

Office Memorandum

DATE : December 29, 2003

TO : MS4 Stakeholders

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SUBJECT : Designation Criteria for Municipal Separate Storm Sewer Systems

The Minnesota Pollution Control Agency (MPCA) is currently developing draft rules to address the federal Phase II storm water regulations which are part of the National Pollutant Discharge Elimination System (NPDES) permit program. As part of the rule development process, the MPCA is planning to conduct a series of stakeholder meetings to solicit input and gather feedback on several issues that are expected to be controversial during this rulemaking effort. You are part of one such group that we are convening to advise the MPCA on the specific issue of designating municipal separate storm sewer systems (MS4s), defined as discretionary MS4s, for NPDES storm water permit coverage. The purpose of this memorandum is to provide a brief discussion of this issue and the MPCA's proposed approach to this issue.

Background

When the MPCA initiated the Phase II Storm Water rulemaking effort in July of 2002, with the publication of a Request for Comment on Possible Amendments to Rules Governing the Storm Water Permit Program, the MPCA did not contemplate appointing an advisory committee to comment on the possible rules. At that time, the MPCA expected to be working under an expedited rulemaking timeline, in an effort to adopt rules to meet the March 10, 2003, federal deadline for Phase II program compliance. However, in part due to limited resources and competing priorities within the Storm Water Program, the MPCA needed to revise the timeline for the Phase II rulemaking. This revised timeline provides time for the MPCA to conduct stakeholder meetings on the draft rules. The MPCA is planning to formally propose the rules in May 2004.

Definition of MS4s

The MPCA proposes to follow federal terminology and more broadly define all regulated MS4s by identifying them as either mandatory; automatically designated for NPDES storm water permit coverage under federal rule, or discretionary; potential designation by the NPDES permitting authority. The MPCA believes that using the terms mandatory and discretionary, instead of using multiple terms based on MS4 population size, is a clearer means of defining MS4s.

Designating MS4s

The Phase II federal regulations require the MPCA to establish a process and criteria for designating small MS4s (discretionary MS4s) for NPDES storm water permit coverage, in addition to the MS4s automatically designated for coverage under federal rule (mandatory MS4s). The MPCA must then apply the criteria to any MS4 with a population of at least 10,000, and a population density of at least 1,000 people/square mile. The MPCA must also designate any MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the

NPDES storm water program. Designated MS4s may include any small MS4 that meets the designation criteria.

The Phase II federal regulations provide recommended criteria for designating MS4s which include high population density, high growth or growth potential, contiguity to an urbanized area, discharge to impacted waters or to outstanding resource value waters, and significant contributor of pollutants to waters of the United States. Although specific criteria are recommended for consideration in designating MS4s, the federal regulations provide flexibility in how states weigh these criteria for designating MS4s. All criteria do not have to be met in order for an MS4 to be designated.

The MPCA reviewed these recommended criteria, and in the July 2002 Request for Comment notice, specifically requested comment on several of these criteria options that were being considered for designating small MS4s to be covered under an NPDES storm water permit. These designation criteria options and a summary of the comments received regarding these options are provided in Attachment 1.

Based in part on the following: 1) the MPCA's review and consideration of the recommended criteria, 2) the resources available to the MPCA in evaluating and applying these criteria, 3) the financial hardship for small MS4s potentially designated based on any of the recommended criteria, and 4) comments received during the Request for Comment notice, the MPCA has drafted a rule provision that establishes criteria for designating small MS4s based on the recommended criteria of population and high growth potential. In applying these designation criteria, the draft rule specifies that a discretionary MS4 is an MS4 located outside an urbanized area with a current or projected population of 10,000. Therefore, the designation criteria defers to population, rather than population density. The MPCA hopes that by designating rapidly growing communities with high growth rates, these communities can better plan for growth areas instead of needing to retrofit their plans after damage from high growth has occurred.

The draft rule provision reads:

Subp. 7. Discretionary municipal separate storm sewer system. “Discretionary municipal separate storm sewer system” or “discretionary MS4” means a municipal separate storm sewer system that is:

- A. located outside an urbanized area, in whole or part; and
- B. located in a municipality with a population of 10,000 or more as identified in the most current decennial census; or
- C. located in a municipality with a projected population of 10,000 or more calculated by multiplying the current decennial census population by the percentage change in population from the preceding decennial census, and adding the result to the current decennial census population; or
- D. located at a publicly owned military base, large hospital, prison complex, or university with potential resident capacity or a temporary population of 1,000 or more people and located in a municipality identified in item B or C.

Attachment 2 contains a list of possible discretionary MS4s that will be evaluated by the MPCA and may be required to obtain a permit under the designation rulemaking. While some cities on the list currently have populations less than 10,000, the MPCA anticipates their populations will exceed 10,000 by the next decennial census. *The MPCA notes that this list is not inclusive and there may be other MS4s considered for designation.*

The MPCA is also proposing that discretionary MS4s identified in the rulemaking process be allowed additional time to develop the required storm water pollution prevention program. This approach would extend the deadline of March 10, 2003, for acquiring NPDES storm water permit coverage for these discretionary MS4s to six months after the implementation date of this rule.

Stakeholder Meeting

The MPCA is seeking input and comment on this proposed approach for designating MS4s and has scheduled a stakeholder meeting on this issue for Tuesday, January 6, 2004, from 1:00 p.m. to 4:00 p.m., at the MPCA Office in St. Paul, 520 Lafayette Road North. The MPCA expects that possibly more than one meeting on this issue may be scheduled.

If you would like to provide comment on this issue, but will not be able to attend the stakeholder meeting on January 6th, you may submit written comments by e-mail to: stormh2orules@pca.state.mn.us.

The Storm Water Rulemaking Team has also been working to coordinate this rulemaking effort with the planning efforts of the Storm Water Design Team. The Design Team, which consists of MPCA staff and external stakeholders with varying interests, is currently working to design a long-term state-wide storm water management effort to be based on effective partnerships with others outside the MPCA, at both the state and local level. Because the storm water rulemaking and program design efforts are inter-related, the Rulemaking Team is also bringing several rule issues to the Design Team for discussion, including designation criteria for MS4s. This issue was discussed at the December 3, 2003, Design Team meeting; the notes from that meeting are provided in Attachment 3 for your information.

The MPCA hopes this stakeholder process will assist us in developing and completing the draft rule. The MPCA thanks you in advance for agreeing to participate in this rulemaking process, for your time and efforts, and for assisting us in this effort to move this rulemaking effort forward.

Attachments

Attachment 1

July 2002 Request for Comment on Possible Amendments to Rules Governing the Storm Water Permit Program

The MPCA requested comment on the following MS4 designation criteria options that were being considered for designating small MS4s:

- Municipalities with populations of 10,000 or more as identified in the latest decennial census.
- Municipalities with projected populations of 10,000 or more after the percent change of growth rate established in the latest decennial census is multiplied by latest decennial census population.
- Municipalities with only a portion of their jurisdictional area within an urbanized area and having a population of less than 10,000 established in the latest decennial count.
- Two or more municipalities with common boundaries with an accumulated current or projected growth population of 10,000 or more.

The following specific comments were received:

- MS4s should not be designated without evidence of actual impairment of designated uses.
- MS4s should not be designated unless impacts are shown to be caused by pollutants in the storm water.
- Designate cities in lake areas that have a seasonal population of greater than 10,000 (i.e. Detroit Lakes, Alexandria, Bemidji, Brainerd, and Wilmar).
- Criteria considered for designation do not include DNR protected waters, ORVW listed waters and 303(d) listed waters.
- If these are the sole criteria for designating MS4s, criteria are more restrictive than or inconsistent with EPA recommendations.
- Do not add any communities into the MS4 program at this time due to confusion and controversy over application of the ORVW, Trout Water, and Wetland rules.
- Develop criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts (40 CFR § 123.35(b)(1)(i)).

The following other designation criteria were suggested:

- Municipalities with populations of 10,000 or more identified in latest decennial census.
- Municipalities with populations that will meet or exceed 10,000 during the current permit cycle based upon recent rates of growth or projected rates of growth.
- Municipalities with any portion of their jurisdictional area within an urbanized area, regardless of population.
- Two or more municipalities with common boundaries with an accumulated current or projected population of 10,000 or more.
- Municipalities which discharge to an ORVW, a water that is listed on the 1998 List or 2002 List or waters that are impaired as not meeting designated uses, and waters listed as a trout stream or trout lake by Minnesota Rules or listed or considered by the DNR.
- All University of Minnesota and MNSCU system campuses.
- The Minnesota State Fair grounds.

Possible Discretionary MS4s

Attachment 2

| City/Township | County | 2000 Population |
|-------------------|------------|-----------------|
| Albert Lea | Freeborn | 18,356 |
| Austin | Mower | 23,314 |
| Bemidji | Beltrami | 11,917 |
| Big Lake | Sherburne | 6,063 |
| Big Lake Township | Sherburne | 6,785 |
| Brainerd | Crow Wing | 13,178 |
| Buffalo | Wright | 10,097 |
| Cloquet | Carlton | 11,201 |
| Faribault | Rice | 20,818 |
| Fairmont | Martin | 10,889 |
| Fergus Falls | OtterTail | 13,471 |
| Forest Lake | Washington | 14,440 |
| Hastings | Dakota | 18,201 |
| Hibbing | St. Louis | 17,071 |
| Hutchinson | Wright | 13,080 |
| Mankato | Blue Earth | 32,427 |
| Marshall | Lyon | 12,735 |
| Monticello | Wright | 7,868 |
| New Ulm | Brown | 13,594 |
| North Branch | Chisago | 8,023 |
| North Mankato | Blue Earth | 11,798 |
| Northfield | Rice | 17,147 |
| Owatonna | Steele | 22,434 |
| Red Wing | Goodhue | 16,116 |
| St. Michael | Wright | 9,099 |
| Stillwater | Washington | 15,143 |
| Waconia | Carver | 6,814 |
| Willmar | Kandiyohi | 18,351 |
| Winona | Winona | 27,069 |
| Worthington | Nobles | 11,283 |

Storm Water Design Team Meeting Notes for MS4 Designation Criteria Rule Discussion - 12/3/03

Comments:

- What about special waters or sensitive waters?
- What about seasonal MS4s (Alexandria)
- What about upstream MS4s (Stillwater, Grant Township)
- Designation needs to be a stepped process where MS4s are phased in over time.
- Phase in – mandatory MS4s now, mandatory & some discretionary MS4s in 2008, statewide MS4s in 2013
- MS4s need ordinances and BMPs in place to manage growth
- Focus on growth rate, not population
- Designate on watershed basis
- Fairness issue for those non-growth or slow growth MS4s
- Do not want to encourage development leap-frogging
- Watershed based - MS4 planning
- Need incentives for watershed based permit
- What would criteria look like?
 - Sensitive waters (define what this would include), ORVWs, 303d list? Number of additional MS4s brought in under this definition would be small?
 - Percent growth rate
 - 1,000 new housing units by 2010
 - population density
 - TMDL, sensitive waters - how many?
- Does it make sense to designate all partial MS4s, particularly those that are mainly rural or slow growing? Include (designate) all partial MS4s – handle requirements for agricultural land, low growth areas, etc. in MS4 permit. Except counties and MnDOT; address requirement for these partial MS4s in rule?
- Don't bother with discretionary non-traditional MS4s at this time, focus on growth areas.
- Designate based on TMDL allocation vs. focusing on watersheds with special waters and rapidly growing areas
- Not far enough along with TMDL process
- Designations can occur over time
- What can the MPCA realistically handle at this time (with respect to additional designations), in the next X years? How much can the MPCA do?
- Map special waters based on watershed (DNR has GIS watershed mapping capabilities)
- Should we first focus on special waters/watershed of the receiving water AND impervious rate of X (5%)?
- All communities are in, in a watershed with X% impervious surface
 - Is this fair to undeveloped cities?
- Imperviousness of watershed or MS4? What mapping capabilities exist?
- Need to consider how basin planning ties in to designation on a watershed basis. Are there MS4s in specific basins we should include, or voluntarily want to be included (Detroit Lakes)

Common themes we thought we heard:

- Watershed based designation
- Focus on MS4s that meet a combination of criteria including high growth rate, a more narrowly defined group of sensitive waters, and amount imperviousness
- Designate partial MS4s, with certain exceptions address in permit