

# Office Memorandum

DATE : October 7, 2003

TO : Utility Stakeholder Group

FROM : Storm Water Rulemaking Team -  
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SUBJECT : Draft Rule Language for Installation of Utilities

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 construction activity requirements for the installation of utilities. 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 Comments on the proposed rulemaking, 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, planned for fall/early winter 2003. The MPCA is planning to formally propose the rules in May 2004.

## Installation of Utility Service Lines

The MPCA has drafted a rule provision to address construction activity requirements for the installation of utility lines such as residential electric and gas lines, telephone lines, and cable lines. This provision does not address construction activity disturbing one to five acres of land associated with oil and gas exploration, production, processing or treatment operations or transmission facilities. The U.S. Environmental Protection Agency has postponed the storm water permit deadline for these activities until March 10, 2005, in order to analyze and evaluate the impact of the Phase II regulations on the oil and gas industry.

Construction projects often involve the installation of utility lines; however, the utility company is not typically the owner or operator of the construction site. In general, the operator of a construction project means the party with operational control over construction plans and specifications, or the party with operational control over the day to day activities of the construction site. Operators are required to obtain permit coverage for their activities that require a construction storm water permit. Therefore, unless the utility company is the operator of the construction site, they are not required to obtain permit coverage for their activities. However, the actions of a utility company on a construction site may affect the storm water controls on the project site installed by the site operator.

Additionally, circumstances may exist where construction on a project site could have more than one operator depending on the timing and/or sequencing of the project. Accordingly, the first party on the project site conducting construction activity that requires permit coverage is considered the site operator. For example, utility installation may occur on a project site well in advance of other construction activity on the site. Subsequently, once the construction activities of the utility company are complete, any new party that proposes to conduct construction activity on the site would also need to apply for permit coverage.

To address these concerns, the MPCA has drafted a rule provision that requires a utility company, if they are not the site operator, to comply with the provisions of the Storm Water Pollution Prevention Plan for the project. The draft rule also specifies that if a utility company is the site operator, they must apply for a permit if their construction activities require permit coverage. This draft rule provision is consistent with the federal requirements for the installation of utility service lines (see February 17, 1998, *Federal Register* (63 FR 7877)).

The draft rule provision reads:

***Installation of utility service lines.*** A. *At project sites that require permit coverage where the utility company is not the site owner or operator, the utility company must comply with the provisions of the storm water pollution prevention plan for the project that their construction activities will impact, and ensure that their activities do not render the erosion prevention and sediment control BMPs for the site ineffective. Should the utility company damage or render ineffective the BMPs for the site, the utility company must repair or replace such BMPs within seven days of completion of utility installation on the site.*

B. *At project sites where the utility company is the site owner or operator, and the utility company disturbs one or more acres of soil for the sole purpose of installation of utility service lines, including residential electric and gas lines, telephone lines, and cable lines, the utility company must apply for permit coverage prior to commencement of construction.*

The MPCA is seeking comment on this draft rule provision. To expedite this process, we request that you please provide your written comments by e-mail to [stormh2orules@pca.state.mn.us](mailto:stormh2orules@pca.state.mn.us) by October 16, 2003.

### **Stakeholder Meeting**

The MPCA has scheduled a stakeholder meeting on this issue for October 21, 2003, from 8:30 to noon, at the MPCA Office in St. Paul, 520 Lafayette Road North. An agenda for the meeting will be sent to you, by e-mail, prior to October 21<sup>st</sup>. The MPCA expects that possibly more than one meeting on this issue may be scheduled.

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.