



Memorandum

To: Bassett Creek Watershed Management Commission
From: Barr Engineering Co.
Subject: Item 4H: Submit Comments on MPCA Construction Stormwater General Permit
BCWMC February 16, 2023 Meeting Agenda
Date: February 8, 2023

Recommendation:

1. BCWMC should consider submitting comments to the Minnesota Pollution Control Agency (MPCA) discussed below in *"Recommended Comments to MPCA."*
2. After revised MPCA Construction Stormwater General Permit is published, BCWMC should consider updating the Requirements Document as discussed below in *"Recommended Requirements Documents Updates."*

Background

The Minnesota Pollution Control Agency (MPCA) is in the process of revising the MPCA Construction Stormwater General Permit (general permit) which was last revised August 1, 2018. On January 17, 2023 the MPCA released a public notice that included draft redlines for the general permit. In addition, the public notice allows for entities to submit comments until March 3, 2023.

The Commission engineer was directed to review the MPCA draft general permit ([2023 NPDES/SDS Permit for Construction Activity - Draft Permit red-lined version \(scs-public.s3-us-gov-west-1.amazonaws.com\)](https://s3-us-gov-west-1.amazonaws.com/scs-public/2023-NPDES-SDS-Permit-for-Construction-Activity-Draft-Permit-red-lined-version)) at its January 19, 2023 meeting. The Commission engineer reviewed the tracked changes draft of the general permit and prepared recommended comments to the MPCA and identified potential updates to the BCWMC requirements document. Note that Section 7.0 of the BCWMC Requirements Document states "It is recommended that applicants follow the standards given in NPDES Permit for Construction Activity" (MPCA Construction General Permit).

Overview of Updates

The draft general permit included updates to the following topics: stabilization, dewatering, inspections, BMPs and stormwater management, infiltration systems, and miscellaneous. Following is a summary of the proposed changes:

Stabilization

- Paragraph 8.5 and 8.6: New requirement for stabilization to be initiated immediately when construction activity has ceased for 7 or more calendar days when the construction area is greater than 25 acres. (For projects less than 25 acres, stabilization must be initiated when construction activity has ceased for 14 calendar days.)

- Paragraph 9.18: Adds new requirement for sediment controls made of soil/muck (e.g., earthen berms) to be temporarily or permanently stabilized within 24 hours.

Dewatering

- Paragraphs 10.2, 11.9, and 11.12: Adds new requirement to visually inspect and photograph dewatering discharges at the beginning and every 4 hours to ensure adequate treatment has been obtained. The photos must be kept with the SWPPP. Also expanded options for sediment control to include sediment trap, sediment basin, or filter bag; previously only temporary or permanent sediment basins were included.
- Paragraph 10.3: New requirement to cease dewatering if nuisance conditions occur as a result of a discharge.

Inspections

- Paragraph 11.5: Adds language that inspections must include "areas adjacent to the project" in addition to surface waters, drainage ditches, conveyances, etc.
- Paragraph 11.11: Allows reduction of inspections 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.

BMPs and Stormwater Management

- Paragraph 7.2: Adds more specific requirements related to phasing and order of construction - "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."
- Paragraph 7.3: Adds recommendation to use erosion control products that minimize impacts to wildlife.
- Paragraph 9.9: Adds requirement for silt fence or other sediment controls to be installed at the base of stockpiles prior to the initiation of stockpiling.
- Paragraph 11.8: Adds a 72 hour deadline to drain sedimentation basins and remove sediment when it is identified that the basin reaches 1/2 the storage volume.

Infiltration Systems

- Paragraphs 16.2 and 16.17: Adds language that requires at least 3 feet of native undisturbed soils above seasonally saturated soils or bedrock for infiltration systems. This was already recommended by the MPCA but is now specifically included in the permit.
- Paragraph 16.21: Added timber products as an industry that is prohibited from building infiltration systems. (Note: Per the Industrial Stormwater General Permit, only timber products facilities operating under SIC code 2491 [wood preserving] are prohibited from new infiltration systems.)

Miscellaneous

- Paragraphs 6.3 and 6.4: Adds the requirement to "amend the SWPPP within 7 days" of any change in design, construction, operation, maintenance, weather, or seasonal conditions and to include or

modify BMPs when inspections identify that changes are necessary. This adds a specific, enforceable deadline for amending the SWPPP.

- Paragraph 13.8: New requirement for photos showing permanent cover be submitted with the Notice of Termination.
- Paragraph 25.15: Added language stating recreational trails are not considered impervious surfaces. Also clarified that sidewalks are considered impervious surfaces.
- Paragraph 2.10: Added language: "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."

Recommended Comments to MPCA

The Commission engineer reviewed the draft general permit and has the following suggested changes and comments. "Black" text indicates the existing general permit verbiage, "red" text indicates the MPCA's proposed general permit verbiage and "green" text indicates the Commission engineer's recommended general permit verbiage.

1. Paragraph 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. temporary or permanent sediment basin on the project site unless infeasible.~~ 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 ~~may dewater to surface waters if they visually~~ must visually check and photograph document the discharge at the beginning and, as necessary, during 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. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties. [Minn. R. 7050.0210]~~
 - *Comment rationale: eliminate excessive burden on contractors*
2. Paragraph 11.5: During each inspection, permittees must inspect the project area, areas adjacent to the project, surface waters, ~~including~~ drainage ditches and conveyance systems, including downstream systems, but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in the project area, 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.
 - *Comment rationale: clarification to inspect downstream conveyance systems*
3. Paragraph 11.9: ~~"Permittees must inspect and photograph document dewatering discharges at the beginning and, as necessary, once every 4 hours during operation. [Minn. R. 7090]"~~
 - *Comment rationale: eliminate excessive burden on contractors*

4. Paragraph 25.15: "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, ~~sidewalks~~, driveways, parking lots, and concrete, asphalt, or gravel roads. Bridges over surface waters are considered impervious surfaces. **Recreational trails and disconnected sidewalks that are distinctly set apart from a roadway and intended for pedestrians or bicycles are exempt from stormwater treatment requirements not considered impervious surfaces.** ~~Directly connected sidewalks within residential areas and alongside roadways must still be included as impervious surfaces.~~ [Minn. R. 7090]
 - o *Comment rationale: increase clarity consistency with BCWMC requirements*

Recommended Requirements Documents Updates

After the new general permit goes into effect, we recommend adding the following paragraphs to the BCWMC Requirements Document for consistency with the proposed general permit:

1. Section 7.0 Erosion and Sediment Control Requirements (Paragraph 7.3q): Require that implementation of stormwater management principles are phased and incorporated as the construction progresses.
 - o *Recommendation rationale: addresses Paragraph 7.2 of the draft general permit*
2. Section 7.0 Erosion and Sediment Control Requirements (Paragraph 7.3r): Require that if erosion control netting is used as part of site stabilization, products must be used to minimize the impacts on wildlife. 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, netting made of polypropylene, nylon, polyethylene, or polyester.
 - o *Recommendation rationale: addresses Paragraph 7.3 of the draft general permit*
3. Section 7.0 Erosion and Sediment Control Requirements (Paragraph 7.3s): Require that silt fence or other sediment control must be installed at the base of stockpiles prior to the initiation of stockpiling.
 - o *Recommendation rationale: addresses Paragraph 9.9 of the draft general permit*

After the new general permit goes into effect, we recommend revising (shown in **green**) the following paragraphs in the BCWMC Requirements Document for consistency with the proposed general permit:

1. Section 5.0 Rate Control Requirements (third paragraph): **Disconnected** trails, **disconnected** sidewalks, and miscellaneous disconnected impervious surfaces (concrete/bituminous pads, etc.) are exempt from BCWMC rate control policies.
 - o *Recommendation rationale: clarification and consistency with recommended MPCA edits*

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Page: 5

2. Section 6.0 Water Quality Requirements (third paragraph): [Disconnected](#) trails, [disconnected](#) sidewalks, and miscellaneous disconnected impervious surfaces (concrete/bituminous pads, etc.) are exempt from BCWMC water quality performance standards.
 - *Recommendation rationale: clarification and consistency with recommended MPCA edits*

3. Section 7.0 Erosion and Sediment Control Requirements (Paragraph 7.3g): Require that all exposed soil areas must be stabilized as soon as possible, but in no case later than 14 days after the construction activity has temporarily or permanently ceased or within 7 days if the project [disturbs 25 or more acres or](#) is within 1 mile of a special or impaired water. A schedule of significant land disturbance work will be required as part of the erosion and sedimentation control plan.
 - *Recommendation rationale: Addresses Paragraph 8.5 and 8.6 of the draft general permit*

4. Section 7.0 Erosion and Sediment Control Requirements (Paragraph 7.3k): Provide temporary on-site sedimentation basins when 10 or more acres of land disturbance drains to a common location. Install temporary sediment basins where appropriate in areas with steep slopes or highly erodible soils drain to one area. On-site detention basins shall be designed [and maintained](#) to achieve pollutant removal efficiencies equal to or greater than those obtained by implementing the criteria set forth by the NPDES Permit for Construction Activity (MPCA, latest version) and the Minnesota Stormwater Manual.
 - *Recommendation rationale: addresses Paragraph 11.8 of the draft general permit*