



September 2, 2009

Mr. Michael Welch
Chair, Bassett Creek Watershed Management Commission
c/o Barr Engineering Company
4700 West 77th Street
Minneapolis, MN 55435

RE: Bassett Creek Watershed Management Commission Letter of August 3, 2009

Dear Mr. Welch:

The following is the Minnesota Pollution Control Agency's (MPCA) response to your letter of August 3, 2009, to Dale Thompson. The MPCA understands and appreciates the efforts the Bassett Creek Watershed Management Commission (Commission) is making toward maintaining and improving water quality in the Bassett Creek Watershed.

The MPCA policy for Total Maximum Daily Loads (TMDL) states "*If data are adequate, individual WLAs should be given to each permitted MS4.*" However, the MPCA recognizes that categorical approaches are acceptable if either of the following two conditions exist:

1. Data are not adequate to develop Individual Wasteload Allocations (WLA) for each Municipal Separate Storm Sewer System (MS4).
2. A strong local organization exists to "manage" the categorical wasteload allocation.

The second condition applies to the TMDLs being developed for the Bassett Creek Watershed.

The letter of August 3 states "*The members of the Commission ... wish to better understand the details of coordinating and managing a categorical WLA before agreeing to do so*". Since the Commission is not a regulated MS4, there are no requirements for the Commission to manage the WLA. The MPCA acknowledges the Commission is a strong advocate for water quality restoration within the watershed and is in a position to guide the activities necessary to restore the impaired waters. Ultimately, if the MPCA finds that adequate progress is not being made toward restoration, we would interpret the WLA and apply it to individual MS4s. If necessary, MPCA's MS4 program may request that the TMDL be re-opened and individual WLAs assigned to the MS4s.

Below are responses to your specific questions.

1. ***Will the MPCA rely exclusively or principally on the Commission's accounting and reporting?*** The MPCA could rely on the Commission's accounting and reporting of WLAs if we can develop a mechanism for identifying appropriate Best Management Practices (BMPs) along with the associated pollutant reduction credits. This can be done

in several ways. Two promising approaches are utilizing any existing watershed management plan that identifies specific activities designed to reduce pollutant loads, or periodically modifying the TMDL Implementation Plan to include specific activities. Since the MPCA can review and comment on these, an MS4 can then simply incorporate these specific activities into its Stormwater Pollution Prevention Program (SWPPP). As stated, it will be important to identify likely pollutant load reductions associated with BMPs.

2. ***How will the reductions credited to Mn/DOT be determined and will the Commission and other MS4s have input on that accounting?*** Specific details of how reductions will be credited to Mn/DOT have not been discussed. We anticipate that Mn/DOT will need to document and explain their loading reduction estimates using methods acceptable to the MPCA.
3. ***If the water body in question is not achieving its TMDL targets, how will the burden of achieving the further necessary reductions be allocated and will the MPCA defer to the Commission?*** The MPCA is responsible for enforcing the permit. The permit requires MS4s to meet the TMDL WLA. The MPCA will review the BMPs in the SWPPP to determine progress toward meeting the WLA and will not use water quality information in the receiving water (since that also includes non-MS4 contributions, e.g., internal loading). It is therefore possible for an MS4 to be in compliance with the WLA and the water body to not be in compliance with water quality standards. If it appeared that both the WLA and Load Allocation (LA) were being met, but the water body was not meeting the standard, the assumptions and technical analysis in the TMDL would need to be revisited and the TMDL would be re-opened.
4. ***Will MPCA permitting enforcement staff recognize and defer to specific agreements the Commission and MS4s enter into and how will the MPCA contribute to and support the effort of the Commission and MS4s?*** Any actions that are likely to result in water quality improvements in impaired waters will likely be acceptable to MPCA. MPCA believes these decisions are best made at the watershed level. The MPCA will therefore recognize any agreement that results in water quality improvements.

It is unclear what is meant by defer. MPCA must ensure that permits are consistent with water quality requirements. While we may therefore recognize and support specific agreements made between the Commission and MS4s, we must review SWPPPs to ensure consistency with the TMDL. To ensure that agreements between the Commission and MS4s are consistent with the WLA, the MPCA would be willing to review and, if requested by the Commission and MS4s, participate in development of these agreements.

5. ***Would the MPCA outline reporting requirements that might be in the renewed MS4 permits and could a single report from one of the MS4s meet the reporting requirement?*** At this time we can only provide conjecture about what the 2011 permit will require. We anticipate MS4s will have to annually report on progress toward


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compliance with the TMDL WLA. Because we are asking MS4s to implement a BMP approach to meeting the WLA, there will be no difference between the reporting requirements for an individual or categorical WLA. It would be appropriate for a single progress report to be developed. MS4s, in their individual SWPPPs, could simply refer to the progress report.

6. *Will the MPCA expect any annual reporting from the Commission?* No, unless the reporting is dependent upon what was agreed to in number 5 above.

If you have any questions, please contact me at 651-757-2790 or mike.trojan@pca.state.mn.us.

Sincerely,



Michael Trojan
Hydrologist 3
Stormwater Section
Municipal Division

MT:wgp