Chad Konickson  
U.S. Army Corps of Engineers  
Regulatory Branch Chief  
180 Fifth Street East, Suite 700  
St. Paul, MN  55101-1678  

Mark Loidolt  
Benton County Public Works  
7752 Highway 25 NE, P.O. Box 247  
Foley, MN  56329  

RE:  2018-00139-BBY – County Road 78 Reconstruction  
Benton County Public Works  
Benton and Morrison Counties, Minnesota  
DRAFT Section 401 Water Quality Certification DRAFT

Dear Chad Konickson and Mark Loidolt:

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

Project Description:
Benton County proposes to reconstruct approximately five miles of County Road (CR) 78 and CR 286 in Morrison County. The project begins at County State Aid Highway (CSAH) 2 (in Benton) to CR 236 (in Morrison). The proposed project would widen the roadway from 28 feet to 40 feet and increase or decrease slopes where needed. Additionally, the proposed project will modify or replace existing road crossings at Zuleger Creek, Bunker Hill Creek, and three unnamed tributaries. The purpose of the proposed project is to improve the safety and stability of the existing roadway. When completed, the reconstructed roadway will comply with State Aid design standards for roadway width, in-slopes, and clear zone design.

The proposed project would result in permanent impacts to 5.49 acre (ac) and temporary impacts to 1.96 ac of waters of the state. Benton County proposes to satisfy compensatory mitigation requirements at a 2:1 replacement ratio, by debiting U.S. Army Corps of Engineers (USACE) approved wetland credits from a mitigation bank located in the same Bank Service Area (BSA 7) as the project.

Decision:
The MPCA proposes to certify the referenced project and has preliminarily determined that it satisfies 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 preliminary 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 draft conditions listed below.
1. The applicant must complete compensatory mitigation for surface water impacts as required by the USACE and in accordance with Minn. R. 7050.0186 and 7050.0265.

2. Before any land disturbance at the site, the applicant must ensure that all aquatic resources (wetlands, ditches, lakes, or streams) in the vicinity of the construction area that are not authorized to be impacted by the project are clearly identified. This may be done through demarcation of those resources on plan sheets or through typical methods of marking boundaries in the field, for example construction staking or the use of silt fences along boundaries. During construction, only those aquatic resources authorized for impact areas may be disturbed.

3. The applicant must document the in-water best management practices (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 401 Certification Program, but must be kept on-site during active construction by the contractor until the project is complete. Proper installation of BMPs are 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 404 Permit or this Certification. While conducting the authorized work, the applicant must regularly inspect the BMPs to ensure that the BMPs are working as intended to reduce or eliminate total suspended solids (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 impact area, then the project activities must immediately cease and any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. Approved temporarily impacted wetlands and aquatic resources, must be returned to original bathymetry contours. 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: https://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html

4. Because Bunker Hill Creek feeds into Little Rock Creek, which is impaired for Cold Water Fish Assemblage, the applicant must comply with the following requirements:
   a. Construction in Bunker Hill Creek must occur during low/no-flow periods;
   b. The applicant must maintain a 100-foot buffer along Bunker Hill Creek except where work is needed in the water crossing for this project. To the extent that trees are removed for water crossings, the applicant must replace trees with new plantings in or near the buffer area.
   c. The applicant must conduct stream temperature monitoring to ensure conditions supporting cold water fish are maintained.
      i. Monitoring must begin one week prior to the start of construction and continue until two weeks following the completion of construction.
ii. The applicant must conduct 15-minute interval logger type temperature monitoring such as HOBO logger, with placement of two loggers on Bunker Hill upstream and immediately downstream of the project construction area; deviations from this methodology must be approved by the MPCA.

iii. Monitoring data must be downloaded weekly, reviewed for changes in temperature, and provided to the MPCA.

iv. If monitoring data show that the temperature at the downstream site exceeds the stress temperature for brown trout (23.3 degrees Celsius) and/or increases by greater than 1 degree Celsius from upstream conditions, the applicant must submit a mitigation plan involving riparian vegetation enhancement to the MPCA for review and approval.

5. During any potential bridge/culvert removal and installation, the applicant must install in-water BMPs, such as but not limited to: weighed double silt curtain when work is conducted near/in deeper water; construction during no/low-flow conditions, cofferdams, and/or rock check dams, to the extent practical and feasible. BMPs are required to be used to minimize 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 including any wetlands delineated in the project area.
   a. This certification does not authorize bridge/culvert demolition activities using explosive devices to implode or collapse a bridge/culvert, or any portion of a bridge/culvert, into any surface water.
   b. This certification does not authorize any grout material other than concrete to be used as the grout material for riprap. Prior to grouting, plywood sheeting, sheet piling, sand bags, or other suitable BMPs must be placed at the base of the riprap to minimize the discharge of grout into the waterbody. The BMPs must remain in place until all grout has cured.
   c. Broken concrete from any existing bridge/culvert, defined as demolition debris in Minn. R. 7035.0300, subp. 30, cannot be used as riprap.
   d. Additionally, and if required that culverts are replaced, it would be highly critical for fish passage that the culverts be replaced utilizing the Culvert Repair Best Practices, Specifications and Special Provisions – Best Practices Guidelines: http://www.dot.state.mn.us/research/TS/2014/201401.pdf.

Bridge/culvert projects not meeting conditions a, b, and c above, are not authorized by this Certification and are denied without prejudice.

6. If dewatering will occur, the applicant must submit dewatering plans and have them approved by the MPCA prior to start of project. The MPCA will approve the dewatering plans within 15 days. If the dewatering plans are not acted on by the MPCA within 15 days, the dewatering plans are automatically approved.

7. If dewatering will occur, the applicant must ensure that dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp. 2. The applicant must use BMPs that minimize TSS and sedimentation by removing solids in the water before discharging the water. The applicant 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 applicant must ensure that properly installed BMPs
are in place before conducting the authorized activities and are maintained throughout the
duration of the dewatering work.

8. The applicant must ensure that earthen material, which may be used to construct or improve
temporary or permanent dikes or dams, including cofferdams or any roads, is contained in a
manner that will prevent its erosion into the water. The applicant must completely remove
temporary structures and restore original bathymetry or contours at project completion.

9. The applicant 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.

10. The applicant must ensure that any fill placed in water is 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 the MPCA
for debris and soil with contaminant levels appropriate for the placement setting. The applicant
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.

11. The applicant 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 primary
contractor responsible for completing the project’s authorized activities. The applicant must also
ensure that there is a mechanism in place requiring each primary 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.

12. The applicant 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.

13. The applicant is responsible for ensuring that all requirements of this Certification are met.

14. This Certification includes and incorporates by reference the general conditions of
Minn. R. 7001.0150, subp.3.

15. The applicant must 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 applicant from obtaining all necessary federal, state, and local permits. It does not limit any other permit where requirements that may be more restrictive. It does not eliminate, waive, or vary the applicant’s obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project. This draft Certification does not release the applicant 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 draft Certification does not authorize impacts to any waters beyond the project area.

This draft 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 draft Certification or revoke this draft 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 draft 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 Bill Wilde at 651-757-2825.

Sincerely,

Melissa Kuskie
Manager
Certifications, Environmental Review & Rules Section
Resource Management and Assistance Division

MS/BW:ds

cc: See next page.