

Minnesota Pollution Control Agency

Municipal Division

Public Notice for the National Pollutant Discharge Elimination System/State Disposal System General Permit for Stormwater Associated with Construction Activity

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to reissue the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater (CSW) General Permit No. MNR100001, under the provisions of *Minnesota Rules* 7001.0210 for persons conducting construction activity and for discharges of stormwater affected from construction activity, to the waters of the state of Minnesota (State). Comments on the proposed permit are requested from affected or interested parties. Comments should be submitted in writing in accordance with the provisions of this notice. This notice and permit are issued under the following authorities: Section 402, Clean Water Act, as amended, *Minnesota Statutes* Chapters 115 and 116, as amended, and *Minnesota Rules* Chapters 7001 and 7090.

NOTICE IS ALSO HEREBY GIVEN that the MPCA will host a public information meeting to discuss the draft CSW permit. The meeting will be held on Friday, March 8, 2013, at the MPCA St. Paul office located at 520 Lafayette Road North, St. Paul, Minnesota 55155. The meeting will be held from 9:00 a.m. to 3:00 p.m. or until all attendees have had an opportunity to participate, whichever occurs first.

Notice

The MPCA proposes to reissue NPDES/SDS General Permit No. MNR100001, with modifications. Consistent with federal requirements, and *Minnesota Rules* Chapter 7090, construction activity disturbing one acre or more, including construction that is part of a common plan of development or sale disturbing one acre or more, must obtain permit coverage. This general permit covers categories with operations, emissions, activities, discharges, or facilities that are the same or substantially similar. The duration of this permit is five years.

Background

The authority to develop and issue a general permit is based in part on the 1979 United States Environmental Protection Agency (USEPA) promulgated revisions to the NPDES Program regulations, *40 Code of Federal Regulations* 122.28 (CFR), which created a class of permits called general permits. General permits are also issued by the MPCA under *Minnesota Statutes* Chapters 115 and 116, and *Minnesota Rules* 7001.0210. General NPDES permits can be issued in states with NPDES authority if the state program includes general permit authority. The MPCA's general NPDES permit program was approved by the USEPA on December 15, 1987. This general permit is based in part on federal requirements in *40 Code of Federal Regulations* 122.26, and State requirements in *Minnesota Rules* Chapters 7001.0210 and 7090.

The NPDES/SDS General Permit No. MNR100001, regulating construction activity was first issued on September 3, 1993, and was reissued September 4, 1998, and August 1, 2003. The general permit was last reissued for the period August 1, 2008 to August 1, 2013.

This draft permit is proposed to replace the existing NPDES/SDS General Permit No. MNR100001 and provides a mechanism to regulate construction activity and the discharges of stormwater pollutants

associated with construction activity. Like the previous permit, this permit will require permittees to develop and implement a Stormwater Pollution Prevention Plan (SWPPP) prior to conducting construction activity to address the potential for discharge of sediment and/or other potential pollutants from the construction site. The SWPPP must be developed prior to application submittal. This general permit will provide coverage for all construction activity including clearing, grading and excavation, which disturb land of equal to or greater than one acre.

The MPCA intends to reissue NPDES/SDS General Permit No. MNR100001, proposed in this notice before the existing general permit expires on August 1, 2013. The draft permit identifies how permittees covered under the existing permit, which will not complete their ongoing construction activities prior to re-issuance of the general permit, can comply with the reissued permit. Certain permittees will need to update their SWPPPs to conform to the requirements of the reissued permit no later than 18 months after the permit issuance date, if the requirements for termination of permit coverage under the existing general permit (expiration date of August 1, 2013) have not been met.

Subject of Permit Revisions

The MPCA has modified the existing NPDES/SDS General Permit No. MNR100001, to meet new federal requirements promulgated in the (2009) Effluent Limitations Guidelines and Standards for the Construction and Development (C&D) Point Source Category Rule at *40 Code of Federal Regulations* pt. 450 (available at: www.ecfr.gov/cgi-bin/ECFR?page=browse) and to address key issues the MPCA identified as needing revision and/or clarification in this permit reissuance. The draft permit also includes numerous updates, permit language reorganization, clarifications and minor language changes to make the permit more concise, cut duplicative or unneeded language and to improve permit readability and understanding. A stakeholder input and participation group meeting was held by the MPCA on December 17, 2012, to introduce these issues into this permit revision process. A handout provided at the stakeholder meeting and viewable on the MPCA Construction Stormwater website offers additional description of the proposed revisions to the permit.

The draft permit and fact sheet are available for review at the MPCA office located at 520 Lafayette Road North, St. Paul, Minnesota 55155, during regular business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, and at the MPCA Regional Offices. Location information for the regional offices is available on the MPCA website at: www.pca.state.mn.us/about/regions/index.html. You may also view a copy of the draft permit and fact sheet at the MPCA Construction Stormwater website at: www.pca.state.mn.us/water/stormwater/stormwater-c.html.

A free copy of the draft permit and fact sheet is also available upon request by calling 651-296-3890 or 1-800-657-3864, or for users of Telecommunications Device for the Deaf call 651-297-5353. Only one copy will be sent per request.

Public Participation

There are four formal procedures for public participation in the MPCA's consideration of the permit reissuance. Interested persons may (1) submit written comments on the draft permit; (2) request that the MPCA hold a public informational meeting; (3) request that the MPCA hold a contested case hearing; and (4) submit a petition to the Commissioner requesting that the MPCA Citizens' Board consider the permit matter.

The public comment period begins: February 4, 2013
The public comment period ends: March 20, 2013

(1) Interested persons are invited to submit written comments on this draft permit. Any comments received before 4:30 p.m. on the last day of the comment period (see above) will be considered before the draft permit is finalized. Comments on the draft permit should include the following information, pursuant to *Minnesota Rules* 7001.0110:

1. A statement of your interest in the draft permit;
2. A statement of the action you wish the MPCA to take, including specific references to sections in the draft permit that you believe should be changed; and
3. The reasons supporting your position, stated with sufficient specificity as to allow the Commissioner to investigate the merits of your position.

(2) The MPCA will hold a public information meeting on the draft permit at the MPCA office at: 520 Lafayette Road North, St Paul, Minnesota 55155 on March 8, 2013, from 9:00 a.m. to 3:00 p.m., or until all attendees have had an opportunity to ask questions and get clarification on any permit requirement intent, whichever occurs first.

Access to the MPCA is controlled, and to attend a meeting you will be asked to sign in at the security desk and provide photo identification, such as a Minnesota driver's license. In order to help the MPCA better plan for space and seating, please RSVP by calling 651-296-3890 or 800-657-3864, and let us know if you are planning to attend this meeting.

The public information meeting will also be webcast; the link to the webcast will be provided on the MPCA Construction Stormwater webpage at: <http://www.pca.state.mn.us/wfhya5b>. Please note that the webcast is not interactive; you will be able to view the meeting only. The meeting will not be rescheduled in the event that the webcast video fails.

(3) Any person may submit a petition for a contested case hearing before the end of the public comment period. A contested case hearing is a formal evidentiary hearing before an administrative law judge. In accordance with *Minnesota Rules* 7000.1900, the MPCA will grant a petition to hold a contested case hearing if it finds that:

1. There is a material issue of fact in dispute concerning the draft permit;
2. The MPCA has the jurisdiction to make a determination on the disputed material issue of fact and
3. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of the contested case hearing would allow the introduction of information that would aid the MPCA in resolving the disputed facts in making a final decision on the draft permit.

A material issue of fact means a fact question, as distinguished from a policy question, whose resolution could have a direct bearing on a final MPCA decision. A petition for a contested case hearing must include the following information:

1. A statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing according to the criteria in *Minnesota Rules* 7000.1900, as discussed above, and

2. A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

In addition and to the extent known, a petition for a contested case hearing should also include the following information:

1. A proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing.
2. A proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing.
3. An estimate of time required for you to present the matter at a contested case hearing.

(4) In the absence of any requests for additional public information meetings or a contested case hearing, the final decision to issue the permit will be made by the MPCA Commissioner. Any person may request that this permit be considered by the MPCA Citizens' Board prior to final permit action; in accordance with *Minnesota Statutes* 116.02, subd. 6 and *Minnesota Rules* 7000.0650. The public is entitled, and welcome, to participate in the activities of the MPCA Citizens' Board and MPCA staff.

Name, address, and telephone number of contact person for more information:

Comments on the draft permit must be received **in writing** during the public comment period identified above. Comments, petitions, and/or requests should be mailed or e-mailed to:

Lawrence S. Zdon
Minnesota Pollution Control Agency
Municipal Division
Stormwater Policy and Technical Assistance Unit
520 Lafayette Road North
St. Paul, Minnesota 55155-4194
Phone: 651-757-2839 or 800-657-3864
E-mail: lawrence.zdon@state.mn.us

All written comments, requests, and petitions received during the public comment period will be considered in the final decisions regarding the permit. The MPCA may revise the draft permit to reflect any comments received during the public comment period.