

December 21, 2020

Chad Konickson
U.S. Army Corps of Engineers
Regulatory Branch Chief, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

RE: Nationwide Permits – Clean Water Act Section 401 Water Quality Certification

Dear Chad Konickson:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. chs. 7001.1400-7001.1470, 7050, 7052, and 7053. The MPCA examined the information furnished by the U.S. Army Corps of Engineers (USACE), including the proposed Nationwide Permits (NWP) issued by USACE Headquarters on September 15, 2020, and regional conditions proposed by USACE St. Paul District September 18, 2020, and proposes requiring conditions through the 401 Water Quality Certification (401 Certification or Certification).

Exclusion from 401 Certification of NWPs

1. Physical Alterations of 300 or More Linear Feet of a 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 stream or river that are not covered under NWP 13, Bank Stabilization or projects that will result in a functional lift of waters impacted by the projects activities. 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 impact on overall water quality. The MPCA must individually review these projects for compliance with Water Quality Standards (WQS).*

2. Exceptional Aquatic Life Use Waters (Attachment 1)

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. 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 Manitou 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 |

3. Prohibited Outstanding Resource Value Waters (Attachment 2)

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 values waters” For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) to prohibited outstanding resource value waters (ORVWs). The MPCA does not find that NWP 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 NWPs 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 NWPs, require individual 401 Certification from the MPCA. *The MPCA Authority: Minn. R. ch. 7050.0255 – 7050-0335. The MPCA needs to be able to individually review projects for compliance with WQS.*

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:

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>.

- A. Waters within the Boundary Waters Canoe Area Wilderness;

- 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, Saint 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; and
 - 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 Saint Croix River; and
 - 2) Rum River from Ogechie Lake spillway to the northernmost confluence with Lake Onamia.
4. **Restricted ORVWs (Attachment 2)**
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." The MPCA does not find that NWP 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 NWPs any project taking place in whole or in part in a listed restricted ORVW in Minnesota, as identified in Minn. R. 7050.0335, subp. 1, and listed below. Such projects, though authorized by the NWPs, require individual 401 Certification from the MPCA. *The MPCA Authority: Minn. R. ch. 7050.0255 – 7050-0335. The MPCA needs to be able to individually review projects for compliance with WQS.*

NOTE: Projects that will potentially impact calcareous fens identified as restricted ORVWs in Minn. R. 7050.0335, subp. 1, are also required to have an approved Fen Management Plan from the Minnesota Department of Natural Resources (DNR) 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 surface waters are restricted outstanding resource value waters:

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>.

- A. Lake Superior, except those portions identified in subpart 3, item B, as a prohibited outstanding resource value waters.
- B. Those portions of the Mississippi River from Lake Itasca to the southerly boundary 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 the DNR, outside the boundaries of the Boundary Waters Canoe Area Wilderness 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) Saint 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; Mississippi River from County State-Aid Highway 7 bridge in Saint Cloud to northwestern city limits of Anoka; and
 - 6) Rum River from State Highway 27 bridge in Onamia to Madison and Rice Streets in Anoka.

401 Certification of NWP

The MPCA proposes to certify the referenced general NWPs because there is reasonable assurance that the activities identified within them will be conducted in a manner that will not violate applicable water quality standards provided the work is done in accordance with the following conditions, which shall become conditions of the NWPs:

Conditions for All NWP Activities

- 1. Mitigation required by an NWP must comply with Minn. R. ch. 7050.0186. *The MPCA Authority: Minn. R. ch. 7050.0186, Minn. R. 7050.0155. This condition is needed to ensure unavoidable physical alterations are properly mitigated.*
- 2. The applicant must ensure that all surface waters in or bordering the construction areas that are not authorized to be impacted by the project are clearly identified prior to construction. This may be done through demarcation of the construction area on plan sheets or through marking boundaries in the field, for example construction staking, flagging, or the use of silt fences along

boundaries. The applicant must not impact any non-construction areas while conducting activities under this permit. *The MPCA Authority: Minn. R. ch. 7001.0150). This condition is needed to protect surface waters not within the project boundaries.*

3. Applicants must install in-water best management practices (BMPs) necessary 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, subd. 14 of any surface water.
4. The applicant 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 for the purpose of the 401 Certification, but must be kept on-site during active construction by the applicant or the applicant's contractor until the project is complete. Proper installation of BMPs is required before conducting the authorized in-water activities and properly maintained throughout the duration of the project's in-water work. While conducting the authorized work, the applicant must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. Visual inspection should occur every seven days and within 24 hours after a rainfall event greater than ½ inch in 24 hours. If the project activities cause an observable increase in TSS or sedimentation as described in Minn. R. ch. 7050.0210, subp. 2 outside or downstream of the authorized defined working area, 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. *The MPCA Authority: Minnesota water quality standards are defined in Minn. R. ch. 7050 and 7052. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*

Information on BMPs that may be suitable for in-water work is located in the Minnesota 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 enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

5. The applicant must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. ch. 7050.0210, subp. 2. BMPs must be used that minimize TSS and sedimentation by removing solids in the water before discharging the water. If discharging to an upland area, the discharge must be directed to an onsite sediment basin prior to discharging and the discharge shall not cause erosion, and must not cause inundation, or sedimentation to the receiving water. The applicant must document the in-water BMPs prior to beginning any dewatering, this includes the point of withdrawal and the point of discharge; 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 for the purpose of the 401 Certification. The applicant must ensure that properly installed BMPs are in place before conducting the authorized activities and maintained throughout the duration of the dewatering work. *The MPCA Authority: Minn. R. ch. 7050.0210, subp. 2 and 7050.0150. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

6. The applicant must ensure any earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained and stabilized in a manner that will prevent any of the earthen material from eroding. The applicant must completely remove temporary structures and restore original bathymetry, or contours at project completion. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*
7. It is the applicant's responsibility to ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303-(d) listed impaired waters. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: <http://www.pca.state.mn.us/lupg1125> and <http://www.pca.state.mn.us/mvri1126>. *The MPCA Authority: Applicable water quality standards are located in Minn. R. ch. 7050. This condition is needed to ensure compliance with state water quality standards.*

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

8. Projects permitted under any NWP must implement planning and prewashing of equipment, prior to entering the site, to minimize the spread of invasive or noxious species. Fill used in any surface water must be clean fill that is free of any solid waste, toxic or hazardous contaminants, and invasive species as defined in Minn. Stat. ch. 84D and Minn. R. ch. 6216, and noxious weeds as defined in Minn. Stats. 18.75-18.91. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. This condition is needed to ensure compliance with state water quality standards.*
9. The applicant must provide: a) a copy of this Certification; b) documentation of any required BMPs under condition 3 above; and c) any written demarcation of waters of the United States under condition 2; to any prime contractor responsible for completing the project's authorized activities. The applicant 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 of surface waters, must be available at or near the project site for use by contractors or staff responsible for completing the project work and must be available within 72 hours when

requested by the MPCA staff. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. This condition is needed to ensure that all contractor activities meet State water quality standards.*

10. The applicant is responsible for compliance with all applicable conditions of this Certification. *The MPCA Authority: Minn. R. chs. 7050.0270 and 7050.0150. This condition is needed to ensure that all contractor activities meet State water quality standards.*
11. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3. *The MPCA Authority: Minn. R. ch. 7001.0150. This condition is needed to ensure the applicant follows state permitting requirements.*

Conditions Specific to Individual NWP Activities

In addition to all other applicable Certification conditions, the following activities must also comply with the activity-specific conditions below. *The MPCA Authority: Minn. R. ch. 7050.0270.*

- **NWP 7, Outfall Structures and Associated Intake Structures**
The applicant must ensure that impacts associated with outfall and intake structures do not harm aquatic life outside of the permitted project area and do not result in an unauthorized loss of surface waters. *The MPCA Authority: Minn. R. ch. 7001.0150). This condition is needed to protect surface waters not within the project boundaries.*
- **NWP 16, Return Water from Upland Contained Disposal Areas**
The applicant must ensure that return water from Upland Contained Disposal Areas, that is returned to the original source water, meet the same water quality standards that apply to the original source water. If the return water is discharged into a receiving water that is not the original source water, then the applicant must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water. *The MPCA Authority: Discharges of return water must not violate the state water quality standard identified in Minn. R. 7050.0210, subp.2. This condition is needed to protect surface water from excess sediment in the form of TSS and any contaminants contained in the TSS.*
- **NWP 19 Minor Dredging**
Projects exceeding 50 CY of impacts are not certified and require an individual review and 401 Certification. *The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.*
- **NWP 27 Wetland and Riparian Restoration and Creation Activities**
For restoration and creation activities, the applicant must meet the following conditions:
 - Manage sediment to minimize downstream effects.
 - Use low-flow and winter construction when appropriate.
 - Provide mitigation for any conversion of surface waters to uplands.*The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.*
- **NWP 53 Removal of Low-Head Dams**
Projects involving the removal of low-head dams must meet the following conditions:

- Manage sediment to minimize downstream effects.
- Use low-flow and winter construction when appropriate.

The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.

NOTIFICATIONS: The following notifications are not conditions of the MPCA CWA 401 Certification of NWPs. They provide practices that can help reduce the potential environmental impacts or they provide notification to the public in Minnesota, that certain discharges in Waters of the State, as defined in Minn. Stat. § 115.01, subd. 22, or activities associated with discharges into Waters of the State, are also regulated under rules administered by the MPCA:

1. It is the applicant'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 an applicant to provide compensatory mitigation for the project's unavoidable physical alterations to wetlands, including those not subject to federal jurisdiction under section 404 of the CWA.
2. Minnesota water quality standards found in Minn. R. ch. 7050, apply in all water of the state, defined in Minn. Stats. 115.01 subd. 22, "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
3. Applicants should review Total Maximum Daily Load (TMDL) / Watershed Restoration and Protection Strategy (WRAPS) projects to determine if they are applicable to their project. A list of WRAPS/TMDL projects is available at: <https://www.pca.state.mn.us/water/total-maximum-daily-load-tmdl-projects>.
4. Any projects in Cold Water Habitat waters, not excluded in Exceptional Aquatic Life Use Waters above and identified as class 2A, 2Ae, or 2Ag in part Minn. R. ch. 7050.0470, are required by the Code of Federal Regulations, title 40, section 131.10, to reflect an existing beneficial use or a feasibly attainable beneficial use, that permits propagating and maintaining a healthy community of cold water aquatic biota and their habitats. Existing beneficial use for cold water habitats means a beneficial use that was attained in a water body on or after November 28, 1975. Any project that impacts a Cold Water Habitat water must ensure that the Beneficial and Existing Uses are maintained.
5. Minn. R. chs. 7001 and 7090 requires any activity that will disturb one acre or more of land must 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 their 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 the following webpage: <https://www.pca.state.mn.us/water/construction-stormwater>.

6. Minn. R. ch. 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 NWP's, the applicant 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.
7. 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://www.pca.state.mn.us/water/salt-applicators>.
8. When riprap is used, the applicant should consider placing riprap in the following manner:
 - a. Use natural rock (average between 6 inches and 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, subd.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 OHWL should be no steeper than 3 to 1 (horizontal to vertical).
9. Section 401 Certification does not release the applicant 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 applicant'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 applicant from any liability, penalty, or duty imposed by Minnesota or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.
10. This Certification does not replace or satisfy environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA). 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, and final governmental decisions to grant a permit, approve a project, or begin a project may not be made, 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.

- A variance has been granted by the state Environmental Quality Board.
11. The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0170.
 12. Pursuant to Minn. R. 7001.1450, 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 any questions on this Certification, please contact Jim Brist at jim.brist@state.mn.us or 401Certification.pca@state.mn.us.

Sincerely,



Anna Hotz
Supervisor
Agency Rules Unit
Resource Management and Assistance Division

AH/JB:ds

Attachments

cc: Melissa Blankenship, EPA
Dave Pfeifer, EPA
Dana Rzeznik, EPA
Dawn Marsh, USFWS
Sarah Quamme, USFWS
Tom Hovey, DNR
Steve Colvin, DNR
Kerryann Weaver, EPA
Todd Vesperman, USACE
Meghan Brown, USACE

Exceptional Aquatic Life Use Streams



Minnesota's Outstanding Resource Value Waters

