

August 31, 2007



Ms. Carol Nankivel
Planner Principal State
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55055-5332

Dear Ms. Nankivel:

The Builders Association of the Twin Cities ("BATC") is providing comment for the public noticed REQUEST FOR COMMENTS (May 18, 2007) regarding *Planned Amendment to Rules Governing the Nondegradation of Minnesota Waters, Minnesota Rules, Chapter 7050*. We understand that the current notice is preliminary to the formal rulemaking process and that Minnesota Pollution Control Agency ("MPCA") staff have not prepared a Statement of Need and Reasonableness ("SONAR") or officially noticed a draft of the planned rule amendments.

We understand that the MPCA is considering amending its rules governing the nondegradation of waters to reflect changes that have occurred since the existing rules were adopted and to address the effect of stormwater discharges. BATC has an interest in Minnesota's waters and the rules adopted to implement Minnesota's water regulatory programs, in particular, those addressing stormwater discharges.

We understand that establishing additional tiers to the current two-tier structure is being advanced to address nondegradation. In addition, we understand that existing water quality standards ("WQS") have been looked to as the quantitative and qualitative measure for both non-point source and point source stormwater discharges. We are encouraged by the tiered approach, as it may allow for a more accurate and environmentally effective approach to the diverse conditions among waterbodies. However, we ask the MPCA to carefully assess the effectiveness and applicability of the current WQS to non-point source stormwater discharges, particularly those discharging from active residential land development and homebuilding construction sites.

The state's water quality standards have been developed and have evolved to best address wastewater point source discharges. Existing WQS may be applicable to discreet, permanent point source stormwater discharges if adjustments are made for the way these systems functions. However, the temporary nature of residential land development and homebuilding activities may warrant a different view when applying the state's WQS.

For example, draft MPCA TMDL guidance indicates that most construction sites could be given de minimus wasteload allocation ("WLA"). In it

is the statement that "Construction stormwater should be given a separate wasteload allocation (WLA) from industrial and MS4 stormwater. In most cases, it is difficult to determine loads from construction activity because we have limited data from effluent monitoring and because the level of ongoing construction activity varies." The documents continues to state that "US EPA has determined that for the purposes of 40 C.F.R. 122.4(i), compliance with the NPDES construction stormwater permit requirements ensures that discharges do not cause or contribute to a violation of a water quality standard."

As the state moves forward with the nondegradation rulemaking, BATC strongly encourages the state to acknowledge the role of the construction stormwater permit and program in achieving nondegradation on active residential land development and homebuilding construction sites. We assert that, if these sites are permitted by the NPDES construction general permit and properly select, install and maintain all BMPs required under that permit and/or meet more restrictive local government construction stormwater requirements, there is a low probability of degradation.

We appreciate the opportunity to comment. In addition, we wish to be notified directly by the agency if and when an advisory committee is established for this rulemaking.

Sincerely,

Pamela Belz
Public Policy Chair
Builders Association of the Twin Cities