



**Minnesota  
Pollution  
Control  
Agency**

Industrial Division

Municipal Division

Environmental Analysis  
and Outcomes Division

## DEFINITIONS

**C.F.R.** Code of Federal Regulations

**CWA** Clean Water Act

**EPA** U.S. Environmental Protection Agency

**Impaired Water** A water body that does not meet water quality standards for one or more uses due to pollutant levels and is on the Minnesota Impaired Waters List

**NPDES** National Pollutant Discharge Elimination System

**TMDL** Total Maximum Daily Load

# Guidance for Issuing NPDES Permits for Discharge to Impaired Waters

## New Facilities

Water Quality, Wastewater Permitting 1-13 • UPDATED: June 2007

In a decision issued on May 17, 2007, the Minnesota Supreme Court upheld the NPDES permit issued to the cities of Annandale and Maple Lake, Minn. for construction of a joint wastewater treatment facility. Effluent from the proposed facility will discharge to the North Fork of the Crow River and ultimately flow to Lake Pepin. Each of these water bodies is on the state list of impaired waters and neither has an approved TMDL in place. In the majority opinion of the court, the permit represented a reasonable interpretation of the Clean Water Act by allowing a reduction of phosphorus discharged at one facility to make up for an increase in phosphorus discharged at another facility in the same watershed.

In the wake of this ruling, the MPCA has received a steadily increasing number of questions regarding its implications on other NPDES permits for facilities that may discharge to impaired waters. The information below outlines guidance for issuing NPDES permits to new applicants intending to discharge to or upstream of impaired waters.

### Federal Regulation

*Federal Regulation 40 C.F.R. 122.4(i) has the primary purpose of ensuring that impaired waters are not further degraded before a TMDL is complete.*

Enacted in the early 1980s, Federal Regulation 40 C.F.R. 122.4(i) fulfills the CWA objective to restore and maintain the chemical, physical and biological integrity of the nation's waters. This regulation prohibits the net increase of any pollutant

that will cause or contribute to a numeric or narrative water quality standard violation.

### Affected Facilities

New facilities proposing a discharge of at least 1,800 pounds of phosphorus per year to or upstream of an impaired surface water may be affected by Federal Regulation 40 C.F.R. 122.4(i). Facilities are affected

- If the proposed discharge contains a pollutant of concern that would impact an identified impairment, **and**
- If no approved TMDL is in place for the pollutant of concern

If an approved TMDL is in place for the pollutant of concern, the facility must meet the conditions of the TMDL.

### Discharge Alternatives

To meet the requirements of Federal Regulation 40 C.F.R. 122.4(i), affected facilities have the following options

1. Eliminate all surface water discharge by using land treatment options such as spray irrigation, rapid infiltration basin or soil treatment systems.
2. Implement pollution prevention actions or treatment to eliminate the source of the pollutant
3. Discharge to a permitted wastewater treatment facility that has capacity to

## Discharge Alternatives – continued

treat the pollutant in question, ensuring that the facility does not exceed current mass allocations.

4. Participate in Pre-TMDL Trading by purchasing pollutant load from another facility.

## For More Information

### Online Resources

Minnesota's Impaired Waters Program  
<http://www.pca.state.mn.us/water/tmdl/index.html>

Pre-TMDL Permitting  
<http://www.pca.state.mn.us/water/tmdl/ptpt.html>

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