



Minnesota Pollution Control Agency

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March 29, 2017

Mr. 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 Mr. 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. 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 final Nationwide Permits (NWP) issued by USACE Headquarters on January 6, 2017, and regional conditions proposed by USACE St. Paul District October 14, 2016, and is requiring conditions through the 401 Water Quality Certification.

The MPCA certifies the referenced general NWP because there is reasonable expectation 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 NWP:

Conditions for All NWP Activities

1. The permittee must ensure that all waters of the United States 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 permittee must not impact these areas while conducting activities under this permit.
2. Compensatory mitigation as required by NWP, General Condition 23, will satisfy the MPCA rules governing wetlands, Minn. R. 7050.0186.
3. The permittee must install in-water best management practices (BMPs) 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 water of the United States.

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 permittee or the permittee'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 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, 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 located in Minn. R. 7050.

Information on the types of BMPs that may be suitable for in-water work is located in the Minnesota Department of Natural Resources Manual titled *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001*, located at: http://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 enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

4. The permittee must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210. subp.2. BMPs must be used that minimize TSS and sedimentation by removing solids in the water before discharging the water. The permittee must document the in-water 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 maintained throughout the duration of the dewatering work.

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

5. The permittee must ensure any 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 any of the earthen material from eroding. The permittee must completely remove temporary structures and restore original bathymetry, or contours at project completion.
6. It is the permittee'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 applicable water quality standards are located in Minn. R. ch. 7050.

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

7. Any fill used in any water of the United States 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,

including those discussed in "A guide to Nonnative Invasive Plants Inventory in the North by Forest Inventory and Analysis," 2009, C. Olson and A. Cholewa.

http://www.nrs.fs.fed.us/pubs/gtr/gtr_nrs52.pdf.

8. The permittee must provide: a) a copy of this Certification; b) documentation of any required BMPs under conditions 3 and 4; and c) any written demarcation of waters of the United States under condition 1; to any prime contractor responsible for completing the project's 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 of the United States, 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.
9. The permittee is responsible for compliance with all applicable conditions of this Certification.
10. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.

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:

1. **NWP 7, Outfall Structures and Associated Intake Structures:** The permittee 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 waters of the United States without proper mitigation in accordance with General Condition 23 of NWPs.
2. **NWP 16, Return Water from Upland Contained Disposal Areas:** The permittee must ensure that return water from dredging that is directly 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 permittee must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water. Discharges of return water must not violate the state water quality standard identified in Minn. R. 7050.0210. subp.2.
3. **NWP 53, Removal of Low-Head Dams:** The permittee must evaluate and manage the accumulated sediment behind the structure to minimize downstream effects during and following the removal of the structure. Use low-flow and winter construction and other appropriate BMPs required in conditions 3 and 4 below.

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 other rules administered by the MPCA:

1. 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>.

2. 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, 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.
3. 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 Draft Twin Cities Metropolitan Area Chloride Management Plan, is located at: <http://www.pca.state.mn.us/r0pgb86>.
4. When riprap is used, the permittee should consider placing riprap in the following manner:
 - a. Use natural rock (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. § ch. 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).

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 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 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

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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
- 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. 7001.0170.

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 651-757-2245 or 401Certification.pca@state.mn.us.

Sincerely,



Melissa Kuskie

Supervisor

Certification, Environmental Review & Rules Section

Resource Management & Assistance Division

MK/JB:ds

cc: Janice Cheng, EPA
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