



# Procedures for Selecting Local Governmental Units to Lead Watershed Projects

Water Quality/Impaired Water #1.35 • July 2010

This document explains the procedures and criteria that the Minnesota Pollution Control Agency (MPCA) uses to determine eligibility of local government units and other “qualified public agencies” (see statutory definition on page two) to lead watershed restoration total maximum daily loads (TMDLs) and protection projects.

In some cases, the scope of projects is too broad for a local entity to lead the project (e.g., Lake Pepin TMDL, Lower Minnesota River low dissolved oxygen TMDL, etc.). Thus, the MPCA may lead projects for technical reasons and for other reasons, such as lack of capability in the watershed.

## Local government leadership

According to the Clean Water Legacy Act (114D. 10, subd. 2), “achieving the state’s water quality goals will require long-term commitment and cooperation by all state and local agencies, and other public and private organizations and individuals, with responsibility and authority for water management, planning, and protection.”

The MPCA has built strong working relationships with local government units. Local government units have developed experience and capacity through MPCA watershed projects funded through the Clean Water Partnership, Clean Water Act Section 319, and TMDL programs, as well as through funding by other state and federal agencies. As a result, local government units – ranging from watershed districts and watershed management organizations to counties and soil and water conservation districts - are

leading watershed projects of all types, and the MPCA has accumulated knowledge of their capacity and ability to do this work. The MPCA strongly encourages local leadership of watershed/TMDL study and planning projects to utilize local expertise and knowledge, and to prepare for implementation.

## MPCA selection criteria and oversight

Local government units eligible to lead watershed projects include those with jurisdiction and experience in the watershed, and who are willing and able to effectively do the work. The MPCA evaluates local government contractors using a pass/fail determination against the following criteria:

- Jurisdiction – The local government unit must have water resource planning and implementation responsibilities and authorities in (at least a portion of) the project watershed, including an approved local water plan that addresses waters of concern.
- Readiness – The local government unit must have staff with demonstrated project management capabilities and experience to administer the project, conduct the proposed tasks, cooperate with other local government partners and successfully complete deliverables as determined in an MPCA-approved work plan. The MPCA will evaluate readiness based on past performance

on prior contracts. If there is not relevant past experience through a prior contract, the MPCA will evaluate readiness using best professional judgment, including their potential for success based on project organization, staff and management capacity, and ability to meet the unique needs of the watershed. Technical or other project assistance may be provided and supplemented by private contractors under the MPCA watershed project master contract.

- Cost – The MPCA will assess whether the proposed cost is reasonable and is for actual labor and other eligible project expenses. Cost comparisons will be made to similar successful projects. Any subcontractor costs must be reasonable and solicited through a competitive process, or can be hired through the MPCA’s watershed project master contract.
- Potential conflict of interest – The local government unit must abide by state law (Minn. Stat. § 16B.97) and submit a “Conflict of Interest/Organizational Conflict of Interest Disclosure Form” (found online at [www.pca.state.mn.us/publications/wq-cwp7-20b.pdf](http://www.pca.state.mn.us/publications/wq-cwp7-20b.pdf)) regardless of whether an apparent or actual conflict of interest exists.
- Additional criteria may be warranted based on the specific needs of the watershed to protect or restore water quality.

The MPCA will gather evaluation information on possible local government contractors, and will provide oversight during every stage of the contract process to ensure that federal and state requirements are met. The MPCA will approve of a watershed project work plan (see work plan guidance at: [www.pca.state.mn.us/water/tmdl/tmdl-policyguidance.html](http://www.pca.state.mn.us/water/tmdl/tmdl-policyguidance.html)) and all contract deliverables.

### **Notification of opportunities for local government involvement in watershed projects**

In addition to its regular communication with local government (newsletters, meetings, etc.), the MPCA posts project schedules and staff contacts on its Web site (<http://www.pca.state.mn.us/water/tmdl/tmdl-projects.html>) to give all interested local government units the opportunity to lead a watershed project. In addition, other local governments with particular experience in the watershed may be eligible to enter into a contract with the MPCA on a portion of the project, as

appropriate. They are evaluated according to the same eligibility criteria as locals who are leading the project.

### **Statutory references**

The MPCA’s criteria for selecting local government contractors to lead a watershed project are also guided by the following statutory references:

- The Clean Water Legacy Act, including the following provisions:
  - *Qualified public agencies* (114D.15, subd. 6 and 9): "Public agencies" means all state agencies, political subdivisions, joint powers organizations, and special purpose units of government with authority, responsibility, or expertise in protecting, restoring, or preserving the quality of surface waters, managing or planning for surface waters and related lands, or financing waters-related projects. Public agencies include the University of Minnesota and other public education institutions."
  - *Demonstrated readiness and demonstrated coordination and cooperation* [114D.20, subd. 5(4)(5)]:

“In recommending priorities for the development of TMDLs, the Act requires the Clean Water Council to give consideration to waters and watersheds:

- (4) where other public agencies and participating organizations and individuals, especially local, basin wide, watershed, or regional agencies or organizations, have demonstrated readiness to assist in carrying out the responsibilities, including availability and organization of human, technical, and financial resources necessary to undertake the work; and (5) where there is demonstrated coordination and cooperation among cities, counties, watershed districts, and soil and water conservation districts in planning and implementation of activities that will assist in carrying out the responsibilities.”

- *Third-party TMDL development:*
  - “...means a TMDL...that is developed in whole or in part by a qualified public agency...” (114D.15, subd. 9)
  - “In determining whether the public agency is qualified to develop a third-party TMDL, the Pollution Control Agency shall consider the technical and administrative qualifications of the public agency, cost, and shall avoid any potential organizational conflict of interest, as defined in section [16C.02](#), subdivision 10a...”

### **For more information**

For more information contact the MPCA at 651-296-6300 or 800-657-3864.