

Informal Public Comments Received for the:

Draft MS4 General Permit (MNR04000)

On May 7, 2019 through June 6, 2019, an initial draft of the MS4 General Permit and a summary of TMDL requirements was available for a pre-public notice review and comment. The MPCA received approximately 280 comments through an online survey, letters, and emails. This document presents the comments, organized by specific sections of the draft permit, with numbers assigned to each individual comment. For example, "(4-1)" at the end of the comment means organization #4 in the table below submitted the comment, and it was their first comment. In several instances, comments were not numbered or presented as a comment on specific permit language. In these instances, only the organization number is provided.

#	Submitted by	#	Submitted by
1	Dakota County	13	City of Apple Valley
2	Nine Mile Creek Watershed District	14	Kimley-Horn
3	University of Minnesota	15	City of Sunfish Lake
4	Minnesota Department of Transportation (Metro)	16	St. Louis County Public Works
5	Minnesota Pollution Control Agency	17	City of Winona
6	Bolton & Menk	18	Volunteer for Duluth Township
7	City of St. Michael	19	Minnesota Department of Transportation (Outstate)
8	City of Rosemount	20	Environmental Protection Agency
9	City of Corcoran	21	City of Woodbury
10	Rice Creek Watershed District	22	Minnesota Cities Stormwater Coalition
11	Capitol Region Watershed District	23	City of Albert Lea
12	Minnehaha Creek Watershed District		

General Comments

1. The general permit or fact sheet must clearly state whether the general permit is a comprehensive or two-step general permit; (20-1)
2. Consider having the general permit define within the permit or fact sheet whether nontraditional small MS4s, such as state departments of transportation, public universities, etc. are able to receive coverage; (20-2)
3. Thank you for the opportunity to review and comment on this draft Permit language in a pre-public-notice format and process. (22-1)
4. Please post all the submitted comments to the MN Stormwater Manual Wiki as soon as possible after June 6th. (22-2)
5. MCSC is taking an unusual approach to these comments on permit language because we are in a relatively informal, pre-public-notice process. We view this as the continuation of a conversation. We are
 - listing items in the draft language that cause concern,
 - providing some specific and constructive details, comments, and suggestions, and
 - raising questions,all to serve as the basis for discussions before the MPCA moves to the public notice version of the new draft MS4 General Permit. (22-3)
6. Fairly early in the revision process for this new draft General Permit, MCSC was assured that there would be relatively few changes made to the General Permit. In this new draft pre-public-notice Permit language, we find the changes to be numerous and significant. We would appreciate an explanation of why this is the case. (22-4)
7. Please consider whether the changes in this new draft Permit are of sufficient number and significance to mandate revisions to the underlying State rule, MN Rule 7090. (22-5)
8. This new MS4 General Permit has many more requirements for documentation and provisions where documentation will be important. In the early days of this Permit, the MPCA was proud of the fact that permittees did not have to spend a significant portion of their time and effort with documentation, leaving more of their time, resources, and effort to focus on work that actually resulted in water quality improvements and positive environmental outcomes. This was appreciated by the permittees. It is distressing to see more of a focus on documentation. The permittees are profoundly unhappy that significantly more of their time and effort will have to go to documentation, with less available for actual good work. (22-6)
9. The additional reporting/documentation requirements could be unnecessarily burdensome for traditional MS4s with larger workloads. (11-3)
10. There are enough new documentation requirements that the MPCA should consider one or more special training/outreach sessions for the MS4 permittees on documentation under the Permit. Such training/outreach should include detailed information about the appropriate resources available in the MS4 Digital Document Library. MCSC is willing to work with the MPCA in developing this training/outreach. (22-7)
11. Please provide the defined terms (Section 26) in bold text and Capitalized everywhere they appear in the body of the Permit. This was done in earlier MS4 General Permits and it is helpful. (22-8)
12. The new TEMPO format for the Permit can be described as a "table format". Please provide the Permit in a format where an individual cell in the table does not break across a page. In Word, this would be done by unchecking the underlined box below. (22-9)
13. The MPCA has added a few sections to this new Permit that focus on controlling pet waste. MCSC has a few comments and requests related to this topic:
 - a. Please provide research and evidence supporting the concept that pet waste, especially dog feces, is a significant pollutant in urban stormwater. Recent research at Minnehaha Creek indicates otherwise.
 - b. Please provide research and evidence supporting the concept that the control measures mandated in the draft Permit will result in meaningfully positive environmental outcomes.
 - c. If the MPCA is mandating that MS4 permittees focus more time, energy, and resources on pet waste, it seems reasonable to expect that the MPCA is also focusing more of its own time, energy, and resources on pet waste. Please provide information about all the ways in which the MPCA is doing that and the products of those efforts.

- d. Please provide information about all the education and outreach materials related to pet waste that the MPCA has generated or plans to generate that will be available for MS4 permittees to pick up and use for MS4 Permit compliance. (22-10)
14. For every Permit section addressing TMDL WLAs, please provide for the condition where an MS4 permittee provides documentation that the WLA is being met. (22-11)
 15. In multiple draft Permit sections, there are references to “refresher training” or “a refresher-training event”. A portion of the staff working on stormwater management for the permittees (permittees, consultants, watershed organizations) are licensed professionals, such as professional engineers. Such professionals frequently have required continuing education that may be equivalent to “refresher training” or “a refresher-training event”. Please revise these sections to provide for this possibility. (22-13)
 16. There is currently no language in the MS4 draft general permit which allows for Water Quality Credit Trading for nutrient removal projects out of City Limits to help meet our TMDL. The City of Albert Lea is requesting to have Water Quality Credit Trading incorporated into the new MS4 permit. Cities would like the flexibility to maximize the use of tax dollars by pursuing water quality projects outside their corporate limits yet in the same watershed that would provide higher cost benefit ratio than projects in dense urban areas typically do. (23)
 17. The City of Rosemount supports the comments provided by the Minnesota Cities Stormwater Coalition. On public education and outreach, it is pretty clear that the State has some definite ideas of what they would like the public to know regarding stormwater and water quality. It is time for the State to step up to the plate. If the State would like consistent messaging and for messaging to go beyond the reach of MS4 communities, they are going to have to start providing more “free” education and outreach materials and resources. These should be quality resources that are easily editable and transferable and that cover the situations encountered in various communities. MS4 communities are bound to a very small area of the state geographically and these issues extend beyond those areas. (8-18)
 18. The purpose of this letter is to provide comments from the City of Apple Valley Minnesota on the current proposed 2019 MS4 Permit. The City supports comments provided by the Minnesota Cities Stormwater Coalition, a subgroup of the League of Minnesota Cities. The City of Apple Valley would like to thank the Minnesota Pollution Control Agency for allowing the opportunity to comment on the proposed MS4 Permit. (13-48)
 19. The City of Woodbury staff has conducted a thorough review of the Minnesota Pollution Control Agency's draft of the Municipal Separate Storm Sewer System General Permit and do not have any additional comments regarding the proposed updates. The City stands to support all comments provided by the Minnesota Cities Stormwater Coalition (MCSC). (21)
 20. St. Louis County thanks the MPCA staff for providing this pre-public notice opportunity to discuss potential changes to the MS4 GP. In addition to comments submitted via the survey system St. Louis County supports the comments and questions submitted by Randy Neprash on behalf of the Minnesota Cities Stormwater Coalition. (16)
 21. The permit language as proposed is a one-size fits all. This is very problematic for smaller MS4 communities with little to no infrastructure and no full-time staff. While we support the new rules for larger communities, many of the new requirements would be extremely difficult if not impossible to implement for smaller communities. We would strongly encourage a stepped program that has different requirements for communities of 500 residents than communities of 250,000 residents. (15-6)
 22. There is an annual assessment requirement for all MCMs. How will this be reported to MPCA in the annual report? We are trying to envision how we will be reporting our assessment activities and results. In addition, the annual assessment requirement at the end of each MCM section should only include examples from that MCM. It is quite confusing in its current format with examples from all MCMs included within the parentheses. (18-4)

MCM 1: Public Education and Outreach

Draft Permit Language:

16.3	During the permit term, the permittee must distribute educational materials or equivalent outreach focused on at least two (2) specifically selected stormwater-related issues of high priority to the permittee (e.g., specific Total Maximum Daily Load (TMDL) reduction targets, changing local business practices, promoting adoption of residential BMPs, lake improvements through lake associations, household chemicals, yard waste, etc.). The topics must be different from those described in items 16.4 through 16.7. [Minn. R. 7090]
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Comments:

1. Non-traditional permittees without permanent residents should be able to consider internal employees their public for high priority issues. (19-1)

Draft Permit Language:

16.6	<p>For businesses, commercial facilities, and institutions, the permittee must implement an education and outreach program focused on communicating appropriate deicing salt use (e.g., direct mailing, phone calls, and/or meetings). The permittee must maintain a written or mapped inventory of businesses, commercial facilities, and institutions that the permittee will target for education and outreach over the permit term. At a frequency defined by the permittee's education and outreach plan in item 16.8, the permittee must distribute educational materials or equivalent outreach to these audiences, which must include information on the following:</p> <ol style="list-style-type: none">a. environmental impacts of deicing salt use;b. BMPs that reduce the use of deicing salt;c. proper storage of salt or other deicing materials; andd. training opportunities to improve winter maintenance activities. [Minn. R. 7090]
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Comments:

1. Non-traditional MS4s should be exempt because this is covered under MCM 6. (3-1)
2. Section 16.6 and 16.7 - These sections do not seem to pertain to linear entities. Can a statement be added that these are for non-linear entities. (4-1)
3. Requested Action: Remove this requirement.
Specific Reason for Requested Action: Businesses, commercial facilities, and institutions rely almost entirely on private contractors for deicing of parking lots and private roadways. In addition, snow removal and salting operations are often performed at night when the presence of vehicles (and facility management) is minimized. The education materials distributed once each calendar year to meet the requirements of 16.5 (a. impacts of deicing salt use on receiving waters and b. methods to reduce deicing salt) should be sufficient to meet the intent of the requirement for managers of these facilities. If the MPCA desires to better control deicing of these types of facilities, it should pursue a certification program for private contractors instead. The program could include the education items listed above as well as reporting requirements regarding information of their road salt application. However, MS4 Permittees should not be required to educate and manage private snow removal and deicing contractors. (6-2)
4. The City feels that maintaining a written or mapped inventory of businesses, commercial facilities, and institutions is an arduous and time-consuming requirement. The City feels that existing efforts through focused education and distribution of educational materials related to salt use is sufficient to educate these groups. (7-1)
5. While the City of Rosemount supports providing education on appropriate use of deicing salt, we believe the items listed in a through d are too prescriptive. It would be better for the PCA to provide examples of programs they like and free editable education materials (fliers, commercials, newsletter articles, etc.) - a database of educational materials. Additionally, maintaining a specific list of private entities the community will target will be somewhat onerous. Many of our communication methods go out to large groups without a specific means of targeting individual entities yet are still effective at getting the message out: cable channel, utility inserts, newsletter articles, facebook posts. We would recommend, especially since this is the first year for this requirement, changing the language to something similar to the following: "For businesses, commercial facilities, and institutions, the permittee must implement an education and outreach program focused on communicating appropriate deicing salt use (e.g., direct mailing, phone calls, and/or meetings). The permittee will incorporate the program in their education and outreach plan." (8-1)
6. 16.6 This is a significant change. The permit language to educate businesses, commercial facilities, and institutions – and have a written/mapped inventory of them is overreaching. (13-1)
7. Part 16.6 and 16.7 should be considered as non-applicable to road authorities (16-1)
8. MnDOT should not be required to provide training to those other entities. (19-2)
9. Section 16.6 – This is a set of significant new Permit requirements. It would be helpful to have a document or some other outreach materials from the MPCA describing the full range of documents, outreach materials, training programs and other measures the MPCA has developed and is planning to develop related to these salt

uses and these Permit requirements. If the permittees are to be required to distribute educational materials or equivalent outreach related to salt use, this will be easier to accept if useful materials and outreach will be available from the MPCA and other sources. MCSC members would also appreciate information about the MPCA's plans to provide outreach and education to small salt applicators. MCSC recommends that the MPCA provide training and outreach sessions for MS4 permittees on the new Permit conditions related to salt and chloride. MCSC is willing to work with the MPCA in developing this training/outreach. (22-34)

10. Section 16.6 – MS4 permittees frequently prepare and distribute educational and outreach materials widely. Using the Web for distribution is an example of this. Preparing and distributing educational and outreach materials for a relatively small targeted audience may be prohibitively expensive and of very limited value. Does the MPCA have estimated costs for such an effort? If the MPCA has done this work, please provide this information to the permittees now. If the MPCA has not done this work, please derive these estimated costs and evaluate the cost effectiveness before settling on this Permit requirement. (22-35)
11. This requirement is extremely broad in scope and scale for MS4s with extensive urban corridors. It could implicate thousands of sites within the District, as nearly all commercial and institutional properties manage sidewalk, parking and other surfaces. Further, inventorying and assessing the priority of such sites is an undertaking that is not familiar to MS4s such as watershed districts. The MPCA should be careful to define this requirement in a way that leaves adequate judgment for an MS4 to gauge the effort that is feasible and cost-effective. At base, the District believes it would be the most effective use of tax dollars for an agency such as the MPCA to develop and distribute educational materials, as opposed to having multiple MS4s (even with some MS4s in local partnerships) developing the materials, and the mechanisms to distribute them, in parallel. This would reduce duplication of public expenditures and ensure consistent messaging to private de-icing applicators. (12-2)

Draft Permit Language:

16.7	At least once each calendar year, the permittee must distribute educational materials or equivalent outreach focused on pet waste to residents. The educational materials or equivalent outreach must include information on the following: <ol style="list-style-type: none">a. the impacts of pet waste on water quality;b. proper management of pet waste; andc. any existing permittee regulatory mechanism(s) regarding pet waste. [Minn. R. 7090]
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Comments:

1. Regarding items 16.7 and 18.5 relating to stormwater pollution associated with pet wastes, it is the opinion of Dakota County that specific pet waste education and regulatory mandates are misguided and conflict with the targeted bacterial reduction approach proposed under items 18.14 and 18.15. Under the proposed items 18.14 and 18.15, regulated MS4s with specific bacteria-related Wasteload Allocations (WLAs) will be required to maintain a written or mapped inventory of potential areas and sources of bacteria within their jurisdiction and prioritize reduction activities to address those areas. MPCA should allow the assessments and plans conducted under items 18.14 and 18.15 to drive pollutant reduction activities and provide MS4s with the flexibility in achieving those required pollutant reductions. The MPCA has not provided evidence that regulatory mechanisms and public education mandates regarding pet wastes are an effective strategy that should be prioritized to reduce pollutants to storm water. Further, the overarching educational and regulatory mandate with regard to pet wastes is unsupported given the varied land use types and drainage areas of unique MS4s. The Environmental Protection Agency's (EPA) Compendium Part 1: Six Minimum Control Measures document illustrates the types of permit provisions that meet the final MS4 General Permit Remand Rule. The MPCA should follow example S5.C.10 from the aforementioned document where Western Washington allows permittees to select from a list of targeted audiences and BMPs and requires permittees to measure the understanding and adoption of the targeted behaviors for the selected audience and BMP. This approach provides MS4s with flexibility in selecting high priority issues, yet provides accountability and meets the "clear, specific, and measurable" requirements under the MS4 General Permit Remand Rule. (1-1)
2. Non-traditional MS4s should be exempt because they do not have a resident pet population (3-2)
3. Section 16.6 and 16.7 - These sections do not seem to pertain to linear entities. Can a statement be added that these are for non-linear entities. (4-1)
4. Part 16.6 and 16.7 should be considered as non-applicable to road authorities (16-1)

5. Requested Action: Revise the sentence to read “At least once each calendar year, the permittee must distribute educational materials or equivalent outreach to residents focused on pet waste.”
Specific Reason for Requested Action: The required action is more clearly stated. (6-3)

Draft Permit Language:

16.8	The permittee must develop and implement an education and outreach plan that consists of the following: a. target audience(s) (e.g., residents, businesses, and local organizations; extra consideration should be given to low-income residents, people of color, and non-native English speaking residents. A resource for identifying these areas is available at: http://arcg.is/nHTyn); b. name or position title of responsible person(s) for overall plan implementation; c. specific activities and schedules to reach each target audience; and d. a description of any coordination with and/or use of stormwater education and outreach programs implemented by other entities, if applicable. [Minn. R. 7090]
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Comments:

1. Section 16.8 a: Directing education efforts toward underrepresented communities is a laudable goal. The City recommends that the MPCA begin developing and maintain a repository of free editable (please consider that some communities cannot afford some more expensive software) education materials formatted to these groups in support of that goal. Many communities do not have the resources to do this on their own. (8-2)
2. 16.8 What does “extra consideration” mean for target audiences? Is the PCA going to provide examples of this criteria or resources to utilize? (13-2)
3. In 16.8 a), I would suggest having the target audience be the groups that will have the most impact on improving water quality. (17-1)
4. Requested Action: Remove the language regarding extra considerations in Section a.
Specific Reason for Requested Action: Recommendations should not be included in the Permit itself. If the MPCA desires Permittees to consider certain target audiences in their education plans, a statement should be provided in guidance documents accordingly. (6-4)

Draft Permit Language:

16.9	The permittee must document the following information: a. a description of all specific stormwater-related issues identified by the permittee in item 16.3; b. all information required under the permittee’s education and outreach plan in item 16.5; c. activities held, including dates, to reach measurable requirements in Section 16; d. quantities and descriptions of educational materials distributed, including dates distributed; and e. estimated audience (e.g., number of participants, viewers, readers, listeners, etc.) for each completed education and outreach activity. [Minn. R. 7090]
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Comments:

1. Section 16.9 d: While this is an old requirement, counting out brochures is not an effective use of tax dollars. It should be sufficient for permittees to keep information on what was available. Please remove the requirement to track quantities. (8-3)
2. 16.9 To conduct an annual assessment of everything in our SWPPP – please make it part of the Annual Report. (13-3)
3. Section 16.9 d - While this is an old requirement, counting out brochures is not an effective use of tax dollars. It should be sufficient for permittees to keep information on what was available. (22-36)
4. Section 16.9.e – Is it the MPCA’s intent that the permittees must implement measures to count Web hits or site visits? This may be difficult or impossible, depending on how the permittees’ Web sites are constructed. It may require significant and/or fundamental changes to a permittee’s Web site construction to make counting visits to specific Web pages possible. Cities frequently use and rely on their Web sites to distribute educational and outreach materials. (22-37)

Draft Permit Language:

16.10	The permittee must conduct an annual assessment of the public education program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 16. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090]
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Comments:

1. Requested Action: Move this requirement to MCM 6 – Pollution Prevention/ Good Housekeeping for Municipal Operations.
Specific Reason for Requested Action: The annual assessment must cover all MCMs. Therefore, the required actions would be more clearly stated if all annual assessment requirements were outlined in one location, and since the assessment is part of the permittee’s Good Housekeeping, MCM 6 would be the best place to locate the requirements. (6-5)

General Comments on this Section of the Permit:

1. Nine Mile Creek Watershed District (NMCWD) is in favor of the added chloride components to the public education and outreach portion of the draft MS4. NMCWD has been a leader among local governmental entities in the metro area in addressing, and educating about, the impact chloride pollution has on water resources. Nine Mile Creek was listed as impaired for chloride by the Minnesota Pollution Control Agency in 2004, and NMCWD led the completion of the Total Maximum Daily Load study of the impairment. The NMCWD fifth generation Water Management Plan identifies a specific chloride water-quality goal, identifies and discusses chloride as a common pollutant in stormwater runoff, and cites reduction of chlorides as a priority issue and implementation action for water quality in the creek. Much of the NMCWD education and outreach centers on the impacts of chlorides on our water resources and proper chloride pollution prevention methods. (2-1)
2. Items 16.1 through 16.10 MCM 1: Public Education and Outreach - The city feels the education/ outreach requirements are arduous and cost-prohibitive. As a small city without commercial uses, storm sewer infrastructure, and a funding mechanism for the educational materials required to meet the proposed requirements, the education requirements as written are not feasible for cities like Sunfish Lake. (15-1)
3. The education and outreach requirements (16.3 – 16.9, 17.6) are increasing, as are the tracking requirements for them. Small MS4s with few staff and tiny budgets will only be able to meet these as part of a larger RSPT effort. Some specific acknowledgement of the ability to meet the requirements in this general section by partnering with a larger group would be appreciated. (18-1)

MCM 2: Public Participation/Involvement

Draft Permit Language:

17.2	New permittees must develop and implement, and existing permittees must revise their current program, as necessary, and continue to implement, a Public Participation/Involvement program to solicit public input on the SWPPP and involve the public in activities that improve or protect water quality. The permittee must incorporate Section 17 requirements into their program. [Minn. R. 7090]
17.6	Each calendar year, the permittee must provide a minimum of one (1) public involvement activity that includes a pollution prevention or water quality theme (e.g., rain barrel distribution event, rain garden workshop, cleanup event, storm drain stenciling, volunteer water quality monitoring, adopt a storm drain program, household hazardous waste collection day, etc.). [Minn. R. 7090]

Comments:

1. 17.2 and 17.6 appear to be redundant. (19-3)
2. Item 17.6, Each calendar year, the permittee must provide a minimum of one (1) public involvement activity that includes a pollution prevention or water quality theme. - The city feels this is an arduous and cost-prohibitive requirement. As a small city, the city does not have the resources to sponsor an annual event to meet this requirement. (15-2)

3. Section 17.6 – This appears to be a new Permit requirement. Will this requirement be met with an event (with an appropriate theme) provided by a permittee in partnership with another organization, such as a watershed district? (22-38)

Draft Permit Language:

17.8	The permittee must conduct an annual assessment of the Public Participation/Involvement program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 17. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090]
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Comments:

1. 17.8 To conduct an annual assessment of everything in our SWPPP – make it part of the Annual Report. (13-4)

MCM 3: Illicit Discharge Detection and Elimination

Draft Permit Language:

18.3	The permittee must maintain a map of the permittee's MS4, as required in Section 14. [Minn. R. 7090]
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Comments:

1. 18.3 seems redundant as it is already spelled out in Section 14. (17-2)

Draft Permit Language:

18.4	To the extent allowable under state or local law, the permittee must develop, implement, and enforce a regulatory mechanism(s) that prohibits non-stormwater discharges into the permittee's MS4, except those non-stormwater discharges authorized in item 3.2. A regulatory mechanism(s) for the purposes of this permit may consist of contract language, an ordinance, permits, standards, or any other mechanism, that will be enforced by the permittee. The regulatory mechanism(s) must also include items 18.5 and 18.6, as applicable. [Minn. R. 7090]
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Draft Permit Language:

18.5	For cities, townships, and counties, the permittee's regulatory mechanism(s) must require owners or custodians of pets to remove and properly dispose of feces on both private property and public space. [Minn. R. 7090]
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Comments:

1. Regarding items 18.5 and 18.6 which require regulated MS4s to adopt regulatory mechanisms requiring pet owners to properly dispose of pet wastes and also require proper salt storage at commercial, institutional, and non- NPDES permitted industrial facilities, Dakota County does not have comprehensive zoning and land use controls outside of its MS4 jurisdiction (highway right-of-way). Rather, cities and townships within Dakota County independently administer zoning and comprehensive planning land use controls. Since Dakota County's MS4 regulatory mechanism regulates only activities that occur within its right-of-way, the MPCA should eliminate items 18.5 and 18.6 which create an undue financial and administrative burden for permittees to implement. It is premature to mandate expansion of permittees regulatory mechanisms without evidence that the current mechanisms and permit language is inadequate. The EPA Compendium Part 1: Six Minimum Control Measures document, which highlights example language from other State Small MS4 General Permits that meet the MS4 General Permit Remand Rule, does not list regulation of pet waste disposal and salt storage on non-public properties as an approach needed to meet the Remand Rule. The MPCA should remove the proposed regulatory mechanism requirements under 18.5 and 18.6. At a minimum, the MPCA should revise items 18.5 and 18.6 to state that only permittees with comprehensive zoning and land use controls shall implement the proposed regulatory mechanism(s). (1-2)
2. 18.4, 18.5 Having regulatory mechanisms to require pet owners to properly dispose pet waste on public and private property. Does this include backyards? Winter? Overreaching language. (13-5)
3. Part 18.5 and 18.6 should be considered as non-applicable to road authorities. We do not have jurisdiction to do these actions. (16-2)

4. 18.5: A pet waste ordinance does not make sense for rural MS4s. The majority of the land area within our township has at least a 4.5 acre minimum lot size, and nearly half of our township is public land/tax forfeit forested property, not managed for public access. In addition to such an ordinance making no sense for a rural MS4, it is also unenforceable. (18-2)
5. Requested Action: Remove the requirement for private property.
Specific Reason for Requested Action: The legality of this requirement is questionable. Municipalities cannot enter private property just to check if pet waste is being disposed of properly, and an illicit discharge from such a property is extremely unlikely to be noticeable from the edge of the property. If pet waste on a private property is so noticeable that it can be smelled from the property line, it would most likely be covered by a public nuisance ordinance. In addition, the term pets should be defined. Livestock (horses, chickens, etc.) should be treated differently than dogs and cats. (6-6)

- 18.6 The permittee's regulatory mechanism(s) must require proper salt storage at commercial, institutional, and non-NPDES permitted industrial facilities. At a minimum, the regulatory mechanism(s) must require the following:
- a. designated salt storage areas must be covered or indoors;
 - b. designated salt storage areas must be located on an impervious surface; and
 - c. implementation of practices to reduce exposure when transferring material in designated salt storage areas (e.g., sweeping, diversions, and/or containment). [Minn. R. 7090]

Comments:

1. Regarding items 18.5 and 18.6 which require regulated MS4s to adopt regulatory mechanisms requiring pet owners to properly dispose of pet wastes and also require proper salt storage at commercial, institutional, and non- NPDES permitted industrial facilities, Dakota County does not have comprehensive zoning and land use controls outside of its MS4 jurisdiction (highway right-of-way). Rather, cities and townships within Dakota County independently administer zoning and comprehensive planning land use controls. Since Dakota County's MS4 regulatory mechanism regulates only activities that occur within its right-of-way, the MPCA should eliminate items 18.5 and 18.6 which create an undue financial and administrative burden for permittees to implement. It is premature to mandate expansion of permittees regulatory mechanisms without evidence that the current mechanisms and permit language is inadequate. The EPA Compendium Part 1: Six Minimum Control Measures document, which highlights example language from other State Small MS4 General Permits that meet the MS4 General Permit Remand Rule, does not list regulation of pet waste disposal and salt storage on non-public properties as an approach needed to meet the Remand Rule. The MPCA should remove the proposed regulatory mechanism requirements under 18.5 and 18.6. At a minimum, the MPCA should revise items 18.5 and 18.6 to state that only permittees with comprehensive zoning and land use controls shall implement the proposed regulatory mechanism(s). (1-2)
2. 18.6 - Non-traditional MS4s should be exempt because this is covered under MCM 6 (3-3)
3. Section 18.6: This section is too prescriptive and lacks flexibility. We recommend removing the section, because it is pretty clear that uncontained salt storage already qualifies as an illicit discharge under existing regulations. (8-4)
4. 18.4, 18.6 Having regulatory mechanisms to regulate and enforce all salt storage at commercial, institutional, and non-NPDES industrial facilities – We just educated them in MCM 16.6. Now MS4s must regulate them? How would the PCA suggest MS4s regulate businesses that do not comply with requests – build them a salt storage shed and bill them for it? Overreaching language. (13-6)
5. Part 18.5 and 18.6 should be considered as non-applicable to road authorities. We do not have jurisdiction to do these actions. (16-2)
6. Requested Action: Remove this requirement.
Specific Reason for Requested Action: Private properties do not have to apply for a "Salting Permit", so it would be extremely difficult for a municipality to track salt use on these properties. Businesses, commercial facilities, and institutions rely almost entirely on private contractors for deicing of parking lots and private roadways. As such, snow removal and salting operations are often performed at night when the presence of vehicles (and facility management) is minimized. In addition, any requirements by municipalities for salt use on private properties may make the City liable for harm caused due to lack of proper ice removal. If the MPCA desires to better control deicing of these types of facilities, it should pursue a certification program for

private contractors instead. The program could include regulations, education items, and reporting requirements regarding information of their road salt application. However, MS4 Permittees should not be required to regulate, educate, and manage private snow removal and deicing contractors. (6-7)

7. MnDOT would use guidelines, not a regulatory mechanism. (19-4)
8. The District readily can incorporate salt storage requirements into its illicit discharge rule. However, the MPCA should note that the universe of properties subject to such a rule (commercial, institutional, industrial sites that apply de-icers in the winter) will number well into the thousands, and is largely distinct from the universe of sites with which the District's inspection resources are engaged (disturbed sites, sites with prior-constructed stormwater or ecological practices). The District is as well-staffed as any watershed district in the state, but inspecting even a small fraction of sites subject to these requirements would be far beyond the District's capacity unless the District ceased the rest of its work. Accordingly, the MPCA must recognize that the benefits of putting these requirements in the rule will come principally in conjunction with education rather than a comprehensive inspection and enforcement effort. (12-3)
9. Section 18.6 of MCM 3 requires MS4 permittees to have a salt storage regulatory mechanism, however not all MS4s are land use authorities that can enforce this. To address this issue, please consider incorporating language (potentially to section 13 of the draft MS4 permit) acknowledging that some of the Minimal Control Measure provisions do not apply to all MS4s depending on their available powers and authorities. (10-1)

Draft Permit Language:

18.8	The permittee must implement a training program that includes the following: a. training all field staff in illicit discharge recognition (including conditions which could cause illicit discharges), and reporting illicit discharges for further investigation. Field staff includes, but is not limited to, police, fire department, public works, and parks staff. Each calendar year following the initial training, the permittee must provide a refresher training to all field staff on illicit discharge recognition and reporting. Training for this specific requirement may include, but is not limited to, videos, in-person presentations, webinars, and/or training documents; and b. Ensure that staff receive training commensurate with their job duties as they relate to the permittee's IDDE program. Staff includes, but is not limited to, individuals responsible for investigating, locating, or eliminating illicit discharges, and/or enforcement. The permittee must ensure that previously trained staff attend a refresher-training event every three (3) calendar years following the initial training. [Minn. R. 7090]
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Comments:

1. Item 18.8, The permittee must implement a training program. - The city feels this is an arduous and cost-prohibitive requirement. As a small city, the city does not have the resources to develop a training program for all field staff (police, fire department, public works, and parks staff). (15-3)
2. In 18.8: a. It is great to clarify who is included in field staff. Clearly not just the stormwater inspectors. MPCA providing packaged training would save a lot of time and effort for MS4 permittees. (17-3)
3. Section 18.8 – Section a. includes this text: “Each calendar year following the initial training, the permittee must provide a refresher training to all field staff on illicit discharge recognition and reporting”. Section b. includes this text: “The permittee must ensure that previously trained staff attend a refresher-training event every three (3) calendar years following the initial training.” This seems confusing. What is the difference between “refresher training” (required each calendar year) and “a refresher-training event” (required every three years)? (22-39)

Draft Permit Language:

18.9	The permittee must maintain a written or mapped inventory of priority areas the permittee identifies as having a higher likelihood for illicit discharges. At a minimum, the inventory must include the following: a. areas where business/industrial activities have a high potential to result in an illicit discharge; b. areas where illicit discharges have been identified in the past and continues to be a risk; and c. non-NPDES regulated areas with storage of large quantities of significant materials that could result in an illicit discharge. [Minn. R. 7090]
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Comments:

1. 18.9 - Non-traditional MS4s should be exempt because this is covered under MCM 6 (3-4)

2. Section 18.9: How are we supposed to know the location of properties in item C? Remove item C. This requirement is onerous. These sorts of properties should also fall under item a. (8-5)
3. 18.9 IDDE written or mapped inventory of priority areas that may have a higher likelihood of illicit discharges. Seems like these places of business may have other state permitting requirements covering their activities. City staff do not have exhaustive resources to monitor places like gas stations or underground storage facilities that have permits – duplicative and unnecessary. (13-7)
4. Part 18.9 establishes a new requirement that could be doable if plenty of time is allowed. I anticipate the best way for us to complete this task well would be to look for high priority areas to watch for IDDE while completing outfall inspections, a task we spread out over a 4-year period (then use 5th year to go back and reinspect to check for maintenance, IDDE at sites of concern etc.). Suggest allowing the 5-year permit term to complete. (16-3)
5. In 18.9 c), what is meant by non-NPDES regulated areas? (17-4)
6. This paragraph is problematic in that it purports to require the District to review the nature of activities at thousands of commercial and industrial sites to assess “potential” for illicit discharge. First, the scope of such an undertaking is well beyond the District’s staff capacity. Second, it isn’t clear how “potential” for illicit discharge would be assessed, but it would seem necessarily to involve examining site operations from a chemical and industrial management perspective. This is a realm heavily regulated under federal and state law. It is one in which watershed districts don’t participate or have expertise. An attempt to engage here, through inspection activity or otherwise, would be duplicative and would raise concerns as to District staff involvement in areas where they typically do not have training or knowledge. (12-4)
7. Section 18.9.c. – This section refers to “non-NPDES regulated areas”. This term is confusing or worse. Under the MS4 Permit, an entire city’s jurisdiction may be regulated under an NPDES (MS4) permit. Thus, there would be no land in the city that would be a “non-NPDES regulated area”. (22-40)
8. Section 18.9.c. – It is difficult to understand how permittees will know or be aware of “non-NPDES regulated areas with storage of large quantities of significant materials”. This section is also redundant when compared with Section 18.9.a. (22-41)
9. Consider, under the Illicit Discharge Detection MCM, requiring permittees to screen a minimum percentage of outfalls within their system for illicit discharges per year, example of 75-100% of major/priority (those defined in section 18.9) outfalls within the permit term. This would result in a clear, specific, and measurable goal within the MCM; (20-3)

Draft Permit Language:

18.10	The permittee must conduct illicit discharge inspections at least once each calendar year in areas identified in item 18.9. [Minn. R. 7090]
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Comments:

1. 18.10 - Non-traditional MS4s should be exempt because this is covered under MCM 6. (3-5)
2. 18.10 Inspecting every one of these identified sites in 18.9 once a calendar year? Not manageable. We are already looking for IDDE every time we are performing a maintenance activity in 18.7. These are required to be inspected by state or federal requirements already. (13-8)
3. The District requests that the MPCA justify, on a cost-benefit basis, this level of inspection attention to ‘potential’ illicit discharge sites. (12-5)
4. Section 18.10 – MCSC has concerns about whether cities have the legal right to enter private properties for such inspections. (22-42)

Draft Permit Language:

18.11	<p>The permittee must implement written procedures for investigating, locating, and eliminating the source of illicit discharges. At a minimum, the written procedures must include:</p> <ol style="list-style-type: none"> a. a timeframe in which the permittee will investigate a reported illicit discharge; b. use of visual inspections to detect and track the source of an illicit discharge; c. tools available to the permittee to investigate and locate an illicit discharge (e.g., mobile cameras, collecting and analyzing water samples, smoke testing, dye testing, etc.); d. cleanup methods available to the permittee to remove an illicit discharge or spill; and
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e. name or position title of responsible person(s) for investigating, locating, and eliminating an illicit discharge. [Minn. R. 7090]

Comments:

1. 18.11 - This has become too detailed. Methods to investigate are documented in IDDE, inspection and spills. (3-6)
2. 18.11 Writing new procedures – we will be looking for examples from the PCA to achieve this. (13-9)

Draft Permit Language:

18.13	The permittee must maintain written enforcement response procedures (ERPs) to compel compliance with the permittee's regulatory mechanism(s) in Section 18. At a minimum, the written ERPs must include: a. a description of enforcement tools available to the permittee and guidelines for the use of each tool; b. timeframes to complete corrective actions; and c. name or position title of responsible person(s) for conducting enforcement. [Minn. R. 7090]
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Comments:

1. 18.13 Enforcement procedures – we already put this in City Code with the last permit. (13-10)

Draft Permit Language:

18.14	If the permittee has an applicable Waste Load Allocation (WLA) for bacteria, the permittee must maintain a written or mapped inventory of potential areas and sources of bacteria (e.g., dense populations of waterfowl or other bird, dog parks). [Minn. R. 7090]
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Comments:

1. 18.14 "Inventory of potential areas and sources of bacteria" is very broad. Every grass area near a trail, sidewalk, park, pond? (13-11)
2. Part 18.14 should be non-applicable for road authorities and Part 18.15 should be revised accordingly. Road authorities can implement items d and e but the other items are less or not at all applicable. (16-4)
3. Requested Action: Remove this requirement.
Specific Reason for Requested Action: If a permittee has an applicable WLA for bacteria, the inventory of potential areas and sources of bacteria should be defined in the TMDL itself. (6-8)
4. Source mapping should have been an activity done by MPCA as part of the TMDL process. If it was too difficult and costly to be wrapped into that project, it should not be required of permittees now. (19-5)
5. Section 18.14 – Why is this section in the IDDE portion of the Permit? Research indicates that bacteria is everywhere in the urban environment and stormwater. Considering it to be an illicit discharge is problematic, inaccurate, and unwise.
What is required of the permittee if the WLA is being met or is met during the term of the Permit? (22-43)

Draft Permit Language:

18.15	If the permittee has an applicable WLA for bacteria, the permittee must maintain a written plan to prioritize reduction activities to address the areas and sources identified in the inventory in item 18.14. The written plan must include BMPs the permittee will implement over the permit term, which may include, but is not limited to: a. water quality monitoring to determine areas of high bacteria loading; b. installation of pet waste pick-up bags in parks and open spaces; c. elimination of over-spray irrigation that may occur at permittee owned/operated areas; d. removal of organic matter accumulated in gutters via street sweeping; e. implementation of infiltration structural stormwater BMPs; and/or f. management of areas that attract dense populations of waterfowl (e.g., riparian plantings). [Minn. R. 7090]
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Comments:

1. 18.15 A written plan to reduce bacteria – great goal but how to monitor?? (13-12)
2. 18.15(d) already doing, but not testing for bacteria in street sweepings. (13-13)

3. 18.15(e). Implementation of infiltration structural stormwater BMPs – are we supposed to test for bacterial here? When? How often? That is hundreds of locations. (13-14)
4. 18.15(f) Manage areas that attract dense populations of waterfowl – we have 300 ponds, wetlands, and lakes. Unfathomable to test them all and to manage waterfowl locations across our city. (13-15)
5. Road authorities can implement items d and e but the other items are less or not at all applicable. (16-4)
6. Requested Action: Move this requirement to MCM 6 – Pollution Prevention/ Good Housekeeping for Municipal Operations.
Requested Action: Remove the list of potential items that could be included.
Specific Reason for Requested Action: A Bacteria TMDL requires the permittee to meet a Waste Load Allocation. Therefore, it should not be treated as an illicit discharge that can be rectified through the Permittee’s IDDE program. Instead, all TMDLs should be tracked in one location, and MCM 6 would be the best place to locate the requirements.
Specific Reason for Requested Action: Recommendations should not be included in the Permit itself. If the MPCA desires Permittees to consider certain plan items for a Bacteria WLA, recommendations should be provided in guidance documents accordingly. (6-9)
7. Given that it is still unclear how to cost effectively search for the most significant sources (except for obvious high risk sources, like feedlots), and with so many factors involved, it will be costly and ineffective to force MS4s to conduct monitoring. In addition, MPCA has not provided adequate BMP guidance for sources in pipes, lawns, etc. (19-6)
8. - All the bullet points in this section follow the phrase “which may include”. The use of the word “may”, in this context, means that these items are recommended, rather than required. Recommendations should not be included in a permit. MCSC recommends that these guidance points be included in the MN Stormwater Manual, instead of in this Permit. MCSC recommends that this section be limited to just the first sentence.
- In bullet point c., eliminating “over-spray” irrigation” is not an achievable requirement. It may be possible to reduce or control over-spray irrigation.
- What is the meaning of the term “and/or” in a permit?
- What is required of the permittee if the WLA is being met or is met during the term of the Permit? (22-44)

Draft Permit Language:

18.17	For each training attended by staff in item 18.8, the permittee must document: <ol style="list-style-type: none"> a. a list of topics covered; b. names and position titles of employees in attendance; and c. date of each event. [Minn. R. 7090]
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Comments:

1. Section 18.17: Please remove the requirement to list position titles for employees attending training in item b. We should be able to easily cross reference this with employment records if needed to for some reason. This seems an unnecessary paperwork exercise meant to waste much valued administrative profession time for those communities with less sophisticated but adequate tracking methods. (8-6)
2. I would suggest incorporating 18.17) as part of 18.8, like 18.8 c. It is easier to understand the permit if the applicable sub sections are grouped together. (17-5)
3. Section 18.17.b. – This is an example of documentation that is excessive and counter-productive. There are MCSC cities that are currently providing training to a broad range of their staff, numbering in the hundreds. Many of these training sessions are relatively short, part of other events, and/or seasonal. Having to collect the names and position titles of all these staff at every training will be sufficiently annoying and time-consuming that it will be a disincentive to having these short, frequent, “light touch” training sessions. Please revise this provision to read as follows: “number and departments of employees in attendance”. (22-45)

Draft Permit Language:

18.18	Enforcement conducted by the permittee pursuant to the ERPs in item 18.13 must be documented, including verbal warnings. At a minimum, the permittee must document the following: <ol style="list-style-type: none"> a. name of the person responsible for violating the terms and conditions of the permittee’s regulatory mechanism(s);
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- b. date(s) and location(s) of the observed violation(s);
 - c. description of the violation(s);
 - d. corrective action(s) (including completion schedule) issued by the permittee;
 - e. referrals to other regulatory organizations (if any); and
 - f. date(s) violation(s) resolved. [Minn. R. 7090]
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Comments:

1. 18.18 Documenting verbal warnings. Most conversations of IDDE with offenders are already documented in great detail according to permit terms and because it is the entire basis of us contacting them. (13-16)

Draft Permit Language:

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| 18.19 | The permittee must conduct an annual assessment of the IDDE program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 18. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090] |
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Comments:

1. 18.19 To conduct an annual assessment of everything in our SWPPP – make it part of the Annual Report. (13-17)

General Comments on this Section of the Permit:

1. NMCWD is in favor of adding the chloride components to the Illicit Detection and Discharge portion of the draft MS4. Over the past few years, we have been receiving more and more phone calls questioning proper storage at commercial and industrial sites. We believe this is a good mechanism address improper salt storage. NMCWD recently added provisions to its stormwater rule to add a regulatory component to its efforts to address the chloride impairment in Nine Mile Creek. A new chloride policy supports the substantive requirement that an applicant submit a chloride-management plan in subsection 4.3.4 and the exhibit required in paragraph of its rules. NMCWD has been a leader among local governmental entities in the metro area in addressing the impact chloride pollution has on water resources. Nine Mile Creek was listed as impaired for chloride by the Minnesota Pollution Control Agency in 2004, and NMCWD led the completion of the Total Maximum Daily Load study of the impairment. In addition, the NMCWD fifth generation Water Management Plan identifies a specific chloride water-quality goal, identifies and discusses chloride as a common pollutant in stormwater runoff, and cites reduction of chlorides as a priority issue and implementation action for water quality in the creek. (2-2)

MCM 4: Construction Site Stormwater Runoff Control

Draft Permit Language:

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| 19.4 | When the CSW Permit is reissued, the permittee must revise their regulatory mechanism(s), if necessary, within six months of the issuance date of that permit, to be at least as stringent as the requirements for erosion, sediment, and waste controls described in the CSW Permit. [Minn. R. 7090] |
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Comments:

1. Section 19.4: 6 months is generally not enough time to update an ordinance or most other regulatory mechanisms. Please note, the draft language and current MS4 permit generally give the permittees 12 months to update their SWPPP after permit coverage is extended. Permittees should be given at least that long to make updates when the CSW Permit is issued (12 months after MS4 permit coverage is extended). We would also like to take this time to remind the MPCA that “at least as stringent” does not mean programs and requirements must be the same. It is not appropriate to compel compliance with another permit that is issued one or more years before the main permit the permittee falls under is issued; this might lead to missed opportunities to provide comments under regulations an entity would fall under. (8-7)
2. 19.4 We may not be able to update our regulatory mechanisms to match the CSW permit within 6 months of its reissuance. Request more time – 12 months min. is recommended. (13-18)
3. Item 19.4, When the CSW Permit is reissued, the permittee must revise their regulatory mechanisms, if necessary, within six months of the issuance date of that permit, to be at least as stringent as the requirements

for erosion, sediment, and waste controls described in the CSW Permit. - The city feels this is an arduous and cost-prohibitive requirement. As a small city, the city does not have the resources to revise our regulatory mechanisms within 6 months. (15-4)

4. Section 19.4 – If the changes to the CSW are significant, six months may not be sufficient time for the required revisions to the permittees’ regulatory mechanisms. One year is more reasonable. (22-46)
5. Requested Action: Revise the timeline to 12 months.

Specific Reason for Requested Action: Six months is a short amount of time for a Permittee to analyze permit revisions and potential ordinance updates needed and then go through the process of approving a new ordinance. A timeline of 12 months is more consistent with the MS4 SWPPP update requirements and provides more time for the Permittee to make the necessary ordinance updates. (6-10)

Draft Permit Language:

19.5	<p>The permittee’s regulatory mechanism(s) must require that owners and operators of construction activity develop site plans that must be submitted to the permittee for review and approval, prior to the start of construction activity. Site plans must be kept up-to-date by the owners and operators of construction activity with regard to stormwater runoff controls. The regulatory mechanism(s) must require that site plans incorporate the following erosion, sediment, and waste controls that are at least as stringent as described in the CSW Permit:</p> <ol style="list-style-type: none">a. erosion prevention practices;b. sediment control practices;c. dewatering and basin draining;d. inspection and maintenance;e. pollution prevention management measures;f. temporary sediment basins; andg. termination conditions. [Minn. R. 7090]
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Comments:

1. Section 19.5 – This sentence – “Site plans must be kept up-to-date by the owners and operators of construction activity with regard to stormwater runoff controls” – describes a requirement for the owners and operators of a construction activity. It does not describe a requirement for a MS4 permittee. As written, it does not belong in this permit. (22-47)

Draft Permit Language:

19.6	<p>The permittee must implement written procedures for site plan reviews conducted by the permittee prior to the start of all construction activity, to ensure compliance with requirements of the regulatory mechanism(s). At a minimum, the procedures must include:</p> <ol style="list-style-type: none">a. written notification to owners and operators proposing construction activity, including projects less than one acre that are part of a larger common plan of development or sale, of the need to apply for and obtain coverage under the CSW Permit; andb. use of a written checklist, consistent with the requirements of the regulatory mechanism(s), to document the adequacy of each site plan required in item 19.5. [Minn. R. 7090]
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Comments:

1. 19.6 Written site plan review procedures – we already use generic language asking the permittee to obtain coverage under the CSW permit. (13-19)
2. Section 19.7 – The requirement that all “active construction activity” be inventoried is too broad. Does the term “construction activity”, as used in this section, mean “Construction Activity”, as defined in Section 26.9? If defined terms (Section 26) are used, please put them in bold text and Capitalized. (22-48)

Draft Permit Language:

19.7	<p>The permittee must maintain a written or mapped inventory of active construction activity within the permittee’s jurisdiction and that discharge to the permittee’s MS4.</p>
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Comments:

1. 19.7 Needs to be limited to “active construction activity” covered either by a state or local CSW permit. We will keep an inventory through our permitting software, not a map. Do not have staff resources or time to maintain an additional map of information already in list format. (13-20)
2. Requested Action: Remove this requirement.
Specific Reason for Requested Action: The MPCA currently tracks construction sites through the NPDES permitting program. (6-11)

Draft Permit Language:

19.8	The permittee must implement an inspection program that includes written procedures for conducting site inspections, to determine compliance with the permittee’s regulatory mechanism(s). The inspection program must also meet the requirements in items 19.9 and 19.10. [Minn. R. 7090]
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Comments:

1. This language is confusing. (19-7)

Draft Permit Language:

19.9	The permittee must maintain written procedures for identifying high-priority and low-priority sites for inspection. At a minimum, the written procedures must include: <ol style="list-style-type: none"> a. a detailed explanation describing how sites will be categorized as either high-priority or low-priority; b. a frequency at which the permittee will conduct inspections for high-priority sites; c. a frequency at which the permittee will conduct inspections for low-priority sites; and d. the name(s) of individual(s) or position title(s) responsible for conducting site inspections. [Minn. R. 7090]
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Comments:

1. Section 19.9: It is unclear to us why inventorying and specifying a frequency for “low-priority sites” is necessary. Please remove references to low priority sites in this section. (8-8)
2. Section 19.9 - Inventorying and specifying an inspection frequency for “low-priority sites” is unnecessary and of little or no value. Please remove references to low priority sites in this section. (22-49)

Draft Permit Language:

19.10	The permittee must implement a written checklist to document each site inspection when determining compliance with the permittee’s regulatory mechanism(s). At a minimum, the checklist must include the permittee’s inspection findings on the following areas, as applicable to each site: <ol style="list-style-type: none"> a. stabilization of exposed soils (including stockpiles); b. stabilization of ditch and swale bottoms; c. sediment control BMPs on all downgradient perimeters of the project and upgradient of buffer zones; d. storm drain inlet protection; e. energy dissipation at pipe outlets; f. vehicle tracking BMPs; g. preservation of a 50 foot natural buffer or redundant sediment controls where stormwater flows to a surface water within 50 feet of disturbed soils; h. owner/operator of construction activity self-inspection records; i. containment for all liquid and solid wastes generated by washout operations (e.g., concrete, stucco, paint, form release oils, curing compounds, and other construction materials); and j. BMPs maintained and functional. [Minn. R. 7090]
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Comments:

1. Section 19.10: Please remove item h. The MPCA in its own inspections does often request self-inspection records. We would again like to remind the MPCA that regulatory requirements need not be the same to be at least as stringent as state requirements. (8-9)
2. The checklist items in 19.10) are overly formal. Adds time and paper to each inspection when the important aspect is simply no off-site impacts to receiving waters. (17-6)

Draft Permit Language:

19.12	The permittee must ensure that staff receive training commensurate with their job duties as they relate to the permittee's Construction Site Stormwater Runoff Control program. Staff includes, but is not limited to, individuals responsible for conducting site plan reviews, site inspections, and/or enforcement. The permittee must ensure that previously trained staff attend a refresher-training event every three (3) calendar years following the initial training. [Minn. R. 7090]
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Comments:

1. 19.12 Training and ongoing certification refresher each 3 years for those conducting site plan reviews requirements – does this includes planning staff? Building officials? (13-21)

Draft Permit Language:

19.13	The permittee must maintain written enforcement response procedures (ERPs) to compel compliance with the permittee's regulatory mechanism(s) in item 19.5. At a minimum, the written ERPs must include: a. a description of enforcement tools available to the permittee and guidelines for the use of each tool; and b. name or position title of responsible person(s) for conducting enforcement. [Minn. R. 7090]
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Comments:

1. I would suggest moving 19.13) to right after 19.5. (17-7)

Draft Permit Language:

19.14	For each site plan review conducted by the permittee, the permittee must document the following: a. project name; b. location; c. total acreage to be disturbed; d. owner and operator of the proposed construction activity; e. proof of notification to obtain coverage under the CSW Permit, as required in item 19.6, or proof of coverage under the CSW Permit; and f. any stormwater related comments and supporting completed checklist, as required in item 19.6, used by the permittee to determine project approval or denial. [Minn. R. 7090]
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Comments:

1. 19.14 Obtaining proof notification to obtain coverage under the CSW permit – should the burden be on the City to collect this information and not on the applicant? We are already required to tell them to get the permit coverage in 19.6. (13-22)
2. Similarly I would suggest moving 19.14) to right after the referenced 19.6, or incorporate into it. (17-8)

Draft Permit Language:

19.15	For each training attended by staff in item 19.12, the permittee must document: a. a list of topics covered; b. names and position titles of employees in attendance; and c. date of each event. [Minn. R. 7090]
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Comments:

1. Section 19.15: Please remove the requirement to track position titles listed in item b. We should be able to easily cross reference this with employment records if needed to for some reason. This seems an unnecessary paperwork exercise meant to waste much valued administrative profession time for those communities with less sophisticated but adequate tracking methods. (8-10)
2. 19.15 Agendas and receipt of the training will be provided. (13-23)
3. I would suggest moving 19.15) to right after 19.12 or incorporate into it. (17-9)

Draft Permit Language:

19.16	<p>Enforcement conducted by the permittee pursuant to the ERPs in item 19.13 must be documented, including verbal warnings. At a minimum, the permittee must document the following:</p> <ul style="list-style-type: none"> a. name of the person responsible for violating the terms and conditions of the permittee’s regulatory mechanism(s); b. date(s) and location(s) of the observed violation(s); c. description of the violation(s); d. corrective action(s) (including completion schedule) issued by the permittee; e. referrals to other regulatory organizations (if any); and f. date(s) violation(s) resolved. [Minn. R. 7090]
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Comments:

1. Section 19.16: Please remove the requirement to keep records on verbal warnings. (8-11)
2. Documenting verbal warnings – every conversation should be documented? What constitutes a warning vs. a reminder of a permit term? This is almost every conversation with permit holders. (13-24)

Draft Permit Language:

19.17	<p>The permittee must conduct an annual assessment of the Construction Site Stormwater Runoff Control program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 19. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090]</p>
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Comments:

1. 19.17 To conduct an annual assessment of everything in our SWPPP – make it part of the Annual Report. (13-25)

MCM 5: Post-Construction Stormwater Management

Draft Permit Language:

20.3	<p>To the extent allowable under state or local law, the permittee must develop, implement, and enforce a regulatory mechanism(s) that incorporates items 20.4 through 20.16. A regulatory mechanism(s) for the purposes of this permit may consist of contract language, an ordinance, permits, standards, or any other mechanism, that will be enforced by the permittee. [Minn. R. 7090]</p>
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Comments:

1. 20.3 Developing and implementing regulatory mechanisms for items 20.4-20.16 will take time. The City just adopted its next 10 year SWMP after 3 years of planning, revisions, and two watershed approvals. Updating the SWMP and City Ordinances is a lengthy process. (13-26)

Draft Permit Language:

20.4	<p>The permittee’s regulatory mechanism(s) must require owners of construction activity to submit site plans with post-construction stormwater management BMPs designed with accepted engineering practices to the permittee for review and approval, prior to start of construction activity. [Minn. R. 7090]</p>
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Comments:

1. 20.4 Will the PCA provide “accepted engineering practices” the City will review from applicants? (13-27)

Draft Permit Language:

20.5	<p>The permittee’s regulatory mechanism(s) must require owners of construction activity to treat the water quality volume on any project where the sum of the new impervious surface and the fully reconstructed impervious surface equals one or more acres. [Minn. R. 7090]</p>
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Comments:

1. Section 20.5 - Please add that this applies within the 2010 census urbanized area. (4-2)
2. Requested Action: Make this requirement consistent with the Construction Stormwater Permit.

Specific Reason for Requested Action: This will require permittees to maintain a more stringent regulatory mechanism than the Construction Stormwater Permit, creating confusion for permittees and developers alike. If the MPCA desires to include fully reconstructed impervious surfaces in permanent stormwater management requirements, this should be done in conjunction with Construction Stormwater Permit updates to keep the NPDES program aligned. (6-12)

3. The proposed threshold for requiring treatment of the water quality volume being placed at “the sum of the new impervious surface and the fully reconstructed impervious surface equals one or more acres” has the potential to create hardships for redevelopments within the City. For example, the Dairy Queen in St. Michael recently had a fire and had to tear down and rebuild. Under the current MS4 permit, the site was only required to provide treatment for the 3,500 sf increase in impervious proposed and reduce volume and pollutant loads, but under the proposed threshold that same site would have been required to provide treatment for roughly 44,000 sf of reconstructed impervious on a site with minimal space for stormwater management. Similar stormwater management policies are more common in higher density Urban communities where property values can support greater infrastructure cost. Implementation of this proposed policy change will likely have impacts on redevelopment in our community. Additionally, the current threshold set by the 2018 NPDES Construction Stormwater General Permit is creating a “net increase of one or more acres of cumulative impervious surface.” The proposed MS4 language not only creates inconsistencies for future construction activity on treatment requirements within the City, but it also places the burden of implementing the new standards on City staff. We also believe that this requirement goes above and beyond the State Non-degradation requirements as well as the federal EPA antidegradation policies. (7-2)
4. 20.5 Why introduce a sum to the calculation of volume/area to treat? Seems like this would double up the counting of many small redevelopment sites. The City already has a more stringent threshold to trigger stormwater management. It seems problematic to change standards at this time in the MS4 permit but not the Construction Permit. Recommend just stating that water quality volume reduction is required where x.x acres of redevelopment occur. (13-28)

Draft Permit Language:

20.6	For construction activity (excluding linear projects), the water quality volume must be calculated as one (1) inch times the sum of the new and the fully reconstructed impervious surface. [Minn. R. 7090]
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Comments:

1. 20.6 Why introduce a sum to the calculation of volume/area to treat? Are sidewalks and trails included in this sum? Recommend just stating that water quality volume reduction is required where x.x acres of redevelopment occur. (13-29)
2. Section 20.6 and 20.7 – These sections list specific treatment targets (1" or 0.5") without flexibility. Please revise these sections to provide for the possibility that there may be more stringent targets for some areas and some projects, at the permittee’s discretion. (22-54)

Draft Permit Language:

20.7	For linear projects, the water quality volume must be calculated as the larger of one (1) inch times the new impervious surface or one-half (0.5) inch times the sum of the new and the fully reconstructed impervious surface. Where the entire water quality volume cannot be treated within the existing right-of-way, a reasonable attempt to obtain additional right-of-way, easement, or other permission to treat the stormwater during the project planning process must be made. Volume reduction practices must be considered first, as described in item 20.8. If additional right-of-way, easements, or other permission cannot be obtained, owners of construction activity must maximize the treatment of the water quality volume prior to discharge from the MS4. At a minimum, owners of construction activity must provide a net reduction from pre-project conditions (on an annual average basis) of Total Suspended Solids (TSS) and Total Phosphorus (TP) utilizing any methods of stormwater treatment. [Minn. R. 7090]
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Comments:

1. Regarding items 20.6 and 20.7, while Dakota County appreciates allowing for non-linear projects to treat the greater of 1" times the new impervious created over one acre or 0.5" times the reconstructed impervious, the requirement to treat reconstructed impervious is not currently widely adopted throughout Dakota County. It is the opinion of Dakota County that the challenges with providing stormwater treatment in a linear right-of-way

corridor are not significantly reduced by allowing 0.5" times the new impervious versus 1" . Rather, it is the requirement to provide any form of permanent stormwater treatment system that necessitates additional ROW acquisition or underground treatment systems (which are cost-inefficient and difficult to inspect and maintain). Acquisition of additional right-of-way to meet the proposed reconstructed impervious treatment requirement in some cases could result in the displacement of residents and potential legal challenges such as eminent domain proceedings. Lastly, the draft permit language appears to reflect the real challenges and limited potential to provide beneficial stormwater treatment systems within narrow right-of-way strips along streets and highways. Dakota County requests the MPCA provide further clarification regarding the steps necessary under the phrase "reasonable attempt to obtain additional right-of-way, easement, or other permission to treat the stormwater during the project planning process" in item 20.7. Dakota County finds this process arduous and burdensome given the limited environmental benefits and likelihood of compromised environmental outcomes realized by treatment systems constructed within public linear right-of-way. In order of preference, Dakota County requests the MPCA consider the following modifications to the proposed language within items 20.6 and 20.7:

- 1) Eliminate the reconstruction requirement for public linear projects.
- 2) Allow for linear projects to construct off-site systems in-lieu of on-site as allowed under proposed item 20.11. (1-3)
2. Requested Action: Revise requirement to accommodate sidewalk and trail projects.
Specific Reason for Requested Action: If sidewalks and trails are disconnected impervious surfaces, some accommodation should be provided to exempt these types of projects from this requirement. Large trail projects may exceed 1 acre of new impervious surface but directing any meaningful volume of runoff to stormwater management facilities in this situation may be impossible. In addition, since the impervious surface is disconnected, no reasonable increase in runoff volume or pollutants should be expected. (6-13)
3. St. Michael, like many other outer-ring metro and out-state communities, has relied on meeting the intent of the Non-degradation policies outlined in the current permit and state statute by treating the net-new impervious. There have been several cases where there has been a demonstrated difficulty complying with MIDS requirements for linear projects due to lack of available ROW and poor soils. Bassett Creek WMC, Rice Creek WD, and Nine Mile Creek WD actually adopted MIDS or similar linear standards and later revoked the requirement for linear projects due to the large number of variances request they were receiving. We request this policy be removed from the permit and maintain the current Non-degradation policy. (7-3)
4. Sections 20.6 & 20.7: By specifying that the water quality volume "must" be calculated as 1" or 0.5" over impervious surface, the MPCA is not allowing for water quality volumes that are more stringent or greater than that amount. For example, a permittee couldn't now require that the water quality volume be 1" over the entire site because the MPCA has stated that it "must" be 1" over the impervious. The language in these sections needs to be tweaked to allow for more stringent water quality treatment volumes. Please note, the existing permit language of no net increase is sufficiently flexible to allow for greater treatment that better fits local needs. (8-13)
5. Proposed language for 20.7 is excessive and if codified into rule, will be unachievable in many situations/settings. Delete the addition of the extension to "fully reconstructed" and leave those decisions to the local WMO's. If implemented consider the following comments: The language "At a minimum, owners of construction activity must provide a net reduction from per-project conditions (on an annual average basis) of Total Suspended Solids (TSS) and Total Phosphorus (TP) utilizing any methods of stormwater treatment" is not practical with current technology and Best Management Practices. Current treatment practices utilize TSS removal (catch basin sumps, separators, etc.) and some TP removal occurs with the TSS removal. However, the dissolved phase of TP cannot be removed, and therefore the rule is unachievable. Modified language may be achievable such as "At a minimum, owners of construction activity must provide 50% removal a net reduction from per-project conditions (on a 5 year event or annual average basis) of Total Suspended Solids (TSS) and Total Phosphorus (TP) utilizing any methods of stormwater treatment". (9-1)
6. 20.7 These standards suggest having to invest in additional projects even if we are past the benefit of reducing pollutants. Language reads that all projects will require volume reduction – other sections say that wet ponds, etc... are not considered volume reduction. For linear projects, it still should state that new impervious requires treatment, this proposed language reads that new impervious and reconstructed impervious shall receive treatment 20.8 clarification is needed – if infiltration is prohibited, a wet sedimentation basin, filtration basin, or

regional pond may be considered. But then the next sentence is that they are not considered to be volume reduction practices. Certainly these practices do retain some volume. (13-30)

7. Item 20.7, For linear projects, the water quality volume must be calculated as the larger of one-(1) inch times the new impervious surface or one-half (0.5) inch times the sum of the new and the fully reconstructed impervious surface.
- The city feels this is an arduous and cost-prohibitive requirement. The city does not have adequate road right-of-way in many situations, so placement of water quality volume BMP's will not be feasible in most situations. (15-5)
8. MnDOT is concerned about adding the treatment requirement to reconstruction. There are often limiting site conditions (compacted soils, structures, foundations, utilities etc.) that limit infiltration within the right of way. Other factors, such as chlorides and potential for groundwater mounding also can complicate siting of stormwater treatment. Adding the infiltration requirement to reconstruction areas further complicates this issue. MnDOT recommends eliminating the reconstruction requirement, or lessening the amount. (19-8)
9. Section 20.6 and 20.7 – These sections list specific treatment targets (1" or 0.5") without flexibility. Please revise these sections to provide for the possibility that there may be more stringent targets for some areas and some projects, at the permittee's discretion. (22-54)

Draft Permit Language:

20.8	Volume reduction practices (e.g., infiltration or other) to retain the water quality volume on-site must be considered first when designing the permanent stormwater treatment system. If this permit prohibits infiltration as described in item 20.10, a wet sedimentation basin, filtration basin, or regional pond may be considered. This permit does not consider wet sedimentation basins and filtration systems to be volume reduction practices. [Minn. R. 7090]
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Draft Permit Language:

20.9	Where the proximity to bedrock precludes the treatment of the entire water quality volume, other treatment practices such as grass swales, smaller ponds, or grit chambers must be installed prior to the discharge of stormwater from the MS4. [Minn. R. 7090]
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Comments:

1. Section 20.9 - Why is this section included in the permit? (4-3)
2. 20.9 How much of these alternate practices would be approved? Might as well add to require a higher level of engineering review to determine what treatment practice can be installed (13-31)

Draft Permit Language:

20.10	Infiltration systems must be prohibited when the system would be constructed in areas: a. that receive discharges from vehicle fueling and maintenance areas, regardless of the amount of new and fully reconstructed impervious surface; b. where high levels of contaminants in soil or groundwater may be mobilized by the infiltrating stormwater. To make this determination, the owners and/or operators of construction activity must complete the Agency's site screening assessment checklist, which is available in the Minnesota Stormwater Manual, or conduct their own assessment. The assessment must be retained with the site plans; c. where soil infiltration rates are more than 8.3 inches per hour unless soils are amended to slow the infiltration rate below 8.3 inches per hour; d. with less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock. e. of predominately Hydrologic Soil Group D (clay) soils; f. in an Emergency Response Area (ERA) within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R. 4720.5100, Subp. 13, classified as high or very high vulnerability as defined by the Minnesota Department of Health; g. in an ERA within a DWSMA classified as moderate vulnerability unless the permittee performs or approves a higher level of engineering review sufficient to provide a functioning treatment system and to prevent adverse impacts to groundwater; h. outside of an ERA within a DWSMA classified as high or very high vulnerability unless the permittee performs or approves a higher level of engineering review sufficient to provide a functioning treatment system and to prevent adverse impacts to groundwater; i. within 1,000 feet up-gradient or 100 feet down gradient of active karst features; or
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j. that receive stormwater runoff from entities regulated under NPDES for industrial stormwater: automobile salvage yards; scrap recycling and waste recycling facilities; hazardous waste treatment, storage, or disposal facilities; or air transportation facilities that conduct deicing activities.

See "higher level of engineering review" in the Minnesota Stormwater Manual for more information. [Minn. R. 7090]

Comments:

1. Section 20.10 precludes infiltration with < 3 feet of separation to bedrock and the sequencing in Section 20.8 applies if there is > 3 feet of separation.
2. Section 20.10 g & h of MCM 5 appears to assume all MS4 permittees are water supply or wellhead protection managers, which is not applicable to watershed district MS4s. This section should be clarified. Please consider RCWD's suggestion on MCM 3 to address this, which was: "please consider incorporating language (potentially in section 13 of the draft MS4 permit) that some of the Minimal Control Measure provisions do not apply to all MS4s depending on available power and authorities." (10-2)
3. 20.10 Prohibiting infiltration items a. through j. we would like the "higher level of engineering review" available for each item as much of our City is within a DWSMA with moderate to high vulnerability. (13-32)
4. In 20.10: j), I suggest rephrasing to "from these types of entities..." Currently could be interpreted to be all NPDES permitted facilities. (17-11)
5. Infiltration standards should account for two further considerations:
 - (a) Watershed districts are not public water suppliers (PWSs) under Minn. Rules 4720. In assessing whether to require infiltration within a DWSMA, a district often looks to the PWS and defers to its judgment if it advises against infiltration. The GP should not place an MS4 in the position of mandating infiltration against the reasoned position of the PWS.
 - (b) The District carefully considers whether its infiltration requirement should be imposed in proximity to known or suspected subsurface contamination. The GP should not place the MS4 in the position of requiring infiltration against the MS4's judgment, when that could mobilize a plume or potentially subject the MS4 to environmental liability. If the MPCA wishes to create an aggressive mandate in this regard, it should do so directly through the NPDES Construction GP. (12-6)
6. Section 20.10 – This section appears to address situations when "infiltration systems must be prohibited". In subsections c., g., and h., though, there are conditions listed under which infiltration is allowed. This is confusing. Please put these subsections in a different section with different leading text. (22-56)

Draft Permit Language:

20.11	For non-linear projects, where the water quality volume cannot cost effectively be treated on the site of the original construction activity, the permittee must identify, or may require owners of the construction activity to identify, locations where off-site treatment projects can be completed. If the entire water quality volume is not addressed on the site of the original construction activity, the remaining water quality volume must be addressed through off-site treatment and, at a minimum, ensure the requirements of items 20.12 through 20.16 are met. [Minn. R. 7090]
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Draft Permit Language:

20.12	The permittee must ensure off-site treatment project areas are selected in the following order of preference: <ol style="list-style-type: none">a. locations that yield benefits to the same receiving water that receives runoff from the original construction activity;b. locations within the same Department of Natural Resource (DNR) catchment area as the original construction activity;c. locations in the next adjacent DNR catchment area up-stream; ord. locations anywhere within the permittee's jurisdiction. [Minn. R. 7090]
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Comments:

1. Section 20.12 – Please provide for the possibility that, especially in a fully-built-out city, it may be impossible to find a suitable location for an off-site treatment project in any of the four types of locations listed in this section. (22-57)

Draft Permit Language:

20.14	Off-site treatment projects must be completed within 24 months after the start of the original construction activity. [Minn. R. 7090]
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Comments:

1. Section 20.14 – Please allow for the option of building off-site treatment projects in advance of a construction activity. When unique or unusual opportunities presented themselves, some cities built large regional treatment BMPs years in advance of subsequent development or road reconstruction projects that would drain to them. (22-58)
2. Section 20.14 – Please add the following text to this section: “unless the permittee determines that completion within 24 months is not practicable. When the permittee determines that a project cannot be completed within 24 months, the permittee must provide the reason(s) and schedule(s) for completing the project in the annual report.” (22-59)

Draft Permit Language:

20.15	If the permittee receives payment from the owner of a construction activity for off-site treatment, the permittee must apply any such payment received to a public stormwater project, and all projects must comply with the requirements in items 20.12 through 20.14. [Minn. R. 7090]
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Comments:

1. Requested Action: Revise this requirement to accommodate previously constructed regional facilities already paid for by the Permittee.
Specific Reason for Requested Action: If a permittee has already paid for and constructed regional facilities to accommodate the new construction, the permittee should not be required to apply payment from the developer for a new and different public stormwater project in a different location. (6-14)

Draft Permit Language:

20.16	The permittee’s regulatory mechanism(s) must include the establishment of legal mechanism(s) between the permittee and owners of structural stormwater BMPs not owned or operated by the permittee, that have been constructed to meet the requirements in Section 20. The legal mechanism(s) must include provisions that, at a minimum: a. allow the permittee to conduct inspections of structural stormwater BMPs not owned or operated by the permittee, perform necessary maintenance, and assess costs for those structural stormwater BMPs when the permittee determines that the owner of that structural stormwater BMP has not ensured proper function; b. are designed to preserve the permittee’s right to ensure maintenance responsibility, for structural stormwater BMPs not owned or operated by the permittee, when those responsibilities are legally transferred to another party; and c. are designed to protect/preserve structural stormwater BMPs. If structural stormwater BMPs change, causing decreased effectiveness, new or improved structural stormwater BMPs must be implemented to provide equivalent treatment to the original BMP. [Minn. R. 7090]
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Comments:

1. Applicability of part 20.16 to road authorities is questionable. (16-6)

Draft Permit Language:

20.18	The permittee must ensure that staff receive training commensurate with their job duties as they relate to the permittee’s Post-Construction Stormwater Management program. Staff includes, but is not limited to, individuals responsible for conducting site plan reviews and/or enforcement. The permittee must ensure that previously trained staff attend a refresher-training event every three (3) calendar years following the initial training. [Minn. R. 7090]
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Comments:

1. Section 20.18: We are confused about the requirement for refresher training every 3 years for staff that deal with post-construction stormwater management. Engineers and many other professionals that typically deal with post-construction stormwater management generally have requirements to maintain training to keep licensure. That is not necessarily the same as “refresher” training. We would recommend removing the 3 year “refresher” training requirement for this section. (8-14)

Draft Permit Language:

20.20	For each site plan review conducted by the permittee, the permittee must document the following:
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- a. supporting documentation used to determine compliance with Section 20 of this permit, including any calculations for the permanent stormwater treatment system;
 - b. the water quality volume that will be treated through volume reduction practices (e.g., infiltration or other) compared to the total water quality volume required to be treated, expressed as a percentage;
 - c. documentation associated with off-site treatment projects authorized by the permittee, including rationale to support the location of permanent treatment in accordance with items 20.11 and 20.12;
 - d. payments received and used in accordance with item 20.15; and
 - e. all legal mechanisms drafted in accordance with item 20.16, including date(s) of the agreement(s) and name(s) of all responsible parties involved. [Minn. R. 7090]
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Comments:

1. Section 20.20 b: Is there a reason that this needs to be expressed as a percentage? Can't the 2 numbers be recorded and that be it? We know this is very simple math and easy to derive, but for that reason alone, it shouldn't be listed as a permit requirement. (8-15)
2. 20.20 Required documentation for site plan review is an iterative process with revisions to stormwater reports and comments. (13-33)
3. 20.20d. Payments received and used are documented already by City finance division. (13-34)

Draft Permit Language:

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| 20.21 | For each training attended by staff in item 20.18, the permittee must document: <ol style="list-style-type: none"> a. a list of topics covered; b. names and position titles of employees in attendance; and c. date of each event. [Minn. R. 7090] |
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Comments:

1. 20.21 Agendas and receipt of the training will be provided. (13-35)
2. I would suggest including 20.21 with 20.18 (17-12)

Draft Permit Language:

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| 20.22 | Enforcement conducted by the permittee pursuant to the ERPs in item 20.19 must be documented, including verbal warnings. At a minimum, the permittee must document the following: <ol style="list-style-type: none"> a. name of the person responsible for violating the terms and conditions of the permittee's regulatory mechanism(s); b. date(s) and location(s) of the observed violation(s); c. description of the violation(s); d. corrective action(s) (including completion schedule) issued by the permittee; e. referrals to other regulatory organizations (if any); and f. date(s) violation(s) resolved. [Minn. R. 7090] |
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Comments:

1. 20.22 Documenting verbal warnings – every conversation should be documented? What constitutes a warning vs. a reminder of a permit term? This is almost every conversation with permit holders. (13-36)
2. In 20.22 a), I would change "name of person" to "name of party". It is not always clear which individual is at fault with post construction issues. (17-13)

Draft Permit Language:

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| 20.23 | The permittee must conduct an annual assessment of the Post-Construction Stormwater Management program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 20. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090] |
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Comments:

1. 20.23 To conduct an annual assessment of everything in our SWPPP – make it part of the Annual Report. (13-37)

General Comments on this Section of the Permit:

1. Sections 20.5-20.7, 20.10, 26.13, 26.19: Remove reference and requirements throughout the entire permit for fully reconstructed impervious areas to put in permanent water quality treatment. This requirement ignores the fact that these areas may already be receiving adequate water quality treatment. Additionally, permittees are subject to scores of plans and mechanisms that help guide where and when stormwater retrofits should occur in previously developed areas: TMDLs, WRAPS, Surface Water Management Plans by the local authority or watershed organizations, inspection and maintenance tracking, resident complaints, AUARs and other environmental reviews, subwatershed assessments, etc. These requirements also ignore the benefits of projects that reduce impervious surface; it's a disincentive to reduce impervious surface for a project under the proposed language. (8-12)
2. General comment on MCM 5: The Rice Creek Watershed District (RCWD) has developed post-construction stormwater management criteria after careful consideration and analysis of the water resources in its jurisdiction. RCWD's criteria is generally more stringent than the statewide standard included in the general MS4 permit, but has several exceptions and variances to grant exemptions when the treatment requirements cannot practically be met. The permit language should include language allowing permittees to develop and implement a set of post-construction stormwater management criteria that are "at least equivalent" to the standard requirements but tailored to the permittees' specific location and issues. (10-3)
3. To be consistent with the direction of statewide water resource management, we recommend the MIDS standard of 1.1" treatment volume be applied to all new and reconstructed impervious surfaces, including linear projects (20.6-20.7). Extensive work was completed by the MIDS work group to determine that 1.1 inches of volume retention on a site nearly mimics native hydrology. (11-1)
4. Sections 20.5 to 20.7. MPCA has indicated that the changes made in this permit are, in part, to provide consistency with the Construction Stormwater Permit (CSW Permit). The addition of the fully reconstructed impervious surfaces to the threshold for requiring water quality treatment and to the required water quality volume calculation are not consistent with what the current CSW Permit requires in its Section 15.3. The CSW Permit addresses only the net new impervious surfaces. While Sections 20.5-20.7 may be similar to what some municipalities and watershed organization rules/standards currently have, there are a number of MS4's for which this change would represent a significant change to current standards, practices and programs. Current standards in some of these MS4 are based on the results of the Non-degradation Analyses which were required, and ultimately approved, by MPCA. Standards adopted by these MS4s following completion and approval of the Non-degradation Analyses specifically address new development (i.e., new impervious) and redevelopment (i.e., reconstructed impervious) standards to achieve a net reduction in TSS, TP and volume. Please include a provision that allows MS4's with standards developed and approved by MPCA through the Non-degradation Analyses to retain those standards and be exempt from adopting the more restrictive standards for reconstructed impervious surfaces proposed in the current draft. (14-1)
5. The proposed revisions to the MS4 general permit (GP) set out in parts 20.5 and 20.7 would significantly increase project costs for road reconstruction projects to a degree that we find unreasonable, particularly when the site-specific need and benefits are not taken into consideration. For an urban road full reconstruction project we estimate, based on tree trench project examples given in the MPCA Stormwater Manual web site, an increased cost of in the range of \$1,000,000 per mile to treat ½" water quality volume. Under the existing MS4 GP the same project consisting of no new impervious surface would be required only to assure some level of net reduction in discharge volume, sediment and phosphorous from existing condition, a requirement that can be met at a much lower cost.
We request that MPCA 1) revise Part 20.5 of the GP so that the requirement for providing permanent treatment is based on new impervious area only and 2) prepare a cost-benefit analysis of this change and associated implications to local government units. (16-5)
6. Throughout Section 20: "Water quality volume" is used and it an awkward phrase. Not clear what is meant: volume and level of contaminants in runoff? (17-10)

7. Section 20 (Post-Construction) – Please consider using the less stringent (linear project) volume control standard for redevelopment projects. Redevelopment projects typically face the same space constraints and limitations as linear projects. (22-50)
8. Section 20 – There are concerns among MCSC members about the costs of implementing these standards. Please provide information about the MPCA’s expectations of the additional costs, for both public and private projects, that will be incurred because of these new permit conditions. If the MPCA does not have this projected cost impacts information, please acquire and disseminate such cost impact information before imposing these permit requirements. For many of the MS4 permittees, the volume control standards required under the section are significant changes to local design standards and regulations. Having the cost impact information from the MPCA will be important for them. Does the MPCA have a statutory or rule requirement that cost impacts must be analyzed and estimated before significant new permit requirements are imposed on permittees? (22-51)
9. Section 20 – MCSC is aware of two places where new volume control standards, similar to those in this draft MS4 Permit, have had negative impacts. It is our understanding that the Bassett Creek WMC implemented similar volume control standards and later decided to withdraw them. The City of St. Cloud implemented a 1/4” runoff volume retention standard and has had second thoughts about it. MCSC requests that the MPCA talk with the staff of both of these organizations before moving ahead with these volume retention standards. In the case of the Bassett Creek WMC, MCSC requests that the MPCA talk directly with the city members of the BCWMC. (22-52)
10. Section 20 – In every appropriate portion of this section where volume control (retention on site) is referenced, please allow for landscape irrigation as an option. This can be an important option to achieve volume control. Also, please address the question of whether landscape irrigation should be viewed as “infiltration” for determining prohibitions or restrictions. Volume control using landscape irrigation is achieved through evaporation, evapotranspiration, and widespread (rather than concentrated) infiltration. (22-53)
11. Sections 20.8, 20.9, and 20.11 – These sections appear to contradict each other. 20.8 allows for wet sed basins, filtration basins, and regional ponds. 20.9 allows for grass swales, smaller ponds, or grit chambers. 20.11 calls for off-site treatment to address the water quality volume. If this is not contradictory, it is confusing. (22-55)
12. Consider including requirements that are more clear specific and measurable for MCM 5 Post-Construction Stormwater Management, for example require a minimum treatment efficiency % removal for TSS and TP, include a minimum number of inspections to be conducted on Post Construction BMPs, or minimum percentage to be inspected. (20-4)
13. This draft Permit includes multiple sections with provisions related to fully reconstructed impervious surfaces. There is an implied assumption, in all these sections, that these fully reconstructed impervious surfaces do not already have some or sufficient volume retention controls in place before the reconstruction project. This is significant. It may be appropriate to distinguish between existing impervious surfaces that have some or sufficient volume retention controls and those that do not. For example, in Section 20.5, it is appropriate to not count existing impervious areas with sufficient treatment toward the calculation of “the sum of the new impervious surface and the fully reconstructed impervious surface” when determining whether the Permit requirements should be applied to a project. (22-12)
14. It has been the experience of a number of cities that volume retention requirements result in the installation of a significant number of underground infiltration vaults, especially in areas that are already highly urbanized. Anecdotal information shows that some cities have found this type of stormwater BMPs to have a relatively high rate of failure, specifically loss of infiltration function over time and standing water more than 48 hours after a rain event. This seems reasonable. Surficial rain gardens rely on vegetation root growth and die-off to maintain infiltration capacity over time. Underground vaults lack this vegetation and its functions. Thus, there is reason to believe that the new volume retention requirements in this draft Permit have a likelihood of leading to the installation of a large number of BMPs that will fail. MCSC recommends that the MPCA investigate this issue before proceeding with these volume retention requirements. Find out how many underground vaults have been built and how many have failed (standing water after more than 48 hours after a rain event). Determine the causes for these failures. Determine whether proceeding with volume retention requirements in this Permit is wise and prudent. Please also consider that these underground vaults may be significant sources of bacteria in stormwater, as was found in the Minneapolis bacteria study. (22-14)
15. MCM 5: Preserve Exercise of Judgment

Specifically as to MCM 5, the proposed GP standards generally reflect the state of technical consensus. The District's broader concern is that the GP, as written, may not allow for the considered judgments (careful exemptions in the rules, variances) that allow the regulatory program to make gains efficiently and avoid the imposition of requirements in circumstances that are not cost-effective, deflect program resources and may undermine regulatory program support.

The District would urge the MPCA to affirm that in incorporating NPDES program requirements into their regulatory programs, MS4s retain their existing flexibility as regulators to make these sorts of judgments. This is less a matter of MCM 5 content requirements, and more a matter of the approach that the MPCA will bring to program audits, and the documentation that will satisfy the MPCA that an MS4's exercise of judgment is preserving equivalency in water resource protection outcomes. (12)

16. MCM 5: Sequencing and Regional Stormwater Management

The District agrees that stormwater abstraction should be achieved where site conditions allow. However, the Draft GP appears to require, for both non-linear and linear projects, that infiltration occur on site to the extent feasible before any off-site treatment may be used.

This apparently rigid preference for on-site treatment is at odds with a trend toward regional treatment, and would inhibit regional projects and partnerships that are a substantial, innovative element of the District's work. Absent localized flooding or volume-diversion impacts, the GP should not care whether volume is managed on-site or regionally (within the same receiving watershed).

First, regional facilities often are more cost-effective to both construct and maintain. In addition, maintenance is simply more reliable for fewer, larger facilities more typically owned and maintained by municipalities and other public bodies, in comparison to many smaller, scattered practices neglected by private property owners and unfunded homeowners' associations. As well, monitoring, inspecting and gaining maintenance of many small practices on private land is substantially more challenging, and the agency cost is much greater.

Second, a regional feature is more easily designed as a treatment train approach. A regional element, for practices designed and owned by public entities, allows for more innovation, a recent example being the incorporation of iron enhanced sand filtration, which tends to be avoided by developers due to its greater sophistication and irregular maintenance expense. In contrast, for example, the District partnered with the City of Victoria on a project to retrofit an existing series of stormwater retention basins with iron enhanced filtration benches, in order to manage stormwater volume and water quality impacts associated with a downtown redevelopment area. The City is able to provide this utility service to redeveloping properties and recover project cost through stormwater charges.

Third, regional stormwater management provides applicants and municipalities greater flexibility during redevelopment, while also providing treatment beyond the minimum requirements. In high-density urban areas of the District, managing stormwater to meet District rule criteria through onsite treatment can be costly and compromise economic use of a limited footprint. Through private and public partnerships, the District has achieved greater stormwater treatment and ecological benefit by constructing or facilitating regional stormwater practices that can be used to meet development and redevelopment needs.

Recently, the District partnered with the Cities of St. Louis Park and Hopkins and a private company in creation of a regional stormwater infiltration/filtration facility. The regional facility, off-site but upgradient from the receiving water, affords treatment capacity for the company's expansion. In addition to the local economic development benefits from the company's ability to grow in place, the company donated valuable land for riparian buffer and ecological preserve, and the regional facility treats another 260 acres of previously untreated urban land and right-of-way. Overall, the facility will keep some 180 pounds of phosphorus per year out of Minnehaha Creek, downstream lakes, and the Mississippi River.

As another example, the District joined with the City of Hopkins to remove an aging riparian use and replace it with community parkland. The District installed a subsurface infiltration practice in partnership with the City of Hopkins and an upgradient redeveloper of affordable housing. The off-site treatment opportunity allowed the developer to preserve a redevelopment footprint adequate for the financial feasibility of the project. The remaining capacity is available for use by other redevelopment.

The District would like to continue to be able to build partnerships and seek greater water quality, water quantity, and ecological benefits through regional stormwater management and permitting. We urge the MPCA to be sure that the MS4 GP does not place obstacles in the way of these efforts by imposing requirements or preferences for on-site treatment, or other sequencing terms, that are not essential. We also urge the MPCA to

recognize the expertise and experience that MS4s bring to their own regulatory and capital programs in order to produce water resource outcomes that exceed those resulting from a conventional site-by-site regulatory approach. (12)

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

Draft Permit Language:

21.3	<p>The permittee must maintain a written or mapped inventory of permittee owned/operated facilities that contribute pollutants to stormwater discharges. The permittee must implement BMPs that prevent or reduce pollutants in stormwater discharges from all inventoried facilities. Facilities to be inventoried may include, but is not limited to:</p> <ul style="list-style-type: none">a. composting;b. equipment storage and maintenance;c. hazardous waste disposal;d. hazardous waste handling and transfer;e. landfills;f. solid waste handling and transfer;g. parks;h. pesticide storage;i. public parking lots;j. public golf courses;k. public swimming pools;l. public works yards;m. recycling;n. salt storage;o. snow storage;p. vehicle storage and maintenance (e.g., fueling and washing) yards; andq. materials storage yards. [Minn. R. 7090]
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Comments:

1. 21.3, o. snow storage - Recommend using the term off-site snow storage location or hauled snow storage to differentiate from snow banks. (3-7)
2. 21.3 Maintaining a written or mapped inventory of items a. through q. is exhaustive, plus then implementing BMPs at every inventoried site to reduce pollutants in stormwater discharges? Essentially every city property and every road right-of-way contains item "o. Snow storage" in the winter months. How does the PCA suggest we implement BMPs to store snow differently than where plows push it? (13-38)

Draft Permit Language:

21.4	<p>The permittee must implement BMPs that prevent or reduce pollutants in stormwater discharges from the following municipal operations that may contribute pollutants to stormwater discharges, where applicable:</p> <ul style="list-style-type: none">a. waste disposal and storage, including dumpsters;b. management of temporary and permanent stockpiles of materials such as street sweepings, snow, sand and sediment removal piles (e.g., effective sediment controls at the base of stockpiles on the downgradient perimeter);c. vehicle fueling, washing, and maintenance;d. routine street and parking lot sweeping;e. emergency response, including spill prevention plans;f. cleaning of maintenance equipment, building exteriors, dumpsters, and the disposal of associated waste and wastewater;g. use, storage, and disposal of significant materials;h. landscaping, park, and lawn maintenance;i. road maintenance, including pothole repair, road shoulder maintenance, pavement marking, sealing, and repaving;j. right-of-way maintenance, including mowing; andk. application of herbicides, pesticides, and fertilizers. [Minn. R. 7090]
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Comments:

1. 21.4 "Must implement BMPS" at items a. through k. – where is "to the maximum extent practicable"? Many of these items are identified in our required SWPPP. (13-39)

Draft Permit Language:

21.5	The permittee must implement the following BMPs at permittee owned/operated salt storage areas: a. cover or store the salt indoors; b. store salt on an impervious surface; and c. implement practices to reduce exposure when transferring material from salt storage areas (e.g., sweeping, diversions, and/or containment). [Minn. R. 7090]
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Comments:

1. 21.5, 21.6, 21.7 "Must implement" these three sections pertaining to salt storage, policy, and required trainings. Will the PCA be offering additional training courses multiple days so all staff can attend? Our entire maintenance staff cannot all attend 5 hour trainings the same day. (13-40)

Draft Permit Language:

21.6	The permittee must implement a written snow and ice management policy for staff that perform winter maintenance activities. The policy must establish practices and procedures for snow and ice control operations (e.g., plowing or other snow removal practices, sand use, and application of deicing compounds). [Minn. R. 7090]
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Comments:

1. 21.5, 21.6, 21.7 "Must implement" these three sections pertaining to salt storage, policy, and required trainings. Will the PCA be offering additional training courses multiple days so all staff can attend? Our entire maintenance staff cannot all attend 5 hour trainings the same day. (13-40)
2. Policies are difficult to change as programs evolve and usually do not offer the specificity listed in this section. Words like "procedures" or "guidance" fit better for requirements like snow removal practices, than "policy". (19-9)

Draft Permit Language:

21.7	Each calendar year, the permittee must train all staff that perform winter maintenance activities. The permittee may use training materials from the Agency's Smart Salting Training or other organizations to meet this requirement. The employee training program must include: a. the importance of protecting water quality; b. BMPs to minimize the use of deicers (e.g., proper calibration of equipment and benefits of pretreatment, pre-wetting, and anti-icing); and c. tools and resources to assist in winter maintenance (e.g., deicing application rate guidelines, calibration charts, Smart Salting Assessment Tool). [Minn. R. 7090]
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Comments:

1. 21.7 - Annual training is too frequent. Recommend allowing MS4 to set the interval such as new employee onboarding training and then refresher training every three years. (3-8)
2. 21.5, 21.6, 21.7 "Must implement" these three sections pertaining to salt storage, policy, and required trainings. Will the PCA be offering additional training courses multiple days so all staff can attend? Our entire maintenance staff cannot all attend 5 hour trainings the same day. (13-40)
3. In 21.7), should specify that the training relates to deicing. (17-14)

Draft Permit Language:

21.8	If the permittee has an applicable WLA for chloride, the permittee must document the amount of deicer applied per salting event to all permittee owned/operated surfaces. [Minn. R. 7090]
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Comments:

1. In section 21.8 please clarify if documenting amount of deicer applied by permittee is the total for all surfaces (one number per event) or the amount applied to each surface (multiple numbers per event). (11-2)

2. 21.8 If cities have an WLA for chloride, document the amount of deicer applied per salting event. We encourage the PCA to work with calibration and fleet management software companies. This is already being tracked, but the weather and actual conditions dictate each event's application. What will the PCA do with this data? Are private contractors responsible for parking lots and private roads/Associations going to have the same requirements? (13-41)
3. re PArts 21.5 - 21.9: some of these new salt-related requirements will be very difficult for many MS4 permittees to meet. MPCA should explain the intended use and need for of the detailed, per-snow/ice application tracking of salt use required in 21.8. St. Louis County is in process of using our own internal GIS, IT and other staff to create a system for tracking material used for de-icing for our own information. We could not find an "off the shelf" system to do this and are putting in considerable effort to create something on our own - that may or may not work as hoped for. Based on our conversations with other road authorities this effort is far ahead of where most cities and counties are at. In summary please be sure that the level of effort and cost associated with compliance with these requirements is justified by the resulting information. One possible way to address this is to dial back from "must" to "should" or other words that establish more recommendations and less hard and fast enforceable requirements. (16-7)
4. Section 21.8 – The requirement that “the permittee must document the amount of deicer applied per salting event” is excessive. Many permittees do not track deicer applied for each salt event. Some applications of deicer do not include the application of salt. Having data for each event is not useful or informative. Annual tracking may be more useful. Even annual tracking may not be informative because of the significant variation in the number and types of winter storm events from year to year. (22-60)
5. The last line should specify that the documentation is only for the area with the WLA and not “all” permittee owned/operated surfaces. (19-10)

Draft Permit Language:

21.9	<p>If the permittee has an applicable WLA for chloride, each calendar year the permittee must conduct an assessment of the permittee's winter maintenance operations to reduce the amount of deicing salt applied to permittee owned/operated surfaces and determine current and future opportunities to improve BMPs. The permittee may use the Agency's Smart Salting Assessment Tool or other available resources and methods to complete this assessment. The assessment must be documented and may include, but is not limited to:</p> <ol style="list-style-type: none"> a. operational changes such as pre-wetting, pre-treating the salt stockpile, increasing plowing prior to deicing, monitoring of road surface temperature, etc.; b. implementation of new or modified equipment providing pre-wetting, or other capability for minimizing salt use; c. regular calibration of equipment; d. optimizing mechanical removal to reduce use of deicers; and e. designation of no salt and/or low salt zones. [Minn. R. 7090]
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Comments:

1. 21.9 Finally, an assessment requirement that includes an example of where to complete an assessment. These operational changes already occur based on events. (13-42)

Draft Permit Language:

21.10	<p>If the permittee has an applicable WLA for temperature that includes a reduction greater than zero percent (i.e., City of Duluth, City of Hermantown, City of Rice Lake, MnDOT Outstate, St. Louis County, University of Minnesota – Duluth, Lake Superior College, and City of Stillwater), the permittee must maintain a written plan that identifies specific activities the permittee will implement to reduce thermal loading during the permit term. The written plan may include, but is not limited to:</p> <ol style="list-style-type: none"> a. implementation of infiltration BMPs such as bioinfiltration practices; b. disconnection and/or reduction of impervious surfaces; c. retrofitting existing structural stormwater BMPs; and d. improvement of riparian vegetation. [Minn. R. 7090]
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Comments:

1. Do we know these efforts will make a difference? MPCA has provided little BMP guidance for temperature impairments. (19-11)

Draft Permit Language:

21.11	The permittee must maintain written procedures for the purpose of determining the TSS and TP treatment effectiveness of all permittee owned/operated ponds constructed and used for the collection and treatment of stormwater. [Minn. R. 7090]
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Comments:

1. 20.11 What does “must maintain written procedures” mean? (13-43)
2. Section 21.11 – Please revise this section to provide for constructed ponds that were designed and built for flood protection and/or rate control and never had any intended water quality (TSS or TP treatment) functions. Determining TP treatment effectiveness for such ponds is irrelevant and unnecessary. (22-61)
3. Section 21.11 – When the Permit language requiring that permittees “must maintain written procedures for the purpose of determining the TSS and TP treatment effectiveness of all permittee owned/operated ponds constructed and used for the collection and treatment of stormwater.” was developed and included in the 2013 MS4 General Permit, the issue of concern was the depth of the ponds. Now, we have a new set of issues related to phosphorus release from the sediments of constructed stormwater ponds. At this time, we have a very limited understanding of the extent, cause, and nature of this problem and even fewer ideas about possible and appropriate management solutions. Under this situation, it is not reasonable to require MS4 permittees to address the broad issues related to the TP treatment effectiveness of all their ponds. Please revise the language for this section so that the permittees’ responsibilities are limited to the depth of their ponds. (22-62)

Draft Permit Language:

21.12	Unless inspection frequency is adjusted as described in item 21.13, the permittee must inspect structural stormwater BMPs (excluding stormwater ponds, which are under a separate schedule below) each calendar year to determine structural integrity, proper function, and maintenance needs. [Minn. R. 7090]
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Comments:

1. In 21.12 and 13), it is unclear if all bmps need to be inspected each year, maybe clarify that some proportion needs to be inspected rather than all. (17-15)

Draft Permit Language:

21.13	The permittee must inspect structural stormwater BMPs each calendar year unless the permittee determines either of the following conditions apply: a. complaints received or patterns of maintenance indicate a greater frequency is necessary; or b. maintenance or sediment removal is not required after completion of the first two calendar year inspections; in which case the permittee may reduce the frequency of inspections to once every two (2) calendar years. [Minn. R. 7090]
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Comments:

1. In 21.12 and 13), it is unclear if all bmps need to be inspected each year, maybe clarify that some proportion needs to be inspected rather than all. (17-15)

Draft Permit Language:

21.14	The permittee must inspect, at a minimum, 20 percent of all ponds and outfalls (excluding underground outfalls) each calendar year on a rotating basis in order to determine structural integrity, proper function, and maintenance needs. [Minn. R. 7090]
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Comments:

1. Requested Action: Revise this requirement to allow inspection of all facilities once within the permit term. Specific Reason for Requested Action: If it is more cost effective for a permittee to inspect facilities all in the same year, they should be allowed to do so. If facilities are inspected once every five years, that should be

sufficient to maintain their proper function. If an emergency repair is needed, that can always be accommodated through additional inspection and maintenance at that time. (6-15)

2. 21.14 Must inspect a minimum of 20 % of all ponds and outfalls each calendar year. This takes away our flexibility to complete all pond inspections within the permit term. (13-44)
3. Unclear how the BMPs listed in 21.14 intersect with those in 21.12 and 13. (17-16)
4. Section 21.14 – Please see #62 above. Similarly, the term “proper function” in this context is unreasonably broad. (22-63)
5. Section 21.14 – Please provide the permittees the option of doing more than 20% of the inspection in any single year and fewer inspections in other years, as long as they inspect all their ponds and outfalls within the five-year Permit cycle. (22-64)

Draft Permit Language:

21.15	Based on inspection findings, the permittee must determine if repair, replacement, or maintenance measures are necessary in order to ensure the following: a. structural integrity, proper function, and treatment effectiveness of structural stormwater BMPs; and b. structural integrity and proper function of outfalls. Necessary maintenance must be completed within one year of discovery, unless the permittee determines maintenance is not practicable. When the permittee determines maintenance cannot be completed within one year of discovery, the permittee must provide the reason(s) and schedule(s) for completing the maintenance in the annual report. [Minn. R. 7090]
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Comments:

1. 21.15 - This is an overly burdensome reporting requirement. MS4s as owner/operator are responsible for system operation and performance. Variables such as funding or other project coordination may affect the timing of maintenance but operators will always prioritize system integrity.
Recommend "When the permittee determines maintenance cannot be completed within one year of discovery, the permittee must provide the reason(s) and schedule(s) for completing the maintenance in the annual report." not be included in the permit. (3-9)
2. 21.15 Requiring maintenance within one year of discovery may not be manageable. The repair or replacement may have to be budgeted and re-designed. Keep flexibility to describe why maintenance was not completed within one year. (13-45)
3. MnDOT has a rating system and makes repairs during projects, which is the most cost-effective approach. (19-12)

Draft Permit Language:

21.16	The permittee must implement a stormwater management training program commensurate with employee's job-duties as they relate to the permittee's SWPPP, including reporting and assessment activities. The permittee may use training materials from the United States Environmental Protection Agency (USEPA), state and regional agencies, or other organizations as appropriate to meet this requirement. The employee training program must: a. address the importance of protecting water quality; b. cover the requirements of the permit relevant to the job duties of the employee not already addressed in items 18.8, 19.12, 20.18, and 21.7; and c. include a schedule that establishes initial training for new and/or seasonal employees, and recurring training intervals for existing employees to address changes in procedures, practices, techniques, or requirements. [Minn. R. 7090]
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Draft Permit Language:

21.17	The permittee must document the following information associated with the operations and maintenance program: a. date(s) and description of findings, including whether or not an illicit discharge is present, for all inspections conducted in accordance with items 21.12, 21.13, and 21.14; b. any adjustments to inspection frequency as authorized in item 21.13; c. a description of maintenance conducted, including dates, as a result of inspection findings; and
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d. employee stormwater management training events, including a list of topics covered, names and position titles of employees in attendance, and date of each event. [Minn. R. 7090]

Draft Permit Language:

- 21.18 The permittee must document pond sediment excavation and removal activities, including:
- a. a unique ID number and geographic coordinate of each stormwater pond from which sediment is removed;
 - b. the volume (e.g., cubic yards) of sediment removed from each stormwater pond;
 - c. results from any testing of sediment from each removal activity; and
 - d. location(s) of final disposal of sediment from each stormwater pond. [Minn. R. 7090]
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Draft Permit Language:

- 21.19 The permittee must conduct an annual assessment of the operations and maintenance program to evaluate program compliance, including the effectiveness of the components of the SWPPP and the status of achieving the measurable requirements in Section 21. Measurable requirements are activities that must be documented or tracked as applicable to the MCM (e.g., education and outreach efforts, implementation of written plans, trainings, site plan reviews, inspections, enforcement, etc.). The annual assessment must be performed prior to completion of each annual report and any modifications made to the program as a result of the annual assessment must be documented. [Minn. R. 7090]
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Comments:

1. 21.19 To conduct an annual assessment of everything in our SWPPP – just make it part of the Annual Report. (13-46)

General Comments on this Section of the Permit:

1. NMCWD is in favor of adding the chloride components to the Pollution Prevention and Good Housekeeping section of the draft MS4, including the training and WLA portions. NMCWD has been a leader among local governmental entities in the metro area in addressing, and educating about, the impact chloride pollution has on water resources. Nine Mile Creek was listed as impaired for chloride by the Minnesota Pollution Control Agency in 2004, and NMCWD led the completion of the Total Maximum Daily Load study of the impairment. (2-3)

TMDLs

Draft MS4 Permit TMDL Requirements Summary Language:

If a permittee has an applicable WLA for dissolved oxygen or oxygen demand, nitrate, TSS, or TP, a compliance schedule is required. The compliance schedule is based on information provided by the permittee in the SWPPP document (i.e., the Part 2 permit application). The SWPPP document becomes part of the permit and is subject to public notice (see item 5.4 in the draft permit). The MPCA is developing the form for submission of the SWPPP document and the form will be available for review during the official public comment period for this permit.

Comments:

1. In the second paragraph of this document, it is stated that "If a permittee has an applicable WLA for dissolved oxygen or oxygen demand, nitrate, TSS, or TP, a compliance schedule is required." This appears to apply to all TMDL WLAs for these pollutants. Does the MPCA intend that a compliance schedule is required where TMDL WLAs are already being met and that can be demonstrated? (22-24)

Draft MS4 Permit TMDL Requirements Summary Language:

1) For each applicable WLA not being met for dissolved oxygen or oxygen demand, nitrate, TSS, and TP, a compliance schedule is required. For lake TMDLs, individual compliance schedules must be developed for each applicable WLA. For stream TMDLs, a compliance schedule will be developed for groupings of WLAs. For example, if the permittee has WLAs for TSS on four stream reaches in a single project, the WLAs will be grouped for the purposes of a compliance schedule and reporting.

Information on each permittee's applicable WLAs and reporting requirements will be provided in a customized compliance schedule. In the compliance schedule, the permittee must provide the following information:

- a. proposed BMPs or progress toward implementation of BMPs to be achieved during the permit term;
- b. the year each BMP will be implemented; and

c. a target year the applicable WLA(s) will be achieved.

Comments:

1. 1) b. Add "approximate" to the year that the BMP will be implemented as MnDOT scopes its' projects 5 years out, but projects move around in the program.
1) c. Also add "approximate" to the target year that applicable WLA (s) will be achieved for the same reason as above. Provide the ability to provide text narrative rather than a number such that the permittee can state that the target year may be beyond the term of the 5 year permit cycle. (4-5)
2. In some cases it may be more productive to separate out the segments. Also still a bit of confusion on the new stream reach numbering. This should be an option not a requirement. (19-13)
3. MCSC wishes to discuss the provision for grouping WLAs for stream TMDLs. We suggest that such groupings be made allowable, but not required. We also wish to discuss whether this provision applies to multiple WLAs within a single TMDL or multiple WLAs in multiple TMDLs. (22-22)
4. The items listed as being part of a TMDL WLA compliance in item #1 of this document can only be forecasted. Some of the factors making such forecasts potentially inaccurate include:
 - a. available funding,
 - b. schedules for street reconstruction projects,
 - c. the exact schedules and locations new development and redevelopment projects, both by public and private entities,
 - d. improvements in technology and research (e.g.: new types of BMPs, learning that some BMPs are less effective than earlier thought, etc.)
 - e. appropriate revisions to the TMDL implementation due to adaptive management.

What is the value or purpose of having permittees submit a compliance schedule based on such forecasting, especially in the context of an enforceable permit submittal that is open to third-party lawsuits? Will the MPCA allow permittees to revise their compliance schedules and target dates in subsequent MS4 Permit applications, SWPPP Documents, and/or SWPPPs, or will moving the schedules or dates back in time be viewed as "backsliding"? (22-25)

Draft MS4 Permit TMDL Requirements Summary Language:

- 2) For each applicable WLA not being met for TSS and TP, the permittee must also provide:
- a. a quantitative estimate of load reductions (in pounds) that will be achieved during the permit term; and
 - b. the method used to determine the quantitative estimate (e.g., P8, WinSLAMM, MIDS calculator, MPCA simple estimator tool, etc.).

Comments:

1. Draft MS4 Permit Total Maximum Daily Load (TMDL) Requirements Summary: Please remove item 2a as a requirement. Providing a load reduction estimate to be achieved during the permit term opens permittees up to significant liabilities. Projects are frequently delayed for a variety of reasons, feasibility studies may show projects are not feasible, estimated load estimates may change significantly as site conditions require changes. The 2013 MS4 Permit language regarding demonstrating progress is preferred. (8-17)
2. The items listed under item 2.a. of this document can only be forecasted quite approximately. Some of the factors making such forecasts potentially inaccurate include:
 - a. available funding,
 - b. schedules for street reconstruction projects,
 - c. the exact schedules and locations new development and redevelopment projects, both by public and private entities,
 - d. improvements in technology and research (e.g.: new types of BMPs, learning that some BMPs are less effective than earlier thought, etc.)
 - e. improved knowledge about BMP effectiveness
 - f. appropriate revisions to the TMDL implementation due to adaptive management.

What is the value or purpose of having permittees submit these items based on such forecasting, especially in the context of an enforceable permit submittal that is open to third-party lawsuits? A quantitative estimate of load reductions appears to have significantly more value in reporting looking backward, compared with a prediction looking forward. Will the MPCA allow permittees to revise their compliance schedules and target

dates in subsequent MS4 Permit applications, SWPPP Documents, and/or SWPPPs, or will moving the schedules or dates back in time be viewed as “backsliding”? (22-26)

Draft MS4 Permit TMDL Requirements Summary Language:

3) For each applicable WLA for TSS and TP where the permittee can provide documentation that the WLA is being met, the permittee must provide the following information:

- a. a list of all structural stormwater BMPs implemented to achieve the applicable WLA, including the BMP type (e.g., constructed basin, infiltrator, filter, swale or strip, etc.), location in geographic coordinates, owner, and year implemented; and
- b. documentation using a Commissioner-approved method, which demonstrates the permittee’s existing load meets the WLA, or documentation that estimated reductions of TSS or TP from BMPs meet the estimated MS4 WLA reductions included in the TMDL report, if that information is available (i.e., % reduction, lbs. reduced). Commissioner-approved methods include P8, WinSLAMM, MIDS calculator, MPCA simple estimator tool, or any other method that receives Commissioner-approval.

Comments:

1. Should not be applied to WLAs the permittee has previously reported as meeting, and has been approved by MPCA’s previous permit application review. (19-14)
2. Under item #3, it will be essential for a permittee to have an accurate map or delineation of the land area covered by a TMDL WLA. Without such a map, a permittee cannot accurately determine which BMPs should be considered as contributing to the TMDL WLA load reductions. (22-28)

Draft MS4 Permit TMDL Requirements Summary Language:

³ Permittees must keep all records used to make this determination. Guidance and recommendations on types of records to retain will be provided in the Minnesota Stormwater Manual.

Comments:

1. In footnote #3, there should be a time limit for how long records must be kept. (22-27)

General Comments on the Draft MS4 Permit TMDL Requirements Summary:

1. It is unclear from the MPCA’s one-page document titled, “Draft MS4 Permit Total Maximum Daily Load (TMDL) Requirements Summary,” if this document is a regulatory document. In addition, it is unclear why it is called a “summary.” Please provide clarification on the intent of this document and whether it is a regulatory document or a factsheet. (7-4)
2. On TMDLs, it was much easier to find requirements for permittees that have TMDLs when there was a separate section for those requirements in the 2013 permit. It will make compliance easier and more clear as to what is required if there is a separate TMDL section. Additionally, there are several items that are included in the “Draft MS4 Permit Total Maximum Daily Load (TMDL) Requirements Summary” that are not stated clearly if at all in the Draft MS4 Permit. For example, the last line of the first paragraph states “Because the permit includes pollutant-specific requirements, a compliance schedule will not be required for the applicable WLA(s) for bacteria, chloride, and temperature.” That seems like a pretty big matter relating to compliance that should be stated clearly in the permit. Additionally, the fact that a compliance schedule will be required is not specifically addressed within the permit. There is reference made to the compliance schedule section 24.3, but that’s it. By housing these requirements in a separate document that is not the permit, we are concerned that this ends up being a means of enacting requirements that don’t have the same rigorous standards for receiving and responding to requirements. The Draft Summary goes far beyond a guidance document; it lists application and permit requirements that are not listed in the permit itself. (8-16)
3. RCWD staff do not have a specific TMDL language change suggestion, but do have a related question for the MPCA: What is the MPCA looking for from MS4 permittees with categorical WLA TMDLs? (10-4)
4. The status of this document is very confusing. Is it directly associated with the Permit? Will this document be part of the final Permit documents? If yes, will it be available for public review and comment under the same administrative conditions and process as the Permit? (22-15)
5. This document includes many requirements and conditions that should be included in the Permit. MCSC recommends that the requirements and conditions in this document are better included in the Permit itself.
6. This document is labeled as a “Summary”. This appears to be inaccurate. Most of the first full paragraph could be viewed as a summary of more specific provisions found within the MCM sections of the Permit. The last

sentence of this paragraph, though, appears to include specific Permit requirement information that is not found in the draft Permit. Almost all the material after this first paragraph appears to be requirements and conditions that should be part of the Permit and do not summarize portions of the draft Permit. (22-16)

7. This document is labeled as a "Summary". This appears to be inaccurate. Most of the first full paragraph could be viewed as a summary of more specific provisions found within the MCM sections of the Permit. The last sentence of this paragraph, though, appears to include specific Permit requirement information that is not found in the draft Permit. Almost all the material after this first paragraph appears to be requirements and conditions that should be part of the Permit and do not summarize portions of the draft Permit. (22-17)
8. This document lists seven types of TMDL WLAs:
 - a. bacteria,
 - b. chloride,
 - c. temperature,
 - d. dissolved oxygen or oxygen demand,
 - e. nitrate,
 - f. TSS, and TP.

Is this list comprehensive? Are there other types of TMDL WLAs that apply to MS4 permittees? If yes, what are the requirements and conditions for those types of TMDL WLAs? (22-18)

9. The term "compliance schedule", in this context, is very important. A list of the information that must be provided as part of the compliance schedule is given in Sections 1.a., b., and c. Please provide this list as a separate definition of the term "compliance schedule" or immediately proximal to the first place where the term appears. (22-19)
10. Is there a difference between a "compliance schedule" and a "customized compliance schedule"? (22-23)
11. MCSC recommends that the MPCA provide outreach and training in the new Permit requirements related to TMDLs and WLAs. MCSC is willing to work with the MPCA in developing this training/outreach. (22-29)
12. MCSC is concerned that 90 days will not be sufficient time to prepare a complete MS4 Permit application, especially the SWPPP Document. Please allow at least a minimum of 150 days. (22-21)
13. In addition to the comments provided above, we believe the information provided in the Draft MS4 Permit Total Maximum Daily Load (TMDL) Requirements Summary should be included in MCM 6 of the general permit to keep all MS4 requirements within the same document. (6-16)

Other parts of the draft permit

Draft Permit Language:

3.2	The following categories of non-stormwater discharges or flows are authorized under this permit to enter the permittee's small MS4 only if the permittee does not identify them as significant contributors of pollutants (i.e., illicit discharges), in which case the discharges or flows must be addressed in the permittee's Stormwater Pollution Prevention Program (SWPPP): water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(b)(20)), uncontaminated pumped groundwater, 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, street wash water, and discharges or flows from firefighting activities. [Minn. R. 7090]
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Comments:

1. 3.2 does not include NPDES permitted discharges (NCC, RO reject, etc that commonly discharge to municipal storm sewer systems. They should be included in this list of 'authorized non-stormwater discharges'. (5-1)

Draft Permit Language:

4.2	The following discharges or activities are not authorized by this permit: <ol style="list-style-type: none">a. non-stormwater discharges, except those authorized by the permittee in item 3.2;b. discharges of stormwater to the small MS4 from activities requiring a separate NPDES/SDS permit. This permit does not replace or satisfy any other permitting requirements;
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- c. discharges of stormwater to the small MS4 from any other entity located in the drainage area or outside the drainage area. Only the permittee's small MS4 and the portions of the storm sewer system that are under the permittee's operational control are authorized by this permit;
- d. this permit does not replace or satisfy any environmental review requirements, including those under the Minnesota Environmental Policy Act (Minn. Stat. 116D), or the National Environmental Policy Act (42 U.S.C. 4321 et seq.);
- e. this permit does not replace or satisfy any review requirements for endangered or threatened species, from new or expanded discharges that adversely impact or contribute to adverse impacts on a listed endangered or threatened species, or adversely modify a designated critical habitat;
- f. this permit does not replace or satisfy any review requirements for historic places or archeological sites, from new or expanded discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places or affecting known or discovered archeological sites; and
- g. discharges to prohibited outstanding resource value waters pursuant to Minn. R. 7050.0335, Subp. 3. [Minn. R. 7090, Minn. R. 7050.0335, Subp. 3, Minn. Stat. 116D, 42 U.S.C. 4321 et seq.]

Comments:

1. (c.) - This is confusing because many MS4s are interconnected with other stormwater systems like drainage from contiguous neighboring municipalities or MS4s completely contained within other MS4s. I assume that this limitation on authorization is intended to stipulate that each small MS4's coverage does not extend to interconnected drainage systems. There is potential for this (as written) to be misinterpreted as prohibiting connections to other drainages outside the MS4's jurisdiction. (5-2)
2. Section 4.2 is confusing to those of us not steeped in regulatory terminology. What does it mean for a discharge to be not authorized under the permit? For example, 4.2.c says that our MS4 drainage system cannot accept stormwater discharges from other entities located in our drainage area. However, the county is a non-MS4 entity that owns many roadside ditches within our MS4 that discharge stormwater into our township (MS4) ditches. This is not named as an allowable exception in section 3.2. (18-3)

Draft Permit Language:

5.1	Permit Authorization. [Minn. R. 7001]
5.2	In order for an applicant to be authorized to discharge stormwater from a small MS4 under this permit, the applicant must submit a complete application in accordance with Sections 9 through 12. [Minn. R. 7001]

Comments:

1. I think that the permit should authorize SWPPPs to include water quality trading programs, to be approved by MPCA, in accordance with MN Stat. 115.03, subp. 10 (officially 'pollutant loading offset'). (5-3)

Draft Permit Language:

11.1	Existing Permittee Applicants. [Minn. R. 7090]
11.2	All existing permittees seeking to continue discharging stormwater associated with a small MS4 after the effective date of this permit must submit Part 2 of the permit application, on a form provided by the Commissioner, in accordance with item 12.2. NOTE: Existing permittees were required to submit Part 1 of the permit application prior to the expiration date (July 31, 2018) of the Agency's small MS4 general permit No.MNR040000, effective August 1, 2013. [Minn. R. 7090]

Comments:

1. Section 11.1 - Existing Permittee Applicants - Add 12 month grace period after notice of permit coverage for implementation of MCM 5 reconstruction standards. (4-6)
2. Please provide copies of all forms that will be provided by the Commissioner and required as part of the permit. It is critical for permittees to evaluate these documents during the comment period to understand our abilities to meet the requirements of the permit. (7-5)

Draft Permit Language:

12.2	All applicants must submit a SWPPP document (i.e., Part 2 of the application form) when seeking coverage under this permit. The SWPPP document will become an enforceable part of this permit upon approval by the Commissioner. Modifications to the SWPPP document that are required or allowed by this permit (see Section 23) will also become enforceable provisions. The SWPPP document must be submitted on a form provided by the Commissioner. [Minn. R. 7090]
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Comments:

1. The SWPPP Document is an important part of the Permit application submittal process. It also represents significant commitments on the part of the MS4 permittees. It will be an enforceable part of the Permit. MCSC has numerous questions and comments about the SWPP Document, as described in this document and Section 12.2 of the draft Permit.
 - a. The requirements of the SWPPP Document were listed in the current MS4 General Permit (Part II.D.). This precedent should be followed for this new MS4 General Permit, instead of using just "a form provided by the Commissioner".
 - b. If the requirements of the SWPPP Document are presented just as "a form provided by the Commissioner", it appears that they will still be "requirements". It is our expectation that a submitted SWPPP Document from a permittee that the MPCA deems to be incomplete or insufficient will be rejected and the application will not go forward. This is equivalent to Permit requirements.
 - c. If the requirements of the SWPPP Document are presented just as "a form provided by the Commissioner", will the elements of this form be available as part of the full public review and comment process for the Permit, including provisions for a formal Response to Comments and the possibility of a Contested Case Hearing Petition?
 - d. MCSC views the apparent provision of the requirements of the SWPPP Document as just "a form provided by the Commissioner" as a significant deficiency. (22-20), (22-30)
2. 12.2 "The SWPPP document must be submitted on a form provided by the Commissioner." We have created and utilized a complex Word document to use as our SWPPP – what will the new form be and when is it available? (13-49)
3. Requested Action: Include the Commissioner approved form for review as part of the Public Draft Notice. Specific Reason for Requested Action: This form is an integral part of the MS4 Program and Permit application. Therefore, it should be included for review and comment with the Permit itself. (6-1)

Draft Permit Language:

13.2	The permittee must develop, implement, and enforce a SWPPP designed to reduce the discharge of pollutants from the small MS4 to the Maximum Extent Practicable (MEP), to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act. [Minn. R. 7090]
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Comments:

1. Section 13.2 – This section ends with this text: "and to satisfy the applicable water quality requirements of the Clean Water Act". The court case Ohio Valley Environmental Coalition; West Virginia Highlands Conservancy; and Sierra Club vs. Fola Coal Company (U.S. Court of Appeals for the Fourth Circuit No. 16-1024) showed that the inclusion of broad language linking a discharge permit to water quality statutes can be perilous for the permittees. MCSC requests that this text be deleted from this Permit, unless the MPCA shows that it is necessary. (22-31)

Draft Permit Language:

14.2	New permittees must develop, and existing permittees must update, as necessary, a storm sewer system map that depicts the following: <ol style="list-style-type: none">a. the permittee's entire MS4 as a goal, but at a minimum, all pipes 12 inches or greater in diameter, including stormwater flow direction in those pipes;b. outfalls, including a unique identification (ID) number assigned by the permittee, and an associated geographic coordinate;c. structural stormwater Best Management Practices (BMPs) that are part of the permittee's MS4;d. structural stormwater BMPs not owned or operated by the permittee, which include an executed legal mechanism(s) between the permittee and owners responsible for the long-term maintenance, as required in item 20.16; ande. all receiving waters. [Minn. R. 7090]
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Comments:

1. Section 14.2 (d): The mapping of structural stormwater BMPs not owned or operated by the permittee increases cost and burden for MS4 permittees. If this is approved, it should be applicable from the passage of this permit going forward and allow for sufficient time for the setup of a local framework. (10-5)
2. 14.2(d) - It is not clear whether the MPCA intends this new mapping requirement to capture all structural BMPs required by past permits, which in the District's case would go back decades. Also, the MPCA should clarify its "map" requirement and afford formatting flexibility, particularly where the many records involved may impede the feasibility of certain mapping concepts. Depending on the need to convert existing records to a specific format, the MPCA also should allow MS4s a reasonable period of time to complete this. (12-1)
3. Section 14.2 – Item d. of this Permit section requires that a permittee's system map depict "structural stormwater BMPs not owned or operated by the permittee". This phrase is unmanageably broad and could include a large number of BMPs to be mapped in a relatively short period of time. This phrase appears to include all BMPs not owned or operated by the permittee without regard to when such BMPs were built or installed. Just finding all these BMPs may be problematic. Without some limit, it could include very small BMPs, such as private homeowners' rain barrels and gutter disconnections. (22-32)
4. Section 14.2.d. – The construction of the provision under item d. in this section is confusing. Are only BMPs not owned or operated by the permittee and covered by an executed legal mechanism(s) between the permittee and the owner required to be mapped? (22-33)
5. 14.2 "Must map all structural stormwater BMPs not owned or operated by the permittee." We would have an inventory of these items based on maintenance agreements, why is there a requirement to map them? The term "structural stormwater BMPs" is very broad. (13-50)

Draft Permit Language:

22.1	Alum or Ferric Chloride Phosphorus Treatment Systems. [Minn. R. 7090]
22.2	If the permittee uses an alum or ferric chloride phosphorus treatment system, the permittee must comply with Section 22 requirements. [Minn. R. 7090]

Comments:

1. If all these provisions are included, will the individual NPDES permits for these systems become obsolete? Can they be terminated? See for example the Taft Lake Flocculation Treatment Facility (MN0070173). (5-4)

Draft Permit Language:

22.4	The permittee's alum or ferric chloride phosphorus treatment system must meet the following design parameters: <ol style="list-style-type: none"> a. the treatment system must be constructed in a manner that diverts the stormwater flow to be treated from the main conveyance system; b. a high flow bypass must be part of the inlet design; and c. a flocculent storage/settling area must be incorporated into the design, and adequate maintenance access must be provided (minimum of 8 feet wide) for the removal of accumulated sediment. [Minn. R. 7090]
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Comments:

1. (c.)- Typo? I think the desired term is flocculant. (5-5)

Draft Permit Language:

22.9	In the following situations, the permittee must perform corrective action(s) and immediately notify the Minnesota Department of Public Safety Duty Officer at 1-800-422-0798 (toll free) or 651-649-5451 (Metro area): <ol style="list-style-type: none"> a. the pH of the discharged water is not within the range of 6.0 and 9.0; b. any indications of toxicity or measurements exceeding water quality standards; or c. a spill or discharge or alteration resulting in water pollution as defined in Minn. Stat. 115.01, subd. 13, of alum or ferric chloride. [Minn. R. 7090]
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Comments:

1. (b.) - It is known that municipal stormwater frequently exceeds several water quality standards (TP, TSS, E. coli + potential narrative standards). What is the purpose of this provision? If pollutants discharged from these

systems cause or have a reasonable potential to cause or contribute to excursions above water quality standards then their permits must contain effluent limits for those pollutants.

What corrective actions are they supposed to take if the discharge exceeds E. coli? TP? And what about response variables for eutrophication?

Also, notifying the duty officer is not necessarily useful for what amounts to an effluent limit violation. (5-6)

Draft Permit Language:

22.14	The following system parameters and how each was determined: a. flocculent settling velocity; b. minimum required retention time; c. rate of diversion of stormwater into the system; d. the flow rate from the discharge of the outlet structure; and e. range of expected dosing rates. [Minn. R. 7090]
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Comments:

1. (a.)-flocculant (5-7)

Draft Permit Language:

23.1	Stormwater Pollution Prevention Program (SWPPP) Modification. [Minn. R. 7090]
23.2	The Commissioner may require the permittee to modify the SWPPP as needed, in accordance with the procedures of Minn. R. 7001, and may consider the following factors: a. discharges from the MS4 are impacting the quality of receiving waters; b. more stringent requirements are necessary to comply with state or federal regulations; and c. additional conditions are deemed necessary to comply with the goals and applicable requirements of the Clean Water Act and protect water quality. [Minn. R. 7090]
23.3	Modifications that the permittee chooses to make to the SWPPP other than modifications authorized in item 23.4, must be approved by the Commissioner in accordance with the procedures of Minn. R. 7001. All requests must be in writing, setting forth schedules for compliance. The request must discuss alternative program modifications, assure compliance with requirements of the permit, and meet other applicable laws. [Minn. R. 7090]
23.4	The permittee's SWPPP may only be modified by the permittee without prior approval of the Commissioner provided the Commissioner is notified of the modification in the annual report for the year the modification is made and the modification falls under one of the following categories: a. a BMP is added, and none subtracted, from the SWPPP; or b. a less effective BMP is replaced with a more effective BMP. The alternate BMP shall address the same, or similar, concerns as the ineffective or failed BMP. [Minn. R. 7090]

Comments:

1. Part 23.1, which replaces 2013 GP part III.G., should pertain to the SWPPP DOCUMENT. This is in line with the existing GP as well as Part 12.3 of the draft 2019 GP. The permittee submits the SWPPP document to the Commissioner for review and approval. The permittee needs to have the freedom to tweak and improve their SWPPP Program without notifying MPCA as long as it stays in line with the actions set out in the document. I would say that our "program" changes several times a month. (note that this gets into general confusion I hear when talking to MS4 permittees about what is a SWPPP, what is a SWPPP document and how they relate to each other. Some say that the SWPPP document = the SWPPP. (16-8)

Draft Permit Language:

24.3	The permittee must submit an annual report to the Agency by June 30th of each calendar year. The annual report must cover the portion of the previous calendar year during which the permittee was authorized to discharge stormwater under this permit. The annual report shall be submitted to the Agency, on a form provided by the Commissioner, that will at a minimum, consist of the following: a. the status of compliance with permit terms and conditions, including an assessment of the appropriateness of BMPs identified by the permittee and progress towards achieving the measurable requirements of each of the MCMs. The
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assessment must be based on results of information collected and analyzed, including monitoring (if any), inspection findings, and public input received during the reporting period;

- b. the stormwater activities the permittee plans to undertake during the next reporting cycle;
- c. a change in any identified BMPs for any of the MCMs;
- d. a summary of the permittee's progress in achieving applicable WLAs for dissolved oxygen or oxygen demand, nitrate, TSS, and TP. The summary must include a list of all BMPs applied towards achieving applicable WLAs for dissolved oxygen or oxygen demand, nitrate, TSS, and TP, the implementation status of BMPs included in the compliance schedule at the time of final application submittal, and an updated estimate of cumulative TSS and TP load reductions;
- e. information required to be recorded or documented in Sections 13 through 23; and
- f. a statement that the permittee is relying on a partnership(s) with another regulated small MS4(s) to satisfy one or more permit requirements (if applicable), and what agreements the permittee has entered into in support of this effort.

[Minn. R. 7090]

Comments:

1. Why focus on those pollutants only? There are also approved MS4 WLAs for:
Bacteria (133 WLAs)
Chloride (95 WLAs)
Temperature (8 WLAs) (5-8)
2. 24.3d. Is this referring to the additional spreadsheet for WLA? If not, this seems like doubling up our TMDL reporting requirements. (13-47)
3. Section 24.3f. – This section refers to “partnership(s) with another regulated small MS4(s) to satisfy one or more permit requirements”. Please provide for partnership with entities that are not regulated small MS4s. (22-65)

Draft Permit Language:

24.6	The permittee must, when requested by the Commissioner, submit within seven days the information and reports that are relevant to the control of pollution regarding the construction, modification, or operation of the facility covered by the permit or regarding the conduct of the activity covered by the permit. [Minn. R. 7001.0150, Subp. 3, item H, Minn. R. 7090]
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Comments:

1. 24.6 Is this relating to an audit by the PCA of our MS4 MCMs? Seven days to compile all information and reports is manageable but we would need time to plan ahead of that to ensure staff will be available those seven days to do the work. If someone is booked in other activities or on vacation those seven days the request is not manageable. (13-51)
2. Section 24.6 – Seven days is far too short a time for a permittee to collect and organize the information and reports listed here, especially in light of the additional documentation requirements in this new draft Permit. Please revise this time period to 12 weeks. Please also note that imposing such information requests on permittees in the busy times of Spring or Fall is unreasonable. (22-66)

Draft Permit Language:

25.13	The permittee must give advance notice to the Commissioner as soon as possible of planned physical alterations or additions to the permitted facility (MS4) or activity that may result in noncompliance with a Minnesota or federal pollution control statute or rule or a condition of the permit. [Minn. R. 7001.0150, Subp. 3, item M]
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Comments:

1. In 25.13, it seems additions could be a yearly reporting item. (17-17)

Draft Permit Language:

26.13	“Fully reconstructed” means areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects, and other pavement rehabilitation projects that do not expose the underlying soils beneath the structure, pavement, or activity are not considered fully reconstructed. Maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements are not considered fully reconstructed. [Minn. R. 7090]
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Comments:

1. Section 26.13 - Fully reconstructed - Add utility work to the list of Maintenance activities that are exempt. (4-7)
2. Section 26.13 – Please revise this portion – “means areas where impervious surfaces have been removed down to the underlying soils.” – to read as follows – “means areas where the underlying soils have been disturbed”. This will align with the similar text in Section 26.9 and the definition for “Construction Activity” in the CSW. (22-67)

Draft Permit Language:

26.18	“Impaired Water” means waters identified as impaired by the Agency, and approved by the USEPA, pursuant to section 303(d) of the Clean Water Act (33 U.S.C. 303(d)). [Minn. R. 7090]
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Comments:

1. What about waters that are designated as impaired by the MPCA but not yet approved by EPA? It took about 4 years for EPA to approve our 2014 303(d) list. The MPCA considers WIDs to be impaired when the list has been on public notice and is posted on the website. Why operate differently for stormwater? (5-9)

Draft Permit Language:

26.19	“Linear project” means construction of new or fully reconstructed roads, trails, sidewalks, or rail lines that are not part of a common plan of development or sale. For example, roads being constructed concurrently with a new residential development are not considered linear projects because they are part of a common plan of development or sale.
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Comments:

1. Section 26.19 – It is inappropriate to include all trail and sidewalk projects under the definition of “linear projects”. When a trail or sidewalk is being built or rebuilt on its own, the impervious area is very narrow and usually surrounded by undisturbed, pervious land. The impacts on stormwater runoff from such projects are negligible. MCSC recommends that “trails, sidewalks” be deleted from the first sentence in this definition. MCSC further recommends that the following sentence be added to this definition: “Where a reconstructed or new trail or sidewalk is part of a new road or road reconstruction project and immediately adjacent to the road, the impervious area of the trail and/or sidewalk shall be included in the impervious area for the project and all subsequent calculations.” (22-68)

Draft Permit Language:

26.21	<p>“Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:</p> <ol style="list-style-type: none"> a. owned or operated by a state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district or similar entity, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management Agency under section 208 of the federal Clean Water Act, United States Code, title 33, section 1288, that discharges into waters of the state; b. designed or used for collecting or conveying stormwater; c. that is not a combined sewer; and d. that is not part of a publicly owned treatment works as defined in 40 CFR 122.2. <p>Municipal separate storm sewer systems do not include separate storm sewers in very discrete areas, such as individual buildings. [Minn. R. 7090.0080, Subp. 8]</p>
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Comments:

1. Section 26.21: In regards to MS4 permitting, RCWD suggests that public drainage systems should be either: 1) a water of the state, subject to standards assessment and impairment, or 2) a public conveyance, operated by the drainage authority and subject to MS4 permitting. It should not be both. If it is determined that public ditches should be subject to standards assessment and impairments, then watershed districts with public drainage systems should no longer be required to obtain MS4 permits. If public ditches are public conveyances and should not be assessed and listed as impaired, then watershed districts should remain MS4 permittees. However, RCWD sees the following issues with MS4 permits being required for public drainage systems:

- Public drainage systems are not "owned and operated" by a watershed district serving as the drainage authority
- Public drainage systems were originally constructed to remove excess runoff from agricultural lands, not stormwater from developed lands
- Watershed districts are not land use authorities and therefore cannot regulate land use within drainage system watersheds
- Watershed districts acting as the local drainage authority are already required by law under M.S. Chapter 103E to consider environmental criteria including the reduction of peak flows and flooding, reduction of erosion and sedimentation, and protection or improvement of water quality as they manage public drainage systems. (10-6)

Draft Permit Language:

26.25	"Outfall" means the point source where a municipal separate storm sewer system discharges to a receiving water, or the stormwater discharge permanently leaves the permittee's MS4. It does not include diffuse runoff or conveyances that connect segments of the same stream or water systems (e.g., when a conveyance temporarily leaves an MS4 at a road crossing). [Minn. R. 7090]
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Comments:

1. Section 26.25: The current definition of "outfall" fails to take into account a conflict with public drainage systems constructed and maintained under M.S. 103E. In many cases, the alignment of public drainage systems traverses uninterrupted through receiving waters, without stopping or starting. RCWD proposes to add at the end of the current outfall definition an additional exclusion: "...or the point source where a public drainage system (as defined by M.S. 103E) enters a receiving water, where the legal extent of the ditch continues uninterrupted through that receiving water." This proposed addition to the definition would define an outfall in such a way that results in MS4 permittees that are also the local drainage authority, not assuming a burdensome amount of outfalls to identify and inspect. Additionally, it should be clearly noted and understood that public drainage authorities are already required to inspect the system on a regular basis and if necessary perform maintenance in accordance with M.S. 103E. (10-7)

Draft Permit Language:

26.26	"Owner" means the person that owns the municipal separate storm sewer system. [Minn. R. 7090.0080, Subp. 11]
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Comments:

1. In 26.26), I would suggest replacing "person" with "entity" or "party". No single person owns the MS4. (17-18)

Draft Permit Language:

26.28	"Person" means the state or any Agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity. [Minn. Stat. 115.01, subd. 10]
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Comments:

1. In my view, 26.28) should be revised so that a person only describes a human person. (17-19)

Draft Permit Language:

26.30	"Pollutant of Concern" means a pollutant specifically identified in a USEPA-approved TMDL report as causing a water quality impairment. [Minn. R. 7090]
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Comments:

1. Pollutants of concern exist regardless of the approval status of a TMDL. And the term 'pollutant of concern' doesn't seem to exist in MN R. Ch. 7090. In fact many of these terms that reference Minn. R. 7090 are not found in Ch. 7090 (pipe, receiving water, reduce, seasonally saturated soil, section, structural stormwater BMP). What is the purpose of the rule citation? (5-10)

Draft Permit Language:

26.40 | "Structural Stormwater BMP" means a stationary and permanent BMP that is designed, constructed, and operated to prevent or reduce the discharge of pollutants in stormwater. [Minn. R. 7090]

Comments:

1. Please provide additional definitions and/or clarifications of term "structural stormwater BMP." For example, is a sump structure considered a "structural stormwater BMP?" By clarifying these definitions, permittees will be able to better understand and more effectively meet the requirements of the permit. (7-6)

Draft Permit Language:

Table 3:

Existing Permittees - Schedule of Permit Requirements

<i>Permit requirement</i>	<i>Schedule</i>
Section 12. SWPPP Document <ul style="list-style-type: none"> • <i>Submit the SWPPP document completed in accordance with Section 12.</i> 	<ul style="list-style-type: none"> • See Table 2 above.
Section 13. Stormwater Pollution Prevention Program (SWPPP) <ul style="list-style-type: none"> • <i>Complete revisions to incorporate requirements of Sections 14 - 22 into current SWPPP.</i> 	<ul style="list-style-type: none"> • Within 12 months of the date permit coverage is extended, unless other timelines have been specifically established in this permit and identified below.
Section 21. Pollution prevention/good housekeeping for municipal operations <ul style="list-style-type: none"> • <i>Conduct structural stormwater BMP inspections.</i> 	<ul style="list-style-type: none"> • Each calendar year (items 21.13 and 21.14).
Section 24. Annual SWPPP assessment, annual reporting and record keeping Item 24.2. Annual SWPPP assessment <ul style="list-style-type: none"> • <i>Conduct assessment of the SWPPP.</i> 	<ul style="list-style-type: none"> • Prior to completion of each annual report.
Items 24.3 and 24.4. Annual reporting <ul style="list-style-type: none"> • <i>On a form provided by the Commissioner, submit an annual report.</i> 	<ul style="list-style-type: none"> • By June 30th of each calendar year.

Comments:

1. Table 3 - Existing Permittees - Schedule of Permit Requirements - Section 12 SWPPP Document - clarify that this is the form submittal only. Add Section 20 Post - Construction Stormwater Management reconstruction requirements - Meet within 12 months of the notice of permit coverage. (4-8)