

November 23, 2022

A.J. Kitchen
U.S. Army Corps of Engineers
St. Paul District, Regulatory Division
Brookfield Field Office
250 N. Sunnyslope Road, Suite 296
Brookfield, WI 53005

RE: Regional General Permits Minnesota Pollution Control Agency 401 Certification
Clean Water Act Section 401 Water Quality Certification

Dear A.J. Kitchen:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under the authority of Section 401 of the Clean Water Act (CWA) (33 U.S.C § 1251 et seq.), Minn. Stat. chs. 115 and Minn. R. 7001.1400 – 7001.1470, chs. 7050, 7052, and 7053. The MPCA has examined the draft Regional General Permits (RGPs) and request for 401 Certification by the U.S. Army Corps of Engineers (USACE) for the following RGPs: Bank Stabilization Habitat Improvement, Beach Creation and Nourishment, Beach Raking, Minor Discharges, Piers and Docks, Transportation, Utility, and Wildlife Ponds, and is requiring conditions through the 401 Water Quality Certification.

RGPs authorize work in Waters of the United States, and USACE can directly enforce water quality certification conditions within the scope of its permitting authority. Minnesota's water quality standards apply to all "waters of the state" which includes all waters of the United States as well as other waters. "Waters of the state" includes all lakes, streams, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water in or bordering Minnesota (Minn. Stat. § 115.01, subd. 22).

Activities that impact waters of the state that are not waters of the United States must comply with state law and state water quality standards. The MPCA has jurisdiction over waters of the state and can enforce the conditions below in waters of the state. The term "waters" as used in the conditions of this Certification, apply to the respective jurisdiction of each agency.

Certain conditions, as identified below, may require case-by-case review and interpretation by the MPCA. After such interpretation, the conditions are enforceable by the MPCA and USACE.

Waters Excluded from 401 Certification of the RGPs

Physical Alterations of 300 or More Linear Feet of a Tributary, Stream or River.

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that protect and maintain existing and beneficial uses. For this reason, the MPCA denies

Certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) for projects that will cause a physical alteration of 300 or more linear feet of a tributary, stream or river. Proposers of these projects must instead obtain an individual 401 certification from the MPCA. Minn. R. ch. 7050.0255 subp. 30, defines “physical alteration” as “a physical change that degrades surface waters such as the dredging, filling, draining, or permanent inundation of a surface water.” The MPCA Authority: Minn. R. ch. 7050.0255. Physical alterations to smaller streams can potentially have significant impacts on overall water quality. The MPCA must individually review these projects for compliance with Water Quality Standards (WQS).

Physical Alteration of any Linear Amount of a Trout Stream or Tributary to a Trout Stream.

The MPCA’s antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that protect and maintain existing and beneficial uses. For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) for projects that will cause a physical alteration to a Trout Stream or tributaries to a Trout Stream, listed in Minn. R. 6264.0050, subp. 4. Proposers of these projects must instead obtain an individual 401 certification from the MPCA. Minn. R. ch. 7050.0255 subp. 30, defines “physical alteration” as “a physical change that degrades surface waters such as the dredging, filling, draining, or permanent inundation of a surface water.” The MPCA Authority: Minn. R. ch. 7050.0255. Physical alterations to any Trout Stream or its tributaries can potentially have significant impacts on overall water quality. The MPCA must individually review these projects for compliance with Water Quality Standards (WQS).

Exceptional Aquatic Life Use Waters

The MPCA’s antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that protect and maintain existing and beneficial uses. For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) for projects that will cause a physical alteration of Exceptional Aquatic Life Use Waters. Exceptional Aquatic Life Use Waters are very susceptible to disturbance. An increase in water temperature or sedimentation can effectively destroy this unique water habitat. Proposers of projects that will potentially impact Exceptional Aquatic Life Use Waters directly or indirectly by impacting stream hydrology, connectivity, chemistry and habitat are required to obtain an individual Certification. The MPCA Authority: Minn. R. ch. 7050.0222 subps. 2c, 3c and 4c. Because Exceptional Aquatic Life Use Waters are very susceptible to disturbance, the MPCA must individually review projects for compliance with WQS for the following water bodies: More information on the water bodies is located at the 401 webpage: <https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>.

	Water Body Name	Miles	Reach
1	Cross River	14.84	Fourmile Cr. To Lk Superior
2	Greenwood River	7.29	Greenwood Lk to Brule R
3	Irish Creek	7.07	Headwaters to Swamp River Reservoir
4	Kimball Creek	8.98	Headwaters to Lk Superior
5	Manitou River	11.07	S Br Manitou R to Lk Superior
6	Mistletoe Creek	4.56	Halls Pond to Poplar R
7	Two Island River	11.44	Unnamed cr to Lk Superior
8	Little Devil Track River	2.71	Unnamed cr to Devil Track R
9	Heartbreak Creek	3.79	Unnamed cr to Temperance R
10	Houghtaling Creek	1.7	Unnamed cr to Unnamed cr

11	Caribou River	5.51	Amenda Cr to Unnamed cr
12	Caribou River	1.18	Unnamed cr to Unnamed cr
13	Crown Creek	1.68	Fry Cr to Unnamed cr
14	Cascade River	14.46	N Br Cascade R to Lk Superior
15	Spruce Creek (Deer Yard Creek)	3.21	Unnamed cr (Ward Lk outlet) to Lk Superior
16	Bluff Creek	2.68	East Twin Lk (16-0145-00) to South Brule R
17	Elbow Creek	0.81	Unnamed cr to Devil Track R
18	Wanless Creek	2.73	Headwaters (Dam Five Lk 38-0053-00) to Houghtaling Cr
19	Lullaby Creek	1.82	Headwaters (Lullaby Lk 16-0100-00) to Brule R
20	Manitou River, South Branch	5.42	Junction Cr to Mantiou R
21	Sixmile Creek	3.32	Unnamed cr to Temperance R
22	Swamp River	1.91	Stevens Lk to T63 R4E S20, east line
23	Brule River	12.58	BWCA boundary to South Brule R
24	Baptism River, West Branch	2.68	-91.3381 47.4702 to Crown Cr
25	Kadunce River (Kadunce Creek)	2.69	-90.1484 47.8261 to Lk Superior
26	Portage Brook	5.85	CSAH 16 to Pigeon R
27	Temperance River	15.05	T61 R4W S4, north line to Sixmile Cr
28	Baptism River, East Branch	3.28	Lk Twenty-three to Blesner Cr
29	Woods Creek	1.84	-90.2650 47.7964 to Devil Track R
30	Devil Track River	6.66	Devil Track Lk to Unnamed cr
31	Humphrey Creek	3.67	Headwaters to Boulder Cr
32	Coyote Creek	1	Unnamed cr to Pequaywan Lk
33	Cloquet River	13.95	Headwaters (Katherine Lk 38-0538-00) to T57 R10 S32, south line
34	Cloquet River	26.44	T56 R10 S5, north line to W Br Cloquet River
35	Cloquet River	28.82	W Br Cloquet R to Island Lake Reservoir
36	Schoolcraft River	7.78	Frontenac Cr to Plantagenet Lk
37	Prairie River, West Fork	2.31	Hartley Lk to Prairie R
38	Willow River Ditch	3.3	Willow River Flowage to Moose R
39	Tamarack River	7.52	Little Tamarack R to Prairie R
40	Prairie River	11.31	Day Bk to Balsam Cr
41	Bee Creek (Waterloo Creek)	3.45	T101 R6W S29, north line to MN/IA border
42	Tulaby Creek	5.08	Tulaby Lk to McCraney Lk
43	Little Isabella River	11.02	Headwaters to Flat Horn Lk
44	Snake River	1.71	T61 R9W S7, south line to T61 R10W S12, north line
45	Jack Pine Creek	7.24	Headwaters to Mitawan Cr
46	Mitawan Creek	8.18	Kitigan Lk to T61 R9W S13, north line

47	Denley Creek	3.13	Nira Cr to Stony R
48	Cross River	3.79	Ham Lake Outlet to Gunflint Lk
49	Bezhik Creek	0.9	BWCA boundary to Moose R

Prohibited Outstanding Resource Value Waters

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that "prohibit a net increase in loading or other causes of degradation to prohibited outstanding resource value waters." For this reason, the MPCA denies certification without prejudice for projects resulting in permanent (impacts longer than 12 months) to prohibited outstanding resource value waters (ORVWs). The MPCA does not find that RGP authorizations for broad categories of activities, where specific impacts may vary, is appropriate for activities in these waters. Therefore, the MPCA excludes from this general 401 Certification of the RGPs any project taking place in whole or in part in a listed prohibited ORVW in Minnesota, as identified in Minn. R. 7050.0335, subp. 3, and listed below. Such projects, though authorized by the RGPs, require individual 401 Certification from the MPCA (Minn. R. Chs. 7050, 7001).

Minn. R. 7050.0335 DESIGNATED OUTSTANDING RESOURCE VALUE WATERS.

Subp.3. Prohibited outstanding resource value waters. For the purposes of parts 7050.0250 to 7050.0335, the following surface waters are prohibited outstanding resource value waters:

- A. Waters within the Boundary Waters Canoe Area Wilderness (BWCAW);
- B. Those portions of Lake Superior north of latitude 47 degrees, 57 minutes, 13 seconds, east of Hat Point, south of the Minnesota-Ontario boundary, and west of the Minnesota-Michigan boundary;
- C. Waters within Voyageurs National Park;
- D. The following scientific and natural areas:
 1. Boot Lake, Anoka County
 2. Kettle River in Sections 15, 22, 23, T.41, R.20, Pine County;
 3. Pennington Bog, Beltrami County;
 4. Purvis Lake-Ober Foundation, St. Louis County;
 5. Waters within the borders of Itasca Wilderness Sanctuary, Clearwater County;
 6. Iron Springs Bog, Clearwater County;
 7. Wolsfeld Woods, Hennepin County;
 8. Green Water Lake, Becker County;
 9. Black Dog Preserve, Dakota County;
 10. Prairie Bush Clover, Jackson County;
 11. Black Lake Bog, Pine County;
 12. Pembina Trail Preserve, Polk County; and
 13. Falls Creek Washington County.
- E. The following state and federal designated wild river segments:
 1. Kettle River from the site of the former dam at Sandstone to its confluence with the St. Croix River; and
 2. Rum River from Ogechie Lake spillway to the northernmost confluence with Lake Onamia.

Restricted Outstanding Resource Value Waters

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that "restrict net increases in loading or other causes of degradation as necessary to maintain the exceptional characteristics for which the restricted outstanding resource value waters were designated." Projects authorized by the RGPs in the following Restricted Outstanding Resource Value Waters (ORVWs) must meet the additional BMPs listed under "Additional BMPs for Restricted Outstanding Resource Value Waters" below, in order to ensure protection of the exceptional characteristics of these waters. Projects that will potentially impact calcareous fens identified as restricted ORVWs in Minn. R. 7050.0335, subp. 1 are not required to meet the additional BMPs below as they are either excluded from RGP coverage altogether (Minor Discharges and Beach Creation and Nourishment) or are required to have an approved Fen Management Plan from the Minnesota DNR (Transportation, Utility, Beach Raking, Piers and Docks, and Wildlife Ponds) which is sufficient to ensure maintenance of the exceptional characteristics for which the fens were designated as restricted ORVWs.

Minn. R. 7050.0335 DESIGNATED OUTSTANDING RESOURCE VALUE WATERS.

Subpart 1. Restricted outstanding resource value waters. For the purposes of parts 7050.0250 to 7050.0335, the following waters are restricted outstanding resource value waters:

- A. Lake Superior, except those portions identified in subpart 3, item B as a prohibited outstanding resource value water;
- B. Those portions of the Mississippi River from Lake Itasca to the southerly border of Morrison County that are included in the Mississippi Headwaters Board comprehensive plan dated February 12, 1981;
- C. Lake trout lakes, both existing and potential, as determined by the commissioner in conjunction with DNR, outside the boundaries of the BWCAW and Voyageurs National Park and identified in parts 7050.0460 to 7050.0470;
- D. The following state and federal designated scenic or recreational river segments:
 - 1) St. Croix River, entire length;
 - 2) Cannon River from northern city limits of Faribault to its confluence with the Mississippi River;
 - 3) North Fork of the Crow River from Lake Koronis outlet to the Meeker-Wright County line;
 - 4) Kettle River from north Pine County line to the site of the former dam at Sandstone;
 - 5) Minnesota River from Lac qui Parle dam to Redwood County State-Aid Highway 11;
 - 6) Mississippi River from County State-Aid Highway 7 bridge in St. Cloud to northwestern city limits of Anoka;
 - 7) Rum River from State Highway 27 bridge in Onamia to Madison and Rice Streets in Anoka.

Additional BMPs for Restricted Outstanding Resource Value Waters:

1. The permittee must have a written plan, kept on site, that shows a practicable means of control to prevent an increase in TSS in the water. It must include methods to minimize degradation of water, including avoidance of impacts, construction phasing, seasonal construction where practicable, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through adequate BMPs, and other management practices published by state agencies (Minn. R. Chs 7050, 7001).

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforce this condition

independent of the RGPs. If there are questions regarding proper implementation of this condition, the MPCA will determine compliance, as needed, on a case-by-case basis. The point of contact at the MPCA for questions regarding this condition is 401Certification.pca@state.mn.us.

2. The permittee must inspect the site daily to ensure that BMPs are functioning properly and to determine if additional BMPs are required. Additionally, permittee must allow representatives from the MPCA to inspect the project site and the authorized activity to ensure that the project is constructed, and BMPs maintained, in accordance with this Certification (Minn. R. Chs. 7050, 7001).
3. Where practicable, the permittee must establish and maintain an undisturbed buffer zone of at least 100 linear feet from the restricted ORVWs, except in the immediate area of the in-water work (Minn. R. Chs 7050, 7001).
4. Whenever any construction activity is within 200 feet of a restricted ORVW, the permittee must stabilize all exposed soils within 24 hours after completing the construction activity (Minn. R. Chs 7050, 7001).

401 Certification of the RGPs

Based on a review of the RGPs and evaluation of information that is relevant to water quality considerations, the MPCA certifies the general permits (excluding projects that discharge to ORVWs) because there is reasonable assurance that the activities authorized by the RGPs will be conducted in a manner that will not violate applicable water quality standards so long as the work is completed in accordance with the below-specified conditions, which shall become conditions of the RGPs. Additionally, based on a review of the determinations specified in the Code of Federal Regulations (CFR), title 33, part 320, subpart 4, and CFR title 40, part 230, subpart 7, the MPCA has determined that the antidegradation standards described in Minn. R. 7050.0270 are satisfied by issuing a 401 Certification with the below conditions:

General conditions

All activities authorized by the above-listed RGPs must comply with the conditions below:

1. Permittees must ensure that surface waters in or bordering the project area that are not proposed to be impacted by the project are clearly identified prior to construction. This may be accomplished through demarcation of the construction area on plan sheets and/or through marking boundaries in the field, for example construction staking, flagging, or the use of silt fences along boundaries. The permittee must not impact these areas while conducting activities authorized by the RGPs (Minn. R. Chs. 7050, 7001).
2. The permittee must install in-water Best Management Practices (BMPs) to the extent practical and feasible, to minimize total suspended solids (TSS) and sedimentation for any work conducted below the ordinary high water level (OHWL) as defined in Minn. Stat. § 103G.005, subp. 14, of any water or within the delineated boundaries of wetlands.

The permittee must document the in-water BMPs to be used during the authorized work prior to disturbing any land at the site; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. This documentation is

not required to be submitted to the MPCA, but must be kept on-site during active construction by the contractor until the project is complete. Proper installation of BMPs is required before conducting the authorized in-water activities and must be properly maintained until the project is complete. This includes maintenance of in-water BMPs along with the establishment and maintenance of any erosion prevention, sediment control or site stabilization features included in the project plan or required by the RGP or this certification. While conducting the authorized work, the permittee must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. If the project activities cause an observable increase in TSS or sedimentation as described in Minn. R. 7050.0210, subp. 2, outside or downstream of the authorized defined working area, then the project activities must immediately cease and any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. This Certification does not authorize the violation of applicable water quality standards outside or downstream of the defined work area. Minnesota water quality standards are defined in Minn. R. Chs. 7050, 7001.

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

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforce this condition independent of the RGPs. If there are questions regarding proper implementation of this condition, the MPCA will determine compliance, as needed, on a case-by-case basis. The point of contact at the MPCA for questions regarding this condition is 401Certification.pca@state.mn.us.

3. The permittee must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp. 2. The permittee must use BMPs that minimize TSS and sedimentation by removing solids in the water before discharging the water. The permittee must document BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. The permittee must ensure that properly installed BMPs are in place before conducting the authorized activities and are maintained throughout the duration of the dewatering work (Minn. R. Chs 7050, 7001).

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforce this condition independent of the RGPs. If there are questions regarding proper implementation of this condition, the MPCA will determine compliance, as needed, on a case-by-case basis. The point of contact at the MPCA for questions regarding this condition is 401Certification.pca@state.mn.us.

4. The permittee must ensure earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained in a manner that will prevent earthen material from eroding into the water. All BMPs must be properly installed to ensure compliance with state water quality standards. The permittee must completely remove

temporary structures and restore original bathymetry or contours at project completion or within 12 months, whichever is sooner (Minn. R. Chs 7050, 7001).

5. The permittee must ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303(d) listed impaired water. Prior to beginning any authorized activities, the Permittee must first identify whether their project area is in, or near, any impaired waters and waters with the USEPA- approved TMDLs. When working in, or near, impaired waters, the Permittee must deploy redundant BMPs as necessary to ensure the authorized construction activities will not exacerbate existing impairments. The following MPCA webpage contains more information and search tools available to determine which waters in Minnesota are impaired: <https://www.pca.state.mn.us/air-water-land-climate/minnesotas-impaired-waters-list>. The applicable water quality standards are located in Minn. R. Chs. 7050, 7001.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforce this condition independent of the RGPs. If there are questions regarding proper implementation of this condition, the MPCA will determine compliance, as needed, on a case-by-case basis. The point of contact at the MPCA for questions regarding this condition is 401Certification.pca@state.mn.us.

6. The permittee must ensure that any fill placed in water must be clean fill that is free of solid waste, toxic or hazardous contaminants. Any deviation from this requirement such as seeking beneficial reuse of materials, requires case-specific beneficial use determinations by MPCA for debris and soil with contaminant levels appropriate for the placement setting. The permittee must also ensure that any fill will not promote the spread of invasive species as defined in Minn. State. Ch. 84D and Minn. R. 6216, and is free of those species identified as “prohibited species” in the *Minnesota Noxious Weeds* publication <https://www.mda.state.mn.us/plants-insects/minnesota-noxious-weed-list>. The Permittee must ensure all construction equipment, construction matting, erosion control devices and BMPs brought to the site are free of the same prohibited species.
7. The permittee must provide: a) a copy of this certification; b) documentation of any required BMPs under the above conditions; and c) any written demarcation of waters to any prime contractor responsible for completing the projects authorized activities. The permittee must also ensure that there is a mechanism in place requiring each prime contractor to provide the same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to waters must be available at or near the project site for use by contractors and staff responsible for completing the project work and must be available within 72 hours when requested by MPCA staff (Minn. R. Chs. 7050, 7001).
8. The permittee must allow representatives from the MPCA to inspect the project site and the authorized activity to ensure that the project is constructed, and BMPs maintained, in accordance with this Certification (Minn. R. Chs 7050, 7001).
9. The permittee is responsible for ensuring that all requirements of this Certification are met (Minn. R. Chs 7050, 7001).

10. This Certification includes and incorporates by reference the general conditions of Minn. R. Chs. 7050, 7001.
11. If dewatering will occur, the applicant must submit proposed dewatering plans to the MPCA for approval prior to start of project. The MPCA will review the dewatering plans within 15 days. If the dewatering plans are not acted on by the MPCA within 15 days, the dewatering plans are automatically approved (Minn. R. Chs. 7050, 7001).
12. If dewatering will occur, the applicant must ensure that dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp. 2. The applicant must use BMPs that minimize Total Suspended Solids (TSS) and sedimentation by removing solids in the dewatering water before discharging the water. The applicant must document BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an erosion control plan, construction plan, or other relevant construction document. The applicant must ensure that properly installed BMPs are in place before conducting the authorized activities and are maintained throughout the duration of the dewatering work.
13. Minn. R. Chs. 7001 and 7090 require any activity that will disturb one acre or more of land to first acquire a National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS) General Stormwater Permit from the MPCA for discharging stormwater during construction activity. Both the owners and operators of construction activity disturbing one acre or more of land are responsible for obtaining and complying with the conditions of the NPDES/SDS General Stormwater Permit prior to commencing construction activities. Sites disturbing less than one acre within a larger common plan of development or sale that is more than one acre also need permit coverage. A detailed Stormwater Pollution Prevention Plan (SWPPP), containing both temporary and permanent erosion and sediment control plans, must be prepared prior to submitting an application for the NPDES/SDS General Stormwater Permit. In addition, any project that will result in over 50 acres of disturbed area and has a discharge point within one mile of a special or impaired water is required to submit its SWPPP to the MPCA for a review at least 30 days prior to the commencement of land disturbing activities. If the SWPPP is out of compliance with the terms and conditions of the NPDES/SDS General Stormwater Permit, further delay may occur. For more information, please visit: <https://www.pca.state.mn.us/business-with-us/construction-stormwater>.
14. Minn. R. 7001.0030 requires that, prior to testing the structural integrity of any newly installed pipeline or any existing pipeline maintained or repaired that is authorized by the RGP, the permittee must obtain NPDES/SDS Permit coverage from the MPCA. The NPDES/SDS permit regulates the discharge of water and trench waters associated with this activity.
15. It is the permittee's responsibility to fully comply with all MPCA rules governing waters of the state, including MPCA rules governing wetlands (Minn. R. 7050.0186), which require a permittee to provide compensatory mitigation for a project's unavoidable permanent impacts to wetlands and streams, including those that are not subject to federal jurisdiction under section 404 of the CWA.

Additional conditions for Transportation RGP projects involving bridge work:

The MPCA requires the following conditions for any project that is authorized under the Transportation RGP to conduct bridge work:

1. During bridge painting, cleaning, or restoration activities, the permittee must use BMPs such as curtains or other reliable methods designed to prevent the discharge of paint, chemicals, grouting, or other contaminants to waters. These BMPs must remain in place for the duration of the project's painting, cleaning, or restoration activities (Minn. R. Chs 7050, 7001).

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforce this condition independent of the RGPs. If there are questions regarding proper implementation of this condition, the MPCA will determine compliance, as needed, on a case-by-case basis. The point of contact at the MPCA for questions regarding this condition is 401Certification.pca@state.mn.us.

2. The permittee must not conduct bridge demolition activities that use explosive devices to implode or collapse a bridge or any portion of a bridge into any water (Minn. R. Chs 7050, 7001).
3. The permittee must not use broken concrete from any existing bridge as riprap bank protection unless, 1) it is crushed to the diameter which is greater than 6 inches and no larger than 30 inches, 2) all steel reinforcement bars and asphalt have been removed, and 3) it does not contain any contaminants of concern listed in Minn. R. 7035.2860, subp. 4.
4. If the permittee plans to place riprap grouted with concrete under a bridge, then plywood sheeting, sheet piling, sandbags, or other suitable material must be placed at the base of the riprap prior to conducting the grouting activity to ensure no grout reaches the waterbody. The material must remain in place until all concrete grouting has cured (Minn. R. Chs 7050, 7001).
5. A Stream Diversion Plan (SDP) will be required for removal and replacement of culverts or bridges. Prior to construction, stream diversion water procedures must be in place to ensure that discharge points are adequately protected from erosion and scour. In addition, the SDP must address erosion prevention and sediment control, comply with water quality requirements, and meet in-water best construction practices. The MPCA reserves the right to add additional conditions if necessary to accommodate and address specific design requirements and to maintain water quality standards (Minn. R. Chs 7050, 7001).

Additional conditions for Utility RGP projects:

The Permittee must comply with the following MPCA conditions for activities authorized under the Utility RGP:

1. **Spill Prevention Plan.** Prior to the start of each segment of construction, for any trenching that will pass over, under, or around any water or any perceptible flow of water, the permittee or contractor acting on permittee's behalf must prepare a spill prevention plan, to be kept on-site, that describes steps that must be taken to prevent, mitigate, and immediately clean up any spill from any product, including drilling mud, from entering any waters. The plan must include a directive to immediately contact the Minnesota State Duty Officer at 651-649-5451 for any spill substance or material of any quantity, other than a spill of five gallons or less of petroleum, that may cause pollution to waters of the state, and it must describe disposal methods for the spill material (Minn. R. Chs. 7050, 7001; Minn. Stat.115.061).

2. Horizontal Directional Drilling (HDD) Requirements.

- a. **Geotechnical Investigation and Cleanup Response.** Prior to conducting any authorized HDD construction activities beneath or near any wetlands, tributaries, and rivers and streams, the Permittee, or contractor acting on Permittee's behalf, must first:
 - i. Ensure there is a geotechnical investigation of the area to determine whether the soils and geology will support successful HDD installation without a moderate to high risk of a drilling mud release during the installation process. The Permittee must retain a copy of the associated report and provide to state resource agencies, including the MPCA, upon request.
 - ii. Prepare a plan to be kept on site that describes cleanup procedures and the response plan in the case of spills or releases of material.
 - iii. In the event of a drilling mud release during the HDD activities, the Permittee or contractor acting on Permittee's behalf must immediately contain and clean up any such drilling mud that discharged into waters of the state, and immediately report the incident to the State Duty Officer at 651-649-5451. Drilling mud discharges to upland area must also be immediately contained and cleaned up accordingly (Minn. R. Chs. 7050, 7001).
 - b. **Prohibition.** The Permittee, or contractor acting on Permittee's behalf, is prohibited from using any drilling muds or drilling mud additives that contain phosphorus or sulfate, or any hazardous materials. The Permittee must keep a Safety Data Sheet on-site for each of the drilling muds or drilling mud additives used during the HDD installation process (Minn. R. Chs. 7050, 7001).
 - c. **HDD drilling mud discharges to waterbodies and wetlands prohibited (MPCA authority: Minn. Stat. ch. 115; Minn. R. chs. 7001, 7050, and 7052).** This 401 Certification does not authorize the Permittee to discharge drilling mud into waters of the state. Such discharges are considered a violation of applicable statutes (Minn. Stat. ch. 115) and applicable water quality standards (Minn. R. 7050).
3. The permittee must utilize low flow and winter construction methods whenever possible (Minn. R. Chs 7050, 7001).
 4. The permittee must restore trenches approaching and leading away from any water to preconstruction contours prior to beginning work on the next segment of trench. The permittee must limit any open trench, for all related projects authorized by the Utility RGP, to 5280 linear feet at any given time (Minn. R. Chs. 7050, 7001).
 5. The permittee must stabilize all exposed soil areas whenever any construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days (Minn. R. Chs. 7050, 7001).
 6. The permittee must use dry construction methods (e.g. coffer dams, HDD, dam and pump, flume, stream diversion, etc.) for any maintenance or repair of any utility that will occur within flowing water (Minn. R. Chs. 7050, 7001).

Notifications:

The following notifications are not conditions of the MPCA CWA 401 Certification of the RGPs. They provide information that can help reduce the potential environmental impacts, or they provide notification to the public in Minnesota that certain discharges in waters are also regulated under other rules administered by the MPCA:

1. Chloride from winter road salt affects water quality. The MPCA encourages public road authorities pursuing projects under the general permit to consider the use of BMPs to reduce the use of chloride. General information about chloride and water quality, including the *Twin Cities Metropolitan Area Chloride Management Plan*, is located at:
https://stormwater.pca.state.mn.us/index.php/Chloride_Management_Plan
2. When riprap is used, the permittee should consider placing riprap in the following manner:
 - a. Use natural rock (cannot average less than 6 inches or more than 30 inches in diameter) that is free of debris that may cause pollution or siltation.
 - b. A filter of crushed rock, gravel, or filter fabric material can be placed underneath the rock.
 - c. The riprap should be no more than 6 feet waterward of the OHWL as defined in Minn. Stat. §103G.005, subp. 14.
 - d. The riprap should conform to the natural alignment of shore and should not obstruct navigation or the flow of water.
 - e. The minimum finished slope waterward of the HWL should be no steeper than 3 to 1 (horizontal to vertical).

Disclaimer:

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

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

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

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

The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0270 and 33 U.S.C. §1341.

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

If you have questions on this Certification, please contact Kirsten Barta at 651-757-2827 or Kirsten.barta@state.mn.us.

Sincerely



This document has been electronically signed.

Anna Hotz
Manager
Environmental and Business Assistance Section
Resource Management and Assistance Division

AH/KB:je