

**National Pollutant Discharge Elimination System (NPDES)/
State Disposal System (SDS) Permit Program Fact Sheet**

**Permit Reissuance
NPDES/SDS Permit MN R100001 for
Construction Activities**

Permittee: Multiple

Current permit expiration date: July 31, 2023

Public comment period begins: January 17, 2023

Public comment period ends: March 3, 2023

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Purpose and participation

Applicable statutes

This fact sheet has been prepared according to the 40 CFR § 124.8 and 124.56 and Minn R. 7001.0100, subp. 3 in regards to a draft National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) permit to control pollution generated from runoff associated with construction activities discharging into waters of the State of Minnesota.

Purpose

This fact sheet outlines the principal issues related to the preparation of this draft permit and documents the decisions that were made in the determinations for the conditions of this permit. You must submit all comments, requests, and petitions during the public comment period identified on page one of this notice. This permit is a reissuance of a previous general permit, which will expire on July 31, 2023. The Minnesota Pollution Control Agency (MPCA) Commissioner has made a preliminary determination to issue this permit for a term of five years.

Public participation

You may submit written comments on the terms of the draft permit or on the Commissioner's preliminary determination. Your written comments must include the following:

1. A statement of your interest in the permit application or the draft permit.
2. A statement of the action you wish the Minnesota Pollution Control Agency (MPCA) to take, including specific references to sections of the draft permit that you believe should be changed.
3. The reasons supporting your position, stated with sufficient specificity as to allow the Commissioner to investigate the merits of your position.

In accordance with Minn. R. 7000.0650 and Minn. R. 7001.0110, you may submit a petition for a public informational meeting, however, due to the number of comments expected, the MPCA has scheduled a public meeting during the public comment period. The MPCA will deliver a short presentation on the proposed changes and answer questions. The meeting will be conducted via Microsoft Teams. For log in information, please see the construction stormwater webpage.

Public informational meeting: February 7, 2023, 10:00 a.m. - 12:00 p.m.

To log into the meeting, see the construction stormwater webpage:

<https://www.pca.state.mn.us/business-with-us/construction-stormwater>

In addition, you may submit a petition for a contested case hearing. A contested case hearing is a formal hearing before an administrative law judge. Your petition requesting a contested case hearing must include a statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing pursuant to the criteria identified in Minn. R. 7000.1900, subp. 1 and a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested. To the extent known, your petition should include a proposed list of witnesses to be presented at the hearing, a proposed list of publications, references or studies to be introduced at the hearing, and an estimate of time required for you to present the matter at hearing.

You must submit all comments, requests, and petitions during the public comment period identified on page one of this notice. All written comments, requests, and petitions received during the public comment period will be considered in the final decisions regarding the permit. If the MPCA does not receive any written comments, requests, or petitions during the public comment period, the Commissioner or other MPCA staff as authorized by the Commissioner will make the final decision concerning the draft permit. Comments, petitions, and/or requests should be made the two methods below:

1. Online at <https://mpca.commentinput.com/comment/search>
2. U.S. mail to the following address:

Minnesota Pollution Control Agency
c/o Todd M. Smith
Stormwater Research Engineering Outreach
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

General Permit Authority

Minn. R. 7001.0210 provides authority to the MPCA to issue a single permit to a category of permittees whose activities are the same or substantially similar. This single NPDES/SDS permit that can apply to numerous facilities is referred to as a general permit. Title 40 CFR § 122.28 and Minn. R. 7001.0210 allows for the issuance of general permits to regulate categories of discharges if the sources within each category:

- a. Involve the same or substantially similar types of operations.
- b. Discharge the same types of wastes.
- c. Require the same effluent limitations or operating conditions.
- d. Require the same or similar monitoring.
- e. Are more appropriately controlled under a general permit rather than under individual permits.

The MPCA has reviewed data to determine the individuals performing construction activity meet the stipulated criteria for development of a general permit for such activities.

General Description of Permitted Activities

This Permit authorizes stormwater discharges associated with construction activity and small construction activity, as defined in 40 CFR § 122.26(b)(14)(x) and (b)(15), respectively. Construction activity refers to clearing, grading, excavating, and other land-disturbing activities that result in the disturbance of one or more acres, as well as disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb one acre or more. Routine maintenance performed to maintain the original line and grade (for example, road grading), hydraulic capacity (for example, ditch cleaning), or original purpose of the facility is excluded from the definition of “construction activity.”

Summary of Permit Conditions

This draft permit will replace the previous permit set to expire July 2023. The conditions of the draft permit remain largely the same as the previous permit. Many of the redlined revisions are not intended to change the policy or expectation, but are intended to improve clarity or readability. Some of the requirements have been adjusted and there are some new requirements.

The following is a partial list of the proposed permit changes. These are considered to be the major changes, other minor changes have been also made. A complete redlined version of the permit is available on the construction stormwater webpage: <https://www.pca.state.mn.us/business-with-us/construction-stormwater>.

- Item 7.3 - This new section does not contain any requirements. Permittees are encouraged to use wildlife friendly erosion control products whenever possible. It is not the intention of the agency to prohibit the use of these products at this time. There may be a shift to banning some of these products, in some scenarios, in the future. The USEPA has a similar approach in their permit.
- Item 8.4 and 8.5 - Soil stabilization timeframes have been shortened on sites disturbing 25 or more acres. 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 USEPA has a similar approach in their permit.
- Item 9.9 - Clarification that all stockpiles must have perimeter controls installed prior to the stockpiling activity.
- Item 9.18 - All soil berms used as perimeter control must be stabilized.
- Item 10.2 - The dewatering section now requires permittees to visually check and photograph all dewatering activities at the beginning of operation and every four (4) hours after. The MPCA has observed many dewatering operations that were discharging turbid water because of lack of oversight by permittees.
- Item 11.5 - This new section requires permittees to remove sediment lost to adjacent areas of the project, even if there is not a surface water impact. The removal is required to the extent allowable by law or physical access constraints.
- Item 11.11d - For sites consisting of solar panels, the weekly inspection requirements have been reduced if the permittees are using pollinator/native prairie seed mixes for final stabilization. as these plant species can take many years to establish
- Item 13.8 - This new section requires permittees to submit representative photographs of the sites final stabilization with the notice of termination. The USEPA has a similar approach in their permit.

EPA Antidegradation Requirements

An additional component of water quality standards is the policy of antidegradation (referred to as nondegradation prior to December 2016). Each state is required to adopt an antidegradation policy consistent with EPA's antidegradation regulations (40 CFR §131.12). EPA's antidegradation policy provides for three 'tiers' of protection from degradation of water quality. The first tier protects existing uses and provides for a minimum threshold of water quality. For Minnesota surface waters, this minimum threshold is existing conditions as of January 1, 1988, or the date of designation for Outstanding Resource Value Waters (ORVW). The second tier protects the level of water quality necessary to support the propagation of fish, shellfish, and wildlife, and provides for recreation activities in waters that are of higher quality than required to support those uses. Before the quality in such waters can be lowered, an antidegradation analysis must be conducted. The third tier protects the quality of ORVW, such as waters of exceptional recreational or ecological significance.

MN Rules, Antidegradation Requirements

The construction permit must meet the antidegradation provisions of Minn. R. chs. 7050 and 7052 to achieve and maintain the highest possible quality in surface waters of the state. The CSW permit identifies specific requirements for erosion prevention, sediment control, general pollution prevention, and permanent stormwater management that will minimize the discharge of sediment, phosphorus and other pollutants during and after construction. By meeting the permit requirements, the permittee will protect the existing uses, designated beneficial uses, and high water quality of all waters that receive stormwater discharges from construction activity. The MPCA bases this conclusion in part on the fact that the controls required in the Construction Activity Requirements and Stormwater Discharge Design Requirements sections of the proposed CSW permit are based on the nationally developed effluent limitations guidelines process¹ that defined the Best Available Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT) and Best Practicable Control Technology (BPT) and New Source Performance Standards (NSPS) level of control for the construction & development category.

Additional requirements are placed on permittees that discharge to waters with high water quality, impaired waters, and restricted and prohibited ORVWs. These additional requirements are contained in section 23 of the draft permit, and include requirements to stabilize exposed soil areas faster, increased use of temporary sediment basins, buffer strips around certain waters, temperature mitigation BMPs and conduct more site inspections than other sites. The draft CSW Permit meets antidegradation requirements by:

- Requiring the reduction of the discharge of sediment and sediment-related parameters (TSS and TP) during construction for all permitted activities;
- Requiring the development of a SWPPP that meets the CSW permit requirements in order to address construction site related discharges of any type;
- Preventing or removing sediment in stormwater runoff to reduce the discharge of pollutants such as heavy metals that adsorb onto sediment particles; and,
- Requirements for construction of permanent stormwater management systems for projects that create one or more acres of new impervious surface to address pollutants in stormwater discharges after the construction activity is complete.

Protection of restricted ORVWs and impaired waters

The draft permit has additional requirements during construction for all projects discharging to restricted or impaired waters that are located within one mile. The additional requirements during construction are specified in item 23.9 through item 23.12 of the draft permit. They include:

- shorter timeframes for stabilization;
- increased use of temporary sediment basins during construction;
- 100-foot buffer strip near certain waters;
- temperature mitigation BMP requirements.

By meeting permit requirements, the permittee will protect impaired waters and restricted ORVWs, by allowing no new or increased discharges that would result in lower water quality.

For construction near these waters, further reducing the amount of time that exposed soil is left in an unstabilized state is especially important for limiting the sediment and/or nutrient load to these waters. The faster stabilization requirement for areas discharging to these waters is designed to minimize the erosion and sedimentation that is associated with large, exposed areas. Along with shorter deadlines to complete stabilization, the requirement for an increased use of temporary sediment basins will help reduce the amount of sediment entrained in the runoff prior to leaving the construction site. Buffer strips and temperature mitigation BMPs further ensure that runoff from sites near these waters will not lower water quality.

It is important to note that the issuance of the CSW permit is important to the state's economy because construction activity within the state would virtually cease without the ability to apply for and obtain a CSW permit for construction activity. Construction projects employ, on average, more than 100,000 Minnesotans per year and account for more than \$13 billion in state gross domestic product. The end products of construction activity result in new housing for residents or provide commercial spaces for local businesses, which add to the vitality of the local economy. The construction of new roads and bridges, or repairing old infrastructure, provides safe options for transportation to jobs and other economic transactions. For these reasons, the issuance of the CSW permit is necessary to accommodate important economic and social development in Minnesota.

Protection of prohibited ORVWs

The draft CSW permit also provides for the protection of prohibited ORVWs. For prohibited waters, the draft CSW permit includes all of the requirements for discharges to restricted ORVWs and impaired waters. Additionally, projects that discharge to prohibited waters require increased inspection frequency during construction activities. Also, for projects that discharge to prohibited waters that cannot infiltrate one inch of runoff from new impervious surfaces, a plan must be developed and included in the SWPPP for the project that demonstrates how the discharge from the project will not increase the levels of TSS or Phosphorus to the prohibited water.

An increase in the frequency of inspections for sites that discharge to prohibited waters will enhance the permittee's ability to find and correct problems before a discharge of pollutants occurs. The MPCA has also determined that projects that can meet the one inch of infiltration requirement for creation of new impervious surfaces will not increase the discharge of pollutants (see volume reduction discussion that was included with 2013 CSW permit response to comments as Attachment B-1)². Projects that cannot meet the volume reduction requirement will have the flexibility to develop a site-specific plan for their construction activity to ensure that no increase of pollutants occurs in discharges to prohibited waters.

The MPCA has determined that compliance with the draft CSW permit satisfies antidegradation requirements, making individualized review unnecessary. The conclusion that compliance with the draft CSW permit will meet the antidegradation requirements for restricted and prohibited waters depends on several key aspects of the permit. First, all construction sites that will be subject to this permit must meet the stringent requirements set out in the item 5.1 through 22.4 of the permit. Through compliance with these limits alone, MPCA expects that the discharge of pollutants will be reduced and/or eliminated such that there should not be a lowering of water quality. This conclusion is based in part on the fact that the requirements in the draft CSW permit are based on the nationally-developed effluent limitations guidelines process that defined the BAT/BCT/BPT and NSPS level of control. The draft CSW permit also requires permittees discharging to high quality waters, impaired waters, and restricted or prohibited ORVWs to meet even more stringent controls found in item 23.1 through 23.14 of the permit. Furthermore, once installed and implemented, the permittee is obligated to maintain these controls and to correct deficiencies where inspection determines that deficiencies exist. Where MPCA determines through its oversight activities (e.g. onsite inspection) that a discharger is not meeting its requirements, such a deficiency will constitute a violation of the permit and will require follow-up corrective action. For all of the reasons outlined above the MPCA has determined that the proposed permit will meet the state's antidegradation rule.

1. Development Document for Final Effluent Guidelines and Standards for the Construction & Development Category – November 2009 (https://www.epa.gov/sites/production/files/2015-06/documents/construction_development_dd_2009_chapters_1-11.pdf)
2. CSW Response to comments - volume reduction approach, Attachment B-1 (<https://www.pca.state.mn.us/sites/default/files/wq-strm2-68j.pdf>)

Antidegradation and anti-backsliding

This Permit also complies with Minn. R. 7053.0275 regarding anti-backsliding.

Any point source discharger of sewage, industrial, or other wastes for which a NPDES permit has been issued by the agency that contains effluent limits more stringent than those that would be established by Minn. R. 7053.0215 to 7053.0265 shall continue to meet the effluent limits established by the permit, unless the permittee establishes that less stringent effluent limits are allowable pursuant to federal law, under section 402(o) of the Clean Water Act, United States Code, title 33, section 1342.

References

United States Environmental Protection Agency, Office of Water. "U.S. EPA NPDES Permit Writers' Manual," EPA-833-B-96-003. September 2010.

Minnesota Pollution Control Agency. "Fact Sheet for the National Pollutant Discharge Elimination System/State Disposal System Multi-Sector General Permit for Industrial Stormwater Activity," November 2010.
