

Draft Certification, 2018

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Bryce Fossand
Minnesota Department of Transportation
1500 West County Road B2
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RE: 2015-00939-BGO I-35 Bridge over the Minnesota River
MN Department of Transportation
Dakota and Hennepin Counties, Minnesota
Draft Section 401 Water Quality Certification

Dear Chad Konickson and Bryce Fossand:

This draft 401 Water Quality Certification (401 draft Certification or draft Certification) decision is made by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act (33 USC 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. chs. 7001.1400-1470, 7050, 7052, and 7053.

Project Description:

This is a U.S. Army Corps of Engineers (USACE) general permit project. Located in the cities of Brunsville and Bloomington. It is a reconstruction of a 2-mile stretch of I-35W from Cliff Road to West 106th street, including replacing the I-35W Minnesota River Bridge (bridge 5983) and the I-35 W bridges over West 106th street (bridges 9043 and 9044). The Minnesota Department of Transportation plans to use explosive devices on the bridge piers on the lower portion of the piers (from approximately 5 feet above the water's surface to 2 feet below the mudline). Because of the use of explosive devices for the existing bridge demolition work, the project requires an individual 401 Certification from the MPCA.

Decision:

The MPCA proposes to certify the referenced project and has preliminarily determined that it will satisfy the antidegradation standards in Minn. R. 7050.0265. The MPCA has examined the application and other information, including the antidegradation assessment information required under Minn. R. 7050.0285 and bases its decision on the evaluation of this information and the relevance to water quality considerations. The MPCA believes that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards provided that the applicant complies with the conditions listed below.

1. The applicant must complete compensatory mitigation for wetland impacts as required by the USACE and in accordance with Minn. R. 7050.0186 and 7050.0265.
2. Permittees must ensure that surface waters in or bordering the project area that are not proposed to be impacted by the project are clearly identified prior to construction. This may be

accomplished through demarcation of the construction area on plan sheets or through marking boundaries in the field, for example construction staking, flagging, or the use of silt fences along boundaries. The permittee must not impact these areas while conducting activities authorized by the USACE General permit or this Certification.

3. The permittee must install in-water Best Management Practices (BMPs) to the extent practical and feasible, to minimize total suspended solids (TSS) and sedimentation for any work conducted below the ordinary high water level as defined in Minn. Stat. § 103G.005, subp. 14, of any water or within the delineated boundaries of wetlands.

The permittee must document the in-water BMPs to be used during the authorized work prior to disturbing any land at the site; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. This documentation is not required to be submitted to the MPCA, but must be kept on-site during active construction by the contractor until the project is complete. Proper installation of BMPs is required before conducting the authorized in-water activities and must be properly maintained until the project is complete. This includes maintenance of in-water BMPs along with the establishment and maintenance of any erosion prevention, sediment control or site stabilization features included in the project plan or required by the Regional General Permits or this Certification. While conducting the authorized work, the permittee must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. If the project activities cause an observable increase in TSS or sedimentation as described in Minn. R. 7050.0210, subp. 2, outside or downstream of the authorized defined working area, then the project activities must immediately cease and any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. This Certification does not authorize the violation of applicable water quality standards outside or downstream of the defined work area. Minnesota water quality standards are defined in Minn. R. ch. 7050.

Information on the types of BMPs that may be suitable for in-water work is located in the Minnesota Department of Natural Resources Manual titled *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001*, located at: http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

4. The permittee must submit dewatering plans and have them approved by MPCA prior to start of project. MPCA will approve the dewatering plans within 15 days. If the dewatering plans are not acted on by MPCA within 15 days, the dewatering plans are automatically approved.
5. The permittee must ensure that dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp. 2. The permittee must use BMPs that minimize TSS and sedimentation by removing solids in the water before discharging the water. The permittee must document BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. The permittee must ensure that properly installed BMPs are in place before conducting the authorized activities and are maintained throughout the duration of the dewatering work.

6. Because the permittee intends to use explosives to remove portions of the existing piers, the permittee must:
 - A. wrap the piers in chain link fence prior to denotation,
 - B. remove the piers in winter months during non-spawning seasons,
 - C. use Repellant charges prior to detonation of piers to deter the presence of fish, and
 - D. remove debris from the river using a backhoe and confirmed with side scan sonar.
7. During bridge painting, cleaning, or restoration activities, the permittee must use BMPs such as curtains or other reliable methods designed to prevent the discharge of paint, chemicals, grouting, or other contaminants to waters. These BMPs must remain in place for the duration of the project's painting, cleaning or restoration activities.
8. The permittee must not use broken concrete from any existing bridge as riprap bank protection unless, 1) it is crushed to the diameter which is greater than 6 inches and no larger than 30 inches, 2) all steel reinforcement bars and asphalt have been removed, and 3) it does not contain any contaminants of concern listed in Minn. R. 7035.2860, subp. 4.
9. If the permittee plans to place riprap grouted with concrete under a bridge, then plywood sheeting, sheet piling, sandbags, or other suitable material must be placed at the base of the riprap prior to conducting the grouting activity to ensure no grout reaches the waterbody. The material must remain in place until all concrete grouting has cured.
10. The permittee must ensure earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained in a manner that will prevent earthen material from eroding into the water. The permittee must completely remove temporary structures and restore original bathymetry or contours at project completion.
11. The permittee must ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303-(d) listed impaired waters. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: <http://www.pca.state.mn.us/lupg1125> and <http://www.pca.state.mn.us/mvri1126>. The applicable water quality standards are located in Minn. R. ch. 7050.
12. The permittee must ensure that any fill placed in water must be clean fill that is free of solid waste, toxic or hazardous contaminants. Any deviation from this requirement, such as seeking beneficial reuse of materials, requires case-specific beneficial use determinations by MPCA for debris and soil with contaminant levels appropriate for the placement setting. The permittee must also ensure that any fill will not promote the spread of invasive species as defined in Minn. Stat. ch. 84D and Minn. R. 6216, and is free of those species identified as "Prohibited Species" in the *Minnesota Noxious Weeds* publication <http://www.dot.state.mn.us/roadsides/vegetation/pdf/noxiousweeds.pdf>.
13. The permittee must provide: a) a copy of this Certification; b) documentation of any required BMPs under the above conditions; and c) any written demarcation of waters to any prime contractor responsible for completing the project's authorized activities. The permittee must also ensure that there is a mechanism in place requiring each prime contractor to provide the

same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to waters must be available at or near the project site for use by contractors and staff responsible for completing the project work and must be available within 72 hours when requested by MPCA staff.

14. The permittee must allow representatives from the MPCA to inspect the project site and the authorized activity to ensure that the project is constructed, and BMPs maintained, in accordance with this Certification.
15. The permittee is responsible for ensuring that all requirements of this Certification are met.
16. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.
17. The permittee shall inform the MPCA of any proposed additional water quality impacts this project may have, before they occur, to determine if further review or authorization is required. This includes any additional dredging, excavation, fill, additional structures, and temporary impacts not shown in the final plans or expressly authorized by the USACE Section 404 permit or the Section 401 Certification from the MPCA.

Disclaimer:

A 401 Certification does not release the permittee from obtaining all necessary federal, state, and local permits. It does not limit any other permit where requirements may be more restrictive. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes, regulations, rules, or local ordinances and it does not convey a property right or an exclusive privilege. This Certification does not authorize impacts to any waters beyond the project area.

This Certification does not replace or satisfy any environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA) or the National Environmental Policy Act. In accordance with MEPA, Minn. Stat. § 116D.04, subd. 2b, and related rules, projects that are required to complete an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) may not be started until:

- A petition for an EAW is dismissed.
- A negative declaration on the need for an EIS has been made.
- An EIS has been determined to be adequate, or
- A variance has been granted by the state Environmental Quality Board.

An Environmental Review, required by law, for any project, must be complete in order for any state permit or Certification to be valid.

The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0170 and 33 U.S.C. §1341.

Pursuant to Minn. R. 7001.1450 and 33 U.S.C. §1341(a).(3), failure to comply with any of the conditions in this Certification may result in the MPCA invalidating or revoking this 401 Certification on a project-by-project basis.

If you have any questions on this draft Certification, please contact Jim Brist at 651-757-2245.

Sincerely,

Melissa Kuskie
Supervisor
Agency Rules Unit
Resource Management and Assistance Division

MS/JB:ds

cc: Peter Swenson, EPA
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