, 2018, 1:30-3:30

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## Applicable Statutes

This fact sheet has been prepared according to the 40 CFR § 124.8 and 124.56 and Minn. R. 7001.0100, subp. 3 in regards to a draft NPDES/SDS permit to control pollution generated from runoff associated with construction activities discharging into waters of the State of Minnesota.

## Purpose

This fact sheet outlines the principal issues related to the preparation of this draft permit and documents the decisions that were made in the determinations for the conditions of this permit. You must submit all comments, requests, and petitions during the public comment period identified on page one of this notice. This permit is a reissuance of a previous general permit, which will expire on August 1, 2018. The Minnesota Pollution Control Agency (MPCA) Commissioner has made a preliminary determination to issue this permit for a term of five years.

## Public participation

You may submit written comments on the terms of the draft permit or on the Commissioner’s preliminary determination. Your written comments must include the following:

1. A statement of your interest in the draft permit.

2. A statement of the action you wish the Minnesota Pollution Control Agency (MPCA) to take, including specific references to sections of the draft permit that you believe should be changed.

3. The reasons supporting your position, stated with sufficient specificity as to allow the Commissioner to investigate the merits of your position.

The MPCA created a page on its website to post portions of proposed language for comment in an effort to gain some early input regarding some of the proposed changes. This was announced through a GovDelivery notification in addition to a number of internal and external quarterly newsletters. Feedback from the public was used to further refine the draft permit language prior to the official 30-day public comment period.

In accordance with Minn. R. 7000.0650 and Minn. R. 7001.0110, you may submit a petition for a public informational meeting, however, due to the number of comments expected, the MPCA has scheduled a public meeting during the public comment period. The MPCA will deliver a short presentation on the proposed changes and answer questions. The meeting will be conducted in a webinar format. Questions may be submitted during the webinar however, the MPCA encourages the public to submit questions prior to the public meeting to ensure enough time to cover all issues raised.

**Public informational meeting:** April 17, 2018 1:30 - 3:30

for more information and to submit questions:

[https://stormwater.pca.state.mn.us/index.php?title=2018\_Construction](https://stormwater.pca.state.mn.us/index.php?title=2018_Construction_Stormwater_Permit_-_Public_Notice_and_Public_Informational_Meeting)

\_Stormwater\_Permit\_-\_Public\_Notice\_and\_Public\_Informational\_Meeting

In addition, you may submit a petition for a contested case hearing. A contested case hearing is a formal hearing before an administrative law judge. Your petition requesting a contested case hearing must include a statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing pursuant to the criteria identified in Minn. R. 7000.1900, subp. 1 and a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested. To the extent known, your petition should include a proposed list of witnesses to be presented at the hearing, a proposed list of publications, references or studies to be introduced at the hearing, and an estimate of time required for you to present the matter at hearing.

You must submit all comments, requests, and petitions during the public comment period identified on page one of this notice. All written comments, requests, and petitions received during the public comment period will be considered in the final decisions regarding the permit. If the MPCA does not receive any written comments, requests, or petitions during the public comment period, the Commissioner or other MPCA staff as authorized by the Commissioner will make the final decision concerning the draft permit.

**Comments, petitions, and/or requests must be submitted by the last day of the public comment period to:**

Todd Smith

Minnesota Pollution Control Agency

520 Lafayette Road North

St. Paul, Minnesota 55155

651-757-2732

[todd.smith@state.mn.us](mailto:todd.smith@state.mn.us?subject=2018%20Draft%20Construction%20Stormwater%20Permit%20)

# General Permit Authority

Minn. R. 7001.0210 provides authority to the MPCA to issue a single permit to a category of permittees whose activities are the same or substantially similar. This single NPDES/SDS permit that can apply to numerous facilities is referred to as a general permit. Title 40 CFR § 122.28 and Minn. R. 7001.0210 allows for the issuance of general permits to regulate categories of discharges if the sources within each category:

1. Involve the same or substantially similar types of operations.
2. Discharge the same types of wastes.
3. Require the same effluent limitations or operating conditions.
4. Require the same or similar monitoring.
5. Are more appropriately controlled under a general permit rather than under individual permits.

The MPCA has reviewed data to determine the individuals performing construction activity meet the stipulated criteria for development of a general permit for such activities.

# General Description of Permitted Activities

This Permit authorizes stormwater discharges associated with construction activity and small construction activity, as defined in 40 CFR § 122.26(b)(14)(x) and (b)(15), respectively. Construction activity refers to clearing, grading, excavating, and other land-disturbing activities that result in the disturbance of one or more acres, as well as disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb one acre or more. Routine maintenance performed to maintain the original line and grade (for example, road grading), hydraulic capacity (for example, ditch cleaning), or original purpose of the facility is excluded from the definition of “construction activity.”

**Summary of Permit Conditions**

This draft permit will replace the previous permit set to expire in August 2018. Although the format of the permit has changed considerably, the conditions of the draft permit remain largely the same as the previous permit. Due to the change in format, a traditional red lined version of the permit is not possible. Therefore, the MPCA is providing a list of all changes in permit language that result in a change of policy, meaning or expectation. The list is included with this document as attachment A. Many of the permit provisions were rewritten, combined or split apart without changing the policy, meaning or expectation.

The draft permit will address pollution associated with the discharge of stormwater related to construction activity by requiring each permittee to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) in compliance with the permit. The SWPPP must be developed prior to applying for coverage under the permit or conducting any construction activity. The permit contains specific detailed requirements and standards for the Best Management Practices (BMP) and other elements of the SWPPP. During the development of the SWPPP, permittees are allowed to choose the appropriate BMPs to address the potential discharge of sediment and other potential pollutants from the construction site. For projects resulting in new impervious surfaces, permittees must choose stormwater treatment BMP’s to be constructed as part of the project to avoid pollution and degradation of surface waters from uncontrolled discharge of stormwater.

All BMPs require regular inspections and maintenance to function as intended. BMPs must be regularly inspected to ensure they are operating properly, including after runoff events. If BMPs are found to be ineffective or failing, action to resolve it should be initiated immediately. The proposed permit contains a timeline for installing or repairing BMPs found to be ineffective. The time intervals are not grace periods, but are schedules considered reasonable for documenting findings and for making repairs and improvements. They are included in the permit to ensure that the conditions prompting the need for these repairs and improvements are not allowed to persist indefinitely.

The draft permit also establishes pollution prevention standards to minimize, control, or eliminate the discharge of pollutants (i.e., construction and demolition waste, solid waste, trash, and other pollutants) in stormwater and other wastewater from pollutant-generating activities that occur on-site or at an off-site construction support activity area.

In addition to erosion prevention, sediment control and waste controls, the permit requires permanent stormwater treatment facilities for projects that will result in a net increase of one or more acres of new impervious surfaces. For example, if a project consists of converting green space into a retail center, stormwater treatment facilities must also be constructed to treat stormwater prior to discharge to surface waters. The permit requires permittees to consider stormwater volume reduction practices first such as infiltration systems. If the site is not appropriate for infiltration, permittees must next consider another type of treatment system such as a wet sedimentation basin or filtration system.

# Facilities Not Eligible to Obtain General Permit Coverage / Criteria for Coverage

Project owners proposing construction activity must certify, at the time of application, that a SWPPP has been developed for the project that meets all terms and conditions of the permit. If the project is such that it cannot be constructed while maintaining compliance with this general permit, an owner may request an individual permit, in accordance with Minn. R. 7001.0210 subp. 6.

# Description of Geographic Area

This permit authorizes stormwater discharges associated with construction activity and small construction activity, as defined in 40 CFR § 122.26(b)(14)(x) and (b)(15), respectively in all areas of the State of Minnesota except land wholly within the boundaries of a federally recognized Indian Reservation that is owned by a tribe or a tribal member, or land held in trust by the federal government for a tribe or tribal member.

# How to Obtain General Permit Coverage

Prior to submitting the permit application, permit applicants must develop a SWPPP. Permit applicants may obtain coverage under this general permit by submitting an application using MPCA’s e-services system. Applicants must certify that a SWPPP has been prepared and that all of the information entered on the application is accurate. For most projects, permit coverage will become effective once the application is received and the fee has been processed. This typically takes one to three days. For certain projects that disturb 50 or more acres and that have a discharge point that is within one mile of a special or impaired water, the MPCA will review the SWPPP before the permit is issued. This typically takes less than 30 days. If the application and SWPPP is considered complete and the MPCA determines that the facility is eligible for coverage under the general permit, the MPCA will send permittees, via email, a notice of coverage letter and a coverage card. These documents are also made available to the public immediately upon approval on the MPCA’s website. Authorization to conduct activities under the general permit does not begin until the permittee receives written confirmation from the MPCA.

# Basis for Effluent Limitations

Permittees can minimize the discharge of pollutants from construction sites by satisfying the non-numeric effluent limitations at 40 CFR 450.21 and by using various controls and practices, outlined in more detail by the permit. The Environmental Protection Agency (EPA) crafted the nonnumeric effluent limits in the C&D rule to allow flexibility in how the permitting authority implements these requirements in permits. See 74 FR 63016. As an example, 40 CFR 450.21(a)(5) requires construction operators to design, install, and maintain controls to “minimize sediment discharges from the site.” Thus, each NPDES permitting authority has some discretion within this somewhat broad requirement, defined further at 40 CFR 450.21(a)(5), to further define what it means to minimize sediment discharges, or to achieve any of the other non-numeric limits. See 74 FR 63016.

Accordingly, this permit contains requirements that specifically implement or incorporate each of the C&D rule’s nonnumeric limits in order to minimize the discharge of pollutants from construction sites. This is consistent with EPA’s objective to write general permits with conditions that are clear, specific, and measurable.

# EPA Antidegradation Requirements

An additional component of water quality standards is the policy of antidegradation (referred to as nondegradation prior to December 2016). Each state is required to adopt an antidegradation policy consistent with EPA’s antidegradation regulations (40 CFR §131.12). EPA’s antidegradation policy provides for three ‘tiers’ of protection from degradation of water quality. The first tier protects existing uses and provides for a minimum threshold of water quality. For Minnesota surface waters, this minimum threshold is existing conditions as of January 1, 1988, or the date of designation for Outstanding Resource Value Waters (ORVW). The second tier protects the level of water quality necessary to support the propagation of fish, shellfish, and wildlife, and provides for recreation activities in waters that are of higher quality than required to support those uses. Before the quality in such waters can be lowered, an antidegradation analysis must be conducted. The third tier protects the quality of ORVW, such as waters of exceptional recreational or ecological significance.

**MN Rules, Antidegradation Requirements**

The construction permit must meet the antidegradation provisions of Minn. R. chs. 7050 and 7052 to achieve and maintain the highest possible quality in surface waters of the state. The CSW permit identifies specific requirements for erosion prevention, sediment control, general pollution prevention, and permanent stormwater management that will minimize the discharge of sediment, phosphorus and other pollutants during and after construction. By meeting the permit requirements, the permittee will protect the existing uses, designated beneficial uses, and high water quality of all waters that receive stormwater discharges from construction activity. The MPCA bases this conclusion in part on the fact that the controls required in the Construction Activity Requirements and Stormwater Discharge Design Requirements sections of the proposed CSW permit are based on the nationally developed effluent limitations guidelines process1 that defined the Best Available Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT) and Best Practicable Control Technology (BPT) and New Source Performance Standards (NSPS) level of control for the construction & development category.

Additional requirements are placed on permittees that discharge to waters with high water quality, impaired waters, and restricted and prohibited ORVWs. These additional requirements are contained in item 1.25.1 of the draft permit, and include requirements to stabilize exposed soil areas faster, increased use of temporary sediment basins, buffer strips in certain waters, temperature mitigation BMPs and conduct more site inspections than other sites.

The draft CSW Permit meets antidegradation requirements by:

* Requiring the reduction of the discharge of sediment and sediment-related parameters (TSS and TP) during construction for all permitted activities;
* Requiring the development of a SWPPP that meets the CSW permit requirements in order to address construction site related discharges of any type;
* Preventing or removing sediment in stormwater runoff to reduce the discharge of pollutants such as heavy metals that adsorb onto sediment particles; and,
* Requirements for construction of permanent stormwater management systems for projects that create one or more acres of new impervious surface to address pollutants in stormwater discharges after the construction activity is complete.

*Protection of restricted ORVWs and impaired waters*

The draft permit has additional requirements during construction for all projects discharging to restricted or impaired waters that are located within one mile. The additional requirements during construction are specified in item23.20 through item 23.23 of the draft permit. They include shorter timeframes for stabilization, increased use of temporary sediment basins during construction, inclusion of a 100-foot buffer strip near certain waters, and temperature mitigation BMP requirements. By meeting permit requirements, the permittee will protect restricted ORVWs and impaired waters, by allowing no new or increased discharges that would result in lower water quality.

For construction near these waters, further reducing the amount of time that exposed soil is left in an unstabilized state is especially important for limiting the sediment and/or nutrient load to these waters. The faster stabilization requirement for areas discharging to these waters is designed to minimize the erosion and sedimentation that is associated with large exposed areas. Along with shorter deadlines to complete stabilization, the requirement for an increased use of temporary sediment basins will help reduce the amount of sediment entrained in the runoff prior to leaving the construction site. Buffer strips and temperature mitigation BMPs further ensure that runoff from sites near these waters will not lower water quality.

It is important to note that the issuance of the CSW permit is important to the state’s economy because construction activity within the state would virtually cease without the ability to apply for and obtain a CSW permit for construction activity. Construction projects employed more than 100,000 Minnesotans on average throughout 2014 and 2015, and accounted for more than $13 billion in state gross domestic product. The end products of construction activity result in new housing for residents or provide commercial spaces for local businesses, which add to the vitality of the local economy. The construction of new roads and bridges, or repairing old infrastructure, provides safe options for transportation to jobs and other economic transactions. For these reasons, the issuance of the CSW permit is necessary to accommodate important economic and social development in Minnesota.

*Protection of prohibited ORVWs*

The draft CSW permit also provides for the protection of prohibited ORVWs. For prohibited waters, the draft CSW permit includes all of the requirements for discharges to restricted ORVWs and impaired waters. Additionally, projects that discharge to prohibited waters require increased inspection frequency during construction activities. Also, for projects that discharge to prohibited waters that cannot infiltrate one inch of runoff from new impervious surfaces, a plan must be developed and included in the SWPPP for the project that demonstrates how the discharge from the project will not increase pollutants to the prohibited water.

An increase in the frequency of inspections for sites that discharge to prohibited waters will enhance the permittee’s ability to find and correct problems before a discharge of pollutants occurs. The MPCA has also determined that projects that can meet the one inch of infiltration requirement for creation of new impervious surfaces will not increase the discharge of pollutants (see volume reduction discussion that was included with 2013 CSW permit response to comments as Attachment B-1)2. Projects that cannot meet the volume reduction requirement will have the flexibility to develop a site specific plan for their construction activity to ensure that no increase of pollutants occurs in discharges to prohibited waters.

The MPCA has determined that compliance with the draft CSW permit satisfies antidegradation requirements, making individualized review unnecessary. The conclusion that compliance with the draft CSW permit will meet the antidegradation requirements for restricted and prohibited waters depends on several key aspects of the permit. First, all construction sites that will be subject to this permit must meet the stringent requirements set out in the item   
7.1 through 13.7 (formerly referred to as Construction Activity Requirements) and item 5.1 through item 6.4 and item 14.1 through item 21.6 (formerly referred to as the Stormwater Discharge Design Requirements sections of the permit. Through compliance with these limits alone, MPCA expects that the discharge of pollutants will be reduced and/or eliminated such that there should not be a lowering of water quality. This conclusion is based in part on the fact that the requirements in the draft CSW permit are based on the nationally-developed effluent limitations guidelines process that defined the BAT/BCT/BPT and NSPS level of control. The draft CSW permit also requires permittees discharging to high quality waters, impaired waters, and restricted or prohibited ORVWs to meet even more stringent controls found in item 23.1 through 23.25 (formerly referred to as appendix A) of the permit. Furthermore, once installed and implemented, the permittee is obligated to maintain these controls and to correct deficiencies where inspection determines that deficiencies exist. Where MPCA determines through its oversight activities (e.g. onsite inspection) that a discharger is not meeting its requirements, such a deficiency will constitute a violation of the permit and will require follow-up corrective action. For all of the reasons outlined above the MPCA has determined that the proposed permit will meet the state’s antidegradation rule.

1. Development Document for Final Effluent Guidelines and Standards for the Construction & Development Category – November 2009 ( <https://www.epa.gov/sites/production/files/2015-06/documents/construction_development_dd_2009_chapters_1-11.pdf> )
2. CSW Response to comments - volume reduction approach, Attachment B-1 (<https://www.pca.state.mn.us/sites/default/files/wq-strm2-68j.pdf>)

**Anti-backsliding**

Any point source discharger of sewage, industrial, or other wastes for which a NPDES permit has been issued by the MPCA that contains effluent limits more stringent than those that would be established by Minn. R. [7053.0215](https://www.revisor.leg.state.mn.us/rules?id=7053.0215) to [7053.0265](https://www.revisor.leg.state.mn.us/rules?id=7053.0265) shall continue to meet the effluent limits established by the permit, unless the permittee establishes that less stringent effluent limits are allowable pursuant to federal law, under section 402(o) of the Clean Water Act, United States Code, title 33, section 1342.

This Permit complies with Minn. R. 7053.0275 regarding anti-backsliding. Any changes from the previous permit effluent limits are explained in attachment A, and will not result in a violation of water quality standards.

# References

United States Environmental Protection Agency, Office of Water. “U.S. EPA NPDES Permit Writers’ Manual,” EPA-833-B-96-003. September 2010.

Minnesota Pollution Control Agency. “Fact Sheet for the National Pollutant Discharge Elimination System/State Disposal System Multi-Sector General Permit for Industrial Stormwater Activity,” November 2010.

**Attachment A**

**Guide for the draft 2018 NPDES/SDS Construction Stormwater General Permit**

**Introduction: This document is intended to serve as a guide for readers to understand all of the proposed changes associated with the draft permit. Many of the permit requirements were re-written, combined or split apart without changing the policy, meaning or expectations of the MPCA. Also, due to Agency wide policies, the format of the permit has changed considerably. For these reasons, a traditional red lined version of the permit is not possible. Some of the requirements have been changed or expanded. The section names denoted with an asterisk (\*) indicate the proposed language is intended to change the policy, meaning or expectation of the MPCA. This guide also highlights some of the key parts of the permit that may appear different even though there is not an intended change in policy or expectation.**

**Current Draft**

**Permit Permit**

**Reference Section Name or Topic Description of Change or Discussion Reference**

|  |  |  |  |
| --- | --- | --- | --- |
| Part I.A.4 | Permit coverage (previously  ongoing projects) | This section was re-written for brevity. The MPCA intends on treating ongoing projects the same as in previous permits. If a project has permit coverage under the current permit and work is still ongoing on the date the proposed permit becomes effective, permittees can either:   * finish the project following the current permit requirements within 18 months or, * if the project will continue beyond 18 months, the permittee must follow the new requirements of the proposed permit. This does not include any changes in requirements for permanent stormwater management.   Another statement was added to notify future permittees obtaining the proposed permit that ongoing projects will be treated in a similar way upon the re-issuance of the next construction permit in 2023. The reference to Minn. R. ch. 7001 was removed since the rule is always applicable regardless of whether or not it is stated here. | 1.6  1.7 |
| Part II.B.3.a | Application and coverage  effective date\* | The MPCA is proposing to omit the mandatory 7 day waiting period. However, payment confirmation is required before the MPCA can issue permit coverage. The waiting period of “seven (7) calendar days” has been replaced with “upon completing the payment process”. This is often one calendar day but in no case more than 7 seven calendar days. All project proposers must obtain NPDES coverage electronically. The online application assures that all of the questions are completed and requires the user to certify that a SWPPP has been prepared for the project. For these reasons, the MPCA does not believe that a waiting period is necessary. | 3.3 |
| Part II.B.3.b | Permit coverage effective date\* | The MPCA is proposing to omit the mandatory 30 day waiting period. For projects that require a SWPPP review before coverage is issued, the MPCA will grant coverage upon the completion of the application and payment process and after the MPCA has made a determination that the SWPPP meets all of the permit requirements. This determination usually takes less than 30 days. Since the MPCA has performed a SWPPP review for these projects, any additional waiting period is not necessary. | 3.4 |
| Part III.A | Stormwater Pollution Prevention  Plan content | The requirements for SWPPP content have been re-written and re-ordered for clarity. Some sections contained multiple requirements and they have broken up into individual items. Some duplicate items have been removed. Most of the items listed remain the same although there are some proposed additions and changes that are described individually below. | 5.1 |
| New Provision | SWPPP Amendments\* | Permittees are allowed to revise the SWPPP for the projects at any time as long as the BMP's are selected, installed and maintained in accordance with the manufactures specifications and accepted engineering practices (Part IV.A and item 7.2). In order to prevent contractors from deviating from the SWPPP and selecting inappropriate BMP option with no regard to the specific site conditions, the MPCA has added the following language regarding SWPPP amendments:  All SWPPP changes must be done by one of the individuals described in item 21.4 or item 21.5 or another qualified individual. Changes involving the use of a less stringent BMP must include a justification describing how the replacement BMP is effective for the site characteristics.  This language preserves the flexibility to allow contractors (or owners) to make cost effective BMP substitutions if the change is still protective for the site. | 6.2 |
| New Provision | Documentation when the volume control standard cannot be achieved\* | For those projects where the full volume reduction requirement cannot be met on site, (e.g., the site has infiltration prohibitions, see item 16.14 through item 16.22 of the proposed permit) the permittee must document the reasons in the SWPPP. This is intended to ensure that SWPPP designers consider volume reduction type practices first before designing non-volume reduction BMP’s such as a wet sedimentation basin. | 5.15  15.6 |
| Part III.A.5.m | Documentation of infeasibility\* | The MPCA has made an addition to this requirement. For projects adjacent to surface waters, the current permit requires the preservation of a 50’ buffer unless infeasible. For projects adjacent to special waters or impaired waters, a 100' buffer zone must be preserved as described in item 23.22. The MPCA has observed several projects in which the buffer was not preserved and there was no apparent reason why. The proposed permit requires permittees to document in the SWPPP why the buffer was not preserved. This requirement is intended to work with item 5.12 which requires buffer zones to be shown on the plan sheets in the SWPPP. | 5.13c |
| Part III.A.7 | Karst areas | This part was removed. Issues pertaining to karst are addressed in item 16.19 and 18.10 of the proposed permit. | 16.19  18.10 |
| Part III.A.8.b | Impaired waters and TMDL’s | This section was deleted. The MPCA has made a programmatic decision not to include specific implementation activities or BMP’s in TMDL implementation plans for construction activity. The permit requirements provide the protection required for no net increase in pollutant loading (see discussion regarding non-degradation). The permit provides this protection through both erosion and sediment control BMP’s during construction and the requirements for providing permanent  stormwater treatment facilities in conjunction with the project including the additional BMP’s found in Appendix A for discharges to impaired waters. |  |
| Part III.D, 2nd paragraph, | Permanent stormwater  management\* | This section was deleted. The current permit offers permittees an option to follow a municipalities (or other plan approval authority such as a watershed district) stormwater ordinance in lieu of the permit requirements if that municipality is regulated by the state through the Municipal Separate Storm Sewer System (MS4) program. This provision was intended to reduce duplicate regulations as all regulated MS4 communities should have an ordinance in place that is at least as stringent as the state permit. However, in MPCA’s experience many of the ordinances have not been written such that the requirements were at least as stringent as the state requirements and this provision prevented the MPCA from taking any action if the permittees plans were approved by the municipality. |  |
| Part III.D, 3rd –  6th paragraph | Permanent stormwater  management | These sections were reworded and reorganized for clarity. The overall intent of the stormwater treatment requirements in this section remains the same as the current permit. The proposed permit attempts to clearly define:   * when the permit requires a treatment system, and * the level or amount of treatment, and * what methods must be considered first and, and * when those methods are not viable, what to consider next.   Projects that will result in a net increase in impervious surfaces of one acre or more must include plans for a permanent stormwater treatment system. Permittees are still expected to provide some type of volume reduction treatment if the site is conducive for stormwater infiltration. If the site is not conducive to stormwater infiltration (see item 16.14 through 16.22) other types of systems must be utilized such as a wet sedimentation basin. The permit will still offer flexibility for linear projects or projects where bedrock limits any type of stormwater management. | 15.1 |
| Part III.D.1.j.i | Infiltration prohibition\* | The current permit prohibits the construction of a designed infiltration system if the system will be constructed in any areas receiving runoff from vehicle fueling and maintenance activities. Currently the prohibition only applies if the permittee is required to provide a stormwater treatment system under this permit. Only those projects that result in a net increase of impervious surfaces totaling one or more acres are required to provide a stormwater treatment system. Many projects, both large and small are not required to provide stormwater management under this permit as the project may encompass areas that are already impervious and the net increase in impervious is less than one acre. Permittees of these projects often propose stormwater management that includes infiltration, either because the owner desires to do so or it may be required under the local ordinance or direction of a watershed district. The proposed permit would prohibit infiltration systems constructed as part of the project regardless of whether or not the CSW permit requires stormwater management if the site receives runoff from vehicle fueling and maintenance areas. | 16.14 |
| Part III.D.1.g | Infiltration requirement\* | The current permit requires “appropriate on-site testing consistent with the recommendations found in the Minnesota Stormwater Manual to verify soil types…”. The manual recommends a certain number of on-site soil tests depending on the size of the system. In the MPCA's experience, many permittees are attempting to design infiltration systems using county soil maps, soil borings from nearby areas or no soil information at all. The proposed permit specifically requires permittees to provide at least one soil boring, test pit or infiltrometer test in the area of each infiltration system for determining infiltration rates. The proposed permit allows field tested rates to be used with a safety factor of 2 or permittees may use the infiltration rate chart found in the Minnesota Stormwater Manual to determine design infiltration rates based on soil type. | 16.10  16.11 |
| Part III.D.1.j.iv | Infiltration prohibition\* | The current permit prohibits constructing infiltration systems in areas with contaminated soil or groundwater. The current language states that infiltration is prohibited in: “areas where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.” The proposed permit includes additional language describing the steps permittees are expected to take to demonstrate compliance with this requirement. The proposed language is as follows:  "Permittees are prohibited from constructing infiltration systems where high levels of contaminants in soil or groundwater may be mobilized by the infiltrating stormwater. Permittees must either complete the MPCA's site screening assessment checklist or conduct their own assessment to determine the suitability for infiltration. The assessment must be retained with the SWPPP. For more information and to access the MPCA's screening assessment tool see the Minnesota Stormwater Manual”.  A page can be viewed in the MN stormwater manual to guide permittees through the process:  [https://stormwater.pca.state.mn.us/index.php?title=Stormwater\_Infiltration\_and\_soil/groundwater](https://stormwater.pca.state.mn.us/index.php?title=Stormwater_Infiltration_and_soil/groundwater_contamination:_A_guide_to_the_Construction_Stormwater_Permit_requirements)  \_contamination:\_A\_guide\_to\_the\_Construction\_Stormwater\_Permit\_requirements  The MPCA does not expect soil or groundwater testing at every site but rather intends for permittees to continue to use the screening assessment tool in the stormwater manual to determine if  contamination might be present. In addition, Permittees can look up past remediation sites using the “What’s in my Neighborhood” tool on the MPCA website to access information on those properties:  <https://www.pca.state.mn.us/data/whats-my-neighborhood> | 16.15 |
| Part III.D.1.j.vii | Infiltration prohibitions for Drinking Water Supply  Management Areas (DWSMA)\* | The current permit prohibits infiltration anywhere within a DWSMA. The MPCA has consulted with the MN Department of Health to write a less restrictive but equally protective requirement regarding DWSMA’s. The proposed permit limits the prohibition to "within an Emergency Response Area (ERA) as defined by the Department of Health" and "areas within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R. 4720.5100, subp. 13, classified as having high or very high vulnerability, unless a regulated MS4 Permittee has performed a higher level of engineering review sufficient to provide a functioning treatment system and to prevent adverse impacts to groundwater." The MPCA has incorporated this data into the Construction Stormwater Special Waters Search tool:  <http://pca-gis02.pca.state.mn.us/CSW/index.html>  The DWSMA and ERA information can be activated by opening the "Map Layers" button and checking the appropriate boxes. | 16.20  16.21 |
| New Provision | Filtration systems\* | The current permit requires infiltration systems to be constructed when the drainage area is stabilized near the end of the project, or to be completely protected if ongoing construction is occurring within the drainage area of the system. This provision helps ensure that the soil profile does not prematurely clog. Filtration systems require the same type of care to avoid clogging the placed material (filter media) installed over the drainage system. The following requirement has been added to the filtration system item:  "The filter media must not be installed until the contributing drainage area has been constructed and fully stabilized unless rigorous erosion prevention and sediment controls (e.g., diversion berms) are provided to keep sediment and runoff completely away from the filtration area." | 17.3 |
| New Provision | Wet sedimentation basin  requirement\* | The design requirements for wet sedimentation basins in the current permit are in Part III.D.2. A new requirement was added to the proposed permit requiring an impermeable liner to be included in the design of a basin located in active karst terrain. | 18.10 |
| Part IV.B.3 | Conveyance channels | This part was deleted. The MPCA added this part in 2013 in response to the EPA C&D rule. Upon further consideration of the other requirements in the permit, the MPCA believes this is duplicative, at least in intent, and is confusing to regulated parties as it appears to be a separate requirement for “conveyance channels” vs. the permit requirements already included regarding “drainage ditches”. The MPCA believes the following items, found in both the proposed permit and the current permit, fulfills the C&D rule requirement for conveyance channels:   * Item 8.6 - “Permittees must stabilize the normal wetted perimeter of the last 200 linear feet of temporary or permanent drainage ditches or swales that drain water from the site within 24 hours after connecting to a surface water or property edge. Permittees must complete stabilization of remaining portions of temporary or permanent ditches or swales within 14 calendar days after connecting to a surface water or property edge and construction in that portion of the ditch temporarily or permanently ceases.” * Item 8.7 - “Temporary or permanent ditches or swales being used as a sediment containment system during construction (with properly designed rock-ditch checks, bio rolls, silt dikes, etc.) do not need to be stabilized. Permittees must stabilize these areas within 24 hours after their use as a sediment containment system ceases." * Item 8.9 - “Permittees must provide temporary or permanent energy dissipation at all pipe outlets within 24 hours after connection to a surface water or permanent stormwater treatment system.” * Item 7.2, 11.4 & 6.4 - item 7.2 states, “Permittees muse select install and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices.” Item 11.4 contains language requiring that any BMP, if found to be ineffective (i.e. drainage swale with high velocity causing erosion) must be replaced or supplemented. Item 6.4 requires that if nuisance conditions are observed, the permittees must revise the SWPPP accordingly. These three sections work together to ensure that all conveyance channels must be designed, maintained and supplemented, if necessary, to ensure that stormwater will not cause nuisance conditions. |  |
| Part IV.B.4 4th  Paragraph | Ditch stabilization methods\* | The current permit specifically states that some less effective stabilization methods such as mulch cannot be used in ditches or swales for stabilization and permittees must rely on more robust practices such as erosion control blankets. The MPCA has heard from numerous stakeholders that Best Management Practices such as disc anchored mulch may be adequate under certain limited conditions such as areas with little or no slope and installing blanket in all locations is cost prohibitive and not necessary. The proposed permit allows permittees more flexibility for the type of stabilization chosen for a ditch bottom if the slope is less than 2%. Additionally, as with all BMP requirements in the permit, If the selected BMP is found to be inadequate at minimizing erosion from ditches or swales, another more effective BMP must be utilized. | 8.8 |
| Part IV.C.5 | Sediment controls near stockpiles | The proposed permit specifically states that perimeter controls are required near the base of stockpiles. This change in language better clarifies that stockpile perimeter controls are required in addition to the perimeter sediment controls required in item 9.2. This does not represent a change in MPCA policy regarding stockpile management. | 9.9 |
| Part IV.C.9 | 50 foot buffer\* | The current permit requires redundant sediment controls around surface waters if a 50 foot natural buffer cannot be maintained. This requirement is derived from the EPA’s C&D rule and will be carried forward in the proposed permit. The proposed permit requires that the sediment control practices must be spaced at least 5 feet apart. The MPCA believes that proper spacing for sediment storage between the practices is necessary in order to function properly. Language was also included to relieve permittees of the spacing requirement if there are site constraints. | 9.17 |
| Part IV.E.5 | Timing for BMP maintenance  after inspections\* | The current permit requires “all nonfunctional BMPs to be repaired replaced or supplemented with functional BMP’s by the end of the next business day after discovery…”. The MPCA has heard from numerous stakeholders that this time frame is often unattainable. The MPCA believes that if it is unlikely to rain, correcting the BMP deficiency by the next day is not necessary and the permit language should offer some flexibility. The language in the proposed permit has been modified: “Permittees must repair, replace or supplement the BMPs prior to the next anticipated rain event or three business days whichever comes first”. Note: this modification also applies to the sediment basin and perimeter control maintenance requirement (Part IV.E.5.a. & b. of the current permit and item 11.7 & 11.8 of the proposed permit). | 11.4  11.7  11.8 |
| Part IV.F.1.c | Hazardous materials\* | The current permit requires “restricted access storage areas must be provided to prevent vandalism”. This component of this requirement has been removed. The MPCA believes this is not an appropriate requirement for the permit. | 12.4 |
| Part IV.F.2 | Fueling and maintenance\* | The current permit requires that “permittees must conduct fueling in a contained area unless infeasible”. This component of this requirement has been removed. The MPCA believes this is not an appropriate requirement for the permit. | 12.7 |
| Part IV.G | Final stabilization | The term “final stabilization” has been removed throughout the entire permit. The MPCA believes the term is confusing and has been misused. The section regarding final stabilization has been re-named “Permit Termination Conditions”. The requirements in this new section are the same as the requirements for final stabilization found in the current permit. | 13.1 |
| Appendix A | Discharges to Special and Impaired Waters\* | Appendix A in the current permit and item 23.1 in the proposed permit contain additional requirements that apply to projects that discharge to Special or Impaired water bodies. The specific water bodies listed remains unchanged however the proposed permit separates the “Prohibited Waters” into its own unique category. The additional requirements for projects discharging to prohibited waters has been expended to address the language in the new antidegradation rule. The categories of prohibited waters, as listed in the proposed permit, are Wilderness Areas, Lake Superior and Scientific and Natural Areas. The new additional requirements that would apply for projects discharging to these waters are:   * 23.24 - Permittees must conduct routine site inspections once every 3 days as described in item 11.2. * 23.25 - If discharges to prohibited waters cannot provide volume reduction equal to one (1) inch of runoff from new impervious surfaces as required in item 15.5, permittees must develop a Permanent Stormwater Treatment plan that will result in no net increase of TSS or Phosphorus to the prohibited water. Permittees must keep the plan in the SWPPP for the project. | 2 3.3 |
| Appendix A.C.4 | Temperature controls\* | The list of additional BMP's for discharges to temperature sensitive waters has been revised. Providing stormwater infiltration is proposed to be the first consideration. Providing stormwater filtration was added to the list as the second option. Minimizing impervious surfaces was removed from the list as it is not a BMP that can be constructed to mitigated temperature. The other options in this list remain the same. | 23.23 |
| Appendix B.18 | Definitions of operator & general contractor | The MPCA has added a definition for general contractor. The draft permit more specifically requires the party that signs the application with the owner as a co-permittee to be hired by and under the supervision of the owner. The draft permit more specifically states that the operator cannot be a subcontractor hired by someone other than the owner. | 25.9 25.19 |
| New provision | Rule references to this permit | This item was added to the proposed permit to preserve continuity with state rules such as Minn. R. 7090 or other documents which refer to specific parts of the construction permit by name that will no longer be used. Those parts in the current permit are:   * "Stormwater Discharge Design Requirements" * "Construction Activity Requirements" * "Appendix A"   Item 24.11 indicates which parts in the draft permit correspond to these three parts of the current permit. | 24.11 |

(\*) indicates the proposed language is intended to change the policy, meaning or expectation of the MPCA.