

## Notes for Utility Stakeholder Meeting 10/21/03

- When utility installation occurs ahead of project, no BMPs, SWPPP, or permit for site.
- Even before project letting, utility can't be denied access on public right of way.
- When not part of a common plan of development and landowner has no control (i.e. moving a line). MPCA explained that utility will need a permit in this case.
- Utility will need copy of SWPPP or get own permit.
- No utility standards (BMPs). Example: bridge across creek, drag line mats, (DNR – needs crossing permit).
- Is this rule for Phase II construction permit or an overall water quality rule?  
Rules for Phase II storm water for MS4, construction, and industrial.
- Is objective of rule for guidance? Rule intentionally calls out utility requirements.
- Rule should look at the perspectives – long corridors, narrow or wider utility installation in farm fields, distinct situations; need to identify perspectives so we are not talking apples and oranges.
- Full scope of rule is explained in SONAR (acts as guidance document for rule).
- Draft rule addresses when permit is in place and utility causes damage.
- Clarification of utility requirement in rule, identifies utility may need a permit. Part B of rule repeats permit requirement for clarity.
- MnDOT does big plan (SWPPP) – but utility does not get permit – utility gets own permit and terminates coverage instead of transferring to MnDOT. MnDOT likes the utility being out of there and done, not transferring permit to MnDOT.
- Everyone responsible for actions. No consequences, MPCA not going after Xcel.
- Rule gives the MPCA the legal authority. Rule removes ambiguity.
- Sometimes MnDOT/builder do not have BMPs. What can utility do if they don't have a SWPPP? New requirements for utilities – need to know what to do. Utilities need to know how to protect themselves (scapegoat). Document what's wrong with site. Utility not always right entity, sometimes, but not always.
- Utility first on site, then MnDOT destroys utility BMPs.
- Elect BMPs different from other BMPs, need separate BMP guidance for utilities. Need fact sheets, guidance, training to support rule.
- Keep options open. Timing an issue, need separate permits, can't tie utilities to SWPPP.
- Separate permit, separate SWPPP, and enforcement requirements in SWPPP?  
Example – multiple utilities in one trench?
- Owner/operator responsible – but anyone could be named in enforcement action.
- Make clear who is liable.
- See subdivision language in permit, register for existing permit or create own SWPPP.
- For common plan of development – SWPPP to address utilities.
- Permit does not specifically address utility installation; can't be in current permit due to 5-year permit term, could be in guidance.
- Option is language in SWPPP for utilities. SWPPP for whole site should address utilities.

- No time with large number of projects, but if guidance in SWPPP keeps utility from being scapegoat.
- Need both options – Rural MN highway/utility projects on different timelines and need 2 separate permits.
- Education needed - letter to organizations to inform utilities they need a SWPPP.
- Common ditch in metro, out-state is different, sewer/water first, then utility, then homebuilder.
- Storm water drains in street when utility goes in, then need SWPPP with inlet protection.
- Restoration instead of pollution prevention. Current message is “throw straw back on when done.”
- What is the SWPPP? A SWPPP is not just storm water, but other requirements (i.e. archeological sites, ...). It is a process.
- MnDOT can't dictate to Excel with contracts submitted.
- Is a common plan of development usually 50+ acres? No, they can be greater than 50 acres and utility less than one acre and no permit, may be part of common plan but not covered.
- Education that utilities need SWPPP - bid document for development?
- Timing issue. Storm water permit, need to know up front – contractor needs SWPPP early – part of bid document. Causes delay.
- Small utility effect large utility permit status and large utility affect developers permit – muddy waters.
- Initial read of rule – utility is scapegoat if builder not doing as permit requires.
- Education needed on both sides. Make clear who is responsible.
- Potential solution - minimum set of standards for common plan of development. Guidance for common plan of development.
- Rule short and clear, but need guidance. This rule doesn't address trout streams, need guidance or incorporate by reference.
- May need to reference other parts of rule for some requirements.
- Guidance v. rule – courts asking why guidance in rules. Not specific, does not address increasing technology in BMPs.
- How big should bonding be? No love here – MnDOT/Excel, carrot/stick contractors. MnDOT currently doing utility guidance/BMPs. Would like to work with utilities.
- Rule expanded with thresholds, performance levels, not guidance. Where to look in permit.
- Feet to trench v. acre? Depends on type tie in.
- Shall not put soil on impervious surface or can do right, or plastic cover. Corner of lot, limited space. Just an example, can go beyond.
- Detail precludes \$ versus enough specificity for violation – look what creates problem, what's missing.
- What is timeline for rulemaking? Phased rulemaking for storm water. This rulemaking to establish Phase II permit requirements in rule, second rulemaking to address 7050, MS4 petition process..., and third rulemaking for fees.
- Will draft rule be available before proposed in State Register? Yes.

- What about areas where utilities work and there are no BMPs in place? Utility has to put in if none. See Permit Part B.
- Projects less than one acre, how do they know they need a permit?
- Sometimes a landowner thinks about doing a development but does not have a plan yet, so until he does, utility extension is done in preparation. Therefore, not yet part of common plan of development.
- Performance base limit, narrative.
- Have to do narrative on linear project.
- Even if MnDOT doesn't need a permit, specifications require contractors to do BMPs, but not utilities.
- Draft rule:
  - 7 days doesn't work – Appendix A special waters.
  - Change third line – SWPPP may not cover utility and need option to do own. Use language from permit (re subdivision).
  - Remove “that their” – awkward.
  - Do not render primary contractors/operators BMPs ineffective - does that mean silt above 1/3 or silt fence ineffective?
  - Need 2 separate sentences.
  - Alternative language for Part A provided.
  - Need clarity in Part B, start of land disturbance, need permit w/ SWPPP.
  - If common plan is identified.
- When does construction activity begin? Light grubbing to test waters, no plat?
- Tricky – different types of utility, sewer/water in cornfield v. residential, grading different than home sites.
- Define utility in statute or rule? Fed Regs limit discussion on type of utility.
- Draft language suggested (temporary/permanent BMPs) + Appendix A.
- Common plan of development issues, but rural MN, minimal disturbance & forestry exemption. Spoil from wetland to upland from other agency permit, need construction storm water permit?
- Need different/separate forum to discuss above ground utility installation issue.
- Draft rule language only for common plan of development. Can apply to linear projects - sediment/erosion control.
- Corp of Engineers allows activity, but construction storm water permit doesn't. Don't have to get Corp permit, Corp is inconsistent. MPCA waived 404.
- Avoid, minimize, mitigate.
- MEQB directive – no chance to avoid.
- Riprap may be considered fill in the future – EPA.
- Draft rule to address residential/commercial.
- Draft language proposed, workable. Still concerned when contractor goes in and no SWPPP, basic BMPs for installation period, otherwise PCA will be inundated with applications.

Draft rule revisions:

**Subp.3 Installation of utility service lines.** A. At project sites that require permit coverage where the utility contractor is not the site owner or operator, *the utility contractor must comply with the provisions of the storm water pollution prevention plan for the project that their construction activities will impact.* The utility contractor must ensure that their activities do not render other erosion prevention and sediment control BMP's for the site ineffective. Should the utility contractor damage or render ineffective the BMP's for the site, the utility contractor must repair or replace such BMP's 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.

Draft language suggested:

At project sites.....SWPPP for the project:

1. The utility contractor shall utilize methods/practices of installation that minimize the potential for impact to waters of the state.
2. The utility contractor shall maintain all temporary BMPs and/or install any BMPs that may or may not be included in the SWPPP as necessary to protect waters of the state.
3. Any temporary BMPs that are rendered non-functional must be repaired and/or removed and replaced within ----- time (24 hours)?
4. Any permanent BMPs that are damaged must be repaired and/or replaced within 7 days of completion of installation of the utility in that portion of the site.