

Notes From the Stormwater-Focused Stakeholder Meeting
March 10, 2009
Board Room, MPCA, St. Paul Office

General:

- Who is Attorney General assigned to this rulemaking? (Bob Roche)

Issue #1 – How do we determine if water quality will be maintained or degraded as a result of a proposed discharge or activity?

- When talking about baseline, are you referring to water quality baseline?
- What is meant by criteria? What would be examples?
- Would performance standards be the same concept?
- Would like to see rulemaking move to watershed based approach; can establish a framework of references for all in the watershed.
- Clarify watershed based approach – drainage area to water body or entities organized/regulated under BWSR rules?
- Include both.
- Some watershed organizations are efficient and productive, others are not. How do watersheds become accountable?
- Raises issues with municipalities and land use. Municipalities will want to go with the permit approach (instead of modeling) because under modeling they will need to deal with a whole new world of land use planning.
- MPCA advancing systematic approach to watershed monitoring – should we move forward from the starting point of this new assessment process?
- Can't see how option 2 (modeling) can work for general permits; will work for individual permits.
- Option 1 has advantages because much work can be done by MPCA up front; everything can be done under modeling framework.
- Clarification of modeling vs. monitoring; modeling has so many variables.
- Keep it simple for the cities.
- Modeling for a general permit turns into discharge limits and a more restrictive permit.
- Modeling does not resolve general vs. individual permits; though under a general permit the process has become like that of an individual permit. Modeling was done under jurisdictional basis, not by receiving water (i.e. 30 MS4s).
- Look at effort done for 30 MS4s for this rulemaking process.
- For permits, is this nondegradation rulemaking for any MS4 permit? Are other permits being proposed? (General permit for small MS4s and individual permit for Phase I large MS4s.)
- Cost of rulemaking vs. benefit?
- The modeling side can be an excellent lead-in for general permits. If you can get PCA endorsement of modeling framework-then you have the framework already established.
- Modeling for general permits will inevitably break down to specific permit conditions.
- Option 2 = full employment for consultants and lawyers. Option 1 is a more cost effective way to regulate; less litigious and less subject to interpretation, less expense associated with interpretation.

- By moving to a watershed approach we are moving decision making authority away from elected officials to appointed watershed officials.
- We are still waiting for the MPCA's opinion on the value of modeling. For the 30 municipalities, it has turned into an individual permit process anyway.
- We have already been down the modeling road and still haven't seen the result. As far as for this rule, modeling still remains to be tested and approved.
- How will the MPCA have the expertise and the will to regulate the complexity of a model? The model options will be more intensive for the PCA than specific permits.
- Criteria – how can flow be used in assessing water quality? At what level is flow a pollutant? How to measure what volume to control to and what water resource?
- Standard should be water quality; flow should not be its own standard.
- Modeling and standardization – almost all 30 MS4 cities had a prior investment in modeling. One of the reasons that we went with modeling for the 30 MS4s was that they had already invested in models. Standardization from here out is possible.
- Seems that with the permit conditions option, it runs back into modeling anyway (how to verify results?)
- Performance standards or criteria based on water quality – cities do not have authority at the water quality level; options are modeling or monitoring to determine what is occurring on the land.
- Modeling might be done to establish permit conditions not necessarily determining water quality.
- Best available control technology – limited suite of BMPs available to MS4s; begs the question of how much a municipality can do- we will never get back to pristine levels. What constitutes degradation threshold for stormwater management?
- No standardized modeling. Non deg should be defined on a watershed level. Different watersheds will need to meet different standards.
- The MPCA has already seen the pain of working with multiple models.
- I don't see how modeling can work until you have a specific discharge proposal.
- There is no way to standardize the model in rule to reflect all the variables in soil and conditions.
- A separate issue with models is the criterion. Not sure how "flow" can be used as a pollutant (understand "rate", but not "volume")

Issue #2 – How will we ensure water quality is being maintained?

- Is State or EPA looking at biological instead of chemical monitoring? (Yes, MPCA is working on TALU standards for rivers and streams, not lakes; adoption scheduled for 2014.)
- What is the receiving water we are trying to protect? What receiving water are we to apply nondegradation to?
- Need some type of delineation between treatment system and receiving water.
- Define what type of water you are trying to protect and BMPs needed.
- How do TMDLs relate to one another and how do nondegradation rules relate to TMDLs? These may be in conflict, which do you protect to? Like when a management plan for a water body is in conflict for a water body downstream (e.g. Lake Calhoun, Lake Pepin).
- Another example – the chloride TMDL required more use sand instead of salt; resulting in a turbidity issue.

- In addition to the spatial, we need to also consider temporal issues. Over what timescale is an acceptable frame of reference? Are we going to look at 2 years or 20 years of trends?
- How can we factor in how waters respond to catastrophic events?
- Need some level of confidence in what we have done to date and acknowledge the success we have had with improvements in water quality. Make process as simple as possible in the short term; later lessons learned.
- Need simplification, don't add more layers, put money toward protecting the resource. Process will end up in the permit.
- Need to define what we mean by receiving waters. Until defined, permitted entities need to make worst case assumptions, which would be monitoring of all receiving waters.
- Define monitoring – urban stormwater runoff is very expensive, detailed, and not very reliable.
- Mining, asphalt perspective (ISW permit) – concerned with modeling vs. monitoring. The draft ISW permit is using monitoring and concerned if once the permit is issued, nondegradation goes to modeling and how permit would have to change in the future. (Issues like this are being communicated within the MPCA and stormwater program.)
- What is the goal of the new nondegradation rulemaking? What is not working with the existing rule? (Current rule geared towards point source discharges. One outcome is to have implementation procedures that are clearer for regulated parties.)
- The reaction of water bodies is unknown. We are trying to put nature in a box. You can't predict reactions. Timeliness and reaction of water body to show nondegradation.
- Phase 1 Cities have made commendable progress. –question is why we need to change the rule. Is it nuts to assume that our nondeg waters are being protected under the current system?
- Phase II MS4 permits, Phase I permits, TMDLs – if municipalities have TMDLs and new ordinances (permit), can we make some assumptions that water bodies will improve without adding another layer? What is really needed? (The goal is to protect waters the best way we know how with implementation procedures well defined.)
- Stormwater programs are being coordinated within the MPCA; however, need broader coordination outside of the stormwater program (e.g. remediation program, ground water program) because some of the BMPs advocated by stormwater (eg. infiltration) are opposed under the VIC program. Keep this in mind as moving forward with this rulemaking.
- Permittees expect that if they implement their permit they will protect resources; if resources are not protected then what is wrong with the permit program? Do we fix the permit or do we fix it here? Overlap of programs (e.g. stormwater, TMDLs, nondegradation, TALU...). From our experiences, what is not working and what do we need to do differently? Action on the ground gets us where we need to be; this means assessment of permit program. Education is core of the MS4 program; cultural shift of behavior needed.
- Concern with all the different permits and programs, conditions, and complexity; where does it all fit together?
- What is the timeline for 30 MS4 nondegradation review and this rulemaking? (Nondegradation review for 30 cities was delayed due to the public process for 200+ MS4 SWPPPs.)

- CWLA funds will help fix infrastructure, which in turn will help fix nondegradation problems.
- Encourage that you bring in MDH- there is a direct contradiction between volume control and well protection.
- Past history – legal challenge to MS4 permit, led to the 30 MS4 studies and to this rulemaking; therefore, be mindful that this rulemaking will have implications for the MS4 permit. The whole process was prompted by MCEA’s lawsuit. Does MCEA have a bottom line or minimal criteria for what this rule needs to cover? (See MCEA petition on MPCA nondegradation rulemaking web site.)
- Review of 30 MS4s nondegradation analysis shows not all cities are equal; need to bring up the lower cities. The MPCA can’t audit 200 cities’ plans. The rule needs to set a standard for all. (MPCA working to level the playing field.)
- Need coordination in schedule – nondegradation rule in place by 2011, MS4 permit expires in 2011. Next MS4 permit revision should reflect the nondegradation rule; reissue existing permit with minimal revisions; revise when rulemaking done.
- Plus TALU is coming in 2014. How do we get them all on the same street? Need continuity in timeframe for various efforts going forward. Need to acknowledge that right now we are doing a good job and let changes evolve.

Issue #3 – What triggers Tier 2 review?

- Need to answer issue #2 before we can answer issue #3. These must work together.
- Until you can prove how you are protecting water quality, you can’t answer the question of whether the permit conditions are effective.
- Adaptive iterative process already in place with MS4 SWPPP and feedback loop. Ground truth in quality of receiving waters has occurred through 30 MS4s nondegradation review. Need to recognize how this will or will not work for other stormwater programs (e.g. industrial).

Issue #4 – How do we meet public participation requirements for individual applicants under a general permit?

- Is the flow chart (draft handout) applied at project level or permit level? (Will depend on stormwater type. Intent of flow chart example is for a permit.)
- Demonstrated need to lower water quality – raises issues regarding taking of a persons’ private property and social/economic justification.
- Socio-economic factors are a hornet’s nest. If a landowner can’t sell their property because of stormwater concerns, who compensates them for the taking of their private property? Landowners have a “takings condemnation claim”.
- There is some precedent on the socio-economic side in wastewater because it has been an issue for decades. There have been specific cases but all of them become much more complex in terms of stormwater.
- What is nondegradation when water bodies have been highly altered for specific reasons?
- Municipalities must balance many things that other entities do not deal with (e.g. affordable housing, public housing....) that are not water-based. How do you maintain and continue to grow? The socio-economic issue comes back to the concern about deferring to watershed organizations. A watershed organization would not have the same perspective as a municipality.
- Framework is workable; however, closely tied to Issue #1.

- It would be useful to have another meeting with a straw-dog proposal that would show how to get out of nondegradation review for an MS4, general permit, individual permit..., etc. Work best from proposals.

Issue #5 – How do we maintain and protect ORVWs, including where Tier 2 protection applies and “prudent and feasible” test is met?

- Don’t assume an individual permit is needed for discharges to prohibited or restricted waters. Must consider the contribution from permitted sources and from non-permitted sources
- Why is this issue in this process when it is already addressed in stormwater permits? Need to determine what is more practical for stormwater.
- Are standard practices insufficient to protect ORVWs? (The reference is to super BMPs). The goal is better protection.
- Find a term that does not disparage the existing BMPs. Suggest the term “resource specific BMPs” instead of “super BMPs”.
- Nondegradation is triggered by new or expanded discharges – what triggers expansion of discharges? Change in land use or redevelopment project? Is there anything other than a change on the land that drives nondegradation? If the answer is no, can we take measures that address the land process and avoid burdensome process to deal with receiving waters? A package of land use controls with no expanded discharge that could meet the concerns of nondegradation; is this approach worth pursuing? Anything else other than changes on the land? Land use control approach vs. receiving water approach? Should the MPCA and stakeholders invest time in exploring? (Majority agree). This approach was presented in a proposal to LCCMR called minimal impact design.
- A better question is – would this proposal work? (Minority agree). Can it be framed in a manner that works for the rule?
- If not meeting one of the six minimum control measures, is the permittee degrading water quality? Program changes that impact water quality.
- What triggers nondegradation review? Is this best considered in a straw-dog proposal? Should stakeholder group reconvene after next month’s Nondegradation Rulemaking meeting? Suggestion to include a range of options with some draft language.