

Guide for the draft 2018 NPDES/SDS Construction Stormwater General Permit

Introduction: This document is intended to serve as a guide for readers to understand all of the proposed changes associated with the draft permit. Many of the permit requirements were re-written, combined or split apart without changing the policy, meaning or expectations of the MPCA. Also, due to Agency wide policies, the format of the permit has changed considerably. For these reasons, a traditional red lined version of the permit is not possible. Some of the requirements have been changed or expanded. The section names denoted with an asterisk (*) indicate the proposed language is intended to change the policy, meaning or expectation of the MPCA. This guide also highlights some of the key parts of the permit that may appear different even though there is not an intended change in policy or expectation.

<u>Current Permit</u>			<u>Proposed</u>
<u>Reference</u>	<u>Section Name / Topic</u>	<u>Description of Change or Discussion</u>	<u>Permit Reference</u>
Part I.A.4	Permit coverage (previously ongoing projects)	<p>This section was re-written for brevity. The MPCA intends on treating ongoing projects the same as in previous permits. If a project has permit coverage under the current permit and work is still ongoing on the date the proposed permit becomes effective, permittees can either:</p> <ul style="list-style-type: none"> - finish the project following the current permit requirements within 18 months or, - if the project will continue beyond 18 months, the permittee must follow the new requirements of the proposed permit. This does not include any changes in requirements for permanent stormwater management. <p>Another statement was added to notify future permittees obtaining the proposed permit that ongoing projects will be treated in a similar way upon the re-issuance of the next construction permit in 2023. The reference to Minn. R. ch. 7001 was removed since the rule is always applicable regardless of whether or not it is stated here.</p>	1.6 1.7
Part II.B.3.a	Application and coverage effective date*	The MPCA is proposing to omit the mandatory 7 day waiting period. However, payment confirmation is required before the MPCA can issue permit coverage and this process takes one business day. The waiting period of “seven (7) calendar days” has been replaced with “upon completing the payment process”. This is often one calendar day but in no case more than 7 seven calendar days. All project proposers must obtain NPDES coverage electronically. The online application assures that all of the questions are completed and requires the user to certify that a SWPPP has been prepared for the project. For these reasons, the MPCA does not believe that a waiting period is necessary.	3.3
Part II.B.3.b	Permit coverage effective date*	The MPCA is proposing to omit the mandatory 30 day waiting period. For projects that require a SWPPP review before coverage is issued, the MPCA will grant coverage upon the completion of the application and payment process and after the MPCA has made a determination that the SWPPP meets all of the permit requirements. This determination usually takes less than 30 days. Since the MPCA has performed a SWPPP review for these projects, any additional waiting period is not necessary.	3.4
Part III.A	Stormwater Pollution Prevention Plan content	The requirements for SWPPP content have been re-written and re-ordered for clarity. Some sections contained multiple requirements and they have broken up into individual items. Some duplicate items have been removed. Most of the items listed remain the same although there are some proposed additions and changes that are described individually below.	5.1
New Provision	SWPPP amendments*	<p>Permittees are allowed to revise the SWPPP for the projects at anytime as long as the BMP's are selected, installed and maintained in accordance with the manufactures specifications and accepted engineering practices (Part IV.A and item 7.2). In order to prevent contractors from deviating from the SWPPP and selecting inappropriate BMP option with no regard to the specific site conditions, the MPCA has added the following language regarding SWPPP amendments:</p> <p>All SWPPP changes must be done by one of the individuals described in item 21.4 or item 21.5 or another qualified individual. Changes involving the use of a less stringent BMP must include a justification describing how the replacement BMP is effective for the site characteristics.</p> <p>This language preserves the flexibility to allow contractors (or owners) to make cost effective BMP substitutions if the change is still protective for the site.</p>	6.2

New Provision	Documentation when the volume control standard cannot be achieved*	For those projects where the full volume reduction requirement cannot be met on site, (e.g., the site has infiltration prohibitions, see item 16.14 through item 16.22 of the proposed permit) the permittee must document the reasons in the SWPPP. This is intended to ensure that SWPPP designers consider volume reduction type practices first before designing non-volume reduction BMP's such as a wet sedimentation basin.	5.15 15.6
Part III.A.5.m	Documentation of infeasibility*	The MPCA has made an addition to this requirement. For projects adjacent to surface waters, the current permit requires the preservation of a 50' buffer unless infeasible. For projects adjacent to special waters or impaired waters, a 100' buffer zone must be preserved as described in item 23.22. The MPCA has observed several projects in which the buffer was not preserved and there was no apparent reason why. The proposed permit requires permittees to document in the SWPPP why the buffer was not preserved. This requirement is intended to work with item 5.12 which requires buffer zones to be shown on the plan sheets in the SWPPP.	5.13c
Part III.A.7	Karst areas	This part was removed. Issues pertaining to karst are addressed in item 16.19 and 18.10 of the proposed permit.	16.19 18.10
Part III.A.8.b	Impaired waters and TMDL's	This section was deleted. The MPCA has made a programmatic decision not to include specific implementation activities or BMP's in TMDL implementation plans for construction activity. The permit requirements provide the protection required for no net increase in pollutant loading (see discussion regarding non-degradation). The permit provides this protection through both erosion and sediment control BMP's during construction and the requirements for providing permanent stormwater treatment facilities in conjunction with the project including the additional BMP's found in Appendix A for discharges to impaired waters.	
Part III.D, 2nd paragraph,	Permanent stormwater management*	This section was deleted. The current permit offers permittees an option to follow a municipalities (or other plan approval authority such as a watershed district) stormwater ordinance in lieu of the permit requirements if that municipality is regulated by the state through the Municipal Separate Storm Sewer System (MS4) program. This provision was intended to reduce duplicate regulations as all regulated MS4 communities should have an ordinance in place that is at least as stringent as the state permit. However, in MPCA's experience many of the ordinances have not been written such that the requirements were at least as stringent as the state requirements and this provision prevented the MPCA from taking any action if the permittees plans were approved by the municipality.	
Part III.D, 3rd – 6th paragraph	Permanent stormwater management	These sections were reworded and reorganized for clarity. The overall intent of the stormwater treatment requirements in this section remains the same as the current permit. The proposed permit attempts to clearly define: <ul style="list-style-type: none"> - when the permit requires a treatment system, and - the level or amount of treatment, and - what methods must be considered first and, and - when those methods are not viable, what to consider next. Projects that will result in a net increase in impervious surfaces of one acre or more must include plans for a permanent stormwater treatment system. Permittees are still expected to provide some type of volume reduction treatment if the site is conducive for stormwater infiltration. If the site is not conducive to stormwater infiltration (see item 16.14 through 16.22) other types of systems must be utilized such as a wet sedimentation basin. The permit will still offer flexibility for linear projects or projects where bedrock limits any type of stormwater management.	15.1
Part III.D.1.j.i	Infiltration prohibition*	The current permit prohibits the construction of a designed infiltration system if the system will be constructed in any areas receiving runoff from vehicle fueling and maintenance activities. Currently the prohibition only applies if the permittee is <u>required</u> to provide a stormwater treatment system under this permit. Only those projects that result in a net increase of impervious surfaces totaling one or more acres are required to provide a stormwater treatment system. Many projects, both large and small are not required to provide stormwater management under this permit as the project may encompass areas that are already impervious and the net increase in impervious is less than one acre. Permittees of these projects often propose stormwater management that includes infiltration, either because the owner desires to do so or it may be required under the local ordinance or direction of a watershed district. The proposed permit would prohibit infiltration systems constructed as part of the project regardless of whether or not the CSW permit requires stormwater management if the site receives runoff from vehicle fueling and maintenance areas.	16.14

Part III.D.1.g	Infiltration requirement*	The current permit requires “appropriate on-site testing consistent with the recommendations found in the Minnesota Stormwater Manual to verify soil types...”. The manual recommends a certain number of on-site soil tests depending on the size of the system. In the MPCA's experience, many permittees are attempting to design infiltration systems using county soil maps, soil borings from nearby areas or no soil information at all. The proposed permit specifically requires permittees to provide at least one soil boring, test pit or infiltrometer test in the area of each infiltration system for determining infiltration rates. The proposed permit allows field tested rates to be used with a safety factor of 2 or permittees may use the infiltration rate chart found in the Minnesota Stormwater Manual to determine design infiltration rates based on soil type.	16.10 16.11
Part III.D.1.j.iv	Infiltration prohibition*	<p>The current permit prohibits constructing infiltration systems in areas with contaminated soil or groundwater. The current language states that infiltration is prohibited in: “areas where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.” The proposed permit includes additional language describing the steps permittees are expected to take to demonstrate compliance with this requirement. The proposed language is as follows:</p> <p>"Permittees are prohibited from constructing infiltration systems where high levels of contaminants in soil or groundwater may be mobilized by the infiltrating stormwater. Permittees must either complete the MPCA's site screening assessment checklist or conduct their own assessment to determine the suitability for infiltration. The assessment must be retained with the SWPPP. For more information and to access the MPCA's screening assessment tool see the Minnesota Stormwater Manual".</p> <p>A page can be viewed in the MN stormwater manual to guide permittees through the process: https://stormwater.pca.state.mn.us/index.php?title=Stormwater_Infiltration_and_soil/groundwater_contamination:_A_guide_to_the_Construction_Stormwater_Permit_requirements</p> <p>The MPCA does not expect soil or groundwater testing at every site but rather intends for permittees to continue to use the screening assessment tool in the stormwater manual to determine if contamination might be present. In addition, Permittees can look up past remediation sites using the “What’s in my Neighborhood” tool on the MPCA website to access information on those properties:</p> <p>https://www.pca.state.mn.us/data/whats-my-neighborhood</p>	16.15
Part III.D.1.j.vii	Infiltration prohibitions for Drinking Water Supply Management Areas (DWSMA)*	<p>The current permit prohibits infiltration anywhere within a DWSMA. The MPCA has consulted with the MN Department of Health to write a less restrictive but equally protective requirement regarding DWSMA’s. The proposed permit limits the prohibition to "within an Emergency Response Area (ERA) as defined by the Department of Health" and "areas within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R. 4720.5100, subp. 13, classified as having high or very high vulnerability, unless a regulated MS4 Permittee has performed a higher level of engineering review sufficient to provide a functioning treatment system and to prevent adverse impacts to groundwater." The MPCA has incorporated this data into the Construction Stormwater Special Waters Search tool:</p> <p>http://pca-gis02.pca.state.mn.us/CSW/index.html</p> <p>The DWSMA and ERA information can be activated by opening the "Map Layers" button and checking the appropriate boxes.</p>	16.20 16.21
New Provision	Filtration systems*	<p>The current permit requires <u>infiltration</u> systems to be constructed when the drainage area is stabilized near the end of the project, or to be completely protected if ongoing construction is occurring within the drainage area of the system. This provision helps ensure that the soil profile does not prematurely clog. <u>Filtration</u> systems require the same type of care to avoid clogging the placed material (filter media) installed over the drainage system. The following requirement has been added to the filtration system item:</p> <p>"The filter media must not be installed until the contributing drainage area has been constructed and fully stabilized unless rigorous erosion prevention and sediment controls (e.g., diversion berms) are provided to keep sediment and runoff completely away from the filtration area."</p>	17.3

New Provision	Wet sedimentation basin requirement*	The design requirements for wet sedimentation basins in the current permit are in Part III.D.2. A new requirement was added to the proposed permit requiring an impermeable liner to be included in the design of a basin located in active karst terrain.	18.10
Part IV.B.3	Conveyance channels	This part was deleted. The MPCA added this part in 2013 in response to the EPA C&D rule. Upon further consideration of the other requirements in the permit, the MPCA believes this is duplicative, at least in intent, and is confusing to regulated parties as it appears to be a separate requirement for "conveyance channels" vs. the permit requirements already included regarding "drainage ditches". The MPCA believes the following items, found in both the proposed permit and the current permit, fulfill the C&D rule requirement for conveyance channels:	
	continued from above...	<p>1. Item 8.6 - "Permittees must stabilize the normal wetted perimeter of the last 200 linear feet of temporary or permanent drainage ditches or swales that drain water from the site within 24 hours after connecting to a surface water or property edge. Permittees must complete stabilization of remaining portions of temporary or permanent ditches or swales within 14 calendar days after connecting to a surface water or property edge and construction in that portion of the ditch temporarily or permanently ceases."</p> <p>2. Item 8.7 - "Temporary or permanent ditches or swales being used as a sediment containment system during construction (with properly designed rock-ditch checks, bio rolls, silt dikes, etc.) do not need to be stabilized during the temporary period. Permittees must stabilize these areas within 24 hours after their use as a sediment containment system ceases."</p> <p>3. Item 8.9 - "Permittees must provide temporary or permanent energy dissipation at all pipe outlets within 24 hours after connection to a surface water or permanent stormwater treatment system."</p> <p>4. Item 7.2, 11.4 & 6.4 - item 7.2 states, "Permittees must select install and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices." Item 11.4 contains language requiring that any BMP, if found to be ineffective (i.e. drainage swale with high velocity causing erosion) must be replaced or supplemented. Item 6.4 requires that if nuisance conditions are observed, the permittees must revise the SWPPP accordingly. These three sections work together to ensure that all conveyance channels must be designed, maintained and supplemented, if necessary, to ensure that stormwater will not cause nuisance conditions.</p>	
Part IV.B.4 4th Paragraph	Ditch stabilization methods*	The current permit specifically states that some less effective stabilization methods such as mulch cannot be used in ditches or swales for stabilization and permittees must rely on more robust practices such as erosion control blankets. The MPCA has heard from numerous stakeholders that Best Management Practices such as disc anchored mulch may be adequate under certain limited conditions such as areas with little or no slope and installing blanket in all locations is cost prohibitive and not necessary. The proposed permit allows permittees more flexibility for the type of stabilization chosen for a ditch bottom if the slope is less than 2%. Additionally, as with all BMP requirements in the permit, if the selected BMP is found to be inadequate at minimizing erosion from ditches or swales, another more effective BMP must be utilized.	8.8
Part IV.C.5	Sediment controls near stockpiles	The proposed permit specifically states that perimeter controls are required near the base of stockpiles. This change in language better clarifies that stockpile perimeter controls are required in addition to the perimeter sediment controls required in item 9.2. This does not represent a change in MPCA policy regarding stockpile management.	9.9
Part IV.C.9	50 foot buffer*	The current permit requires redundant sediment controls around surface waters if a 50 foot natural buffer cannot be maintained. This requirement is derived from the EPA's C&D rule and will be carried forward in the proposed permit. The proposed permit requires that the sediment control practices must be spaced at least 5 feet apart. The MPCA believes that proper spacing for sediment storage between the practices is necessary in order to function properly. Language was also included to relieve permittees of the spacing requirement if there are site constraints.	9.17

Part IV.E.5	Timing for BMP maintenance after inspections*	The current permit requires “all nonfunctional BMPs to be repaired replaced or supplemented with functional BMP’s by the end of the next business day after discovery...”. The MPCA has heard from numerous stakeholders that this time frame is often unattainable. The MPCA believes that if it is unlikely to rain, correcting the BMP deficiency by the next day is not necessary and the permit language should offer some flexibility. The language in the proposed permit has been modified: “Permittees must repair, replace or supplement the BMPs prior to the next anticipated rain event or three business days whichever comes first”. Note: this modification also applies to the sediment basin and perimeter control maintenance requirement (Part IV.E.5.a. & b. of the current permit and item 11.7 & 11.8 of the proposed permit).	11.4 11.7 11.8
Part IV.F.1.c	Hazardous materials*	The current permit requires “restricted access storage areas must be provided to prevent vandalism”. This component of this requirement has been removed. The MPCA believes this is not an appropriate requirement for the permit.	12.4
Part IV.F.2	Fueling and maintenance*	The current permit requires that “permittees must conduct fueling in a contained area unless infeasible”. This component of this requirement has been removed. The MPCA believes this is not an appropriate requirement for the permit.	12.7
Part IV.G	Final stabilization	The term “final stabilization” has been removed throughout the entire permit. The MPCA believes the term is confusing and has been misused. The section regarding final stabilization has been re-named “Permit Termination Conditions”. The requirements in this new section are the same as the requirements for final stabilization found in the current permit.	13.1
Appendix A	Discharges to Special and Impaired Waters*	Appendix A in the current permit and item 23.1 in the proposed permit contain additional requirements that apply to projects that discharge to Special or Impaired water bodies. The specific water bodies listed remains unchanged however the proposed permit separates the “Prohibited Waters” into it’s own unique category. The additional requirements for projects discharging to prohibited waters has been expended to address the language in the new state antidegradation rule. The categories of prohibited waters, as listed in the proposed permit, are 1 Wilderness Areas, Lake Superior and Scientific and Natural Areas. The new additional requirements that would apply for projects discharging to these waters are: 23.24 - Permittees must conduct routine site inspections once every 3 days as described in item 12.2. 23.25 - If discharges to prohibited waters cannot provide volume reduction equal to one (1) inch of runoff from new impervious surfaces as required in item 15.5, permittees must develop a Permanent Stormwater Treatment plan that will result in no net increase of TSS or Phosphorus to the prohibited water. Permittees must keep the plan in the SWPPP for the project.	23.3
Appendix A.C.4	Temperature controls*	The list of additional BMP's for discharges to temperature sensitive waters has been revised. Providing stormwater infiltration is proposed to be the first consideration. Providing stormwater filtration was added to the list as the second option. Minimizing impervious surfaces was removed from the list as it is not a BMP that can be constructed to mitigated temperature. The other options in this list remain the same.	23.23
Appendix B.18	Definitions of operator & general contractor	The MPCA has added a definition for general contractor. The draft permit more specifically requires the party that signs the application with the owner as a co-permittee to be hired by and under the supervision of the owner. The draft permit more specifically states that the operator cannot be a sub-contractor hired by someone other than the owner.	25.9 25.19
New provision	Rule references to this permit	This item was added to the proposed permit to preserve continuity with state rules such as Minn. R. 7090 or other documents which refer to specific parts of the construction permit by name that will no longer be used. Those parts in the current permit are: - "Stormwater Discharge Design Requirements" - "Construction Activity Requirements" - "Appendix A" Item 24.11 indicates which parts in the draft permit correspond to these three parts of the current permit	24.11

(*) indicates the proposed language is intended to change the policy, meaning or expectation of the MPCA.