



# Procedure 3: MS4 Exemption

## Buffer Law Implementation

June 28, 2017

This document was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. §103F.48, subd. 5(4) to describe how this exemption can be utilized to demonstrate compliance with this section. It is a guide; not a rule. It is not a statement of general applicability and future effect. It is not designed to amend statute. Statutes are subject to change and if the language of this procedure differs from statute, the statute controls. In addition, users of the document are encouraged to obtain legal advice of an attorney regarding their specific application of Minn. Stat. §103F.48 and their own legal authorities.

## Procedure

The procedures for utilizing exemption (4)(i) are provided below:

1. NPDES/SDS Program MS4 permittees are not required to take any action regarding this exemption, which is as follows:  
*Minn. Stat. §103F.48, subd. 5*
  - 4) regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) permit under Minnesota Rules, chapter 7900, and provides water resources riparian protection, in any of the following categories:
    - (i) municipal separate system sewer system (MS4);
    - (ii) construction storm water (CSW);
    - (iii) industrial storm water (ISW)
2. Actions that meet the “water resources riparian protection” provision of Minn. Stat. §103F.48, subd. 5 (4) include, separately or in combination:
  - a. Perennially rooted vegetation as prescribed in Minn. Stat. §103F.48, subd. 3(a), or
  - b. Alternative riparian water quality practices as prescribed in Minn. Stat. §103F.48, subd. 3(b), or
  - c. Projects with comparable water quality protection provided by MS4 managed or sponsored infrastructure.
3. NPDES/SDS Program MS4 permittees that choose to take action to support this exemption should:
  - a) have implemented a MS4 permittee sponsored project(s) which provides water quality protection comparable to a buffer for the parcel seeking the exemption; and
  - b) provide evidence of (a) to the landowner and the respective SWCD.

## Background

This document provides direction to cities, townships, watershed districts, soil and water conservation districts (SWCD), counties and landowners regarding the implementation of Minn. Stat. §103F.48, subdivision 5(4). This provision provides an exemption to landowners from the requirements of the Buffer Law if the following conditions are met:

- (1) The land is subject to a NPDES/SDS Program MS4 permit; and
- (2) Water resources riparian protection is provided; and

- (3) The site is not inconsistent with the requirements of the state shoreland rules.

A MS4 permit does not have water resources riparian protection as a required component of the permit and the MS4 permit does not provide water resources riparian protection for areas outside the infrastructure subject to and managed by the MS4 permittee. Therefore, a MS4 permittee is not expected to provide water quality protection comparable to the buffer protection as part of the permit.

The Minnesota Pollution Control Agency (MPCA) oversees the NPDES/SDS Programs and can provide information on entities regulated under this program including specific permit requirements.

**Program Need:**

- 1) Landowners need to know if the MS4 permittee has or is planning an infrastructure project with water quality protection comparable to the buffer protection for their parcel.
- 2) The MS4 permittee needs to know that they may be able to help landowners with cultivated lands achieve eligibility for an exemption from the Buffer Law requirements by accomplishing a project with comparable water quality protection.
- 3) SWCDs need to know, for progress tracking and compliance validation, if an infrastructure project with water quality protection comparable to a buffer for a parcel is being provided by the MS4 permittee.

**Statutory Basis.**

- Minn. Stat. §103F.48 subd. 5(4)(i). Exemptions
- Minn. Stat. §103F.48 subd. 7. Corrective Actions
- Minn. Stat. §103B.101, subd. 12(a). Administrative Penalty Orders
- Minn. Stat. §103F.48 subd. 9. Appeals and Validations of Penalty Orders