2023 NPDES Permit for Construction Activity: RESPONSE TO PUBLIC COMMENTS RECEIVED

Introduction

The Minnesota Pollution Control Agency (MPCA) construction stormwater permit draft was placed on public notice on January 17, 2023, through March 3, 2023. The MPCA received 45 comment letters containing between one and 35 comments each. The letters were assigned a number and each individual comment was numbered. Comments have been grouped together according to the section numbers in the permit. Also, similar comments on the same topic have been combined and paraphrased with the corresponding comment numbers. Many general comments were received that were not tied to a specific permit item and these comments are addressed before comments on specific permit items.

Letter #	Submitted by	Letter #	Submitted by
1	Apple Valley, City of	24	Minnesota County Engineers Association
2	Basset Creek WMC	25	Minnesota Energy Resources
3	Beckman, Nate	26	Minnesota Department of Transportation
4	Berube, Jade	27	New Range Copper Nickel LLC
5	Braun Intertec Corporation	28	Olson, Jon
6	Capital Region Watershed District	29	Olson, Timothy
7	Caselli, Alessio	30	Ramsey-Washington WMD
8	Central Minnesota Builders Association	31	Rice Creek Watershed District
9	Coon Creek Watershed District	32	Richfield, City of
10	Eden Prairie, City of	33	Savage, City of
11	Environmental Protection Agency	34	Shakopee, City of
12	Fitzgerald, Mary	35	Shonka, Scott
13	Forestar Group, Inc.	36	Smith, Courtney
14	Friedges, Jack	37	St. Cloud, City of
15	Gerdts, Sam	38	Thompson, Jacob
16	Great River Energy	39	Trojan, Mike
17	Haugh, Brendan	40	U of M Erosion Stormwater Cert Program
18	Holm, Leo	41	U of M Facilities Management
19	Housing First	42	Whipps, Dianne
20	Howe, Richard	43	White Bear Lake, City of
21	Johnson, Brent	44	Woodbury, City of
22	Malz, Josh	45	WSB & Associates
23	Minnesota Chamber of Commerce		

General Comments

1) Comment: Many comment letters contained some type of suggestion regarding the appearance or organization of the permit. A summary of these suggestions appears in the following list: (5-33, 5-34, 8-3, 18-2, 18-3, others)

- change the numbering system,
- change the order of the sections,
- change the order of items within a section,
- use less references to other permit items or re-state permit language instead of using references,
- add spaces to create white space,
- use bold font for words that have a definition in item 24.1 or other words
- change the table of contents.

Response: The MPCA appreciates this feedback. Several changes were made if the suggestion appeared to enhance readability.

Comment: While the permit contains BMPs and enforceable controls, we were unable to find a statement that explicitly prohibits a discharge that violates water quality standards. We understand that corrective actions may be required if the site is found to be causing a water quality standards violation, but it is not clear that causing or contributing to a violation of water quality standards would be a permit violation. (add an item to section 2 that states this permit prohibits discharges that violate water quality standards)

Similarly, we found no overall statement implementing MPCA's water quality criteria generally into the permit as is found in other MPCA permit standard conditions. We noted that similar language was used for specific types of discharges or to trigger corrective actions, but there was no overall statement serving as narrative water quality based effluent limits. (11-1, 11-2)

Response: Item 15.2 of the permit states "Permittees must design the project so all stormwater discharged from the project during and after construction activities does not cause a violation of state water quality standards, including nuisance conditions, erosion in receiving channels or on downslope properties, or a significant adverse impact to wetlands caused by inundation or decrease of flow". In addition to item 15.2, all impacts considered nuisance conditions, which would include any discharges violating water quality standards, are prohibited. Additionally, item 6.4 specifically requires the permittee to modify the SWPPP anytime a discharge is causing a water quality standard exceedance.

Comment: Please revise the language surrounding permit eligibility and applicability to Indian country to clarify that operations located in Indian country are not eligible for coverage under this permit and include the following reference to the United States Code: 18 USC §1151 - Indian country means "(a) all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." (11.3)

Response: The MPCA believes this comment is addressed in section 1.4. The permit states, "This permit covers all areas of the State of Minnesota except land wholly within the boundaries of a federally recognized Indian Reservation owned by a tribe or a tribal member or land held in trust by the federal government for a tribe or tribal member".

Comments: The permit appears to indicate that projects are automatically covered without an opportunity for MPCA to review applications. MPCA should ensure that the process allows for the ability for MPCA to review to at least ensure the proposed discharges are eligible for coverage before issuing notices of intent. Edits related to this comment would be needed in several places… (11-4)

Response: The MPCA eServices application portal asks a number of eligibility questions to ensure project proposers applying for this permit are eligible. The application's eligibility question must be answered in order to proceed and each question is accompanied by a help button which explains in detail the eligibility requirements. The final step in the online process is to certify under penalty of law that all of the information provided is accurate.

Comment: Consideration to eliminating permit coverage with MS4 boundaries would eliminate overlapping requirements and redundant permitting. (28-1)

Response: The MPCA follows the EPA model for construction stormwater permitting. 40 CFR § 122.34b(4) requires operators of small MS4s to develop, implement, and enforce a program that reduces pollutant in stormwater runoff from construction activities over one acre in size, or that are part of a larger common plan of development or sale. However, federal law requires construction stormwater permits be issued by delegated NPDES states. The Agency has held this delegation since 1974 and is prohibited from delegating this responsibility to local governments. The MPCA has tried to integrate the MS4 permit program to the extent possible

The MPCA supports coordination with MS4 construction stormwater permit programs in order to provide consistent messages to builders and to efficiently utilize limited resources at both levels. However, this coordination must be within the bounds of federal law, be practical, and provide for environmental protection.

Comment: Helpful language additions/clarifications in Sections 9.9, 10.2, 10.3 for purposes of enforcement. Thank you for making these additions/clarifications. (30-4)

Comments on Specific Permit Items

1.7 Coverage for projects that extend beyond the expiration date of this permit remains effective for a grace period covering project completion and Notice of Termination (NOT) submittal. If Permittees cannot complete projects during the grace period, the MPCA will extend coverage under the next permit and permittees must comply with the requirements of the new permit including updating the SWPPP. Permittees are not required to follow changes to the permanent stormwater treatment section of the next permit.

Comment: Section 1.7 allows for a grace period for coverage under this general permit to extend beyond the expiration of the permit without additional action. EPA recommends specifying an end date or duration of the grace period. (11-5)

Response: The MPCA agrees with this comment and has made changes to item 1.7.

2.10 This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented.

Comment: Commentors are concerned wetland approvals from other agencies could delay the start of projects. Other commentors believe that work on other areas of the project (away from any wetland impacts still waiting for approval) should be allowed to commence. The issuance of the NPDES Construction Stormwater Permit does not need to be conditional upon finalization of wetland permitting. For example, a small wetland impact being permitted somewhere on a construction site should not hold up the issuance of the Construction Stormwater Permit and delay construction anywhere on the site. Some stated the proposed change also doesn't consider projects that can have sequential regulatory approvals. Examples are route permits issued by the Minnesota Public Utilities Commission, which sometimes releases approvals for sections of projects at a time. (5-1, 21-1, 23-1, 25-1, 27-1)

Response: The MPCA uses this item in the permit to satisfy Minn. Rule 7050.0186 which contains wetland mitigation sequencing (avoid, minimize, mitigate) requirements that must be complete before the MCPA issues a permit or determination. The MPCA has no program to review such projects prior to issuing the construction stormwater permit and must rely on these other approvals to be able to issue our permit. Projects that have wetland impacts on a portion of the site, but have other areas of the site that do not drain to wetlands and have no potential impacts to wetlands can be broken up into different permits to allow part of the project to proceed while waiting on wetland permits on the other portion of the site.

Comment: WCA LGUs do not issue permits, they issue decisions or determinations, which are very different from each other within the technicalities of WCA administration. It would be good to include the word "decisions" here along with "other determinations" to be consistent with language and avoid a potential loophole. An additional concern with this section is how the MPCA will keep track of whether a project needs wetland approval and if all required approvals have been obtained. Does this apply to Army Corps of Engineers permits as well? If so, there could be major consequences for project timelines due to the long review times at the federal level. (9-1)

Response: The MPCA agrees with this comment and has added "decisions" to item 2.10 and in section 22. This does apply to Army Corps of Engineers permits and the MPCA recommends that projects plan and apply for these permits well in advance of their projects to avoid delays.

3.3 For projects or common plans of development or sale that disturb less than 50 acres or do not discharge stormwater within 1 mile (aerial radius measurement) of a special or impaired water, permittees do not need to submit the SWPPP with the application. Permit coverage for these projects is effective upon application and completing the payment process.

Comment: Please clarify (41-1)

Response: Please see the MPCA fact sheet on common plan of development: https://www.pca.state.mn.us/sites/default/files/wq-strm2-22.pdf

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3.4 For certain projects or common plans of development or sale disturbing 50 acres or more, the complete SWPPP must be included with the application and submitted at least 30 days before the start of construction activity. This applies if there is a discharge point on the project within one mile (aerial radius measurement) of, and flows to, a special water listed in item 23.3 through 23.6 or an impaired water as described in item 23.7. Permit coverage for these projects is effective upon submitting the application and complete SWPPP, completing the payment process and receiving a determination from the MPCA that the review of the SWPPP is complete. The determination may take longer than 30 days if the SWPPP is incomplete. If the MPCA fails to contact the permittees within 30 days of application receipt, coverage is effective 30 days after completing the payment process.

Comment: We recommend language adjustment for clarity. “This also applies to projects or common plans of development of sale disturbing less than 50 acres if there is a discharge point on the project within one mile…” (6-2,

Response: The intent of part 3.4 in the permit is to only include projects that are both over 50 acres and discharging within 1 mile of a special or impaired.

4.4 Permittees may terminate permit coverage prior to completion of all construction activity if they meet all of the following conditions:

- **a.** construction activity has ceased for at least 90 days; and
- **b.** at least 90 percent (by area) of all originally proposed construction activity has been completed and permanent cover has been established on those areas; and
- **c.** on areas where construction activity is not complete, permanent cover has been established; and
- **d.** the site complies with item 13.3 through 13.7.

After permit coverage is terminated under this item, any subsequent development on the remaining portions of the site will require permit coverage if the subsequent development itself or as part of the remaining common plan of development or sale will result in land disturbing activities of one (1) or more acres in size.

Comment: Suggest eliminating b. What happens if a project gets canceled before disturbing 90% of the proposed construction area?

Response: A project that gets canceled would be considered by the MPCA to have completed construction and permittees can terminate permit coverage if they comply with items 13.2 through 13.7.

5.2 The owner must develop and implement a SWPPP. The SWPPP must include items 5.3 through 5.26.

Comment: Add owner and operator must implement the SWPPP. (18-1)

Response: The draft changes to this item were deemed unnecessary as this concept is covered in item 3.5 of the permit.

5.11 The SWPPP must include a site map showing construction activity areas that are adjacent to and drain to Public Waters for which the DNR has promulgated "work in water restrictions" during specified fish spawning time frames.

Comment: What is the definition of “adjacent”? (41-3)

Response: For the purposes of this permit the term “adjacent” mean areas very near, next to or touching the project boundary.

5.26 The SWPPP must account for the following factors in designing temporary erosion prevention and sediment control BMPs:

- **a.** the expected amount, frequency, intensity, and duration of precipitation; and
- **b.** the nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features; and

c. the stormwater volume, velocity, and peak flowrates to minimize discharge of pollutants in stormwater and to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and

d. the range of soil particle sizes expected to be present.

Comment: This existing requirement requires multiple factors (such as precipitation, soil types, etc.) to be accounted for in SWPPP design, but it has always been unclear as to what this means. For example, when accounting for "the expected amount, frequency, intensity, and duration of precipitation (5.26b)," should the permittee rely on Atlas 14 data or estimates based on more current climate data? And should designers be calculating RUSLE style equations on the various exposed surfaces of a project or is it acceptable to use well established design standards for choosing erosion and sediment control practices? Will the MPCA publish guidance on how these factors are to be accounted for and incorporated into the SWPPP design; and what must be designed, documented, and implemented to meet this permit requirement? (26-1)

Response: This requirement originates from the EPA 2009 Effluent Limitations Guidelines and Standards for the Construction and Development (C&D Rule) Point Source Category Rule at 40 Code of Federal Regulations pt. 450. The level of proper analysis is determined by the permittee. For example, evaluating rainfall characteristics is important in order to identify specific factors that need to be accounted for in the design of stormwater controls. Each of these specific design factors correspond to the C&D rule requirements in 40 CFR §§ 450.21(a)(2)(5). It is important to consider precipitation characteristics so that earth-disturbing activities can be planned during periods with a lower risk of precipitation and so that erosion and sediment control practices can be designed to convey and manage the precipitation that is expected to occur.

7.2 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 to minimize the discharge of pollutants in stormwater from construction activities. Examples of stormwater controls for this section include but are not limited to wet sedimentation basins, temporary depressions to hold stormwater, stormwater routing, dikes, berms, pumping, and stormwater treatment BMPs. Permittees must phase and incorporate stormwater management principles as the construction progresses. Unless infeasible, temporary or permanent wet sedimentation basins (when required) should be constructed as a first step in the process and stormwater routed to these.

Comment: Several commentors praised this new section and liked the inclusion of examples. One commenter suggested eliminating the list of examples as it may confuse the reader. (5-2, 18-2, 26-2)

Response: The MPCA believes the list of examples is useful in this new item and have left them in the permit.

Comment: reference Section 14 of the permit so people know where to find the sedimentation basin requirement. (30-1)

Response: The MPCA agrees with this comment and has made changes to this item.

Comment: We appreciate the emphasis on managing stormwater. The updated wording in item 7.2 will hopefully reinforce the need to focus on stormwater in addition to BMPs. We also propose defining stormwater management in Permit Section 25 to further emphasize the stormwater management process: Stormwater management principles are design items and construction methods that control, manage, prevent, and isolate sediments and turbid flows from the movement of stormwater around and through the project. These principles are not only structural and estimated BMPs but also represent a process for construction activities to minimize the generation of sediments and other pollutants. (26-2)

Response: The MPCA believes that defining stormwater management is best left for guidance and training materials.

Comment: Within this section, the word "should" suggests that this is a recommendation and is not appropriate to be used in a permit that has regulatory enforcement. Eliminate the word "should". (5-3)

Response: The MPCA believes this new section of the permit adds the concept of overall stormwater management to the permit and encourages permittees to manage stormwater beyond simply erosion prevention and sediment control practices. The MPCA believes "should" is the correct word because it's a general permit and flexibility may be needed. However, the MPCA believes concept should be implemented whenever possible.

Comment: The term "stormwater controls" is unclear. Consider replacing it with term "stormwater management practices." (6-3)

Response: The MPCA agrees with this comment and has made changes in item 7.2.

Comment: recommends placement "*Unless infeasible, temporary or permanent wet sediment basins (when required) should be constructed as a first step in the process and stormwater routed to these"* in Section 14.1 Temporary Sediment Basins. (6.4)

Response: The MPCA believes that this language is in the correct location under the new Stormwater Management section.

Comment: What makes it infeasible? Is cost a reason for something being infeasible? This is broad and subject to interpretation. (10-1)

Response: Cost can be a factor in the permittees determination of infeasible. The term "infeasible" is defined in permit Item 25.13. The definition is - "Infeasible" means not technologically possible or not economically practicable and achievable in light of the best industry practices.

7.3 If permittees will be using some type of erosion control netting on the site as part of the soil stabilization techniques, permittees are encouraged to consider using products that have been shown to minimize impacts on wildlife. The U.S. Fish & Wildlife Service recommends using types of netting practices that are considered "wildlife friendly," including those that use natural fiber or 100 percent biodegradable materials and that use a loose weave with a non-welded, movable jointed netting. Products that are not wildlife friendly include square plastic netting that are degradable (e.g., photodegradable, UV-degradable, oxo-degradable), netting made from polypropylene, nylon, polyethylene, or polyester. Other recommendations include removing the netting product when it is no longer needed. More information may be found at: Make the Change to Wildlife-Friendly Erosion Control Products! | U.S. Fish & Wildlife Service (fws.gov) . There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products. See Minnesota Department of Transportation requirements at: Rolled Erosion Prevention Products - Erosion Control and Stormwater Management - MnDOT.

Comment: Many commenters supported the MPCA is recommendation for the use of wildlife-friendly erosion control products. One commentor states this new provision should be required and not recommended. Another commenter states this is a recommendation and not a requirement, therefore does not belong in the permit. We believe this would be better suited within MPCA issued guidance. The same commenter states It is not certain that manufactures of these products will be able to adjust within a 5-year period. One commenter appreciated the addition of item 7.3 to encourage permittees to use wildlife friendly products

instead of plastic netting, however, they strongly encouraged MPCA to prohibit plastic netting outright. (26-3, 5-4, 5-5, 32-1, 43-1, 44-1)

Response: The MPCA added this new item to the permit to encourage permittees to limit the use of plastics where possible on their construction sites. The MPCA believes that this new item in the permit is an appropriate first step in reducing and eliminating the use of plastics in construction stormwater BMPs. We chose not to make it a requirement at this time to give the industry a chance to prepare for this becoming a requirement in the future. Also, to give permittees time to change their standard BMPs that use plastic to alternative products. We will be closely monitoring the industries response to this effort to reduce the use of plastics with a future potential prohibition.

Comment: Referencing a link supported by another agency could be problematic if it changes during the 5-year permit cycle. (5-6)

Response: This is a recommendation in this permit cycle and the MPCA is trying to provide as much guidance as possible until such time as this becomes a requirement. While we recognize that this is a potential problem if the link changes, this is only a recommendation at this time and not a permit requirement.

Comment: recommend language adjustment "…permittees are encouraged to use products that have been shown to minimize impacts on wildlife…"

Response: The MPCA agrees with this comment and has made changes to item 7.3.

Comment: Recommend providing guidance. (41-4)

Response: The MPCA included links to guidance in this item in the permit.

8.3 Permittees must minimize the need for disturbance of portions of the project with steep slopes. When steep slopes must be disturbed, permittees must use techniques such as phasing and stabilization practices designed for steep slopes (e.g., slope draining and terracing).

Comment: Requirements regarding steep slopes are discussed in item 8.3 but the reader has to turn to the definitions to see that steep slopes are defined as 1:3 or steeper (item 25.32). Including the definition in item 8.3 would improve readability. (26-4)

Response: There are numerous terms throughout that permit that could be restated in the body of the permit. It is our approach that these terms be defined in a specific location so as not to make the permit overly long or cluttered with additional language.

8.4 Permittees must stabilize all exposed soil areas, including stockpiles. Stabilization must be initiated immediately to limit soil erosion when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. Stabilization is not required on constructed base components of roads, parking lots and similar surfaces. Stabilization is not required on temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) but permittees must provide sediment controls at the base of the stockpile.

Comment: Recommend language addition for clarity. "Stabilization is required for stockpiles of base material for roads, parking lots, and similar surfaces until they are constructed as a part of a road, parking lot, or similar surface. (6-6)

Response: The agency does not believe it is appropriate to attempt stabilization on stockpiles consisting of material intended for road base construction as that material does not have the organic components necessary to support vegetation. It should also be noted that stockpiles of this type of material are less erosive than a soil stockpile.

8.5 For projects, including a common plan of development or sale, disturbing less than 25 acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased.

8.6 For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7 calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased.

Comment: Add reference to stabilization timeframe requirements for Special and Impaired Waters (Section 23) here so all the different timeframes can be found in one place - 'erosion prevention,' even if redundant. (30-3)

Response: The MPCA agrees the different requirements for stabilization near impaired/special waters is not immediately evident as it is found much later in the permit. The MPCA will add a reference to the stabilization requirements found in the special waters sections.

Comment: 25 acres threshold should be decreased to 15 or 20 to encompass more urbanized projects. Our District is mostly smaller redevelopment, and we would consider 15-20 acres to be our "big" projects that cause the most nuisance conditions. Other commentors suggested other limits. Some commentors point out the existing permit conditions already have safeguards for sites over 10 acres draining to a common location. (30-2, 33-1, 34-1)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: Many commentors inquired about the basis of the 25-acre threshold. Project size is not necessarily the best indicator of risk, other factors should be considered. (5-7, 44-2)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: Soil stabilization timeframes have been shortened on sites disturbing 25 or more acres with the premise that the MPCA believes larger sites with more potential for harm should be stabilized quicker. Project proposers are already required to provide stabilization within seven (7) days for sites near sensitive waters. This proposed requirement states that all sites over 25 acres must stabilize the soils within seven (7) days, regardless of receiving water type. The commenter believes that 14 days allowed for flexibility on larger projects with complex construction and schedule concerns. The requirement for 7 days may place an unnecessary burden on available resources. This will increase construction and monitoring costs associated with large projects while not lessening environmental risks or potential stormwater discharges versus sites less than 25 acres. The MPCA should reconsider changing the current language in Section 8.4. (27-2)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: The 7-day window will have needless cost impacts as the reduced timeframe will see stabilization needed before work is completed. The shortened timeframe will result in the need to restabilize after certain activities occurred (e.g. grading, landscaping, etc). Recommendation: Modify 8.6 to read " … disturbing 25 or

more acres at any one time…" as this more accurately represents the intent of the modification while recognizing the practical impacts of the requirement. (19-1)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: The phrase "initiate immediately" should also include notes about feasibility. Many times, the site conditions, seasonality, and weather conditions make the action infeasible at the time. Requirements on documenting changes to timing should be included in inspection reports. (5-8)

Response: "Initiated immediately" is defined in the permit. One option for initiated immediately allows the permittee to finalize arrangements to have stabilization products fully installed in compliance with the applicable deadline for completing stabilization. The MPCA believes this can be accomplished within 7 days in most if not all situations.

Comment: Consider referencing "stockpiles" within this language to avoid confusion regarding timelines. Consider leaving the text "… to limit soil erosion…" in these sections as this provides context on the importance of stabilization. (6-7,

Response: The MPCA has reverted back to the 2018 permit language in this section which included the reference to stockpiles.

Comment: The 7-day window cuts in half the current time frame, adding unnecessary costs because it will require stabilization before work is completed. Recommendation: Change 8.6 to read ". . . disturbing 25 or more acres at any one time . . ." which accomplishes the intent of the requirement without unintended negative consequences. (8-1)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: The shortened soil stabilization timeframes for projects disturbing greater than 25 acres contained in this section will be very challenging to implement, particularly on the linear transmission line projects we typically works on. On a linear transmission line project, 25 acres of disturbance can be distributed across many miles of construction. The disturbance on these projects is typically small, disconnected areas associated with the installation of the transmission towers. As a result, the impact on the local water bodies is limited and not equivalent to a project where 25 acres is disturbed within a single location. Furthermore, it is much more challenging to implement stabilization measures on a large number of discrete locations spread across a linear project. Therefore, we request that this shortened timeline only apply to projects where the 25 acres being disturbed are contiguous. (16-3)

Response: The MPCA has reverted back to the 2018 permit language in this section.

Comment: What are the estimated impacts of this change? What are the cost implications? How many sites typically land above that threshold and are not already held to the 7-day stabilization requirement due to proximity to impaired waters? (44-2)

Response: The MPCA has reverted back to the 2018 permit language in this section.

8.8 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.

Comment: Recommend language adjustment for clarity "…within 14 calendar days (or 7 days depending on the applicability of items 8.5 or 8.6) after connecting…" (5-9, 6-8, 26-5)

Response: Items 8.5 and 8.6 have been changed back to 2018 permit language so this recommended change is not needed.

8.9 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. Permittees must stabilize these areas within 24 hours after their use as a sediment containment system ceases.

Comment: Remove this item given the conflict of this item with Section 8.8 and observed concerns with implementation of this. Areas within the last 200 linear feet of a drainage ditch or swale that drain water from the site should generally not be used as a sediment containment system unless the means for drainage, such as a catch basin, is fully blocked. (6-9)

Response: A reference to 8.9 will be added to section 8.8 to eliminate the conflicting language. The commentor states the last 200' of a drainage ditch should not be used as a sediment containment system . This may be true on certain sites, but it may be the only location available on some sites and the MPCA does not want eliminate this as an option. All BMP's used must be effective.

8.10 Permittees must not use mulch, hydromulch, tackifier, polyacrylamide or similar erosion prevention practices within any portion of the normal wetted perimeter of a temporary or permanent drainage ditch or swale section with a continuous slope of greater than 2 percent.

Comment: There is a lot of confusion among people both new to stormwater and experienced practitioners about what type of stabilization is acceptable for this part of the permit. Many people think the best product to use to stabilize ditches is biorolls. They may be getting confused with section right before it (section 8.7). Suggestion:

Permittees must not use mulch, hydromulch, tackifier, polyacrylamide or similar erosion prevention practices within any portion of the normal wetted perimeter of a temporary or permanent drainage ditch or swale section with a continuous slope of greater than 2%. <u>Acceptable erosion prevention practices include blankets, poly, riprap, and other similar products).</u> *or* <u>Examples of acceptable erosion prevention practices include blankets, poly, riprap, etc.).</u>

Response: The MPCA agrees with this comment and has made changes to this item.

8.12 Permittees must not disturb more land (i.e., phasing) than can be effectively inspected and maintained in accordance with Section 11.

Comment: Add For small sites 1 acre and less with limited space and interim stabilization is infeasible during active construction, rigorous perimeter control BMPs must be maintained. Nonfunctional BMPS must be resorted and made functional in 24 hrs. (18-4)

Response: This permit covers land disturbing activities of 1 or more acres and does not include requirements for projects less than one acre.

Comment: The requirement to disturb no more land than can be effectively inspected and maintained is not new. But in light of the re-framing of Permit Section 7, we suggest that this requirement be moved to Section 7. Phasing to minimize concurrent area of disturbance currently appears in Section 8, which is largely concerned with structural or product-based practices, whereas it is really more of a stormwater management practice. (26-6)

Response: The MPCA agrees with this comment and has made the change.

9.2 Permittees must establish sediment control BMPs on all downgradient perimeters of the site and downgradient areas of the site that drain to any surface water, including curb and gutter systems. Permittees must locate sediment control practices upgradient of any buffer zones. Permittees must install sediment control practices before any upgradient land-disturbing activities begin and must keep the sediment control practices in place until they establish permanent cover.

Comment: It would be helpful if item 9.2 had distance and slope requirements where downgradient perimeter control is not required when runoff is retained on same property as land disturbance activity is occurring prior to discharge to surface water. As a designer, we are forced to provide regardless of distance and slope to waters. Some degree of natural vegetated buffer should be practical. (5-10, 28-2

Response: This is a general permit and SWPPP designers will need to use their best professional judgement when selecting appropriate downgradient perimeter controls that are effective in retaining sediment on site. It would be very difficult to create a set of requirements that account for every scenario, from slope, soil type, vegetation type and thickness, time of year, amount of disturbance draining to the perimeter, length of time disturbed activities will be occurring etc. The permit requires an effective downgradient perimeter control which can be variable depending on individual site conditions.

9.5 A floating silt curtain placed in the water is not a sediment control BMP to satisfy item 9.2 except when working on a shoreline or below the waterline. Immediately after the short-term construction activity (e.g., installation of rip rap along the shoreline) in that area is complete, permittees must install an upland perimeter control practice if exposed soils still drain to a surface water.

Comment: Provide a definition of the phrase “short term”. This phrase does not add any value to the permit but if kept in without defining could lead to confusion or disagreements between permittees and the MPCA. (5-11)

Response: The MPCA agrees with this comment and has made changes to this item.

Comment: Add Silt curtain must be placed as close to the active constriction work as feasible. Silt curtain must not be placed across culvert ends or across flowing water. (18-5)

Response: This item in the permit is intended to clarify there will be instances when no upland perimeter control is in place, but a permittee can be in compliance with the permit if silt curtain is in place. Placement of floating silt curtain in waters of the state may be regulated by other programs such as DNR, Army corps and the MPCA 401 program. The MPCA generally agrees with the comment, however, it is better left to guidance material. This recommendation can already be found in the Minnesota Stormwater Manual.

9.8 Permittees may remove inlet protection for a particular inlet if a specific safety concern (e.g. street flooding/freezing) is identified by the permittees or the jurisdictional authority (e.g., city/county/township/Minnesota Department of Transportation engineer). Permittees must document the need for removal in the SWPPP.

Comment: A commenter recommends language adjustment. "…if a specific safety concern (e.g. street flooding/freezing) is observed (or has been observed) by the permittees…" (6-10,

Response: The MPCA believes that the Permittees should be allowed to identify safety concerns for a particular inlet prior to actually observing a safety concern.

9.9 Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6.

Comment: "prior to the initiation of stockpiling" is not practical and would limit the operating space for machinery to access the pile. · The risk of erosion and sediment runoff when a new stockpile is established is generally low due to it being actively worked. If the purpose of this is to minimize risk, the addition of "completed within 24 hours or before predicted rain whichever comes first" to this section would be more practical. Another commenter states- with sediment controls needing to be an effective distance away from the base of a stockpile, it makes more sense for sediment controls to be installed immediately after a stockpile is created. Another commenter says that stockpiles can vary in size and volume, and it is hard to estimate the final proportions for precise perimeter controls before the stockpile is placed. This language runs the risk the perimeter controls could be too little or too much for the actual stockpile, defeating the purpose. It makes much better sense to install perimeter controls that match the actual stockpile. There is also an increased risk to damage of the perimeter control, therefore reducing control effectiveness. Recommendation: Change 9.9 to read "within 24 hours of stockpiling" instead of "prior to". (5-12, 8-2, 9-2, 19-2, 27-3, 32-2)

Response: The MPCA believes that installing downgradient perimeter control at the base of stockpiles still leaves the upgradient side of the stockpile free to access. The MPCA does not agree that a new stockpile is a low risk of erosion and sediment runoff. The MPCA notes that perimeter controls can be adjusted to accommodate stockpiles changing in size or if they are larger or smaller than first anticipated. The MPCA believes there is flexibility in this item because it refers to item 9.6 where perimeter controls can be removed and reinstalled in order to access the stockpile. The suggested change to "within 24 hours of stockpiling" would be difficult to enforce.

Comment: There is an overall convention in the permit to avoid references to specific types of best management practices. But item 9.9 specifically mentions silt fence. This is contrary to the requirements that the permittees design and implement an effective SWPPP. We suggest removing this reference to silt fence by deleting the words "silt fence or other" so that the line reads "…provide effective sediment controls at the base of stockpiles…" (26-7, 40-3)

Response: The MPCA believes that an example is useful in this permit item and does not believe it limits the Permittees use of effective BMPs of their choice.

Comment: The permit states that perimeter controls are required on the downgradient perimeter. If the stockpile is placed on a flat surface area where there is not a change in grade is perimeter control install not required? Can you provide more clarification on these requirements? (45-1)

Response: The MPCA intends that in the situation described, effective perimeter controls would be required around the entire stockpile as sediment will be transported away from the stockpile in all directions.

Comment: If stockpiling work is temporary, same day for example, are perimeter controls prior to work required? (45-2)

Response: The intent of this requirement is the installation of perimeter control BMPs and they would be required regardless of the length of time the stockpile is in place.

Comment: Is there a threshold for how large or type of material requires this pre-protection? (45-3)

Response: The MPCA believes that there is no clear lower size limit that would be appropriate in all situations that a general permit may regulate.

9.12 Permittees must use street sweeping if vehicle tracking BMPs are not adequate to prevent sediment tracking onto the street.

Comment: One commenter recommends language adjustment in "…use street sweeping in addition to a vehicle tracking BMP if vehicle tracking BMPs alone are not adequate…" (6-11)

Response: The MPCA agrees with this comment and has made the change in the permit.

9.14 In any areas of the site where final vegetative stabilization will occur, permittees must restrict vehicle and equipment use to minimize soil compaction.

Comment: This is often difficult or impossible on linear projects because of the narrow working conditions and the need for large amounts of construction vehicle traffic. We suggest adding language to allow permittees to mitigate compaction if it could not be avoided: When compaction is not preventable, permittees must estimate the area for decompaction BMPs and implement practices to mitigate compaction. (26-8, 40-4)

Response: The MPCA included this requirement in the 2013 permit in response to the EPA Construction & Development (C & D) rule requiring construction permits to include a provision for avoiding soil compaction. There are many sites where soil compaction can clearly be avoided and the MPCA expects permittees to attempt to do so. The MPCA agrees that additional flexibility may be needed on certain projects and has previously added the term "minimize" to this item. The additional cost of this requested permit change would require a chance for regulated parties to comment; the MPCA will consider adding a similar decompaction requirement to a future permit.

9.17 Permittees must preserve a 50-foot natural buffer or, if a buffer is infeasible on the site, provide redundant (double) perimeter sediment controls when a surface water is located within 50 feet of the project's earth disturbances and stormwater flows to the surface water. Permittees must install perimeter sediment controls at least 5 feet apart unless limited by lack of available space. Natural buffers are not required adjacent to road ditches, judicial ditches, county ditches, stormwater conveyance channels, storm drain inlets, and sediment basins. If preserving the buffer is infeasible, permittees must document the reasons in the SWPPP. Sheet piling and other impermeable barriers is a redundant perimeter control if installed in a manner that retains all stormwater are considered redundant perimeter control.

Comment: County and judicial ditches being exempt from the 50 ft natural buffer requirement should be re-evaluated. Some public ditches are impaired waters and/or drain directly to major waterways or public waters. (9-3)

Response: The intent of this requirement is to provide an extra level of protection for sites adjacent to natural waterbodies and to exclude man made stormwater features. There are some natural waterways that have been artificially straightened and are now legally considered a ditch. In the event a judicial or county ditch is also listed as impaired, the impaired status overrides the exemption, and a 50-foot buffer is required.

9.18 Any sediment control made of soil/muck must be temporarily or permanently stabilized within 24 hours.

Comment: eliminate "muck" since muck is a type of soil. (5-13)

Response: The MPCA agrees with this comment and has made changes in the permit.

Comment: This addition may encourage the use of muck that could leach out nutrients or other deleterious materials into runoff that lead to surface waters and/or off-site. (5-14)

Response: The MPCA removed the reference to muck.

Comment: Define how much soil needs to be included (ex. more than 50% by volume is soil) to be considered soil for the purpose of this section. Sometimes soil amendments are incorporated into other materials (mulch) and are already stabilized to some extent. (5-15)

Response: The MPCA does not believe that the amount of soil included in a sediment control berm needs to be defined in this permit. The berm must be effective and stabilized to be in compliance with permit requirements.

Comment: The use of earthen berms for perimeter control should be emphasized or recommended to help eliminate single use plastic silt fence. (9-4)

Response: The MPCA believes that this is a great comment and will include information in guidance. Additionally, there is a new item in the permit (7.3) that encourages permittees to use less plastic products on construction sites.

Comment: Stabilizing any sediment control made of soil/muck is especially important if it is within proximity to a wetland or waterbody. We feel the requirement to stabilize within 24 hours is not enough time and may be overly restrictive depending on its location (i.e., not near a wetland or waterbody). A requirement of 7 days for stabilization would be more appropriate if it is not within 100 feet from a wetland or waterbody, as the control would be inspected daily during the time prior to permanent stabilization. (27-4

Response: The MPCA included this permit item because soil berms have long been used by the Minnesota Department of Transportation. MnDOT has used a 24-hour timeframe for stabilization when using topsoil berms and it has proven to be effective practice. Topsoil berms are especially prone to erosion and when being used as a perimeter sediment control the MPCA believes that 24 hours is an appropriate timeframe to complete stabilization. It is important to note that this is just one option of perimeter control and Permittees are free to choose other BMPs that are effective on their sites.

10.2 Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge.

**Note: Requirement 11.5 states the photographs in section 10.2 must be documented. Comments on 11.5 are included here.*

Comment: Guidance on taking photos should be provided. (40-5, 44-3, 45-7)

Response: The MPCA is planning on providing guidance on this item of the permit.

Comment: Several commentors support the addition of visually checking and photographing dewatering operations every 4 hours. One commentor believes an inspection log should also be recorded. One commenter suggested changing the language to "at least once every 4 hours" (6-13, 18-6)

Response: The MPCA has added inspection requirements which include documenting dewatering inspections. See item 11.9.

Comment: Many commentors stated the requirement for visual inspection every four hours is overly burdensome. Many dewatering systems often operate 24hrs/day which would require multiple inspection throughout the night or over other non-working hours. One commentor suggested using the term "as necessary" instead of "every 4 hours". Some commentors suggested other time frames. Others suggest the issues that led to this requirement should be addressed through outreach and education. One commenter states it would be more appropriate to be able to establish dewatering monitoring protocols within the SWPPP to accommodate for site specificity as 4 hours is an arbitrary number of hours. (1-1, 2-1, 2-3, 10-2, 10-6, 24-1, 26-9, 27-5, 28-3, 32-3, 32-5, 33-2, 34-2, 44-3, 5-18)

Response: The MPCA has modified permit language in this item so inspections during dewatering operations must occur at the beginning and at least once every 24 hours of operation. This should alleviate the concern from having to do inspections throughout the night.

Comment: The requirement of photos every four hours raises serious concerns about misunderstanding context and situational factors (example: sudden heavy rains) that would lead to unfair enforcement actions. Recommendation: Change the language to ". . . at the beginning and a minimum of once every 24 hours of operation . . ." We would also recommend keeping the 2018 language in this section by removing the words "and photograph". (8-3, 19-3, 27-5)

Response: The MPCA agrees that changing the language to "at the beginning and a minimum of once every 24 hours" is appropriate and has made changes to this item. The MPCA believes that photographs of dewatering discharges is beneficial for both the MPCA and the permittees to document that dewatering activities are successful and not causing nuisance conditions.

Comment: Several commentors stated dewatering activities associated with groundwater pumping are usually clear and uncontaminated and should be treated differently than construction stormwater dewatering which is often high in total suspended solids. (1-2, 4-1, 5-17, 32-3, 34-2, 37-1)

Response: While groundwater pumping may be clearer that some other types of dewatering activities, the discharge of the clean water may cause erosion and result in a nuisance condition discharge from the site. The MPCA believes that relaxing the inspection frequency to once every 24 hours is not overly burdensome for any type of dewatering activity. There have been situation where ground water pumping was clear and odor free for a period of time before the discharge starting producing gas vapers as contamination from adjacent properties can be drawn towards a pumping location.

Comment: When dewatering at night, photographs that have any value will be difficult to capture with a normal camera. (5-16)

Response: The MPCA believes that the change in inspection frequency will allow permittees to avoid taking photos at night.

Comment: The new language in the permit requests that, if possible, the dewatering is onto an upland vegetated area. MPCA should include protection of this area from scouring. (5-19)

Response: The MPCA believes that this is covered in item 10.5 of the revised permit.

Comment: We strongly recommend clarification of where a discharge is going in all areas where term "discharge" is bolded above i.e., discharge to a surface water or discharge to a sediment control. This will also provide clarification that visually checking and photographing the discharge is required for permittees to discharge TO A SURFACE WATER. (6-12)

We recommend retaining language that discharge cannot "adversely … affect downstream properties" (or add to 10.3). Flooding of downstream properties during dewatering operations is a concern.

Response: When using the term "discharge", the MPCA means the discharge of pollutants such as sediment leaving the boundaries of a construction site or to a surface water. The language referring to adversely affecting downstream properties was removed from the permit because it was deemed too vague considering EPA's C & D rule. The C & D rule clarified the effects of discharges must be limited to areas in the immediate vicinity of the site. This concept is covered in item 10.5 in the revised permit.

Comment: Several commentors requested that some level of deminimus dewatering be allowed here. Placing transmission line poles might require hundreds of dewatering operations with each individual being less than 100 gallons. (16-1, 25-2, 45-6)

Response: The MPCA agrees minor dewatering discharges that only last for minutes, as opposed to hours and do not reach a surface water, should not require photographs or documentation and has made changes to item 11.9.

Comment: The proposed language prohibits dewatering if discharge from the sediment control device has visible turbidity. Filter bags, sediment traps, and sediment basins often don't remove all visible turbidity. This proposed change would likely mean an extensive treatment train would often be required for dewatering activities. Additionally, naturally occurring water with high-humic content appears brownish, which is unrelated to construction activities. Humic conditions can occur in lakes, wetlands, and streams. (23-2)

Response: The MPCA agrees that there may be certain dewatering operations that need a treatment train to prevent discharges to surface waters that cause nuisance conditions. In the case of naturally occurring humic conditions, MCPA enforcement staff will take that specific condition into account when determining if a violation of nuisance conditions has occurred.

Comment: Does this apply to discharges to the sanitary sewer? (44-3)

Response: Dewatering discharges directly to the sanitary sewer do not need to be photographed, but may require permission from the sanitary sewer authority.

10.3 If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer.

Comment: It would be important to have someone properly trained and qualified doing the observation. Recommendation: Change 10.3 to read "a qualified or trained observer" instead of "an observer". (8-4, 19-4

Response: The MPCA believes that item 21.3 ensures that the party doing the dewatering inspection has been trained commensurate with their job duties as it pertains to the SWPPP for the site.

Comment: Change "occur" to "be implemented" (40-6)

Response: The MPCA agrees with this comment and has made changes to this item.

Comment: In addition to examples of nuisance conditions, suggestions for corrective actions would be helpful here. (10-3)

Response: Please see the Minnesota Stormwater Manual and MPCA dewatering fact sheet for suggestions for correction actions regarding dewatering discharges.

Comment: The nuisance conditions listed in that item are overly broad, and the term "aquatic habitat degradation" requires a definition. As written, the item would allow any observer to claim that there was aquatic habitat degradation, —absent any qualification to make that determination—thus bringing dewatering to a halt and negatively impacting construction work. Additionally, "has a visible contrast" is an unclear description because pumping clear water into a turbid stream would create a visible contrast, as would pumping naturally humic water into a less humic stream. We propose replacing proposed Item 10.3 with the following language:

"If nuisance conditions, as defined in Minn. R. 7050.0210 Subp. 2, result from the discharge to a surface water, Permittees must cease dewatering immediately and corrective actions must be implemented before dewatering is resumed. (23-3, 27-6)

Response: The MPCA believes the list of examples is helpful for the reader to understand what types of impacts are considered nuisance conditions. The nuisance conditions rule, Minn. R. 7050.0210 is referenced in permit section 10-2 and uses the term "aquatic habitat degradation".

11.2 Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours.

Weekend rain inspections should be removed from the CGP, for a couple of reasons: first, having to be on-call on weekends is a burden, leads to inspector burnout and makes the inspections less accurate on the long run. Second, there are no BMP companies that are available to address any deficiencies found on a weekend inspection because they do not work on weekends. It is impracticable to have staffing coverage on weekends and holidays exclusively for the purpose of 24-hour post-rain event inspections. States overwhelmingly do not require rain events while on a 7-day inspection frequency and do not require weekends/holidays. Gas expenses for having to drive more during the weekends Instead, let rain event inspections be on the next business day. Give permittees the option to do either weekly inspections without rainfall inspections or, to do inspections every 14 days with rainfall inspections. This is the EPA approach and is consistent with many other states. (3-1, 20-1, 22-1, 7-1, 15-1, 35-1, 36-1, 42-1, 45-10, 13-1, 35-1, 14-1, 17-1, 20-1)

Response: The MPCA believes that weekly inspections and inspections after rain events over ½ inch in 24 hours are crucial to discover BMPs maintenance needs and discover potential harmful discharges so they can be corrected in a timely manner. Discovering BMP failures on the weekend allows permittees time to make arrangements such that the corrective actions can be completed by the end of the next business day.

Comment: We request clarification of the language "next business day". For this, we provide the following example from the North Dakota Authorization to Discharge Construction Stormwater under the North Dakota Pollutant Discharge Elimination System Section III (A)(1)(a): · "Within 24 hours after any storm event greater than .25 inches rain per 24-hour period" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm. · Note Braun Intertec Corporation is not requesting to lower the rainfall amount trigger, we are requesting of the MPCA language similar to the provided example. (5-20)

Response: The term "next business day" is found in item 11.4 and is referring to when corrective actions need to be made. The MPCA is unclear regarding what the commenter is suggesting.

11.4 Permittees must inspect all erosion prevention and sediment control BMPs and Pollution Prevention Management Measures to ensure integrity and effectiveness. Permittees must repair, replace or supplement all nonfunctional BMPs with functional BMPs by the end of the next business day after discovery unless another time frame is specified in item 11.5 or 11.6. Permittees may take additional time if field conditions prevent access to the area.

Comment: The 24-hour standard is unrealistic and would constitute the tightest standard in the region if not the country. Weather events like heavy rains happen suddenly, including weekends or holidays, and imposing a 24-hour maintenance and repair standard sets-up our members for failure and enforcement actions. Recommendation: Change the language to ". . . functional BMPs within 72 hours after discovery . . ." (8-5, 19-5

Response: The MPCA changed this requirement in the 2013 permit from a 24-hour repair time to the end of the next business day. This was done to give permittees more time to make repairs – especially in the case where a BMP failure is discovered at the end of a Friday workday and wouldn't need to be repaired until the end of Monday. The MPCA believes that inspections after rain events are of paramount importance in the effort to ensure that the discharge of sediment is minimized from leaving the site. However, the MPCA agrees that it would be difficult to require maintenance activities to be performed on weekends and holidays where the proper personnel are not on site. The MPCA believes that waiting 7 calendar days, as proposed, is not appropriate given the rainfall patterns in the state of Minnesota.

11.5 During each inspection, permittees must inspect areas adjacent to the project, surface waters, including drainage ditches and conveyance systems but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil. Permittees must complete removal and stabilization within seven (7) calendar days of discovery unless precluded by legal, regulatory, or physical access constraints. Permittees must use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) days of obtaining access. Permittees are responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work in surface waters.

Comment: Clarify text to make clear that downstream conveyance systems must be inspected. (2-2)

Response: The C & D rule clarified the effects of discharges must be limited to areas in the immediate vicinity of the site therefore the MPCA limits inspections to those areas adjacent to the project.

Comment: Due to trespassing concerns, the "areas adjacent to the project" language of the permit would be better suited to state "visually inspect areas adjacent to the project and as permissible by adjacent landowners". Another commentor wants to make sure there is a provision for not recovering the sediment if the landowner does not want it removed. Please clarify what is expected of a permittee in this situation and what type of documentation is needed to demonstrate that access has been denied or sediment removal is not wanted. Permittee may not have right to legally access property for inspection or be able to obtain access through reasonable efforts. What should the permittee do then? (5-21, 26-10, 10-4, 23-4)

Response: Item 11.12 has requirements for documentation of inspections and corrective actions. In a situation where you were denied legal access, or the landowner did not want you to remove sediment you would document that as required in item 11.12. When not allowed on a property that is adjacent to your site, document this with other inspection reports. The MPCA would expect the permittee to inspect up to the edge of the site and look beyond for readily apparent problems.

Comment: Curb and gutter systems adjacent to the project should not be exempt from being inspected for sediment deposition. Large amounts of sediment can be transported through curb and gutter systems. It should also be clarified what "adjacent" means within the section or in definitions. (9-5, 41-5, 32-4)

Response: Please see item 11.6 for inspection requirements for curb and gutter systems. The term adjacent mean areas very near, next to or touching the project boundary.

Comment: This section requires permittees to "… remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems…" This provision will be very challenging to implement. Removing ALL sediment deposited in surface waters is not feasible – sediment can remain suspended in the water and disbursed over very large areas. In addition, in many cases, any sediment associated with the construction project will be indistinguishable from the sediment in place prior to the project. Finally, in some cases the sediment deposits and deltas will not be visible from the surface and their detection and removal would be very challenging and potentially create a safety risk. Therefore, we request that this provision be removed. If it is retained, it should be qualified so that it only applies to significant sediment deposits that are visible from the surface and obviously related to the construction activity. (16-4)

Response: Permittees are only required to remove sediment that is visible and where it is physically possible to remove and distinguish from background. This is as long-standing permit requirement and has not been a point of contention when determining what sediment needs to be removed.

11.6 Permittees must inspect construction site vehicle exit locations, streets and curb and gutter systems within and adjacent to the project for sedimentation from erosion or tracked sediment from vehicles. Permittees must remove sediment from all paved surfaces within one (1) calendar day of discovery or, if applicable, within a shorter time to avoid a safety hazard to users of public streets.

Comment: Sediment on paved surfaces is often caused by construction traffic exiting the project and presents a high risk of discharge to storm sewers and eventually to surface waters. Inlet protection devices are not perfect, and their safety overflow feature adds to the risk of sediment discharge. This permit item already requires removing sediment from paved surfaces sooner than within one calendar day of discovery if the sediment creates a safety hazard. Because of the high risk of discharge from paved surfaces, consider also requiring more frequent sediment removal if needed to avoid sediment discharge. Our proposed edits would simply add the underlined words to the following sentence from item 11.6: "…remove sediment from all paved surfaces within one calendar day of discovery or, if applicable, within a shorter time to avoid <u>sediment discharge</u> or a safety hazard…" (26-11)

Response: The MPCA believes that this addition to the permit would be very difficult to enforce and should not be added to the permit. However, permittees that use increase street sweeping to reduce risk of sediment discharge are appreciated for their efforts.

11.8 Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery.

Comment: The language may be better suited to say "when basin is visually ½ the storage volume of the interim or final volume" as basins are not fully graded until very end of construction. There is also safety and accessibility concerns entering the basins to manually check sediment levels. Add to the language: "within 72 hours of discovery as field conditions allow" (5-22, 27-7

Response: The MPCA only expects visual observation when determining storage volume and need of clean out. Item 11.4 allows permittees to take additional time repairing, replacing, and maintaining BMPs time if field conditions prevent access to the area.

Comment: Is it possible that the sediment would require testing? If so, 72 hours will not be adequate. (10-5)

Response: Only ponds that are expected to have pollutants in the sediments are required perform testing prior to clean out. Newly constructed ponds would not require testing.

11.9 Permittee's must inspect and photograph dewatering discharges at the beginning and once every 4 hours during operation.

Note: several comments on this section can be found in the response to section 10.2.

Comment: This section as it is redundant with the application of 10.2. (5-23, 18-7, 27-8)

Response: This is a new requirement and the MPCA believes there is value in having it in both locations.

11.11 (c) Permittees may adjust the inspection schedule described in item 11.2 as follows: c. where construction activity has been suspended due to frozen ground conditions, inspections may be suspended. Inspections must resume within 24 hours of runoff occurring, or upon resuming construction, whichever comes first.

Comment: Winter runoff inspections need more of a formal definition. What is considered a runoff event? Two consecutive days with temperatures over 32 degrees Fahrenheit? Certain number of consecutive hours over 32 degrees Fahrenheit? Clarification is requested on if there is rain on top of snow, regardless of the amount of rain, does that classify as a runoff event since the rain could cause runoff (project specific)? (5-35,

Response: Every construction site has its own specific topography, and one site may have runoff occurring while another site does not due to the nature of it's topography. The MPCA believes that a runoff event is best determined by the permittee on their specific site. A good rule of thumb is to inspect the site for runoff after back-to-back days of temperatures over 32 degrees Fahrenheit.

11.11 (d) For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met.

Comment: One commentor suggested an added level of incentive by tying reduced inspections to builders attempting the Minnesota Board of Soil and Water Resources (BWSR) Habitat Friendly Solar Program requirements. Commentor suggests adding the following language: <u>If the project is meeting the BWSR Minnesota Habitat Friendly Solar Program requirements, inspections may be suspended once the site has temporary vegetation with a density of 70% temporary uniform cover, no erosion is present in vegetated areas and emerging seeded native vegetation is observed. Minnesota Habitat Friendly Solar Program compliance shall be documented in the SWPPP</u>. (38-1)

Response: The MPCA will be directing parties interested in establishing habitat friendly vegetation to BWSR guidance. The seed mixes and recommendations by BWSR will be instrumental in the establishment of this type of vegetation in Minnesota. However, the MPCA did not want to limit this provision to the BWSR recommendations as they are focused on solar farm applications and the draft permit will be amended to allow any developer establishing habitat friendly vegetation to utilize the revised inspection schedule. Also, there may be other seed mixes intended to serve different environmental functions other than those the BWSR recommendations are focused on.

Comment: We ask of the MPCA to apply this for all project types that will have a portion of their project in native or pollinator habitat. All projects using these vegetations will require additional time for establishment and pollinator and native type vegetation is beneficial to encourage. Expanding this provision to apply to all projects would reduce the disincentive associated with establishing native and pollinator habitat and therefore likely lead to additional valuable habitat in Minnesota. (5-24, 6-14, 16-2, 23-5, 24-2, 26-12, 32-6, 39-7, 41-6, 44-4, 45-8)

Response: The MPCA agrees with this comment and has made changes to this item.

Comment: Permit item 11.11 should be reworded to apply to all projects using 100% native seed mixes, e.g., "for projects consisting of ground mounted solar panels where a pollinator habitat or native prairie. type vegetated cover is being established using 100% native (other than cover crop) seed… (24-2)

Response: Some Board of Water and Soil Resources seed mixes designed to meet the Habitat Friendly Solar Standard contain nonnative species. This is a general permit that covers many projects each year and the MPCA does not want to be so specific regarding seed mixes to allow flexibility.

Comment: Do the terms “temporary vegetation” and “temporary uniform cover” refer to cover crops consisting of annual species? Please clarify what is meant by temporary vegetation and cover.

Response: The intent of this section is to relieve the permittee of weekly inspections once the site has been stabilized with some type of vegetation. The term “temporary vegetation” includes perennial and annual species.

11.12 (h) All photographs of dewatering activities and documentation of nuisance conditions resulting from dewatering activities as described in section 10.

Comment: Photography is difficult at night. Documentation and monitoring results should be acceptable. (5-25,

Response: Please see response to item 10.2.

12.2 Permittees must place building products and landscape materials under cover (e.g., plastic sheeting or temporary roofs) or protect them by similarly effective means designed to minimize contact with stormwater. Permittees are not required to cover or protect products which are either not a source of contamination to stormwater or are designed to be exposed to stormwater.

Comment: add "at the end of the business day" as a more realistic expectation than "under cover". Without this, the MPCA would be restrict access and usage of the products for the projects. (5-26)

Response: The MCPA believes it is important to cover these materials to minimize contact with stormwater and when it is not raining, the materials can be uncovered to access as needed. The selected method of cover should be available near the materials that need protection from precipitation.

Comment: This item requires supplies to be covered to prevent contact with stormwater. It includes the term "building products," which implies materials used for vertical construction. Consider replacing the term "building products" with "construction materials" to be more inclusive of the types of construction that is covered under the permit. (26-13, 40-7)

Response: The MCPA agrees with this comment and has made changes to this item.

12.7 Permittees must take reasonable steps to prevent the discharge of spilled or leaked chemicals, including fuel, from any area where chemicals or fuel will be loaded or unloaded including the use of drip pans or absorbents unless infeasible. Permittees must ensure adequate supplies are available at all times to clean up discharged materials and that an appropriate disposal method is available for recovered spilled materials. Permittees must report and clean up spills immediately as required by Minn. Stat. 115.061, using dry clean up measures where possible.

Comment: MPCA should provide a definition of "adequate supplies". From the Code of Federal Regulations Chapter 40 Part 112: Oil Pollution Prevention, requires the owner to provide spill clean up supplies, however as numerous projects do not meet the threshold to require the application of this rule, we request of the MPCA to explain the reasoning and an attainable number for the permittee of spill supplies on site. (5-27)

Response: The general permit covers up to 2500 projects each year of all types and sizes. The MPCA believes what constitutes "adequate supplies" needs to be determined on a site specific basis for the particular project considering what is being constructed, equipment on site, the length of time the project will be under construction, project location etc.

Comment: We request of the MPCA to define reportable spills and to refer it to the current Minnesota statute 115.061: Duty to Notify; Avoiding Water Pollution. (5-28)

Response: Please see the MPCA factsheet "Reporting Construction Site Stormwater Discharges" on the MPCA Construction Stormwater Website. Reporting Construction Site Stormwater Discharges (state.mn.us)

13.6 For residential construction only, permit coverage terminates on individual lots if the structures are finished and temporary erosion prevention and downgradient perimeter control is complete, the residence sells to the homeowner, and the permittee distributes the MPCA's "Homeowner Fact Sheet" to the homeowner.

Comment: While this item applies to housing construction, it is of interest to MnDOT because of our role in providing training around the state. The phrase "temporary erosion prevention and downgradient perimeter control is complete" can have multiple meanings. This can be difficult to teach and interpret. Consider rephrasing this as follows:

"…structures are finished and ~~temporary erosion prevention and downgradient perimeter control is complete~~ <u>at the time of sale the erosion prevention and sediment controls are functional and in 100% compliance with the permit or have been removed because permanent cover has been established</u> and the permittee distributes the MPCA's "Homeowner Fact Sheet…" <u>(26-14)</u>

Response: The MPCA agrees with the concept of the comment and has made changes to this item.

Comment: The word "complete" is not universally understood. Consider the following language: "Complete" means that at the time of sale, the project has either 1) functional temporary erosion prevention over all exposed soil surfaces and sediment control practices have been installed along the entire downgradient perimeter or 2) non-hardscaped areas on the site meets the definition of established perennial vegetative cover appropriate for the individual lot. (40-8)

Response: The MPCA agrees with the concept of the comment and has made changes to this item.

13.8 When submitting the NOT Permittees must include either ground or aerial photographs showing the requirements of 13.2 have been met. Permittees are not required to take photographs of every distinct part of the site, however the conditions portrayed must be substantially similar to those areas that are not photographed. Photographs must be clear and in focus and must include the date the photo was taken.

Comment: Many of our projects are large and the soil types and vegetation conditions can vary considerably along the length of a large project. Photographs can be a good tool for accountability but the proposed wording of 13.8, particularly the term "substantially similar," leaves a lot of room for interpretation. Will you publish guidance explaining acceptable levels of photo documentation for sites of various sizes and acceptable documentation that the predominant plant species depicted are perennial rather than annual species? As described during the webinar, please include detailed information in the permit or a fact sheet of what the photo requirements are, such as how many, what needs to be included, etc. Are there requirements of how permittees are expected to include the prove of date requirement? (45-4, 45-5, 26-15)

Response: The MPCA plans to have guidance on this new requirement.

Comment: The City suggests the MPCA provide an exemption for projects that occur within an MS4 community and receive proper local permits. The Municipal Separate Storm Sewer System (MS4) Permit already requires MS4 Permittees enforce regulatory mechanisms that are at least as stringent as the Construction Stormwater General Permit. The permit currently requires that all areas consist of uniform perennial vegetation before permit termination can occur. The proposed section creates an unnecessary redundancy for permit termination. Unless there is evidence that this will improve final site conditions, this provision would require additional resources from MS4 and Construction Stormwater Permittees while providing minimum benefit. The City supports projects outside of MS4 communities having to abide by this permit termination condition if deemed appropriate by subjected parties. (44-5)

Response: The MS4 permit contains a specific list of items regarding construction stormwater permitting which are required in city ordinance. An exemption for this termination requirement would be most appropriately found in the next MS4 permit. It has not yet been determined if MS4s will be required to collect photographs when accepting permit terminations. Please comment on the next MS4 permit.

14.1 Temporary Sediment Basins

Comment: We are hoping for some additional clarification added to this section. We often have non-compliance issues of turbid water passively skimming off a temporary sediment basin and leaving the site, or installed storm sewer outlet structures taking on turbid water. Could language be added such as "Permittees must not allow turbid water to discharge offsite from their temporary sediment basin. If turbid water persists, additional filtering methods required." or something similar? (12-1)

Response: The MPCA believes that item 6.4 of the permit covers the situation described in the comment. When a temporary sediment basin is discharging turbid water off site or to surface water item 6.4 would require modified or additional BMPs to correct the problem. The MPCA does not want to limit options available to permittees such as filtering because additional BMPs upstream of the temporary sediment basin may solve the problem.

15.2 Permittees must design the project so all stormwater discharged from the project during and after construction activities does not cause a violation of state water quality standards, including nuisance conditions, erosion in receiving channels or on downslope properties, or a significant adverse impact to wetlands caused by inundation or decrease of flow.

Comment: add “and implement” and “or contribute to” so the statement reads: Permittees must design and implement the project so all stormwater discharged from the project during and after construction activities does not cause or contribute to a violation of state water quality standards…” (11-6)

Response: The MPCA will modify this section of the permit to be clear that the design must include implementation such that a violation of water quality standards does not occur.

15.3 Permittees must design and construct a permanent stormwater treatment system to treat the water quality volume if the project's ultimate development replaces vegetation and/or other pervious surfaces creating a net increase of one (1) or more acres of cumulative impervious surface.

Comment: Permanent stormwater treatment requirement should apply to all newly constructed and fully reconstructed impervious surfaces on permitted projects. In most cases in urbanized areas, very little to no water quality treatment or volume reduction would be required based on the language in Parts 15.3 and 15.4 that requires water quality treatment for “a net increase of one (1) or more acres of cumulative impervious surface.” (6-1)

Response: The Agency chose not to include a redevelopment standard in the construction stormwater permit as it applies to all construction activity across the State and may not be appropriate or necessary in some areas. The agency is also the permitting authority for the Municipal Stormwater (MS4) permit which regulates stormwater in the urban areas of the state. The MS4 permit does require the permitted cities to have a redevelopment standard for builders who are constructing in those cities. Several commentors noted the discrepancy between the 2 permits.

There are many undeveloped areas of the state where surface water quality is heavily degraded due to agriculture and not because of urban development. In these areas, a redevelopment standard would not likely translate into better water quality. There are also areas of the State where water quality remains high due to the watershed being mostly undeveloped. Watersheds with a low percentage of impervious surfaces generally do not exhibit surface water degradation due to development. For these areas, a redevelopment

requirement is not necessary to improve water quality. Since the MS4 permit regulates construction activity in the urbanized areas of the state where intense development has occurred for many years without stormwater treatment requirements, a redevelopment standard is necessary to reverse water quality degradation due to development.

15.9 For linear projects where permittees cannot treat the entire water quality volume within the existing right-of-way, permittees must make a reasonable attempt to obtain additional right-of-way, easement or other permission for stormwater treatment during the project planning process. Documentation of these attempts must be in the SWPPP. Permittees must still consider volume reduction practices first as described in item 15.5. If permittees cannot obtain additional right-of-way, easement or other permission, they must maximize the treatment of the water quality volume prior to discharge to surface waters.

Comment: Please consider adding to item 15.9 to explicitly allow treatment on a nearby project under the same common plan of development if it will provide more environmental benefit than if it were built on the project that triggered the requirement for permanent treatment. Possible wording for the permit could read: Permittees can build permanent stormwater treatment on other projects within the same common plan of development if the treatment on the other project will provide a greater environmental benefit. Stormwater treatment on the other project must be constructed prior to or up to two years after the project that triggers the requirement for permanent stormwater treatment.

Response: The general permit language requires permittees to provide treatment on-site whenever possible. For linear projects, flexibility is provided when on-site treatment is not an option or obtaining additional right-of-way is not feasible. The MPCA believes that this concept in the comment is appropriate in limited situations and suggests that permittees work with the agency on a case-by-case basis to ensure adequate treatment of new impervious surfaces occurs.

16.7 Permittees must design infiltration systems to provide a water quality volume (calculated as an instantaneous volume) of one (1) inch of runoff, or one (1) inch minus the volume of stormwater treated by another system on the site, from the net increase of impervious surfaces created by the project.

Comment: One commentor states the requirement for instantaneous volume should be reconsidered for certain practices such as vegetated swales, but is not asking for a permit change at this time. (39-1)

Response: The MPCA will consider making the suggested changes in the next permit cycle.

16.11 For design purposes, permittees must divide field measured infiltration rates by 2 as a safety factor or permittees can use soil-boring results with the infiltration rate chart in the Minnesota Stormwater Manual to determine design infiltration rates. When soil borings indicate type A soils, permittees should perform field measurements to verify the rate is not above 8.3 inches per hour. This permit prohibits infiltration if the field measured infiltration rate is above 8.3 inches per hour.

Comment: The City requests to either modify the last sentence to also be divided by 2 or add a new permit section for just the last sentence. Reasoning: The City requests the reason/research for a safety factor of 2 for design purposes, but not for the prohibition of infiltration. If current research supports prohibiting infiltration if the field measured infiltration rate is above 8.3 inches per hour, please add a new permit section just for this sentence to eliminate potential confusion related to the safety factor of 2. (37-2)

Response: The safety factor of 2 was added to the permit to account for the initial decrease in infiltration rates often observed immediately following construction. These rates typically level off as time continues. The safety factor helps mitigate this observed characteristic. The commentor also suggests a separate section for the

prohibition, which there already is. Section 16.16 of the permit contains the prohibition for high infiltration rate soils. This prohibition in 16.16 simply states "This permit prohibits permittees from constructing infiltration systems in areas where soil infiltration rates are field measured at more than 8.3 inches per hour…" which the MPCA believes is a clear statement. The prohibition is also repeated in Section 16.11 which was suggested by commentors in the past. The MPCA believes this section, as written, is clear.

Comment: The commenter strongly suggests the Agency re-examine this restriction. Field-measured values should be encouraged more aggressively. In addition, research conducted at Villanova University indicates most infiltration practices overperform. This is because use of one-dimensional infiltration rates, as specified in the Minnesota Stormwater Manual for different soil types, does not represent actual flow conditions, which are three-dimensional. In addition, the long-term effects of vegetation, specifically native perennial vegetation, have been shown to restore and maintain infiltration rates in non-stormwater applications. There is insufficient research on this topic for stormwater practices, but it is likely to be an area of active research in the coming years. (39-2)

Response: The MPCA agrees field measured rates are preferred however since this a general permit covering all types of construction and all types of builders some flexibility is needed. Many of the projects permitted by this program are small, simple and can be served by simple depression in the ground where simply verifying the soils are not clay might be enough to provide a successful stormwater treatment system. The MPCA also agrees infiltration rates are more complicated than 1 dimensional rate and more research is needed. The MPCA is always reviewing studies and research to better inform our permit language and will continue to review this issue in the future.

16.12 Permittees must employ appropriate on-site testing to ensure a minimum of three (3) feet of separation from the seasonally saturated soils (or from bedrock) and the bottom of the proposed infiltration system. At least 3 feet of soil above the seasonally saturated soils or bedrock must consist of native undisturbed soils.

Comment: We Strongly recommend that clarification is provided that seasonally saturated soils are indicated by redoximorphic features NOT one time groundwater measurements. (6-15)

Response: The MPCA believes the permit adequately covers this concept with the definition of seasonally saturated soils in item 25.28 and no further changes to the permit are needed. The MPCA agrees the best indication of groundwater elevation is redoximorphic features. This is covered in detail in the stormwater manual.

Comment: We strongly recommend removal of this addition. We have several permitted sites where soil corrections were completed for the 3 feet of soils between the bottom of the infiltration system and seasonally saturated soils due to contaminated or poorly infiltrating soils and this material replaced with engineered media or sand. We feel that this decision should be left to the engineer. We prioritize the use of infiltration and feel that this would unnecessarily limit many sites to filtration. Bringing in fill to raise grade of low sites has been a great approach to utilize infiltration. How is non-native fill any different than utilizing sand filters with underdrains? The justification for the requirement that the 3 ft of separation between groundwater or bedrock and the bottom of an infiltration system must be native undisturbed soils is unclear. This would make volume control even more difficult to achieve for sites in high groundwater areas. (6-16, 9-6, 10-7, 26-18, 28-4)

Response: The MPCA agrees with this comment and will remove the changes.

16.16 This permit prohibits permittees from constructing infiltration systems in areas where soil infiltration rates are field measured at more than 8.3 inches per hour unless they amend soils to slow the infiltration rate below 8.3 inches per hour.

Comment: It is common practice to construct infiltration basins in areas where the in-situ soils drain faster than 8.3 inches per hour. This is corrected by installing custom filter media on top of the in-situ soils that has been adjusted to reduce the infiltration rate to below 8.3 inches per hour. However, it is also common to have confusion about whether infiltration is even allowed in soils that drain faster than 8.3 inches per hour. Consider publishing guidance to explain (with diagrams) that infiltration is acceptable in fast draining soils as long as the filtration media installed on top achieves the target infiltration rate. (26-19)

Response: The MPCA stormwater manual already contains guidance on this issue. The MPCA guidance recommends a certain depth of amended soils to slow the infiltration rate and does not require amendments below that depth.

Comment: Section 16.16 prohibits infiltration on soils with infiltration rates exceeding 8.3 inches per hour and disincentivizes field measurement of infiltration, which is contrary to the language in Section 16.11. There is no rationale established in MPCA guidance that supports this value. Restricting infiltration at higher rates presents an obstacle to maximizing retention, which is at odds with the concepts of GSI. (39-3)

Response: Although the maximum infiltration rate at which treatment no longer occurs is not universally agreed upon, most professionals do agree there will be diminishing results at some point as the rates increases. The MPCA is always reviewing studies and research to better inform our permit language and will continue to review this issue in the future.

16.17 This permit prohibits permittees from constructing infiltration systems in areas with less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock. At least 3 feet of soil above the seasonally saturated soils or bedrock must consist of native undisturbed soils.

Comment: Change the wording from “native undisturbed soils” to “pre-project soils” since undisturbed native soils in urban areas are rarely found. There can be problems with the use of only native/pre-project soils as they could be contaminated or have poor infiltration rates whereas approved engineered fill will not as well as projects with a significant amount of fill brought into the site or when there isn’t three feet of soils, adding soils could allow for infiltration. One commenter strongly recommends removal of this addition. We have several permitted sites where soil corrections were completed for the 3 feet of soils between the bottom of the infiltration system and seasonally saturated soils due to contaminated or poorly infiltrating soils and this material replaced with engineered media or sand. We feel that this decision should be left to the engineer. We prioritize the use of infiltration and feel that this would unnecessarily limit many sites to filtration. (1-3, 5-29, 32-7,6-16)

Response: It is preferred that infiltration occur through native undisturbed soils, however the MPCA recognizes this may not be practical since most of the state has been disturbed in some way over time. The MPCA has removed this permit addition.

Comment: Sections 16.17, 17.9 and 17.10 specify a 3-foot separation distance from the seasonal highwater table. As far as I can tell, the 3-foot separation is based on septic system requirements. Considering just water quality, pollutant loading from septic drain fields is considerably higher than in most stormwater situations. The Minnesota Stormwater Manual indicates in systems with engineered media most of the pollutant attenuation occurs in the upper 6 inches. North Carolina, utilizing research conducted by Dr. William Hunt, one of the leading stormwater researchers in the country, employs a separation distance of two (2) feet.

Again, I'm not recommending a change in the draft permit language, but strongly recommend the Agency look at this restriction and consider modifying it if appropriate. (39-6)

Response: The 3-foot separation distance and recommended engineered media depth are different issues. The Minnesota Stormwater manual recommends 2.5 feet of engineered media in a filtration system. The MPCA believes for an infiltration system the 3-foot separation distance is a conservative requirement and is intended to protect groundwater. Pollutants that reach groundwater are very difficult to detect and costly to remove. The MPCA is always reviewing studies and research to better inform our permit language and will continue to review this issue in the future.

16.18 This permit prohibits permittees from constructing infiltration systems in areas of predominately Hydrologic Soil Group type D soils (clay).

Comment: All soils can infiltrate to some extent. Why not encourage infiltration to the extent possible on any soil? What is a soil with an infiltration rate of 0.15 inches per hour, a C or D soil? Is capture and re-use on an area of D soils allowed? (39-4)

Response: The MPCA has seen many failures of infiltration systems even in good soils and does not want to require infiltration in D soils where there is a high likelihood of failure. This is a general permit that expires at the end of construction and the MPCA wants to ensure that required treatment systems have long term functionality. Permittees are allowed to design infiltration systems that achieve infiltration beyond the water quality volume in any type of soil. The MPCA considers stormwater reuse for irrigation to be a compliant method for stormwater treatment even if the irrigation area consists of clay soils. The MPCA believes that if the stormwater is applied at a slow rate and is spread out over a wide area, the clay soils will not produce runoff during irrigation. While 0.15 inches per hour is between the listed values in the Minnesota Stormwater Manual, its below the 0.2 inches per hour for C soils and would be considered a D soil.

17.5 Permittees must use a pretreatment device such as a vegetated filter strip, small sedimentation basin, water quality inlet, forebay or hydrodynamic separator to remove settleable solids, floating materials, and oils and grease from the runoff to the maximum extent practicable, before runoff enters the filtration system.

Comment: language adjustment: "…forebay**,** or hydrodynamic separator **or equivalent** to remove settleable solids…" Pretreatment options are variable and evolving and may include other practices that those listed directly. Comma should be after forebay. (6-17)

Response: The MPCA agrees pretreatment options are variable. The requirement uses the phrase "such as" to reflect the variability and does not believe changes to this item are necessary.

17.6 Permittees must design filtration systems to treat a water quality volume (calculated as an instantaneous volume) of one (1) inch of runoff, or one (1) inch minus the volume of stormwater treated by another system on the site, from the net increase of impervious surfaces created by the project.

Comment: Section 17.6 does not clarify whether a permittee can take credit for volume reduction in practices with an underdrain. The Minimal Impact Design Standards Calculator can be used to calculate volume retention in these practices. Like the above comment on D soils, why not incentivize infiltration by specifying that retention credits can be taken for filtration practices? (39-5)

Response: The general permit requires infiltration on site where sites are favorable, once infiltration is ruled out on a site, filtration practices can be used. Permittees can raise the underdrain on these practices to promote infiltration in excess of the water quality volume, even though it is not required by the permit.

19.2 When the entire water quality volume cannot be treated by volume reduction practices on site, retained onsite, permittees can use or create regional wet sedimentation basins provided they are constructed basins, not a natural wetland or water body, (wetlands used as regional basins must be mitigated for, see Section 22). The owner must ensure the regional basin conforms to all requirements for a wet sedimentation basin as described in items 18.3 through 18.10 and must be large enough to account for the entire area that drains to the regional basin. Permittees must verify that the regional basin will discharge at no more than 5.66 cfs per acre of surface area of the basin and must provide a live storage volume of one-inch times all the impervious area draining to the basin. Permittees cannot significantly degrade waterways between the project and the regional basin. The owner must obtain written authorization from the applicable LGU or private entity that owns and maintains the regional basin.

Comment: The current NPDES-CSW permit the use of "onsite" versus in the NPDES-CSW draft permit it is "on site". (5-30)

Response: The MPCA has changed "on site" or "onsite" to "on-site" throughout the permit.

20.2 Permittees must keep the SWPPP, including all changes to it, and inspections and maintenance records at the site during normal working hours by permittees who have operational control of that portion of the site.

Comment: language adjustment for clarity: "Permittees must keep the SWPPP on site during normal working hours with personnel who have operational control over the applicable portion of the site, including all changes to the SWPPP, inspections, and maintenance records." (6-18)

Response The MPCA agrees the proposed language in the comment is clearer. This change has been made.

Comment: This language does not reflect the current state of record-keeping, specifically electronic records. We know the federal EPA and other states allow the use of electronic storage of SWPPPs, Inspection Reports, etc. Recommendation: Change the language to ". . . inspections and maintenance records at the site or electronically available at the site during normal working hours by permittees . . ." (8-6, 17-2, 19-6)

Response: The MPCA agrees with this comment and the change has been made to this item.

23.12 Permittees must design the permanent stormwater treatment system so the discharge from the project minimizes any increase in the temperature of trout streams resulting from the one (1) and two (2) year 24-hour precipitation events. This includes all tributaries of designated trout streams located within the same Public Land Survey System (PLSS) Section. Permittees must incorporate one or more of the following measures, in order of preference:

- **a.** Provide stormwater infiltration or other volume reduction practices as described in item 15.4 and 15.5, to reduce runoff. Infiltration systems must discharge all stormwater routed to the system within 24 hours.
- **b.** Provide stormwater filtration as described in Section 17. Filtration systems must discharge all stormwater routed to the system within 24 hours.
- **c.** Minimize the discharge from connected impervious surfaces by discharging to vegetated areas, or grass swales, and through the use of other non-structural controls.
- **d.** If ponding is used, the design must include an appropriate combination of measures such as shading, vegetated swale discharges or constructed wetland treatment cells that limit temperature increases. The pond must be designed as a dry pond and should draw down in 24 hours or less.
- **e.** Other methods that minimize any increase in the temperature of the trout stream.

Comment: Is the 24-hour drawdown required for underground systems or systems that are not subject to solar gain? (41-7)

Response: At this time the 24-hour drawdown requirement would apply to underground systems. The MPCA is always reviewing studies and research to better inform our permit language and will continue to review this issue in the future.

24.2 If the MPCA determines that an individual permit would more appropriately regulate the construction activity, the MPCA may require an individual permit to continue the construction activity. Coverage under this general permit will remain in effect until the MPCA issues an individual permit.

Comment: Please revise so that if the MPCA determines that an individual permit is required, MPCA may deny or terminate coverage under the general permit and require an individual permit application. See 40 CFR 122.28(b)(3). (11-7)

Response: The MPCA believes that the current permit language is adequate and does not believe a change is necessary.

24.5 In addition to the requirement found in section 20, permittees must make the SWPPP, including all inspection reports, maintenance records, training records and other information required by this permit, available to federal, state, and local officials within three (3) days upon request for the duration of the permit and for three (3) years following the NOT.

Comment: We request of the MPCA to add this to Section 20 as it will fit better there. (5-31)

Response: The MPCA believes this requirement is in the appropriate location.

25.15 *definition* - **"Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, driveways, parking lots, and concrete, asphalt, or gravel roads. Bridges over surface waters are considered impervious surfaces. Recreational trails that are distinctly set apart from a roadway and intended for pedestrians or bicycles are not considered impervious surfaces. Sidewalks within residential areas and alongside roadways must still be included as impervious surfaces.**

Comment: Strongly disagree with exemptions for any type of impervious transportation facility, independent of mode and purpose. Trails receive winter snow and ice maintenance, and some trails are very susceptible to erosion. (41-8)

Response: The MPCA does not believe this exclusion in the impervious surface definition will result in any negative water quality impacts. The trails intended to be excluded as impervious surfaces are areas where stormwater runoff cannot realistically be collected and treated using a traditional system such as a wet sedimentation basin or infiltration basin. In this situation, relying on overland flow may be the only realistic option for stormwater treatment. However, these trails will often have a large enough vegetated buffer to mitigate fully for the impervious surfaces.

Comment: Many commenters stated that “distinctly set apart” needs more guidance. Many commentors stated the requirement should be tied to other parameters such as width of path or buffer width between the path and the road. Some commentors state that any sidewalk with any buffer should be exempt from the definition of impervious surfaces. The term “residential areas” is not defined. Does this include sidewalks in industrial areas? (1-4, 2-4, 9-7, 10-8, 21-2, 26-17, 29-1, 30-4, 34-4, 45-9)

Response: The MPCA believes when trails or sidewalks are constructed along with a roadway, the impervious surfaces can simply be included with the roadway impervious surface calculations, as some type of traditional stormwater system will already be required. Existing roadways often have a stormwater treatment system already in place. Although there may still be some projects where providing stormwater treatment for a sidewalk will be cumbersome, the MPCA believes this permit revision will alleviate many of the situations where constructing a compliant stormwater treatment system for a non-motorized recreational trail is not practical or necessary to prevent long term water quality impacts. Although the typical sidewalk buffer can provide treatment, they often do not over time as the medians can raise up. Also, all stormwater management, including buffers, constructed to meet a regulation should include a drainage easement, which is not always practical or desired in residential areas.

Some commentors inquired why this exclusion is limited to residential areas. The MPCA agrees the new exclusion should not be associated with the development type. The exclusion should be based on whether or not the trail is parallel or generally following a roadway. Trails that are parallel to a roadway will in most cases have some option for proper stormwater management whereas trails away from roads will not. Also, trails that are not parallel to a roadway will in most cases have a significant buffer to mitigate stormwater runoff.

Comment: Some commentors stated more clarification is need for the expected use of the tail. Consider changing to "distinctly set apart from a roadway intended for non-motorized and motorized recreational uses are not considered impervious" for this section. Consider not limiting recreational uses of trails to pedestrian or bicycling—For example, this could also apply to skiing, snowmobiling trails, etc. (5-32, 30-4)

Response: The MPCA believes motorized trails have a higher potential for water quality impacts from sediment and other pollutants associated with motorized vehicles and therefore continue will be included as impervious surfaces that require permanent stormwater treatment.

Comment: CRWD strongly recommends language adjustment for clarity. "Recreational trails … are considered disconnected impervious surfaces. Disconnected impervious surfaces are impervious surfaces that direct runoff to adjacent pervious areas where it can be infiltrated." CRWD would support MPCA efforts to create a fact sheet providing guidance for calculating disconnected impervious. (6-19)

Response: The MPCA believes that the concept of disconnected impervious surfaces would be difficult to implement in a statewide general permit. Areas where runoff goes to vegetated areas to infiltrate would be considered treatment practices and would require permanent drainage easements to ensure the longevity and permanent nature of the infiltration practice. This would be very difficult to ensure in the general permit.

25.22 *definition:* **"Permanent Cover" means surface types that will prevent soil failure under erosive conditions. Examples include: gravel, concrete, perennial cover, or other landscaped material that will permanently arrest soil erosion. Permittees must establish a uniform perennial vegetative cover (i.e., evenly distributed, without large bare areas) with a density of 70 percent of the native background vegetative cover on all areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include temporary BMPs such as wood fiber blanket, mulch, and rolled erosion control products.**

Comment: Requests clarification if "70 percent of the native background vegetative cover" would permit an area to be approved with less than 70% density if the area existed as non-vegetated prior to ground disturbance. This is a common misconception and a frequent point of contention during closure inspections. Recommend language adjustment "… of 70% of planned vegetative cover on all areas …"

Response: The MPCA agrees the vegetative cover at the site prior to construction is not the benchmark for determining the 70% cover requirement. The benchmark condition is the full vegetative cover one would expect on undeveloped land in the same area with similar characteristics of the site such as slope and soil type. The MPCA will adjust the language similar to the EPA permit. The EPA permit states, “provide 70 percent or more of the vegetative cover native to local undisturbed areas”.
