

FRAMEWORK FOR INTEGRATED WATERSHED-BASED STORMWATER PERMITTING IN MINNESOTA

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EXECUTIVE SUMMARY

Effective stormwater and watershed management is the goal of myriad federal and state programs affecting local units of government in Minnesota. As a result, multiple agencies administer a variety of programs that often require local units of government to conduct the same or similar activities intended to control stormwater runoff and improve water quality conditions. Despite the overlap among many programs, there are some gaps among existing stormwater and watershed management regulatory programs that create challenges for developing and implementing comprehensive, integrated programs. Stakeholders throughout Minnesota involved in and concerned with stormwater and watershed management issues have initiated efforts to develop an integrated watershed-based stormwater permitting approach that has the potential to 1) reduce programmatic overlap and inefficiencies, 2) target and maximize financial and staff resources in achieving programmatic and water quality goals, and 3) fill existing programmatic gaps to ensure activities are comprehensive.

The purpose of this framework document is to describe the concept of and proposed process for integrated watershed-based stormwater permitting in Minnesota. Integrated watershed-based stormwater permitting is a proposed approach for streamlining federal and state regulatory and, in some cases, voluntary requirements for watershed and stormwater management. The approach addresses the existing overlaps and gaps in federal and state requirements that have the potential to burden regulated and regulating entities, as well as hamper the effectiveness of these regulatory programs. Successful development and implementation of an integrated watershed-based stormwater permitting approach will ensure compliance while producing both efficiencies and environmental results.

Through detailed regulatory analysis of federal and state regulations, a number of options to include in an integrated watershed-based stormwater permitting framework became readily apparent. This document presents a total of five options for streamlining and integrating stormwater permitting requirements on a watershed-basis. Two of the five options focus on how the Minnesota Pollution Control Agency (MPCA), the National Pollutant Discharge Elimination System (NPDES) permitting authority for the State of Minnesota, develops the municipal separate storm sewer system (MS4) general permit and the remaining three options focus on how MS4s choose to apply for permit coverage and implement their permit requirements. The five options discussed in the document are summarized below.

GENERAL PERMIT DEVELOPMENT OPTIONS: CONSIDERATIONS FOR THE PERMITTING AUTHORITY TO CONSIDER

1. **Assess and Reference a Qualifying Local Program in an MS4 General Permit [CFR § 122.34(c)].** The permitting authority can develop a general permit that references an existing program – that the MS4 currently implements in most cases – as a qualifying local program (QLP) that fulfills the requirements of a particular minimum control measure (MCM). Under this option, the permitting authority must assess the existing program to ensure that it fulfills the requirements of a particular MCM. If the permitting authority determines that implementation of an

existing program is equivalent to implementation of a particular minimum control measure, the permitting authority will identify the existing program as an approved QLP. The permit would require the MS4 to continue to follow the QLP to fulfill its MCM requirements under the MS4 permit rather than develop a separate and new program.

2. **Recognize Another NPDES-Regulated Entity with Implementation Responsibility [CFR § 122.35(b)].** The permitting authority can develop a general permit that recognizes another NPDES-regulated entity as the entity responsible for implementing any or all of the minimum control measures. Responsibility for implementation of the measure(s) would rest with the specified NPDES-regulated entity, thereby relieving the small MS4 permittee of its responsibility to implement that particular measure(s). The regulated small MS4 does not have to perform the measure and is not held liable if the entity recognized in the MS4 permit as having responsibility for administering the recognized program should fail.

GENERAL PERMIT COVERAGE SCENARIOS

1. **Individual Applicant Scenario [40 CFR § 122.33(b)(1)].** It is important to keep in mind that this scenario focuses on use of a general permit – the term “individual applicant” means that every MS4 submits its own permit application for coverage under a general permit. An individual permit is NOT used in this scenario. Each MS4 submits an Notice of Intent (NOI) and a storm water pollution prevention plan (SWPPP) for individual coverage under the MS4 general permit. Each MS4 would implement a SWPPP that meets the six MCMs and requirements under the Phase II MS4 general permit.
2. **Co-permittee Scenario [40 CFR § 122.33(b)(1)].** The NPDES Stormwater Program gives regulated MS4s the flexibility to share permit compliance responsibilities by taking a co-permittee approach. Under the NPDES Stormwater Phase II Final Rule, multiple regulated small MS4s may jointly submit an NOI for MS4 general permit coverage as co-permittees. Each permittee will be equally liable for compliance, however, responsibility for implementing the MCM can be shared amongst the co-permittees or one of the covered co-permittees can be responsible for implementing all MCM for the other co-permittees covered. The NOI must describe which entities will implement the MCM within the area to be covered. (It is important to note that although the federal stormwater regulations allow a co-permittee permitting approach, MPCA’s draft proposed MS4 general permit does not explicitly address whether or not regulated small MS4s can jointly submit an NOI and share responsibility for SWPPP development and implementation.)
3. **Sole Permittee Scenario.** EPA’s *Watershed-based NPDES Permitting Implementation Guidance* describes a permitting scenario that involves developing and issuing an NPDES permit to an authorized watershed entity that represents point source dischargers within a watershed. This scenario would

require that only one permittee submit an NOI and SWPPP to the permitting authority for an MS4 area (i.e. watershed) that includes other entities. This sole permittee would implement the SWPPP for the entire watershed area in lieu of requiring the other MS4s within that boundary to comply. Unlike the co-permittee scenario, this sole permittee would be singly culpable and responsible for permit compliance even within areas of the MS4 that are not owned and operated by that sole permittee. The purpose for this type of approach is to promote complete integration on a watershed-basis for maximum water quality improvements and administrative efficiencies for both the permitting authority and permittees.

Given the varying degrees of integration and cooperation among watershed management organizations and local governments, the integrated watershed-based permitting framework developed for Minnesota should include all options presented in a tiered manner and allow regulated MS4s to choose the approach that is appropriate for their local situation. This document concludes with a discussion of next steps for developing the integrated watershed-based stormwater permitting approach, including piloting one or more of the MS4 general permitting options.

INTRODUCTION AND PURPOSE

The purpose of this framework document is to describe the concept of and proposed process for integrated watershed-based stormwater permitting in Minnesota. Integrated watershed-based stormwater permitting is a proposed approach for streamlining federal and state regulatory and, in some cases, voluntary requirements for watershed and stormwater management. The approach addresses the existing overlaps and gaps in federal and state requirements that have the potential to burden regulated and regulating entities, as well as hamper the effectiveness of these regulatory programs. Successful development and implementation of an integrated watershed-based stormwater permitting approach will ensure compliance while producing both efficiencies and environmental results.

The framework builds upon the momentum created through the Minnesota Stormwater Steering Committee, as well as efforts by the U.S. Environmental Protection Agency (EPA) to promote watershed-based permitting under the National Pollutant Discharge Elimination System (NPDES) Program. It explores the concept of integrated watershed-based stormwater permitting, issues and actions related to integration of federal and state regulations, and potential options and administrative procedures for implementing this approach. The goal is to eventually initiate one or more pilot projects to apply the integrated watershed-based stormwater permitting approach described in this framework and continue to refine the concept and process. Therefore, the information contained in the framework will continue to evolve over time.

The organization of the framework is as follows:

- Section One: Background on the Concept of Integrated Watershed-based Stormwater Permitting

- Section Two: Regulatory Program Issues and Actions to Facilitate Integrated Watershed-Based Stormwater Permitting
- Section Three: Permitting and Implementation Options for Integrated Watershed-Based Stormwater Permitting
- Section Four: Proposed Next Steps in Developing and Piloting the Integrated Watershed-Based Stormwater Permitting Framework
- Appendix A: Detailed Evaluation of Element Alternatives (Tables A-1 and A-2)

SECTION ONE: BACKGROUND ON THE CONCEPT OF INTEGRATED WATERSHED-BASED STORMWATER PERMITTING

Effective stormwater and watershed management is the goal of myriad federal and state programs affecting local units of government in Minnesota. As a result, multiple agencies administer a variety of programs that often require local units of government to conduct the same or similar activities intended to control stormwater runoff and improve water quality conditions. Despite the overlap among many programs, there are some gaps among existing stormwater and watershed management regulatory programs that create challenges for developing and implementing comprehensive, integrated programs. Stakeholders throughout Minnesota involved in and concerned with stormwater and watershed management issues have initiated efforts to develop an integrated watershed-based stormwater permitting approach that has the potential to 1) reduce programmatic overlap and inefficiencies, 2) target and maximize financial and staff resources in achieving programmatic and water quality goals, and 3) fill existing programmatic gaps to ensure activities are comprehensive. This section of the framework provides additional background information on the genesis and development of the integrated watershed-based stormwater permitting approach in Minnesota.

WHY CONSIDER AN INTEGRATED WATERSHED-BASED STORMWATER PERMITTING APPROACH NOW?

The complex relationship among stormwater and watershed management regulatory programs at the state and federal levels are the driving force behind the analysis of an integrated watershed-based stormwater permitting approach. To fully understand why now is an appropriate time to consider this approach, it is necessary to briefly discuss the significant federal and state programmatic factors affecting both stormwater and watershed management in Minnesota.

Overview of Significant Federal Programmatic Factors

The NPDES Stormwater Program significantly expanded the universe of regulated entities with the final Stormwater Phase II Rule that required NPDES permit coverage for regulated small municipal separate storm sewer systems (MS4s) and construction activities between one and five acres. The Stormwater Phase II MS4 Program not only required a large number of municipalities to obtain permit coverage, but also other entities such as universities, hospitals, departments of transportation, and federal facilities.

In Minnesota, over 190 local governments and other entities – including watershed management organizations that own and operate MS4s – are required to comply with MS4 permit conditions including the development and implementation of Stormwater Pollution Prevention Programs (SWPPP). The Minnesota Pollution Control Agency (MPCA) is the NPDES permitting authority authorized to administer the NPDES Program in the State of Minnesota, including the NPDES Stormwater Program. As the

NPDES permitting authority, MPCA is responsible for developing and issuing stormwater MS4 permits.

MPCA issued an MS4 general permit on March 10, 2003 and expires on March 10, 2008. Litigation on the permit (see Table A-2 in Appendix A - NPDES Stormwater Municipal Separate Storm Sewer System (MS4) Program and Water Quality Standards sections) resulted in the MPCA developing an amended Phase II MS4 general permit scheduled for review and approval by the MPCA Citizen's Board on February 27, 2006.

At the federal level, EPA is continuing to recognize the need for NPDES permit integration on a watershed-basis. Building on its commitment to advancing an NPDES watershed framework expressed in the 1994 "NPDES Watershed Strategy," the EPA Assistant Administrator for Water issued a policy memorandum in December 2002 entitled "Committing EPA's Water Program to Advancing the Watershed Approach." This policy memorandum not only reaffirmed EPA's commitment to the watershed approach but also reenergized efforts to ensure that EPA as a whole fully integrates the watershed approach into program implementation.

Following the release of the December 2002 watershed approach policy memorandum, EPA's Office of Water released the "Watershed-Based NPDES Permitting Policy Statement" on January 7, 2003 (see Appendix B). This statement communicates EPA's policy on implementing NPDES permitting activities on a watershed basis, discusses the benefits of watershed-based permitting, presents an explanation of the process and several mechanisms to implement watershed-based permitting, and outlines how EPA will encourage watershed-based permitting. It serves as both a formal commitment and a strategy for fully integrating the watershed approach into the NPDES permitting program and accelerating these efforts, as called for in the watershed approach policy memorandum. Then, in December 2003, the Office of Water issued the *Watershed-based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance* to more fully describe the concept of and the process for developing and issuing multi-source permits on a watershed-basis under the NPDES program. Expansion of the NPDES Stormwater Program and a reenergized commitment to watershed-based NPDES permitting are two important driving factors in Minnesota's pursuit of an integrated watershed-based approach to stormwater permitting.

Overview of Significant State Programmatic Factors

Momentum currently exists to address stormwater and watershed management issues due to the recent activities of the Minnesota Stormwater Steering Committee, issuance of an amended MS4 permit in 2006 that incorporates nondegradation planning requirements, and anticipated reissuance of the industrial stormwater permit. State specific regulatory programs that affect stormwater and watershed management, in addition to the federal NPDES Stormwater Program implemented at the state-level by MPCA, also serve as driving factors due to the potential overlap with federal regulatory requirements. A brief overview of the significant state-specific regulatory programs is provided below.

The Metropolitan Land Planning Act (MLPA) of 1976 provided the Metropolitan Council, created nearly a decade earlier, with the authority to plan for and implement regional facilities (transportation, wastewater, open space, water resources and most recently water supply). The MLPA and Minnesota Statutes (M.S.), Chapter 462 and others required cities, towns and counties to prepare comprehensive plans for future development. Comprehensive plans identified how local government would grow over an approximately 20-year period. Official controls (e.g. zoning maps with ordinances, site plan and subdivision regulations, sanitary codes, etc.) derived from the Comprehensive Plan.

When the Metropolitan Surface Water Management Act of 1982 was enacted, all minor watersheds were required to have plans along with a governing entity such as a watershed district or joint powers board of local governments. The Act also requires local governments to prepare local water plans conforming as near as possible to watershed plans. Local governments are required to incorporate local water plans into comprehensive plans; integration of these requirements has been particularly useful with respect to correcting identified surface water problems and conducting comprehensive wetland management planning and implementation. Amendments in 1990 expanded the law requiring groundwater plans by metropolitan counties and changing the citation to Metropolitan Water Management Program (M.S. 103B.201).

Water management in Minnesota's seven county metropolitan areas is somewhat unique as it is accomplished by a network of watershed management organizations (WMOs) covering most minor watersheds (eleven minor watersheds are under county management in Carver, Dakota and Scott counties). A WMO is either a watershed district under M.S. Chapter 103D with a board of managers appointed by a county board or a joint powers entity (M.S. 471.59) with board of managers

**A Closer Look at a WMO:
Overview of the Ramsey Washington
Metro Watershed District**

The Ramsey-Washington Metro Watershed District (the District) is a special purpose governmental unit responsible for protecting the water resources of the watershed, located in the eastern portion of Ramsey County and the western edge of Washington County, Minnesota. The District was established in 1975 under the Minnesota Watershed District Act.

The District also includes all or part of 10 cities in Ramsey and Washington Counties: These cities include St. Paul, Woodbury, Oakdale, Landfall, North St. Paul, Maplewood, Little Canada, White Bear Lake, Vadnais Heights and Gem Lake.

Programs and projects undertaken by the District focus on achieving the goals of the District's Watershed Management Plan, required under the Metropolitan Surface Water Management Act. The District's goals include surface water management, water quality management, integrated resource management, and lake management. To meet these goals, the District administers and enforces land development permit program, a natural resources program, a public education program, water quality and biological monitoring, as well as capital improvement projects.

The District currently coordinates with other regulated MS4s in its jurisdiction to address stormwater permitting requirements, although no formal agreement or approach is in place at this time.

consisting of interested persons appointed by respective local governments within its boundaries. The WMO can exercise land use authority under certain circumstances (e.g. a local water plan has not been adopted).

Minnesota is unique in having WMOs as mandated local units of government with authority to enforce ordinances under certain circumstances and levy taxes (property tax levy authority has been granted to watershed districts and one joint powers board WMO). With such authorities, WMOs are well suited to pilot an innovative approach to watershed-based permitting that EPA once considered as a potentially viable permitting option. Minnesota can demonstrate how WMOs are an innovative option for implementing a truly watershed-based approach to stormwater permitting. Integration of state watershed planning requirements with federal stormwater pollution prevention planning, local water management planning, and local comprehensive planning would truly demonstrate a comprehensive approach that is the first of its kind nationwide.

Figure 1 illustrates the current stormwater permitting and watershed management system that exists in Minnesota.

WHAT ARE THE ANTICIPATED BENEFITS?

The concept of integrated watershed-based stormwater permitting has several anticipated benefits for both regulated local governments and regulatory agencies and organizations. EPA's *Watershed-based NPDES Implementation Guide* describes the anticipated benefits of watershed-based permitting, including:

- Targeting and maximizing use of resources to achieve the greatest environmental results
- Coordinating and streamlining permitting and planning processes
- Strengthening cooperative local efforts
- Reducing costs and leveraging resources
- Using existing watershed data and information.

Identifying and quantifying the actual benefits of watershed-based stormwater permitting in Minnesota will require a more detailed analysis of on-the-ground piloting of a watershed-based approach. However, it is assumed that the stakeholders participating in this approach would recognize some of the anticipated benefits described by EPA. Future phases of this project will focus on a detailed analysis of the costs and benefits associated with watershed-based stormwater permitting for permittees and regulatory agencies.

**Watershed-based Permit and Relationship to Existing
Federal – State – Regional - Local Programs in Minnesota**

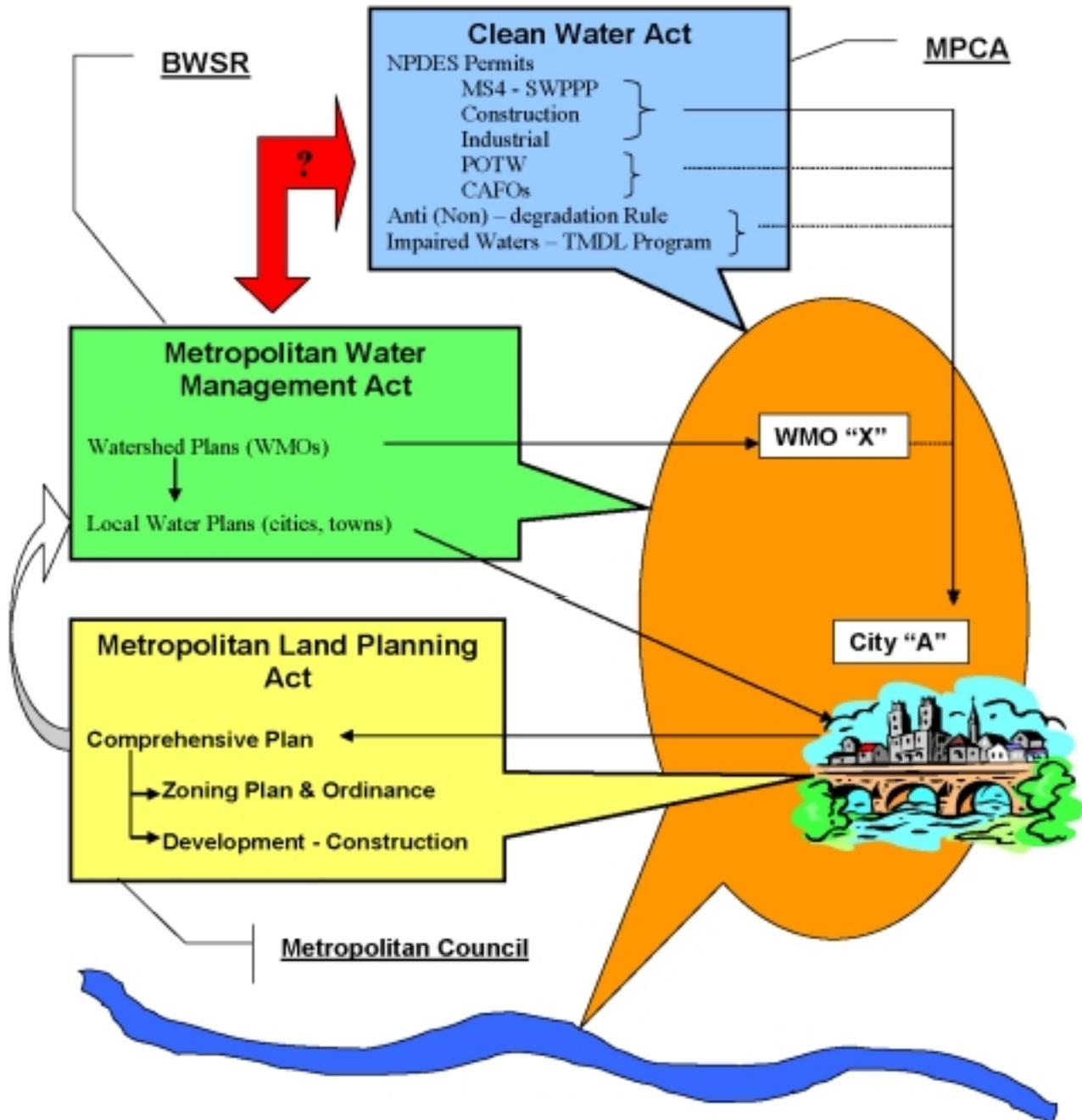


Figure 1

Local Governments (towns, cities and counties), WMOs (watershed districts & joint powers), Metropolitan Council, MPCA, BWSR, and U. S. EPA

The effort to develop an integrated watershed-based stormwater permitting framework originated from the Minnesota Stormwater Design Team in September 2003. The Design Team involved 16 nonprofits and government entities. The Design Team developed nine purpose statements, three of which provide a direct linkage to the framework in the state stormwater effort. The purpose of the Design Team's efforts is to design a state stormwater effort that:

- Integrates stormwater rule development with the design of the stormwater effort;
- Recognizes the interrelationship between stormwater and the state's impaired waters effort; and
- Streamlines by integrating stormwater management into existing planning, regulatory and governance structures to the maximum extent possible (Minnesota Stormwater Design Team 2004).

The Design Team also established commonly held beliefs among its members. Three of the nine tenets have a direct bearing upon the integrated watershed-based stormwater permitting framework development:

- We will build an efficient and understandable framework;
- Government will assist citizens and regulated parties; and
- We will use a watershed approach (Minnesota Stormwater Design Team 2004).

A Stormwater Steering Committee (SSC) evolved out of the Design Team's efforts in spring 2004 as a group of public and private stakeholders charged with implementation. The SSC established subcommittees to facilitate implementation of the Design Team's purposes. Subcommittees addressed key priority areas to:

- Establish and maintain a comprehensive Stormwater Management Manual; and
- Promote a watershed approach to stormwater management.

The SSC's workplan identified high priority items, including development of the Manual and this permitting framework beginning in 2004. The SSC completed the Minnesota Stormwater Manual in November 2005. The SSC's Watershed Subcommittee led efforts to develop the permitting framework starting in 2004. Subcommittee members met several times in 2004 and early 2005 to discuss the MS4 nondegradation permit issue and the broader issue of permitting. The Watershed Subcommittee approved the submission of two grant applications in summer 2004. The first was to Metropolitan Council's Metro Environment Partnership (MEP) grant program and the second was to U.S. Environmental Protection Agency (EPA) Region 5's NPDES – Water Quality Cooperative Agreements FY 2005 proposal. Metropolitan Council awarded a MEP grant in September 2005 entitled "Watershed-Based NPDES Management and Permitting Potential in Minnesota" to the Board of Water and Soil Resources. Partners in the grant project are as follows:

- Minnesota Board of Water and Soil Resources (BWSR)
- Minnesota Pollution Control Agency
- Metropolitan Council
- Ramsey-Washington Metro Watershed District
- Dakota County/Vermillion River Watershed.

Table 1 shows the tasks, schedule and deliverables associated with the Watershed-Based NPDES Management and Permitting Potential grant project.

Table 1: Tasking for Watershed Based NPDES Management and Permitting Potential Grant Project

TASK	DESCRIPTION	TIME-FRAME	DELIVERABLES
1	Assessment and Analysis of Regulatory Components	October – November 2005	Table 1 of Report
2	Evaluations of Element Alternatives	November – December 2005	Table 2 of the Report
3	Framework Design for Implementation	December 2005 – January 2006	Tables 1 & 2 and Framework options for review by January Subcomm. meeting
4	Integrated Water Management Planning	February – March 2006	Draft Framework for Review by February Subcomm. meeting
5	NPDES Construction Site Permitting	February – March 2006	Present draft Framework Tasks 1-3 to March SSC meeting
6	SSC Watershed Approach Subcomm Review and Recommendations	April – May 2006	Final draft Framework presented to SSC for adoption
7	Municipal and Civic Engagement in the Pilot Watersheds	June – August 2006	Present final draft Framework to <i>hybrid</i> watersheds stakeholders

The Watershed Based NPDES Management and Permitting Potential grant project is scheduled for completion by September 2006. As of February 2006, the EPA Region 5 proposal is pending.

WHAT ARE THE PRINCIPLES AND GOALS OF AN INTEGRATED WATERSHED-BASED STORMWATER PERMITTING APPROACH?

To ensure that the integrated watershed-based stormwater permitting approach fulfills the needs of both regulated entities and regulatory agencies and organizations, it is imperative that the approach reflects a set of agreed upon principles and a suite of goals that represent the standards and targets driving each of the regulatory programs.

Recommended Principles

The following principles for integrated watershed-based stormwater permitting are recommended for stakeholder review and consideration.

- Achieve a greater level of environmental protection and improve water quality more efficiently than would be accomplished by fulfilling federal, state, and local program requirements separately.
- Provide a level of flexibility that will consider multiple sources of runoff (e.g., point and nonpoint) and will focus on watershed goals.
- Maintain an equivalent level of regulatory control, assuring necessary and appropriate enforcement of federal and state legislative mandates.
- Involve a full range of stakeholders in formulating and implementing this framework and foster public confidence in the framework.
- Ensure framework is applicable initially to the metro area and include optional approaches for out-state areas.
- Maintain flexibility while standardizing and unifying processes to avoid “one-size-fits-all” approaches that do not consider unique watershed conditions and characteristics.
- Focus on local-level plan development and implementation with state-level oversight.
- Institute more effective program administration (including inspections) and tracking to improve permit compliance and reduce permit backlog.

Goals and Targets

An integrated watershed-based stormwater permitting approach brings together a variety of federal, state, and local stormwater and watershed management programs, each with its own set of standards, criteria, goals, and targets. As a result, it is imperative to not only identify the goals and targets of each program, but also to ensure that the integrated approach reflects encompasses and reflects those individual programmatic goals and targets. As a result, an integrated watershed-based stormwater permitting approach carries a significant challenge in fulfilling many programmatic requirements, including state water quality standards, stormwater and watershed management planning standard of maximum extent practicable (MEP), and other local comprehensive and water management planning goals.

SECTION TWO: REGULATORY PROGRAM INTEGRATION ISSUES AND ACTIONS TO FACILITATE WATERSHED-BASED STORMWATER PERMITTING

This section of the Framework addresses the issues surrounding federal and state program integration to facilitate watershed-based stormwater permitting, as well as recommendations for future actions to resolve these issues. The first step in developing a framework for integrated watershed-based stormwater permitting was to conduct an analysis of federal and state regulations that directly or indirectly affect watershed management and stormwater permitting. The goal of the regulatory analysis was to identify opportunities and obstacles for program integration on a watershed-basis. Federal and state programs included in the regulatory analysis are as follows:

Federal

National Pollutant Discharge Elimination System (NPDES) Program

- Concentrated Animal Feeding Operation (CAFO) Program
- Stormwater Program (Industrial, Municipal Separate Storm Sewer System, Construction)
- Pretreatment

Nonpoint Source Pollution Control Program (Section 319)

Water Quality Planning and Management Total Maximum Daily Load (TMDL) Program

Water Quality Standards

Wetlands Permitting (Section 404)

Source Water Assessment Program (Safe Drinking Water Act)

State

NPDES/SDS permitting

NPDES Pretreatment Program

NPDES MS4 Program

NPDES Construction Program

NPDES Industrial Program

MPCA Feedlot Program

Water Quality Planning and Management

Water Quality Standards

Nonpoint Source Pollution Control Program

Dredge and Fill Materials Program

Wetland Conservation Act

Public Waters Work Permit Program

Wetland Mitigation – MPCA

Source Water Assessment Program

Metropolitan Water Management Program

Watershed Law

Comprehensive Local Water Management Act

Metropolitan Land Planning Act

Section 401 Water Quality Certification

Appendix A presents the detailed assessment of the federal and state regulatory programs listed above. Table A-1 in Appendix A provides a general overview of each federal and state regulatory program, including the program's purpose, administration of the program, the jurisdiction to which the program applies, and the geographic scale. This information helps to identify 1) programs with potential for integration and 2) aspects of the program that might present opportunities or obstacles. Based on the information contained in Table A-1, the list of programs became more focused for further analysis.

Table A-2 in Appendix A continues the regulatory analysis for a refined list of federal and state programs. Elements examined in Table A-2 include public notice and review requirements, applicable standards and criteria, infrastructure responsibility, liability, compliance and enforcement processes, applicable court decisions and guidance, and relationship to the TMDL Program.

Issues and Actions

The remainder of this section presents the findings of the regulatory analysis summarized in Tables A-1 and A-2 in Appendix A. The findings focus on the issues and actions related to program integration for stormwater permitting on a watershed-basis. For the purposes of the Framework, issues and actions refer to the conflicts or deficiencies identified through the regulatory analysis and the suggested approaches for resolving these conflicts and deficiencies that will produce opportunities for seamlessly integrating existing federal and state regulatory requirements for watershed-based stormwater permitting.

Federal Program Issues and Actions

A discussion of the issues and actions associated with federal programs is provided below. The name of each federal program is shown in italics with the list of issues and actions appearing below. The list of issues is contiguously numbered despite the change in federal programs for ease of reference.

NPDES Phase II MS4 Program

Issue 1: Stormwater Phase II MS4 Program does not require tracking of industrial stormwater permittees or other third parties located within the MS4 boundary.

Unlike the Stormwater Phase I MS4 Program, small regulated MS4s subject to Phase II MS4 permit requirements do not track industrial facilities or other third parties that discharge to the MS4. This lack of information hampers the ability of the MS4 to holistically manage stormwater runoff entering their system. Although MS4s might identify potential problems associated with industrial facilities or other third parties through their illicit discharge detection and elimination programs, they will have limited information for comprehensively tracking, system inspection and required prohibition [40 CFR 122.34(B)(3)(ii)(B)].

Action 1a: Establish a mechanism between MPCA and MS4s to share industrial stormwater permit NOIs.

Action 1b: Provide an incentive for MS4s to develop an industrial facility tracking system using publicly available databases such as Dunn and Bradstreet,

TRI, and other sources of information that track industrial facilities by type and location.

Issue 2: Stormwater Phase II Rule provides the NPDES permitting authority with the option to use the flexible MS4 permitting approaches such as referencing a qualifying local program (QLP) [40 CFR 122.34(C)] and recognizing another NPDES regulated entity [40 CFR 122.33(1) and 122.35]. The Stormwater Phase II Rule allows NPDES permitting authorities to consider various options to provide flexibility in MS4 permitting. These options are intended to help streamline permitting requirements for regulated MS4s. However, use of these options require the NPDES permitting authority to assess local, State, and Tribal programs that could potentially serve as:

- 1) A qualifying local program (QLP) that the MS4 is already implementing (e.g., a state required erosion and sediment control program); or
- 2) A program or activity implemented by another NPDES-regulated entity to fulfill one or more minimum control measures under the SWPPP for a regulated MS4.

If the NPDES permitting authority chooses not to make these assessments, these flexible permitting options are not available to regulated MS4s. Although there are still other flexible permitting options available to MS4s that do not require authorization on behalf of the NPDES permitting authority (e.g., relying on another entity to fulfill one or more minimum control measure or becoming a co-permittee with another MS4), they do not streamline requirements as effectively and do not alleviate the regulated MS4 of their ultimate liability under the MS4 general permit in the same way.

Action 2a: Facilitate discussions with MPCA about conducting the necessary program assessments on a watershed-basis through the development of a program equivalency package. It is first necessary to determine MPCA's rationale for not taking advantage of these flexible permitting options. If MPCA did not conduct program assessments due to resource constraints, it might be possible to propose making these options available on a limited basis in this permit term or during the next permit term through the development of a third-party program equivalency package. A program equivalency package would contain a comprehensive assessment of programs that the MS4 permit could identify as a qualifying local program or recognized NPDES regulated entities that would perform one or more minimum control measures. The development of a program equivalency package would take the research burden off of MPCA and allow them to focus on reviewing the package to make a determination.

Action 2b: Identify opportunities to reduce the potential assessment burden on MPCA by creating uniform standards for grading permit programs under watershed management organization plans to facilitate a qualifying local program determination. The most obvious candidate for a qualifying local program is the grading (i.e., erosion and sediment control or construction activity) permit

program administered by a WMO. This program is derived from a watershed district's approved watershed plan. Although all WMOs are required to have a watershed plan in place, not all programs originating from the watershed plans are the same. Therefore, MPCA cannot assume that one WMO's grading permit program is as stringent and contains all the same elements as a grading permit program implemented by another WMO. If the Metropolitan Water Management Program required all WMOs to develop and implement plans that met the same criteria, MPCA could more easily assess each WMO's grading permit program as a QLP that satisfies the construction site runoff minimum control measure under the MS4 permit.

Issue 3: Phase II MS4 Rule Doesn't Require Stormwater Pollution Prevention Plan to be based on stormwater discharge characterization/monitoring. Under the Phase I NPDES Stormwater Program, MS4 permittees conducted stormwater discharge characterization monitoring as part of the intensive permit application process. Phase I MS4s then used this sampling data to craft a stormwater management program that addressed specific pollutants of concern found in their systems. Under the Phase II NPDES Stormwater Program, MS4s do not have any stormwater discharge characterization requirements. Therefore, regulated small MS4s develop stormwater pollution prevention programs using best professional judgment on the pollutants of concern affecting their systems based on land use and other readily available information. As a result, many SWPPPs are often generic in nature and do not attempt to address specific pollutants found in stormwater discharges.

Action 3: Tie SWPPP to other plans (i.e., watershed management organization plans with nondegradation policy and implementation) that identify pollutants of concern to ensure that BMPs are focused on pollutant sources and loadings affecting local water quality.

Issue 4: Phase II MS4 Rule requires a construction minimum control measure that overlaps with Construction Activity program requirements and potentially other state and local sediment and erosion control requirements. One criticism of the Phase II NPDES Stormwater Program is the overlap between construction permitting requirements at the federal, state, and local levels. A developer might be subject to an NPDES Construction General Permit issued by MPCA, requirements imposed by a local ordinance as a result of an MS4 SWPPP, and existing local erosion and sediment control requirements administered by a WMO through its approved watershed management plan. This overlap in permitting requirements illustrates the need for program integration on all levels to alleviate the administrative burden to the regulated community as well as regulating entities.

Action 4: Identify feasible mechanisms for a permit-by-rule approach to complying with both construction general permit requirements and the Phase II MS4 construction minimum control measure in the MS4 SWPPP.

Issue 5: Despite TMDL and stormwater wasteload allocation (WLA) memo, there are still uncertainties and challenges associated with TMDL implementation using MS4 permits.

Action 5: Coordinate with EPA Region 5 on approach for developing and implementing WLAs through use of stormwater BMPs to attain water quality standards.

NPDES Stormwater Construction Program

See Issue 4

NPDES Stormwater Industrial Program

See Issue 1

Nonpoint Source Pollution Control Program (Section 319)

Issue 6: Grant funding to conduct nonpoint source pollution education is not available to conduct public outreach and education activities required to comply with Phase II MS4 permit requirements.

Action 6: Identify how other states are finding opportunities to use some or all Section 319 grant monies to conduct education activities related to Phase II MS4 public outreach and education requirements.

Total Maximum Daily Load Program

See Issue 5

Other Federal Issues

- 1) Limited programmatic integration within EPA
- 2) Watershed-based permitting endorsed by EPA, but no examples exist to date of a watershed-based permit issued to a watershed organization.
- 3) Limited federal resources available to provide to state and local governments to facilitate integration of federal programmatic requirements on a watershed-basis.

State Program Issues and Actions

MS4 Stormwater Program

Issue 7: Federal flexibility in Phase II Stormwater Final Rule is not reflected at state level. Although the federal Phase II Stormwater Rule includes innovative provisions to provide permittees and permitting authorities with flexibility, MPCA did not incorporate these permitting options into the MS4 permit (see Table A-1, MS4 Permit, Weaknesses). See Issue 3 under Federal Program Issues.

Action 7: Suggest language to be incorporated within future Minnesota Phase II MS4 permit addressing flexibility provisions within the federal rule allowing for a joint stormwater management program and implementation. See discussion under Action 3a and 3b.

Issue 8: Neither Minnesota statutes (Chapters 115 & 116), MS4 permit or new stormwater rule, Chapter 7090 address metropolitan watershed management planning and local water planning (see Table 1. MS4 Permit, Weaknesses) . A successful framework could address integrating the stormwater permitting and watershed/local planning programs. The number of existing (190) and potential MS4 point source permit holders in Minnesota elevates the program in statutory importance, similar to publicly owned wastewater collection and treatment and animal feedlot programs. The challenge is to craft statutory, permit and/or rule amendments that are primarily metropolitan in geographic scope at this time.

Action 8: Suggest language amendments for a new statute section under chapters 115 or 116 pertaining to stormwater permit program integrating watershed and local water planning. Suggest rule and MS4 permit amendment language addressing same issue. Prepare suggested amendment summary proposals for either Chapter 115 or 116 of Minnesota Statutes and Minnesota Rule 7090

Issue 9: MS4 permit implementation approaches (e.g., co-permittee, MS4s jointly filing NOI with shared implementation, and relying on another MS4 or other entity) for some or all MCMs requires a liability evaluation of the potential increased risk of exposure to criminal prosecution and/or civil penalties with respect to carrying out MS4 permit provisions. The existing MS4 permit (Table 4, G-1) results in several liability to the permittee for violations. To what degree do the other approaches (G-2, G-3, G-4 or G-5) result in joint and several liability risk to each party involved? Minnesota statutes have reduced the extent of joint and several liability damage awards through a proportionate share approach, thus reducing the “deep pocket” scenario (M.S. section 604.02). However, environmental issues are a statutory exception [M.S. section 604.02, Subd. 1(4)], thus a party remain subject to joint and several liability for the whole damage award. Criminal violations may arise for a person who knowingly violates an NPDES permit [M.S. section 609.671, Subd. 8(3)(d)]. See also Table 2, Liability item.

In an effort to address permit administrative efficiency, cost effectiveness and better environmental outcomes through alternative MS4 permit implementation approaches, have legal liability obstacles been created? Alternatively, will spreading the work out through more efficient delivery systems result in liability being spread-out as well?

Action 9: Suggest seeking legal opinion on several issues relating to the alternative MS4 permit approaches and perhaps their unintended liability. It is important that cost savings predicted to accrue with such approaches are not off-set by potential

increased legal exposure. The issue is pertinent to MS4s as well as other entities providing assistance MCM implementation.

Industrial Stormwater Program

Issue 10: Expired permit when reissued should include integration with MS4 permit as well as watershed management planning and local water planning. See discussions in Table 1 (Barriers, Challenges, Opportunities, Strengths and Weaknesses) and Issue 2. While technically not industrial facilities subject to permit issuance, other third party stormwater discharges (e.g. shopping centers, multiple housing complexes, etc.) have the potential for significant impacts to receiving waters. Therefore, such discharges essentially “fall through the cracks” of the stormwater program and would not be specifically addressed within comprehensive watershed/local planning.

Action 10: Lower priority due to waiting for EPA issuance of new draft industrial permit. Be ready to comment to EPA on draft permit that assures integration with both. See action item 2a. Other third party discharges are worthy of future discussion by the Watershed Subcommittee and Stormwater Steering Committee and alternative approaches for “filling the crack” on this matter.

Water Quality Standards

Issue 11: Language within the existing nondegradation rules (M.R. 7050.180 and specifically 7050.185) applies more readily to point source *continuous* discharges (i.e. wastewater) rather than intermittent discharges (i.e. stormwater). This is most evident with respect to the determination of “significant discharge” and its application to expanded discharges, minimum levels of treatment and reasonable control measures. The latter two rule requirements do not mention either best management practices or the MEP requirement, the latter being cornerstones of stormwater management. The Minnesota Appeals Court decision, in part, (Table 2, Appendix A), directed the MPCA to determine if additional controls are necessary for expanded discharges. The amended MS4 permit scheduled for consideration by the MPCA Board in February 2006 will partially address this issue. However, the rule remains cumbersome in its application to intermittent stormwater discharges and has implications to other state water management program integration.

Action 11: In abeyance, as a future MPCA effort will amend rule and clarify its applicability implementation. The MPCA may amend the nondegradation rules in the next five years. The priority for rule-making could be accelerated depending upon the outcome of implementing the Appeals Court decision and issuance of an amended MS4 permit.

Metropolitan Water Management Program

Issue 12: Language interfacing M. S. 103B and M. R. 8410 with respect to applicable MPCA statutes (M.S. 115 or 116) and rules (M.R. 7001, 7050 and 7090).

Essentially, this is the “flip-side” of Issue 8 in terms of watershed-based permit integration, that being the watershed and local water planning aspects. The BWSR watershed and local water management program (M.S. 103B & 103D, M.R. 8410) and MPCA stormwater program (MS4 permit and M. R. 7090), need to integrate and operate in a seamless fashion. A seamless fashion anticipates an amendment process that does not increase complexity. Seamless operation is critical from the perspectives of the primary stakeholders and the administrative agency, meaning easily understood purposes and requirements. See also, Table 1, Weaknesses, Metropolitan Water Management Program and Watershed Law.

Action 12: Present examples of language amendments for initial consideration by Watershed Subcommittee and Stormwater Steering Committee review and comment. It should be noted that merging both statutory program authorities (115 and 103B) and administrative rule programs (7001, 7090 and 8410) presents some risk. There is the possibility that it may be easier to repeal existing conflicting legal instruments and craft a free standing statute and/or rule accomplishing stormwater management, both planning and permitting. However, such an approach likely may be uncomfortable for some stakeholders. So, early on in the suggested revision process, draft amendments, integration understanding and complexity reduction will need to be presented to ascertain positive and negative stakeholder reactions.

Issue 13: There is no specific mention to the 303(d) - impaired waters and TMDL programs within metropolitan water management statutes or regulation.. Existing language in M.R. 8410.0090 allows for discussion of problems within a watershed for planning and implementation purposes. A simple solution would be a paragraph reference to the 303(d) and TMDL programs like existing language within the MS4 permit. However, because the entire watershed/local planning process anticipates a structured implementation process, care in the amendment process would be necessary in light of the previous Issue 6 discussion and the Weakness shown in Table 1 under Water Quality Planning and Management.

Action 13: Present an example of a rule language amendment pertaining to the 303(d) and TMDL programs for initial consideration by Watershed Subcommittee and Stormwater Steering Committee review and comment. As discussed previously, there is some uncertainty on the level of effort anticipated with this Action item with respect to the Issue 6 discussion and suggested action.

Watershed Law

Issue 14: Language interfacing M. S. 103D and M. R. 8410 with respect to applicable MPCA statutes (M.S. 115 or 116) and rules (M.R. 7001, 7050 and 7090).

See Issue 12 above regarding the metropolitan water management program and Table 1, Weakness, Metropolitan Water Management Program and Watershed Law. Minnesota Statutes, Chapter 103D does not contain the specificity of Chapter 103B with respect to watershed plans and local water plans. Instead cross-referencing to 103B is undertaken directing the user to the specific planning process. Statute 103D is a statewide in scope, not metropolitan as in the case of 103B. Thus, cross-referencing 103D with MPCA statutes may create more problems that are worthwhile. Another option, could be a separate subdivision within 103D relating to metropolitan watershed districts and watershed/local water planning. As discussed previously under Issue 12, creating more statutory complexity needs to be weighed against the difficulty of creating a new freestanding law.

Action 14: Present amendment outline approaches for initial consideration by Watershed Subcommittee and Stormwater Steering Committee review and comment. An outline approach is preferable to actual language amendments due to the risk of “going down an unacceptable pathway”. Such a method is more cost-effective in determining the best course of action to implement in the final analysis.

Comprehensive Local Water Management Act

Issue 15: The barrier to implementing watershed-based permits statewide because of a lack of watershed authorities outside of the metro area. It is unlikely that watershed district authorities will or could be formed for all 81 minor watersheds across the state, notwithstanding current numbers. County and city planning through joint power authority may be the more likely scenario. Another approach, but more of an educational route would be loosely-knit Non-governmental Organizations (NGOs) such as the successful efforts in the Duluth metropolitan area known as the Regional Stormwater Protection Team (<http://www.duluthstreams.org/stormwater/rspt.html>). The more likely alternative approach would be to hold off on any efforts in this regard until completion of hybrid projects.

Action 15: Conduct further discussions by Watershed Subcommittee on this issue to formulate future direction. Input from Carver, Dakota and Scott counties staff on their respective minor watershed management approaches may be helpful.

Metropolitan Land Planning Act

Issue 16: Integration of land use planning at the local level with watershed management along with state and federal regulatory programs is somewhat lacking. Seeking local government approvals are the first step in any proposed development. A

watershed-based permit concept needs to address a crucial interface with local planning authorities. Effective integration of local water management with comprehensive planning is necessary to “come full circle” with this concept. Further analysis of integrated comprehensive and local water planning efforts need to be addressed to determine effectiveness. Obstacles sometimes exist between planning and engineering staffs or consultants within local government driven by sometimes competing goals and policies. Seeking the highest and best use of property sometimes can sacrifice environmental issues. The key to success of watershed-based permitting is to have all decision-makers on the same page. See Weaknesses in Table 1, Metropolitan Land Planning Act.

Action 16: Further review and discussion of this issue is warranted with both Metropolitan Council staff and local governments to determine the degree of disparity on these issues. The most appropriate change suggests a statutory amendment to M.S. 103B cross-referencing the requirements for integrating local water management plans into comprehensive plans, but also their importance within watershed plan development. Such action would also necessitate a similar amendment to M.R. 8410 pertaining to the same integration.

SECTION THREE: PERMITTING AND IMPLEMENTATION OPTIONS FOR INTEGRATED WATERSHED-BASED STORMWATER PERMITTING

Ideally an integrated watershed-based stormwater permitting approach will address planning and implementation requirements for all pertinent programs at all levels. The goal of such an approach is to achieve water quality improvements and administrative efficiencies that will benefit both regulators and the regulated community. This section of the Framework presents options for developing and implementing stormwater and watershed management plans that will achieve water quality and administrative benefits.

Based on the regulatory analysis summarized in Section Two, it is apparent that the first step in developing an integrated watershed-based stormwater permitting approach is to take advantage of regulatory flexibility where it currently exists. The NPDES Phase II Stormwater Final Rule provides several opportunities for streamlining stormwater permitting requirements with other federal, state, and local programs. The issues and actions presented in Section Two illustrates where these opportunities to streamline are not yet tapped in Minnesota. As a result, this initial Framework focuses on permitting and implementation options under the NPDES Phase II Stormwater Program that can facilitate an integrated watershed-based stormwater permitting approach in Minnesota.

EPA Supports Partnerships and the Watershed Approach Under the NPDES Phase II Stormwater Program

The NPDES Phase II Final Rule clearly shows that EPA supports the idea of watershed-based stormwater permitting. The Phase II Final Rule states in CFR § 122.30(d), “EPA strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.”

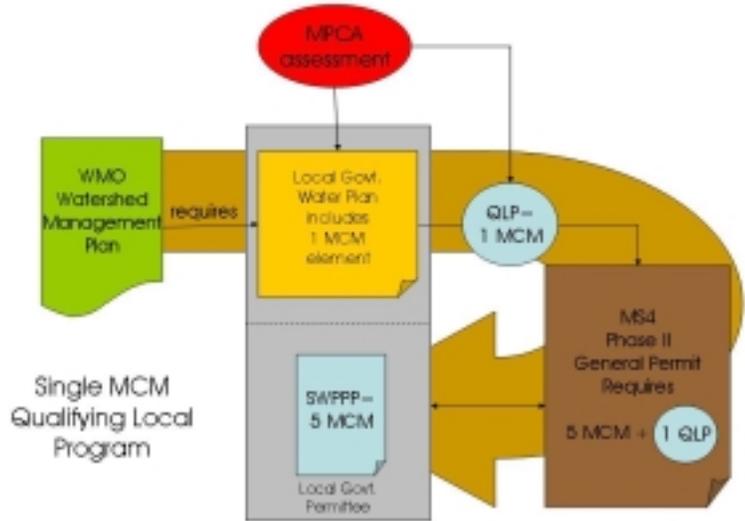
The development and implementation of an integrated watershed-based stormwater permitting approach will vary depending on the types of permitting options chosen and made available by the permitting authority and permittee(s) and how the SWPPP is implemented by the permittee(s). There are several appropriate permitting options available to Phase II MS4 permittees and each can be implemented in a variety of ways. Each implementation option involves varying roles and responsibilities of permittee(s), differing compliance liability for permittee(s), and requires a varying level of administration by the permitting authority.

GENERAL PERMIT DEVELOPMENT: CONSIDERATIONS FOR THE PERMITTING AUTHORITY

The NPDES Phase II MS4 program has been specifically designed to use the general permit approach; EPA does not recommend individual permits for small MS4s. Under the NPDES Phase II Final Rule, the permitting authority is authorized to consider two flexible permitting options to decrease the duplication of effort by the regulated small MS4 permittee when developing a general permit. These flexible permitting options provide MS4s with the opportunity to integrate MS4 permitting requirements with existing program activities conducted either by the MS4 or by another NPDES-regulated entity. Given these are permitting options, the authority to use these approaches rests

with the NPDES permitting authority. These flexible permitting approaches are described in detail below.

1. **Assess and Reference a Qualifying Local Program in an MS4 General Permit [CFR § 122.34(c)].** The permitting authority can develop a general permit that references an existing program – that the MS4 currently implements in most cases – as a qualifying local program (QLP) that fulfills the requirements of a particular minimum control measure (MCM). Under this option, the permitting



authority must assess the existing program to ensure that it fulfills the requirements of a particular MCM. If the permitting authority determines that implementation of an existing program is equivalent to implementation of a particular minimum control measure, the permitting authority will identify the existing program as an approved QLP. The permit would require the MS4 to continue to follow the QLP to fulfill its MCM requirements under the MS4 permit rather than develop a separate and new program. A summary of the administrative, implementation, enforcement/compliance considerations are provided below, in addition to an overview of the challenges and benefits. Table 2 below provides a summary of this information as it pertains to MPCA, the WMO, and other MS4s.

Administration: This permitting approach involves two administrative activities: 1) conducting an assessment of existing programs to determine if they are adequate as a QLP for one or more of the six minimum control measures and 2) incorporating a reference to the approved QLP(s) in the MS4 general permit. Both of these administrative activities fall into the purview of MPCA as the NPDES permitting authority. To help alleviate some of the administrative burden from

**General Permit Development Approach Summary:
MS4 General Permit References an Existing Program as a Qualifying Local Program**

What Would MPCA Do?

1. Assess (or review a self-assessment) existing programs to determine that the program(s) satisfies the requirements of a particular MCM.
2. Reference the approved QLP in the MS4 permit.

What Would an MS4 Do?

1. Work with MPCA to identify existing programs that are potential QLPs.
2. Conduct self-assessment of existing programs that are potential QLPs and submit to MPCA for review and approval.
3. Continue to comply with existing program that MPCA approves as a QLP and references in the MS4 permit.

MPCA under this option, it would be feasible to develop a self-assessment approach for MS4s to evaluate existing programs as potential QLPs. A self-assessment approach would require the development and application of an assessment tool (e.g., worksheet or checklist) that guides an MS4 through an assessment process of its existing programs. The MS4 would then submit the completed assessment tool and related documentation (e.g., supporting information to illustrate the existing program's activities and effectiveness) to MPCA for review and consideration. The self-assessment approach would require the MS4 to do the time-consuming research on the program and allow MPCA to expedite the review and approval process for QLPs.

Implementation Options: Implementation under this permitting approach depends on 1) the type of existing programs assessed as potential QLPs; 2) the entity responsible for implementing the approved QLP under the MS4 general permit; and 3) how many of the MCMs the QLP satisfies.

Any existing program that addresses one or more of the six minimum control measures would be eligible for consideration as a QLP. For example, programs related to a WMO's approved Watershed Management Plan (WMP) are particularly strong candidates as QLPs. It is assumed that a WMO is primarily responsible for implementing existing programs under an approved Watershed Management Plan, such as construction site permitting. Therefore, a WMO would likely conduct the self-assessment of the existing program(s) as discussed above and continue to implement the existing programs as a QLP upon receiving approval from MPCA. The WMO would be required to comply with the QLP requirements to fulfill the requirements of the associated MCM(s) as required under the MS4 general permit.

If covered as co-permittees, local government MS4s might continue to implement existing programs as QLPs under the MS4 general permit. For example, an MS4 might currently implement a program that might address one of the six minimum control measures under its local water plan adopted to meet the requirements of the approved WMP. The MS4 could request an assessment by MPCA or, if possible, conduct a self-assessment of the program to obtain approval as a QLP. The permit would require the MS4 to comply with the QLP to fulfill the requirements of the associated MCM(s). This implementation option is most likely to occur if an MS4 chooses to submit a NOI and SWPPP as an individual applicant rather than as a co-permittee (see discussion below).

A truly watershed-based integrated stormwater permitting approach under this permitting scenario would result in an MS4 general permit referencing an entire Watershed Management Plan as a QLP. For this to occur, a WMP – and the programs and projects implemented under the plan – must adequately fulfill all requirements of the six minimum control measures. Using the self-assessment tool described above, the WMO would determine where an existing WMP fell

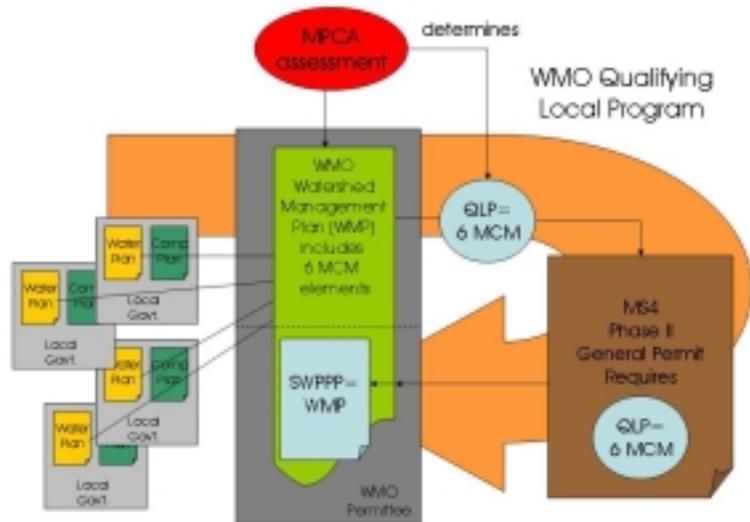
short of fulfilling all six MCMs and provide benchmarks for “upgrading” the WMP to serve as a comprehensive QLP for the entire SWPPP.

Enforcement and Compliance Implications:

Under this permitting scenario, the MS4 (i.e., the WMO or other MS4) should already implement and be in compliance with the approved QLP referenced in the MS4 general permit.

Noncompliance with the QLP equals noncompliance with the relevant MCM under the SWPPP and, therefore, noncompliance with the MS4 permit. Where an

MS4 continues to implement a QLP to satisfy the requirements of one or more MCMs, MPCA must have mechanisms in place to determine compliance with the QLP.



Challenges: The potential challenges associated with this approach focus on the assessment of existing programs to determine if they are adequate QLPs for one or more of the six minimum control measures. The concept of a self-assessment approach as described above would alleviate some of the programmatic review burden on MPCA under this option by requiring the MS4 to conduct the research and compile the relevant information for MPCA’s consideration. In addition to the programmatic assessment, identifying the compliance assurance mechanisms used under the approved QLP and coordinating information sharing between MPCA and the other relevant agencies (e.g., BWSR) might prove potentially challenging.

Benefits: This approach most directly benefits the permittees by allowing them to avoid duplication of efforts and resource expenditure by taking credit for their existing activities that fulfill their MS4 permit requirements. It also promotes fully integrating ongoing stormwater management activities that currently take place within a watershed.

Table 2. Summary of Implications Associated with Assessing and Referencing a QLP in the MS4 General Permit

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	N/A	<p>Review and approve existing programs as QLPs</p> <p>Reference approved QLPs in MS4 general permit</p>	Identify and use existing enforcement/compliance mechanisms associated with QLP	<p>Conducting assessment of existing program(s) to determine equivalency with MCM and approve as a QLP.</p> <p>Identifying and coordinating enforcement mechanisms associated with QLP to determine compliance with MS4 permit.</p>	<p>If self-assessment approach is allowed, generates efficiencies related to time and staff resource use to conduct programmatic assessments.</p> <p>Demonstrates commitment to integration of stormwater permitting requirements.</p>
WMO	Continue to implement existing program referenced in MS4 permit as approved QLP (where WMO has implementation responsibility for existing program)	Prepare and submit self-assessment of existing program as potential QLP	Non-compliance with QLP equates to non-compliance with SWPPP and MS4 permit	<p>Persuading MPCA to make this option available.</p> <p>Preparing thorough self-assessment package to illustrate existing program's fulfillment of MCM requirements for approval as a QLP.</p>	<p>Avoids duplication of effort between MS4 permit requirements and other required stormwater-related programs.</p> <p>Promotes full integration of programs at the watershed-level.</p>
Other MS4s	If other MS4s have implementation responsibility for an existing program referenced as an approved QLP, must continue				

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
	implementation. No implementation responsibility if not currently responsible for implementing an existing program referenced as an approved QLP (assumes that MS4 is in a co-permittee arrangement with WMO and other MS4s)				

2. **Recognize Another NPDES-Regulated Entity with Implementation Responsibility [CFR § 122.35(b)].** The permitting authority can develop a general permit that recognizes another NPDES-regulated entity as the entity responsible for implementing any or all of the minimum control measures. Responsibility for implementation of the measure(s) would rest with the specified NPDES-regulated entity, thereby relieving the small MS4 permittee of its responsibility to implement that particular measure(s). The regulated small MS4 does not have to perform the measure and is not held liable if the entity recognized in the MS4 permit as having responsibility for administering the recognized program should fail.

Administration: Like the approach described above, this permitting approach involves two administrative activities: 1) conducting an assessment of another NPDES-regulated entity to determine if they can successfully implement one or more of the six MCMs for the MS4 permittee and 2) recognizing the NPDES-regulated entity in the MS4 general permit as having implementation responsibility for one or more of the six MCMs. Both of these administrative activities fall into the purview of MPCA as the NPDES permitting authority. Although an MS4 and another NPDES-regulated entity might be in agreement about this type of implementation arrangement, it is the decision of the permitting authority to recognize the other entity in the MS4 permit and essentially transfer liability from the permittee to the other entity.

A third-party assessment tool could help to alleviate some of the administrative burden from MPCA related to assessing another NPDES-regulated entity and its activities. Similar to the self-assessment approach described above, a third-party assessment tool would allow the permittee to compile information about the activities of another NPDES-regulated entity that they would like MPCA to potentially recognize in their permit. This approach would require the development and use of an assessment tool (e.g., worksheet or checklist) that guides an MS4 through an assessment process of another NPDES-regulated

**General Permit Development
Approach Summary:
MS4 General Permit Recognizes Another
NPDES-Regulated Entity as Responsible
Party for Implementation**

What Would MPCA Do?

1. Assess the entity that would have responsibility for performing one or more MCM to determine if the MS4 permit should recognize the entity.
2. Recognize the approved NPDES-regulated entity in the MS4 permit.

What Would an MS4 Do?

1. Work with MPCA to identify NPDES-regulated entities that are willing to perform one or more MCMs. existing programs that are potential QLPs.
2. Consider establishing an agreement with the other NPDES-regulated entity outside the context of the permit (e.g., a memorandum of agreement or understanding) to demonstrate a commitment and understanding of the consequences.
3. Do not implement the MCMs for which the MS4 permit recognizes another NPDES-regulated entity.
4. Be prepared to implement the MCMs for which the MS4 permit recognizes another NPDES-regulated entity; permitting authority can require the permittee to implement this MCM if the recognized entity fails to do so.

entity. The MS4 would then submit the completed assessment tool and related documentation (e.g., supporting information to illustrate the NPDES-regulated entity's existing program's activities and effectiveness) to MPCA for review and consideration. This assessment approach would require the MS4 to do the time-consuming research on the program and allow MPCA to expedite the review and approval process.

Implementation Option: If the permitting authority chooses to recognize an NPDES-regulated entity – possibly a WMO or another regulated small MS4 – the recognized NPDES-regulated entity has implementation responsibility for one or more specific MCMs. It is assumed that the recognized NPDES-regulated entity is performing the applicable MCMs as part of their own MS4 permit (i.e., the recognized entity is required to perform this activity to comply with its own permit requirements and is not implementing this activity solely to assist other regulated MS4s). The MS4(s) regulated under the MS4 general permit that recognizes another NPDES-regulated entity would not have implementation responsibility for those MCMs. However, the MS4 should be aware that if the recognized NPDES-regulated entity fails, the permitting authority can require the MS4 to implement the applicable MCMs. This implementation option is most likely to occur if an MS4 chooses to submit a NOI and SWPPP as an individual applicant rather than as a co-permittee (see discussion below).

Enforcement and Compliance Implications: Under this permitting scenario, the NPDES-regulated entity recognized in the MS4 permit has the responsibility for implementing one or more of the MCMs. Therefore, liability for those MCMs rests with the recognized NPDES-regulated entity and not the actual permittee. Although the actual permittee is not liable for implementation of the MCMs where the permit recognizes another NPDES-regulated entity, the permitting authority can require implementation by the permittee if the recognized entity fails. As a result, MPCA must verify compliance by the recognized NPDES-regulated entity and ensure that mechanisms are in place to notify the permittee of the need to assume implementation responsibilities if the recognized entity fails to fulfill the requirements of the specified MCMs.

Challenges: The potential challenges associated with this approach include 1) assessing the efforts of other NPDES-regulated entities to determine if they are acceptable to recognize in an MS4 permit for another regulated small MS4 as having implementation responsibility for one or more MCMs; 2) modifying the MS4 general permit to include language that recognizes an approved NPDES-regulated entity that will implement one or more MCMs; and 3) tracking the activities of the recognized NPDES-regulated entity for compliance and enforcement purposes relative to the Phase II MS4 general permit which recognizes the entity.

Benefits: This approach most directly benefits MS4 permittees that would experience conditional relief from specific permit requirements, given the

recognized NPDES-regulated entity continues to satisfy the requirements of the applicable MCM(s). It also promotes integration and streamlining of MS4 permit implementation at the local-level. While this approach does not inherently have a watershed-focus, it could support a watershed-based permitting approach by recognizing another NPDES-regulated entity that is implementing one or more MCMs on a watershed-basis (i.e., a WMO).

Table 3. Summary of Implications Associated with Assessing and Recognizing Another NPDES-Regulated Entity in the MS4 General Permit

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	N/A	<p>Review and approve another NPDES-regulated entity and its activities related to one or more MCMs.</p> <p>Recognize approved NPDES-regulated entity in MS4 general permit</p>	<p>Use existing enforcement/ compliance mechanisms associated with recognized entity's NPDES permit.</p> <p>Identify mechanism for tracking compliance against both permit requirements (i.e., recognized entity's own permit and other MS4's permit)</p>	<p>Conducting assessment of other NPDES-regulated entities to determine if their permitted activities will fulfill one or more MCM for other MS4s.</p> <p>Coordinating enforcement and compliance mechanisms.</p> <p>Notifying and requiring MS4 to implement MCM if recognized entity fails to do so.</p>	<p>If third-party assessment approach is allowed, generates efficiencies related to time and staff resource use to conduct programmatic assessments.</p> <p>Demonstrates commitment to integration of stormwater permitting requirements.</p>
WMO (if approved recognized NPDES-regulated entity)	Continue to implement existing program required under own MS4 permit that is recognized in the permit of other MS4s.	<p>None beyond what current MS4 permit would require.</p> <p>Potential contribution to a third-party assessment of its existing programs for MPCA review and consideration.</p>	Non-compliance with existing SWPPP and MS4 permit would trigger enforcement action, but nothing new or different due to status as a recognized NPDES-regulated entity in another MS4 permit.	Potential added pressure to ensure compliance with permit requirements due to implications for other MS4s with a general permit that recognizes their ongoing activities.	<p>Avoids duplication of effort between two or more regulated MS4s.</p> <p>Promotes communication and cooperation among MS4s.</p> <p>Promotes full integration of programs at the watershed-level.</p>
Other MS4s (with coverage under an MS4 general permit that recognizes another	No implementation responsibility if MS4 permit recognizes another NPDES-	Potential development of a third-party assessment of another NPDES-regulated	No liability for MCMs that the recognized NPDES-regulated entity must perform. .		Alleviates permit requirements for one or more MCMs.

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
NPDES-regulated entity)	regulated entity as having implementation responsibility for one or more MCMs. (Assumes that MS4 is not in a co-permittee arrangement with the recognized NPDES-regulated entity.)	entity's existing programs for MPCA review and consideration.	<p>(Assumes that MS4 is not in a co-permittee arrangement with the recognized NPDES-regulated entity.)</p> <p>MPCA might require MS4 to implement MCMs if recognized entity fails to do so; becomes liable for MCMs with new requirements.</p>		<p>Avoids duplication of effort between two or more regulated MS4s.</p> <p>Promotes communication and cooperation among MS4s.</p> <p>Promotes full integration of programs at the watershed-level.</p>

GENERAL PERMIT COVERAGE SCENARIOS

Once MPCA issues a general permit, there are multiple options for how small MS4s can obtain general permit coverage and fulfill permit requirements to comply with the required MCMs. Options for obtaining general permit coverage and complying with permit requirements provide opportunities for integrated watershed-based activities. Whereas the approaches discussed above are solely dependent on the approval of the permitting authority, the options for obtaining permit coverage and complying with permit requirements are not all dependent on permitting authority approval. However, the options that provide the most integration will require approval from the permitting authority. The options for general permit coverage are presented from least integrated to most fully-integrated.

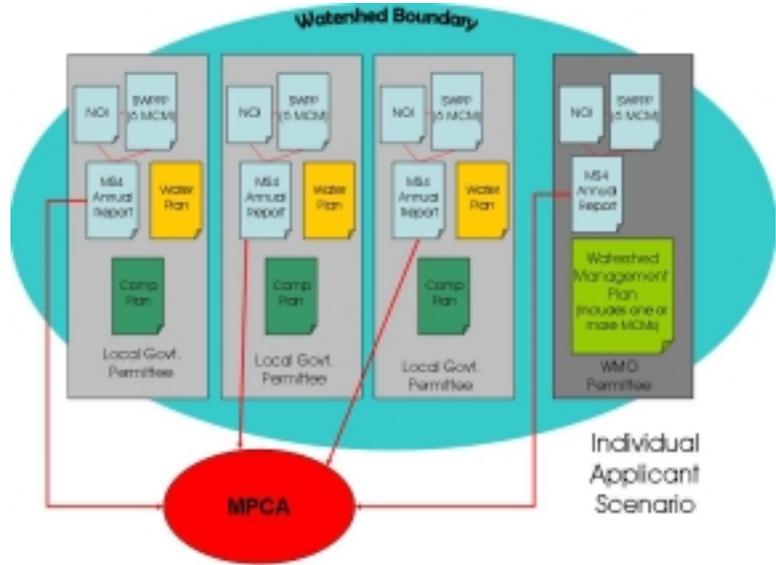
Additional Flexible Approach Currently Available to all Permittees: Relying on Another Entity to Perform One or More MCMs

It is important to note that the NPDES Phase II Final Rule does allow for a flexible approach to Phase II MS4 stormwater management program implementation that applies to all of the general permit coverage scenarios described below. In fact, this flexible approach applies to small MS4s currently covered under the existing MS4 general permit issued by MPCA. As a result, this document does not present it as a separate option to promote watershed-based stormwater permitting. It is mentioned here to ensure that all readers are aware of this currently available flexible approach to MS4 permit implementation. Under 40 CFR § 122.35(a), a small regulated MS4 can choose to have a non-NPDES regulated entity implement one or more MCMs on its behalf. For example, a nonprofit organization that currently conducts local, watershed, or regional stormwater education could perform the public education and outreach MCM on behalf of a regulated small MS4. This is referred to as relying on another entity. The other entity does not have to be a governmental entity regulated under the NPDES program – unless the small MS4 wishes the other entity to fulfill all six MCMs on their behalf – and must agree to the arrangement. In addition to agreeing to the arrangement, the other entity must implement the measure in a way that is at least as stringent as the federal requirement. If an MS4 chooses this type of implementation approach, it is recommended that the MS4 and the other entity enter into a formal, signed agreement documenting the arrangement. The regulated small MS4 is ultimately liable and responsible for the implementation of the MCM should the other entity fail to do so; MPCA will not have the ability to enforce against the other entity given it is not covered under an NPDES permit.

Three scenarios for general permit coverage are described below. The scenarios include 1) individual applicant scenario; 2) co-permittee scenarios; and 3) sole permittee scenario. All scenarios focus on the use of general permits. The first two scenarios describe options that are currently available under the existing NPDES Phase II Rule and would not require a regulatory change. The third scenario represents an option that is not explicitly authorized under existing regulation, although the existing EPA watershed-based permitting policy does address this option. It is important to keep in mind that

these options have the potential to integrate with the two options for general permit development (e.g., QLP and recognizing another program) described in the previous section.

1. Individual Applicant Scenario [40 CFR § 122.33(b)(1)]. It is important to keep in mind that this scenario focuses on use of a general permit – the term “individual applicant” means that every MS4 submits its own permit application for coverage under a general permit. An individual permit is NOT used in this scenario. Each MS4 submits an NOI and SWPPP for individual coverage under the MS4 general permit. Each MS4 would implement a SWPPP that meets the six MCMs and requirements under the Phase II MS4 general permit.



Implementation Options: Even though each MS4 would develop and submit individual SWPPPs, MS4s would ideally use a cooperative, watershed-based approach to coordinate the development and implementation of SWPPPs. In addition, individual MS4s could rely on other non-regulated or regulated entities to implement one or more MCMs. If an MS4 chose to rely on another entity, the MS4 would simply note this in the individually submitted SWPPP with supporting documentation such as a memorandum of understanding (MOU) between the MS4 and other entity.

Administration: This approach involves each MS4 developing and implementing SWPPP, submitting an NOI, and reporting annually to the permitting authority. The permitting authority would review each NOI and SWPPP, as well as annual reports from each MS4.

Enforcement and Compliance Implications: Each MS4 (i.e. the WMO and local units of government) would submit separate NOIs and SWPPPs. As a result, the permitting authority would provide permit coverage to each MS4 under the general permit. Each MS4 would have the responsibility to implement its SWPPPs. Each MS4 would be liable for compliance with all the requirements of the Phase II MS4 general permit.

Administration: This option requires that each MS4 develop and update a SWPPP, submit an NOI, implement each MCM, and report annually to the permitting authority. The permitting authority would review the NOIs, SWPPPs, and annual reports from each MS4.

Challenges: This option likely will require the most resources from MS4s and the permitting authority. While the opportunity for watershed-based coordination exists, this approach does not necessitate or promote watershed-based communication or cooperation for the implementation of the programs. If watershed-based communication and coordination takes place, it is due to actions initiated by participating MS4s and is not likely to involve the permitting authority.

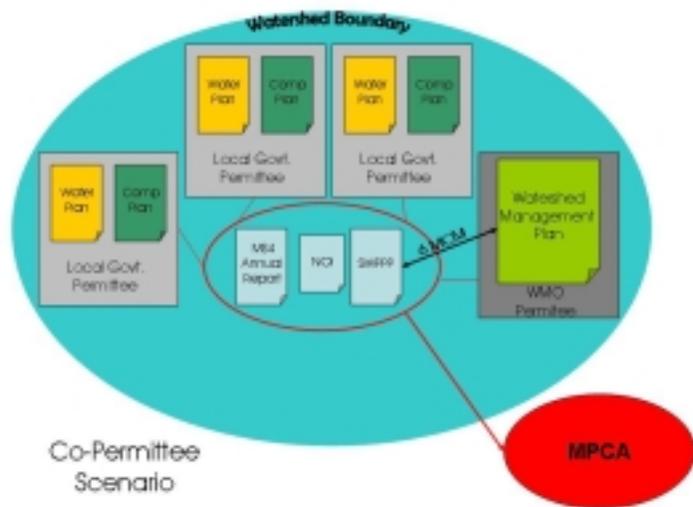
Benefits: Individual MS4s would be autonomous and would not be liable for the potential acts of non-compliance initiated by other MS4s. Culpability for non-compliance would be easy for the permitting authority to ascertain.

Table 4: Summary of Implications Associated with the Individual Applicant Scenario

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	Not applicable	MPCA would have to review each NOI and SWPPP submittal, annual reports submitted from each MS4.	MPCA would have to audit and enforce against each MS4 individually for non-compliance.	Significant resources to cover all of the permittees, review submitted materials and monitor for compliance.	Culpability would be easy for MPCA to ascertain as each would be responsible for compliance separately.
WMO Other MS4s	Individual SWPPPs could be implemented on a watershed level by formal communication and coordination mechanisms. Programs being implemented by non-regulated entities could be used to implement certain MCMs.	Each MS4 has to submit an NOI, submit a SWPPP and be covered under the general permit. In addition, each MS4 must develop and submit an annual report each year.	Each MS4 would be individually responsible for compliance with the general permit and each submitted SWPPP.	Significant resources to develop materials, submit reports and implement programs individually. Coordination amongst all of the MS4s may be challenging as well.	Individual MS4s would not be liable for the non-compliance of other permittees.

2. Co-permittee Scenario [40

CFR § 122.33(b)(1)- The NPDES Stormwater Program gives regulated MS4s the flexibility to share permit compliance responsibilities by taking a co-permittee approach. Under the NPDES Stormwater Phase II Final Rule, multiple regulated small MS4s may jointly submit an NOI for MS4 general permit coverage as co-permittees. Each permittee will be equally liable for compliance, however, responsibility for implementing the MCM can be shared amongst the co-permittees or one of the covered co-permittees can be responsible for implementing all MCM for the other co-permittees covered. The NOI must describe which entities will implement the MCM within the area to be covered. (It is important to note that although the federal stormwater regulations allow a co-permittee permitting approach, MPCA's draft proposed MS4 general permit does not explicitly address whether or not regulated small MS4s can jointly submit an NOI and share responsibility for SWPPP development and implementation.)



Implementation Options: Two implementation options are available under the co-permittee scenario. (1) The co-permittees would agree to implement specific portions of a single SWPPP. Participating MS4s would outline specific responsibilities in the NOI and SWPPP. (2) A participating WMO that is also a regulated small MS4 could act as the lead permittee for all regulated MS4s in its jurisdiction. The NOI and SWPPP would outline the delegation of responsibilities to the WMO as the lead co-permittee.

Under this scenario, the co-permittees (as a group or individually) can rely on other non-regulated or regulated entities to implement one or more of the MCM. This would be indicated in the submitted SWPPP.

Enforcement and Compliance Implications: Each MS4 would have general permit coverage and have liability for compliance with the submitted NOI and SWPPP, regardless of the entity identified as having responsibility for implementation of a particular (or all) MCMs. EPA recommends that the MS4s develop a legally binding agreement, such as a Memorandum of Understanding (MOU), that outlines specific implementation responsibilities in the instance of non-compliance. This will provide legal assurance and recourse options between

co-permittees if SWPPP obligations are not met and the permitting authority enforces against all co-permittees.

Administration: This permitting scenario requires that all the co-permittees work together to develop a SWPPP and submit an NOI. All the MS4s would have to agree on implementation options for the MCMs responsibilities and develop MOUs that satisfy liability concerns of all the co-permittees and the permitting authority. Each year, the co-permittees would generate a single annual report detailing the implementation activities and effectiveness of the SWPPP. This will require some degree of cooperation and communication amongst all co-permittees, even under the implementation option where a WMO (or another MS4) serves as the lead co-permittee. It is assumed that the lead co-permittee would require the other co-permittees to submit information for the annual reports.

Under this scenario, the permitting authority will have to review a single SWPPP and NOI. Typically, the co-permittees would develop a single annual report for submittal to the permitting authority. If a lead co-permittee is performing the majority of the implementation, it is assumed that the lead co-permittee would have the responsibility for developing and submitting the annual report on behalf of all co-permittees. If, however, the co-permittees distribute implementation responsibilities amongst themselves, each would have to dedicate resources to developing and submitting an annual report to the permitting authority.

Challenges: This scenario requires more cooperation amongst multiple MS4s joining together as co-permittees. If multiple MS4s commit to implementing various components of the SWPPP, effective tracking and reporting is essential to demonstrate compliance. In addition, coordination among co-permittees is key to ensure SWPPP implementation occurs according to schedule, as outlined in the NOI submitted to the permitting authority.

If the WMO acts as the lead co-permittee and is committed to implementing all MCMs for the co-permittees, it is essential for all entities to engage in frequent communication to ensure successful SWPPP implementation. The compliance status of all co-permittees would depend upon the WMO's implementation of the necessary BMPs according to the schedule developed in the SWPPP.

Benefits: Unlike the individual applicant scenario, the co-permittee scenario has a permitting compliance mechanism in place that will facilitate participation on a watershed-basis. As a co-permittee with shared liability, participating MS4s have a vested interest in the success of a coordinated approach within a watershed boundary. If co-permittees opt to designate a WMO as a lead co-permittee, it is possible for a WMO to ensure implementation occurs on a watershed-basis and integrates with ongoing watershed management activities. As a result, this scenario will increase the potential for achieving improved water quality on a

watershed-basis through improved communication among permittees and targeted implementation that focuses on the shared resource.

In addition to the incentive to participate on a watershed-basis, this scenario also generates benefits related to administrative efficiencies for both MPCA and the regulated MS4s. A co-permittee scenario eliminates the need for MS4s to prepare multiple NOIs, which in turn reduces the time MPCA must spend on NOI review. This scenario also eliminates the need for development and review of multiple SWPPPs and facilitates streamlining implementation.

Table 5: Summary of Implications Associated with the Co-permittee Scenario

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	Not applicable	One NOI and SWPPP would be submitted by the co-permittees. One annual report would be submitted each year.	All of the co-permittees would be equally culpable for compliance with the SWPPP.	All co-permittees are culpable for the overall implementation of the SWPPP; however, the SWPPP will detail specific responsibilities for implementation of MCMs or tasks. Agreements (i.e. MOUs) between the co-permittees will be necessary to ensure that there are repercussions amongst them in the instance MPCA has to take enforcement action against the group.	<p>This scenario will reduce the time and staff resources necessary to review NOIs, SWPPPs, and annual reports because the co-permittees will submit one of each on behalf of the group.</p> <p>Increased potential for achieving improved water quality on a watershed-basis through improved coordination and communication among permittees.</p>
WMO	Co-permittee with other MS4s covered under the permit. Specific responsibilities would be outlined in the SWPPP.	Each co-permittee would be responsible for tracking implementation for specific SWPPP items. A single annual report would be required; therefore, it may be necessary to have an administrative committee in charge of tracking data and reporting requirements for the co-permittee group.	All co-permittees would be equally responsible for ensuring the SWPPP is implemented, however, MOUs between the co-permittees can establish which co-permittee agrees to perform which tasks or MCMs. Individual responsibilities should be outlined in the SWPPP.	This scenario requires more cooperation amongst co-permittees. Effective tracking, communication and reporting are essential to ensure that program effectiveness and goals are adequately assessed and reported to MPCA.	<p>Reduced amount of paperwork and documentation through the preparation of one collective NOI, SWPPP, and annual report.</p> <p>Increased potential for achieving improved water quality on a watershed-basis through improved coordination and communication among permittees.</p>
Other MS4s	Co-permittees with the WMO covered under the permit. Specific responsibilities for each would be outlined in the SWPPP.				

Table 6: Summary of Implications Associated with the Co-permittee Scenario, WMO as the Lead Co-permittee

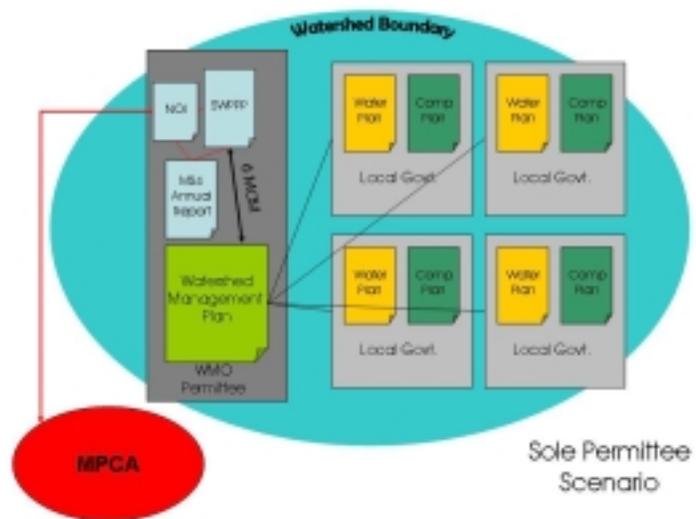
Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	Not applicable	One NOI and SWPPP would be submitted by the co-permittees. One annual report would be submitted each year.	All of the co-permittees would be equally culpable for compliance with the SWPPP.	All co-permittees are culpable for the overall implementation of the SWPPP; however, the SWPPP will detail that the WMO is responsible for implementation. Agreements (i.e. MOUs) between the co-permittees will be necessary to ensure that there are repercussions amongst them in the instance MPCA has to take enforcement action against the group.	<p>This scenario will reduce the time and staff resources necessary to review NOIs, SWPPPs, and annual reports because the co-permittees will submit one of each on behalf of the group.</p> <p>Less resources necessary to ensure compliance with the SWPPP since the WMO will have responsibility for implementing all MCMs as lead co-permittee.</p> <p>Increased potential for achieving improved water quality on a watershed-basis through improved coordination and communication among permittees.</p>
WMO	Co-permittee with other MS4s covered under the permit. SWPPP would outline that the WMO would be the lead co-permittee and implement the SWPPP.	The WMO would track all implementation of the SWPPP. A single annual report would be required and the WMO would develop and submit. Coordination	All co-permittees would be equally responsible for ensuring the SWPPP is implemented, however, MOUs between the co-permittees would	Communication is important to assist the WMO in implementing the SWPPP and dealing with issues.	This scenario requires less cooperation amongst co-permittees, than the co-permittee scenario without the WMO as the lead co-permittee as the other

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
Other MS4s	Co-permittees with the WMO covered under the permit. SWPPP would indicate that the other MS4s would not be responsible for implementation.	amongst the co-permittees would be helpful to guide the implementation of the SWPPP throughout the permit term and allow the WMO to report progress and discuss issues.	establish that the WMO would be responsible for all implementation. MOUs may outline responsibilities for participation, communication, etc. necessary by the other MS4s.		MS4s would not need to implement or track progress. This scenario still facilitates a watershed-based approach to SWPPP development and implementation if adequate communication and coordination amongst the co-permittees is maintained.

3. Sole Permittee Scenario:

EPA's *Watershed-based NPDES Permitting Implementation Guidance* describes a permitting scenario that involves developing and issuing an NPDES permit to an authorized watershed entity that represents point source dischargers within a watershed. This scenario would require that only one permittee submit an NOI and SWPPP to the permitting authority for an

MS4 area (i.e. watershed) that includes other entities. This sole permittee would implement the SWPPP for the entire watershed area in lieu of requiring the other MS4s within that boundary to comply. Unlike the co-permittee scenario, this sole permittee would be singly culpable and responsible for permit compliance even within areas of the MS4 that are not owned and operated by that sole permittee. The purpose for this type of approach is to promote complete integration on a watershed-basis for maximum water quality improvements and administrative efficiencies for both the permitting authority and permittees.



Implementation Option: The WMO would develop and submit the NOI and SWPPP and implement the MCMs to fulfill SWPPP implementation requirements. The SWPPP would cover the entire watershed. The WMO would have ultimate responsibility for ensuring implementation of all MCMs. However, this may or may not entail the WMO actually conducting implementation of all MCMs – the WMO would coordinate with the regulated small MS4s in its jurisdiction to determine how best to implement the six MCMs to fulfill the SWPPP requirements and make arrangements and contractual agreements accordingly. Unlike the co-permittee scenario, these arrangements between the WMO and the regulated small MS4s in its jurisdiction would not become part of the NOI or the SWPPP submittals to the permitting authority.

The primary goal of this scenario is to seamlessly streamline implementation of stormwater permitting requirements and watershed management activities currently conducted by the WMO. Ideally, the permitting authority would have conducted an assessment (or reviewed a self-assessment submitted by the WMO) of the WMO's programs and projects currently implemented under the WMO's approved watershed management plan and approved the entire watershed management plan as a QLP. Where necessary, the WMO would address gaps in the watershed management plan by implementing additional activities to ensure it adequately fulfills all six MCM requirements. This type of approach has been

referred to as a hybrid approach because it fuses watershed management planning activities driven by state-level requirements with local stormwater management activities driven by federal-level requirements.

Under this scenario, the WMO still can rely on other non-regulated or regulated entities to implement one or more of the MCM (i.e. public education by a local non-profit). This would be indicated in the submitted SWPPP.

Enforcement and Compliance Implications: The WMO would have sole liability under the MS4 general permit and would be the subject of any enforcement action by the permitting authority in situations of non-compliance with the general permit. The other regulated small MS4s would not ultimately be at risk for an enforcement action from the permitting authority and would not be liable for WMO non-compliance.

This type of scenario is only possible because of the authorities granted to a WMO under the Metropolitan Water Management Program. The WMO is therefore able to require the other regulated small MS4s in its jurisdiction to participate in stormwater management activities required under the MS4 general permit by incorporating these requirements into the approved watershed management plan. As a result, the WMO has an enforcement mechanism in place to ensure that the other regulated small MS4s within its jurisdiction indirectly comply with MS4 general permit requirements as a function of complying with watershed management plan programs and projects. The WMO might also consider drafting MOUs between the WMO and the other MS4s as an added mechanism to facilitate participation and input into the SWPPP development and implementation process. The permitting authority and the WMO might require such MOUs under this scenario. If an MS4 decided not to participate in the process, it is likely that the WMO could take enforcement action against the MS4 and notify the permitting authority of the need for separate permit coverage to the non-participating MS4.

Administration: The WMO would complete and submit the NOI, develop and implement the SWPPP, and produce all annual reports. The permit could not require any cooperation or coordination between the WMO and the regulated small MS4s that are not officially covered under the MS4 general permit. Ideally, the WMO would communicate with the MS4s within the geographic area covered by the permit, but the permit could not require their participation. Determining how to ensure participation from the other regulated small MS4s within the WMO's jurisdiction would ultimately rest with the WMO and likely be a function of its existing authorities under the Metropolitan Water Management Program. The WMO might also consider drafting MOUs between the WMO and the other MS4s as an added mechanism to facilitate participation and input into the SWPPP development and implementation process. The permitting authority and the WMO might require such MOUs under this scenario. If an MS4 decided not to participate in the process, it is likely that the WMO could take enforcement action

against the MS4 and notify the permitting authority of the need for separate permit coverage to the non-participating MS4.

The permitting authority would have to review a single SWPPP and NOI. A single annual report would be developed for submittal to the permitting authority.

Challenges: This scenario relies heavily on the WMO's authorities under the Metropolitan Water Management Program to ensure the necessary participation from regulated small MS4s within the watershed boundary, given they will not have direct liability under the MS4 general permit. If the WMO is unable to effectively administer and implement the SWPPP in a particular jurisdiction, there is no recourse in the permit to require the other regulated small MS4 to cooperate or fulfill the obligation in lieu of the WMO. Effective permit compliance would be dependent on the WMO's ability to require the necessary compliance activities or cooperation from each MS4 served by the WMO. The permit would not necessitate ownership in the SWPPP development and implementation process.

Given similar approaches around the country, such as the Neuse River Basin Compliance Association, it is likely that U.S. EPA will work with MPCA to guarantee transparency and accountability through this scenario. Although MS4s within the WMO's jurisdiction might not be official permittees under the MS4 general permit, it is likely that the permitting authority must require documentation of the MS4s encompassed by this approach (e.g., a comprehensive list of MS4s contained in the NOI and the SWPPP) and a demonstrated commitment to support the efforts of the WMO in fulfilling the MS4 general permit requirements (e.g., signed MOUs).

The permitting authority must determine if this type of scenario would work using the current MS4 general permit or if an MS4 general permit tailored specifically to this approach is necessary.

Benefits: This scenario promotes administrative efficiencies for the permittees through the development of a single NOI, SWPPP, and annual report for review by the permitting authority. Water quality benefits are anticipated as a result of SWPPP development and implementation that draws upon comprehensive watershed data from existing watershed management plans.

Table 7: Summary of Implications Associated with the Sole Permittee Scenario, WMO as the Sole Permittee

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
MPCA	Not applicable	One NOI and SWPPP submitted by the WMO for the watershed area. One annual report would be submitted each year.	Only one entity (the WMO) would be culpable for compliance with the SWPPP and general permit.	<p>Determining if the current MS4 general permit would facilitate this approach or if it would require tailoring for a specific watershed.</p> <p>Ensuring transparency and accountability in the MS4 general permit that has the WMO as the sole permittee representing a group of regulated small MS4s within its jurisdiction.</p> <p>Enforcing against the WMO and not individual MS4s, since they would not technically be listed as permittees or co-permittees.</p> <p>Relying on the WMO and any internal agreements the WMO has with the other MS4s to guarantee watershed-based cooperation amongst all entities.</p>	<p>This scenario will reduce the time and staff resources necessary to review NOIs, SWPPPs, and annual reports because the WMO will submit one of each as the sole permittee.</p> <p>Increased potential for achieving improved water quality on a watershed-basis through SWPPP implementation tailored to local watershed conditions.</p>

Stakeholder	Implementation	Administration	Enforcement/ Compliance	Challenges	Benefits
WMO	<p>Sole permittee responsible for SWPPP implementation, with or without assistance from other MS4s in the watershed.</p> <p>WMO would use its authorities through state watershed management regulations to require participation from other MS4s in the context of the approved watershed management plan.</p>	<p>The WMO develop and submit the NOI and the SWPPP. Primary responsibility for tracking all implementation of the SWPPP. Develop and submit a single annual report. Coordinate efforts among MS4s within its jurisdiction.</p>	<p>The WMO would be solely liable for the implementation of the SWPPP and compliance with the general permit.</p> <p>Authorities under the Metropolitan Water Management Program would provide enforcement/compliance mechanism for WMO to require MS4 participation via the approved watershed management plan.</p>	<p>Engaging MS4s in the process.</p> <p>Communicating with other MS4s to facilitate a truly watershed-based SWPPP without the federal regulatory hammer of the MS4 general permit.</p>	<p>Allow maximum integration with ongoing watershed management activities via the approved watershed management plan.</p> <p>Reduced staff and financial resources from other MS4s related to permit compliance.</p> <p>Increased potential for achieving improved water quality on a watershed-basis through SWPPP implementation tailored to local watershed conditions.</p>
Other MS4s	<p>Required to implement one or more MCMs as a function of compliance with the approved watershed management plan linked to the SWPPP.</p>				

The number of options presented in this section might appear too numerous to include in an integrated watershed-based stormwater permitting framework. However, it is important to keep in mind that no two watersheds are alike and while one option might appear suitable for one watershed, another option might be more appropriate for the conditions found in another watershed. A watershed characterized by strong leadership on the part of a WMO with support from a majority of local governments might want to consider applying the Sole Permittee Scenario within its boundaries. If a watershed has cooperation among all local governments and a willingness to work with the WMO, but a desire to maintain full responsibility for its NPDES permitting requirements, the Individual Applicant Scenario might be the most appropriate approach. Given the varying degrees of integration and cooperation, following either watershed or local jurisdictional boundaries, the integrated watershed-based permitting framework developed for Minnesota should provide all regulated MS4s with the opportunity to consider all options and choose the approach that is appropriate for their local situation.

SECTION FOUR: PROPOSED NEXT STEPS IN DEVELOPING AND PILOTING THE INTEGRATED WATERSHED-BASED STORMWATER PERMITTING FRAMEWORK

This document represents an output of the initial phase of developing an integrated watershed-based stormwater permitting framework for Minnesota. Project partners are planning additional activities to further the development of the framework and pilot its application at the watershed-level. Additional activities include:

Phase Two – Framework Implementation Analysis

- Set-up Advisory Committee (Watershed Subcommittee of Stormwater Steering Committee with additional representatives from League of Minnesota Cities, Builders Association and Minnesota Chamber of Commerce)
- Investigate legal barriers and/or obstacles [Federal, State and local (county/city/town and WMO)] to framework components and element alternatives.
- Evaluate liability exposure to MS4s and other entities that may implement Minimum Control Measures (MCMs) and/or other permit compliance issues.
- Prepare detailed Framework evaluation narrowing implementation options for pilot areas.
- Conduct detailed cost analysis for permit agency and permittee. Analysis should include capital, operation, administrative, and other costs associated with permit and plan compliance efficiencies.

Phase Three – Framework Implementation

- Determine Pilot Area selection criteria and select two pilot areas.
- Review WMO plans in the two pilot areas with respect to outcomes of Phases One and Two.
- Review WMO and local government NPDES MS4 permits in two pilot areas with respect to outcomes of Phases One and Two.
- Prepare M.S. 103B and 103D statute and M.R. 8410 amendments or recommended amendment approach outline.
- Prepare MS4 general permit amendments or recommended amendment approach outline.
- Prepare and present draft report to Advisory Committee, WMOs and local governments
- Final Report – Watershed-based Management and Permitting

In addition, project partners would like to further investigate the design of a framework that assesses the major components for a *hybrid* watershed management plan incorporating existing watershed plan components (M.S. 103B.201) and MS4 Stormwater Pollution Prevention Program (SWPPP) requirements, including administrative procedures and potential resource efficiencies. Project partners would also like to identify states that have authorized local governments to administer the NPDES construction stormwater program, including the arrangements and processes between states and local government to administer the NPDES construction stormwater program. A summary of existing arrangements and processes, as well as recommendations on

whether or not these approaches are feasible in the State of Minnesota based on existing state legislation, will aid project partners in determining next steps.

REFERENCES

- Minnesota Stormwater Design Team. 2004. "Purpose, Goal, Vision, Tenets."
<http://www.pca.state.mn.us/publications/wq-strm8-01a.pdf>
- USEPA (U.S. Environmental Protection Agency). 2000. *Storm Water Phase II Compliance Assistance Guidance*. U.S. Environmental Protection Agency, Washington D.C.
- USEPA (U.S. Environmental Protection Agency). 2003. *National Pollutant Discharge Elimination System (NPDES) Watershed-based Permitting Implementation Guidance*. U.S. Environmental Protection Agency, Washington D.C.

APPENDIX A: DETAILED EVALUATION OF ELEMENT ALTERNATIVES

Categories of information that require detailed discussion or explanation and will not fit in the previous table format are presented below. Where applicable, the discussion will specify if the information pertains to federal or state programs.

Public Notice and Review

NPDES Stormwater Municipal Separate Storm Sewer (MS4) Program

State

- See May 2003 MN Appeals Court decision under Applicable Court Decisions and Guidance. A public hearing is required before issuance of a general permit.

NPDES Construction Stormwater Program

State

- See May 2003 MN Appeals Court decision under Applicable Court Decisions and Guidance. A public hearing is required before issuance of a general permit.

NPDES Industrial Stormwater Program

State

- See May 2003 MN Appeals Court decision under Applicable Court Decisions and Guidance. A public hearing is required before issuance of a general permit.

Applicable Standards and Criteria

NPDES Stormwater Municipal Separate Storm Sewer (MS4) Program

State

The, federal rule 40CFR section 122.34 (a) states in part... “Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to section 122.33 constitutes compliance with the standard of *maximum extent practicable*.”

Minnesota Rule, 7001.1080 provides that “except as provided in subpart 3, the commissioner shall establish effluent limitations for each pollutant to be discharged.” Minnesota Rule, 1080, subp. 2. Subpart 3 of the rule provides as follows:

If the commissioner finds that it is not feasible to establish an effluent limitation, standard, or prohibition using a numerical value, the commissioner shall establish permit conditions requiring the implementation by the permittee of best management practices.

Nonpoint Source Pollution Control Program (CWA Section 319)

Federal

On September 13, 2001, EPA published Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (66 FR 47653-47657). Supplemental Guidelines specify the elements of a well-designed watershed management plan eligible to receive Section 319 grant funding. Elements are as follows:

- a. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the load reductions estimated in this watershed-based plan (and to achieve any other watershed goals identified in the watershed-based plan), as discussed in item (b) immediately

below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (e.g., X numbers of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation)

b. An estimate of the load reductions expected for the management measures described under paragraph (c) below (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time). Estimates should be provided at the same level as in item (a) above (e.g., the total load reduction expected for dairy cattle feedlots; row crops; or eroded streambanks).

c. A description of the NPS management measures that will need to be implemented to achieve the load reductions estimated under paragraph (b) above (as well as to achieve other watershed goals identified in this watershed-based plan), and an identification (using a map or a description) of the critical areas in which those measures will be needed to implement this plan.

d. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon, to implement this plan. As sources of funding, States should consider the use of their Section 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing this plan.

e. An information/education component that will be used to enhance public understanding of the project and encourage their early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

f. A schedule for implementing the NPS management measures identified in this plan that is reasonably expeditious.

g. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

h. A set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made towards attaining water quality standards and, if not, the criteria for determining whether this watershed-based plan needs to be revised or, if a NPS TMDL has been established, whether the NPS TMDL needs to be revised.

i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under item (h) immediately above.

State

Criteria 2.A.(3) in M.R. 7076.0170 references “local water plan” information with respect to resource investigations projecting ranking. Definition of “local water plan” in M.R. 7076.0110, Subp. 8 should be amended for better specificity. This is the only location in the priority ranking criteria where any mention of local water plan relationship is earmarked.

Enforcement and Compliance Processes

NPDES Program

State

MPCA retains criminal, civil and administrative penalty authority under M.S. 115.071, 116.072 and most importantly M.S. 609.671.

NPDES Confined Animal Feeding Operations

State

County Feedlot Pollution Control Officer conducts inspections in accordance with County’s agreement. MPCA retains authority under M.S. 116.07, Subd. 9. Agricultural operations except for NPDES – CAFOs are exempt from civil penalties (M.S. 115.071, Subd. 3).

Metropolitan Water Management Program

No criminal, civil or administrative authority or penalty provisions exist for compliance or enforcement by a WMO. A complaint provision (M.S. 103B.231, Subd. 13) along with a BWSR dispute resolution process (M.S. 103B.101, Subd. 10) exists, but with no penalties.

Watershed Law Program

A Watershed District has criminal (misdemeanor), but less civil authority (no fines) and no administrative penalty authority.

Applicable Court Decisions and Guidance

NPDES Program

State

1. State of Minnesota in Court of Appeals, A03-333, Minnesota Center for Environmental Advocacy as Realtor vs. City of Faribault, Respondent, City of Owatonna, Respondent, and Minnesota Pollution Control Agency as Respondent and filed January 6, 2004.
 - a. Question of fact relating to MPCA's decision not to apply phosphorus to NPDES permits for both cities WWTPs. Issues of fact relating to methodology and interpretation of phosphorus modeling by MPCA. Requiring a 1 ppm phosphorus effluent limitation resulted in a 25% reduction of in-lake phosphorus concentration, but MPCA modeling showed a much lower chlorophyll *a* decrease. Court believed there were material facts in dispute regarding the predicted reduction in chlorophyll *a* concentration.
 - b. Decision reversed MPCA's issuance of the NPDES permits and remanded back for a contested case hearing.

NPDES Stormwater Municipal Separate Storm Sewer System (MS4) Program

Federal

Environmental Defense Center et al v. EPA, No. 70014 & consolidated cases (9th Cir., Sept. 15, 2003) held that NOI requirements violated provisions of CWA section 402 and concluded that EPA's failure to require review of NOIs and failure to make NOIs publicly available or subject to public hearings contravene the express requirements of the CWA. EPA provides guidance to EPA Regional Offices and state NPDES permitting authorities on how to make NOIs publicly available, provide opportunity for public hearings and conduct review of NOIs for both new and already issued general permits for MS4s.

<http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf>

State

State of Minnesota in Court of Appeals, C6-02-1243, Minnesota Center for Environmental Advocacy as Realtor vs. Minnesota Pollution Control Agency as Respondent and filed May 6, 2003.

- a. The use of a general permit is proper by MPCA.
- b. A general permit that does not require a public hearing before each permittee will be covered by the permit violates the Clean Water Act's public hearing requirement.
- c. The MS4 general permit must require controls to "reduce" pollutants not "minimize".
- d. MPCA may rely on the Best Management Practices (BMPs) not numerical effluent limits.
- e. Any requirement for monitoring is left up to the discretion of the MPCA.
- f. See reference under Water Quality Standards discussion below.

NPDES Confined Animal Feeding Operations

State

1. State of Minnesota in Court of Appeals, A04-1287, Berne Area Alliance for Quality Living, et al., Appellants vs. Dodge County Board of Commissioners, as Respondent and filed April 12, 2005.
 - a. A proposed feedlot is physically capable of housing more than 1,000 Animal Units (AU), thus the Minnesota Pollution Control Agency is the responsible unit of government (RGU) not Dodge County.

Water Quality Planning and Management (Total Maximum Daily Load Program)

State

1. State of Minnesota in Court of Appeals, A04-2033, In the Matter of the Cities' of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater, and Request for Contested Case Hearing.
 - a. The MPCA erred when it issued a permit for the Cities' proposed new POTW discharge to a 303(d) listed impaired water, notwithstanding an offset reduction in phosphorus loading from other sources. The Appeals Court decision involved an interpretation of federal regulation [40 CFR Section 122.4(I)] stating in part: "No permit may be issued: . . . [t]o a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards". The decision is on a appeal to the State Supreme Court.

Water Quality Standards

State

1. State of Minnesota in Court of Appeals, C6-02-1243, Minnesota Center for Environmental Advocacy as Relator vs. Minnesota Pollution Control Agency as Respondent and filed May 6, 2003.
 - a. MPCA must determine whether additional controls are necessary for expanded discharges under the non-degradation rule
2. State of Minnesota in Court of Appeals, A04-1324, Minnesota Center for Environmental Advocacy as Relator vs. Minnesota Pollution Control Agency, Respondent and City of Princeton, Respondent and filed May 17, 2005.
 - a. Under MPCA non-degradation rules, City of Princeton must analyze the prudence and feasibility of a downsized WWTP used in conjunction with decentralized treatment.
 - b. MPCA must establish the existing water quality of the Rum River and impose necessary restrictions on WWTP to protect the water quality.

Metropolitan Water Management Program

State

See Court of Appeals, 2001 decision below.

Watershed Law Program

State

- State of Minnesota in Court of Appeals, C0-01-322, September 11, 2001. In the Matter of Enlargement and Increasing the Number of Managers of the Brown's Creek Watershed District in Washington County pursuant of M. S. 103D.261 and .305.
- a. Minn. Stat. Section 103D.261, subd. 2(a) does not authorize BWSR to enlarge a watershed district to include territory already within a joint powers water management organization.
1. State of Minnesota in Court of Appeals, A03-1440, July 13, 2004. Agra Resources Coop d/b/a Exol , Relator vs. Freeborn County Board of Commissioners, Respondent.
 - a. Minnesota's drainage statute authorizes Freeborn Count as a drainage authority to a assess a reasonable, volume-based user fees for benefits and maintenance for discharge of a predictable quantity of water in to a ditch system.
Why the decision relates to M.S. Chapter 103E, watershed districts routinely act as a drainage authority. Joint powers WMOs also may exercise drainage authority powers [M.S. 103B.211, Subd. 1(a)(4)].

Metropolitan Land Planning Act

State

1. State of Minnesota in Court of Appeals, A03-458, December 16, 2003. The City of Lake Elmo, Relator vs. Metropolitan Council.
 - a. The Court affirmed that Metropolitan Council did not exceed its statutory authority when it required the City of Lake Elmo to conform to the council's plan. The Metropolitan Council

concluded that the City's Comprehensive Plan would have a substantial impact on its plan or contains a substantial departure from the council's plan.

State of Minnesota, Supreme Court, A03-458, August 5, 2004. The City of Lake Elmo, Appellant vs. Metropolitan Council, Respondent.

a. The Metropolitan Council has the authority to require the city to conform to the Council's system plans when the Council determines a city's comprehensive land use plan may have substantial impact or departure from regional system plans.

b. The City of Lake Elmo's comprehensive land use plan may have substantial impact on and substantially depart from the Council's regional systems plans is support by a preponderance of the evidence.

Tmdl Program Relationship

NPDES MS4, Construction, and Industrial Stormwater Programs

Federal

EPA published a memo on November 22, 2002 that addresses establishing wasteload allocations (WLAs) for NPDES-regulated storm water sources and NPDES requirements based on the WLAs.

The memo states the following:

- NPDES-regulated storm water discharges must be addressed by the wasteload allocation component of a TMDL. See 40 C.F.R. § 130.2(h).
- NPDES-regulated storm water discharges may not be addressed by the load allocation (LA) component of a TMDL. See 40 C.F.R. § 130.2 (g) & (h).
- Storm water discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL. See 40 C.F.R. § 130.2(g).
- It may be reasonable to express allocations for NPDES-regulated storm water discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs. See 40 C.F.R. § 130.2(i). In cases where wasteload allocations are developed for categories of discharges, these categories should be defined as narrowly as available information allows.
- The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.
- NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).
- WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.
- EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.
- When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.
- The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. See 40 C.F.R. § 122.44(i). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

- The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

The full memo is available at <http://www.epa.gov/npdes/pubs/final-wwtmdl.pdf>

**Watershed Based NPDES Management and Permitting Potential in Minnesota
Task A-1: Assessment and Analysis of Regulatory Components**

Table A-1 - Federal and State Programs

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
FEDERAL PROGRAMS					
<p>NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)</p> <p>Clean Water Act (CWA), Sections 318, 402, 405</p> <p>Title 40, Code of Federal Regulations (CFR) Parts 122 – 125, 129 and 401-471</p>	<p>Regulates point source wastewater discharges into waters of the United States. Authorizes programs to develop, issue, and enforce permits for a wide variety of wastewater discharges and point sources, including:</p> <p>Industrial and municipal wastewater (POTWs including combined and sanitary sewer overflows), concentrated animal feeding operations(CAFOs), stormwater discharges from industrial and construction activities, and municipal separate storm sewer systems (MS4s).</p> <p>Permits issued under the NPDES Program have a 5-year permit term.</p>	<p>U.S. EPA can authorize state agencies to administer the NPDES Program. Minnesota NPDES authorization, the appropriate EPA Regional Office serves as the NPDES permitting authority. EPA Regional Offices maintain an oversight role where states are the NPDES permitting authority.</p>	<p>Entities with regulated point source discharges are responsible for complying with their respective NPDES permit requirements.</p>	<p>NPDES program specific</p>	<p>NPDES program specific; traditionally a facility or point source specific focus</p>
<p>NPDES PRETREATMENT PROGRAM</p> <p>CWA, Part 402</p> <p>Title 40 CFR, Chapter 403</p>	<p>The National Pretreatment Program is a joint regulatory effort by local, state and Federal authorities requiring control of industrial and commercial sources of pollutants to a publicly owned treatment works (POTWs), which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system.</p> <p>The U.S. EPA General Pretreatment Regulations require POTWs that meet certain criteria to develop Pretreatment programs to control industrial discharges into their sewage collection systems.</p>	<p>U.S. EPA</p>	<p>Owner or operator of the facility with a regulated discharge(s) into a POTW.</p>	<p>The owner and/or operator of the POTW acts as the Pretreatment “Control Authority” with respect to Industrial Users that discharge into their systems.</p>	<p>Thirty-four states are authorized to serve as Approval Authorities for implementation of the Pretreatment Program.</p> <p>Not watershed-based</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>NPDES Stormwater Municipal Separate Storm Sewer (MS4) Program</p> <p>CWA, Section 402 (p)(6)</p> <p>40CFR, Part 122, 123 & 124.</p>	<p>Regulates storm water discharges from municipal separate storm sewer systems (MS4s).</p> <p>Requires the development and implementation of stormwater management programs to reduce the amount of pollutants entering stormwater runoff to the maximum extent practicable (MEP).</p> <p>The small MS4 program specifically addresses six minimum control measures that a stormwater management program must address:</p> <ol style="list-style-type: none"> 1. Public Education/Outreach 2. Public Involvement/Participation 3. Illicit Discharge Detection and Elimination 4. Construction Stormwater Runoff Control 5. Post-Construction Stormwater Runoff Control 6. Good Housekeeping/Pollution Prevention 	<p>Regional EPA offices have oversight of states that are authorized to administer the NPDES Stormwater Program.</p>	<p>Owners and operators of MS4s. Includes local units of governments, federal facilities, universities, and departments of transportation. 40CFR, 122.35 allows a regulated small MS4 to share permit requirements for any or all the six MCMs.</p>	<p>Follows MS4 boundary based on MS4 definition as any conveyance or system of conveyances that is owned or operated by a State or local government entity designed for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works (POTWs).</p>	<p>Large MS4 - areas with a population of 250,000 or more. Medium MS4 - areas with a population between 100,000 - 249,999. Small MS4s (i.e., any MS4 not currently permitted under the Phase I MS4 Program) within the boundary of an Urbanized Area EPA promotes implementation on a watershed-basis.</p>
<p>NPDES CONSTRUCTION STORMWATER PROGRAM</p> <p>CWA SECTION 402</p> <p>Title 40 CFR, section 122.26(a)(1) and (9)(i)(B)</p>	<p>Requires permit coverage for construction sites one acre or larger.</p> <p>Requires the development and implementation of stormwater pollution prevention plans to reduce the amount of pollutants entering stormwater runoff to the maximum extent practicable (MEP).</p>	<p>Regional EPA offices have oversight of states that are authorized to administer the NPDES Stormwater Program.</p>	<p>Construction site owner/operator is required to apply for permit coverage and comply with requirements of the applicable NPDES permit.</p>	<p>Requirements apply to any construction site that is one acre or more, regardless of location.</p>	<p>Construction sites one acre or larger</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>ANIMAL FEEDING OPERATIONS</p> <p>CWA, Section 502(14)</p> <p>40 CFR, Sections 122 and 412</p>	<p>Regulates Concentrated Animal Feeding Operations (CAFOs) as an NPDES point source. These facilities must first be defined as an Animal Feeding Operation (AFO) where animals are kept and raised in confined situations. Once an AFO is defined, it may be designated as a CAFO dependent upon the actual number of animals at the operation rather than prior “animal unit” definition.</p>	<p>Regional EPA offices have oversight of states that are authorized to administer the NPDES Animal Feeding Operations Program.</p>	<p>Minnesota Pollution Control Agency</p>	<p>An owner of an AFO defined as a CAFO and subject to an NPDES permit.</p>	<p>Facility-by-facility basis.</p>
<p>Water Quality Planning and Management (Impaired Waters and Total Maximum Daily Load Program)</p> <p>CWA, Sections 303 and 305 Title 40 CFR Part 130</p>	<p>Requires the development of a list of <i>impaired waters</i> not meeting water quality standards within each state, referred to as the 303(d) list. Requires the development of total maximum daily loads (TMDLs) for impaired waters on a state’s 303(d) list. Requires states to develop a continuing planning process for all navigable waters within the state. Requires states to conduct water quality monitoring and develop water quality reports on a regular basis that assesses the health of waters in the state, referred to as the 305(b) report.</p>	<p>U.S. EPA and state water pollution control agencies</p>	<p>MPCA is responsible for conducting water quality assessments under CWA Section 303(d) and 305(b) to identify impaired waters and develop TMDLs</p>	<p>MPCA develops TMDLs for impaired waters, but point and nonpoint sources with wasteload and load allocations are responsible for TMDL implementation.</p>	<p>Impaired waterbody and/or segment listed by major basin watershed.</p>
<p>Water Quality Standards</p> <p>CWA Section 303 Title 40 CFR Part 131</p>	<p>Requires states to establish water quality standards comprised of designated uses, numeric or narrative criteria, and implementation methods for the antidegradation policy. Requires state to conduct a triennial review of existing water quality standards, using public participation, to determine if modifications to the standards are necessary. Requires EPA to review and approve state water quality standards. Specifies when the state must conduct a use attainability analysis.</p>	<p>U.S. EPA and states</p>	<p>MPCA</p>	<p>Applies to all waters of the state; enforced by MPCA</p>	<p>Developed for Waters of the State. Lake Superior watershed has separate water standards.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>Nonpoint Source Pollution Control and Funding Program</p> <p>CWA Section 319 Title 40 CFR Part 35</p>	<p>To assist states in implementing EPA-approved Section 319 nonpoint source management programs. The grant focuses on the implementation of projects that are designed to improve waters listed as impaired under Section 303(d).</p>	<p>U.S. EPA and states</p>	<p>MPCA obtains Section 319 funds and administers its own grant program using this funding</p>	<p>MPCA can make Section 319 grant awards to eligible applicants to address nonpoint source issues</p>	<p>Watershed basis</p>
<p>Dredge and Fill Material Permitting</p> <p>CWA Section 404, 33 CFR 33 Part 323; 40 CFR Parts 230 and 231</p>	<p>Regulates the discharge of dredged or fill material into waters of the United States, including lakes, rivers, and wetlands.</p> <p>Primary regulation to ensure protection of wetlands.</p>	<p>U.S. Army Corps of Engineers and U.S. EPA</p>	<p>Permits issued by U.S. Army Corps district offices.</p>	<p>Regulated permit activities: filling or wetland conversion to upland.</p>	<p>Site specific</p>
<p>Source Water Assessment Program</p> <p>Safe Drinking Water Act,(SDWA), Sections 1453 and 1428</p>	<p>Requires states to develop an assessment methodology for assessing the vulnerability of source waters and submit methodology to EPA for review and approval.</p> <p>Requires states to delineate the boundaries of areas providing source waters to public drinking water supplies and identify sources of regulated and certain unregulated contaminants in the delineated area to determine the susceptibility of waters to contamination.</p> <p>Results of source water assessments intended for use by public water systems to develop source water protection programs and plans.</p> <p>States required to complete assessments by 2003 for every public water system.</p>	<p>U.S. EPA and state agencies</p>	<p>Minnesota Department of Health</p>	<p>Applicable to all public water systems</p>	<p>Wellhead protection area</p>

Barriers, Challenges, Opportunities, Strengths, Weaknesses for Watershed-based Permitting

MS4 PERMIT

- **STRENGTH:** MS4 permit regulations allow for a sharing of implementation responsibilities under 40 CFR 122.33 (b)(1) and 122.35.
- **OPPORTUNITY:** Inclusion of this approach within an amended MS4 general permit.

CONSTRUCTION PERMIT

- **CHALLENGE:** NPDES Construction permit program overlaps with MS4 permit - minimum control measure #4.
- **OPPORTUNITY:** Some states require MS4s to ensure compliance (ordinance or other legal instrument) by having the construction site owner/operator show permit coverage (copy of NOI) under the NPDES construction storm water permit program.
- **OPPORTUNITY:** Regulatory provision (40CFR, Section 122.44 allows for “qualifying local program” to be included within the NPDES general construction permit.

INDUSTRIAL PERMIT

- **CHALLENGE:** Changes within a future draft permit should be reviewed with respect to potential impact upon MS4 permit holders.
- **OPPORTUNITY:** To review benefits of integration into watershed-based permit program.

PROGRAM INTEGRATION

- **WEAKNESS:** Program Integration: Permitting; TMDLs, 319 & Watersheds; Water Quality Standards; and Source Water Assessment programs are spread across four U.S. EPA divisions (OWM, OWOW, OST & OGWDW).
- **STRENGTH:** U.S. EPA memorandum of November 22, 2002 explains TMDL , storm water sources and NPDES Permit Requirements.

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
STATE PROGRAMS					
<p>National Pollutant Discharge Elimination System (NPDES) and/or State Disposal System (SDS) Program</p> <p>M.S. 115.03, Subd. 1 and 5. Related statutes: M.S. 114C; 116 and 116F. M.R. Chapters 7001 and 7090</p>	<p>Creates MPCA authority to participate in the National Pollutant Discharge Elimination System (NPDES) permit program. Permits are required for:</p> <ol style="list-style-type: none"> 1) treatment, storage, or disposal of hazardous waste; 2) treatment, distribution, utilization, storage, or disposal of sewage sludge; 3) construction, installation, or operation of a disposal system; 4) discharge of a pollutant into the waters of the state from a point source; 5) construction or operation of an animal feedlot or manure storage area or for the correction of a pollution hazard; 6) construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard; 7) processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341; and 8) construction or operation of a substance storage facility under M.R. 7001.0020, I. 	MPCA	Any person as defined under M.S. 115.01, Subd. 10	<p>Any point source discharger in receipt of an NPDES permit.</p> <p>Generally, MPCA State Disposal System (SDS) permits are described as either not discharging to surface waters or from a land application facility.</p>	<p>State of Minnesota</p> <p>Waters of the State as defined at M.S. 115.01, Subd. 22</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>NPDES PRETREATMENT PROGRAM</p> <p>M.S. sections 115.03, Subd. 1(e)(6) and 115.03, Subd. 1(m) M.S. 473.504, Subd. 4,5, and 6; 473.515, Subd. 3. MCES Rules, Articles IV – Limitations on Discharges and V – Enforcement and Admin.</p>	<p>The program establishes or revises pretreatment standards to prevent or abate the discharge of any pollutant into any publicly owned disposal system, which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system.</p> <p>The program requires each governmental subdivision identified as a permittee for a publicly owned treatment works (POTW) to evaluate in every odd-numbered year the condition of its existing system and identify future capital improvements needed to attain or maintain compliance with a NPDES or SDS permit.</p> <p>If a facility generates industrial process wastewater that comes from metal-finishing or other industrial processes covered by the EPA categories listed in 40 CFR 413 - 471 and if this wastewater is routed to the sanitary sewer system, the pretreatment form below must be provided to the MPCA directly.</p>	<p>MPCA</p>	<p>Any person as defined under M.S. 115.01, Subd. 10.</p> <p>Owner or operator of the facility with a regulated discharge(s) into a POTW.</p> <p>Owner or operator of the facility must complete a Pretreatment SDS permit application Short Form P and submit to the MPCA.</p>	<p>Ultimately, the owner and/or operator of the POTW is responsible as discharger to waters of the state.</p>	<p>State of Minnesota</p> <p>Not watershed based</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>NPDES Stormwater Municipal Separate Storm Sewer (MS4) Program</p> <p>M.S. 115.03, Subd. 5c M.R. Chapter 7090; Sections 7090.1010 and 7090.1040</p> <p>Permit No. MN R 004000</p>	<p>Establishes an NPDES storm water permit program to regulate discharges of storm water from municipal separate storm sewer systems for purposes of abating water pollution associated with such storm water discharges.</p> <p>Owners or operators of permitted MS4s must develop a storm water pollution prevention program (SWPPP) including BMPs for reducing pollutants that address the following six Minimum Control Measures (MCMs):</p> <ol style="list-style-type: none"> 1) public education and outreach; 2) public participation/involvement; 3) illicit discharge detection and elimination; 4) construction site runoff control; 5) postconstruction runoff control; and 6) pollution prevention/good housekeeping. <p>Development of BMPs for the SWPPP must consider pollution activities within the watershed and sensitivity of the receiving waters (Permit, Part V. D.).</p>	<p>MPCA</p>	<p>Owners or operators of an MS4 that meet the criteria in M.R. 7090.1010, Subd. 1 A-C.</p>	<p>Any point source discharger in receipt of an NPDES permit.</p>	<p>State of Minnesota</p> <p>Waters of the State as defined at M.S. 115.01, Subd. 22</p> <p>Two terms: MS4 and receiving water are contained in the permit. The former is defined in rule and permit, while the latter is left up to the permittee.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>NPDES Construction Stormwater Program</p> <p>M.S. 115.03, Subd. 5c M.R. Chapter 7090; Sections 7090.2010 – 7090.2060</p>	<p>Establishes an NPDES storm water permit program to regulate and abate water pollution associated with discharges of storm water from construction activities disturbing one or more acres of land. Disturbances of less than one acre also need permit coverage if that activity is part of a “larger common plan of development or sale” that is greater than one acre. Most construction activities can be covered by the MPCA general stormwater permit for construction activity. Some sites need to obtain individual permit coverage.</p> <p>Both owners and operators are responsible for submitting the permit application. Regulated parties must develop a stormwater pollution prevention plan (SWPPP) identifying the BMPs to be applied to the site for erosion/sediment control during construction along with a permanent stormwater management system.</p>	<p>MPCA</p>	<p>Person or party possessing the title of the land, lease holder, or contracting government agency on which the construction activities will occur; if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity under part M.R. 7090.2000</p>	<p>Any point source discharger in receipt of an NPDES permit.</p>	<p>State of Minnesota</p> <p>Surface Water or Waters defined in Appendix B of the Permit as a subset of Waters of the State defined at M.S. 115.01, Subd. 22.</p> <p>Watershed is not used in the permit.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>NPDES Industrial Stormwater Program</p> <p>M.S. 115.03, Subd. 5c M.R. Chapter 7090; Sections 7090.3010 – 7090.3080</p>	<p>Establishes an NPDES storm water permit program to regulate discharges of storm water from 11 categories of industrial activities for the purposes of reducing the amount of pollution that enters surface and ground water. Facilities that need a permit must develop and implement a Stormwater Pollution Prevention Plan (SWPPP) designed to eliminate or minimize stormwater impacts by incorporating specific BMPs applicable to the site. The SWPPP should incorporate parts of Spill Prevention Control and Countermeasures (SPCC) or other management plans located at a site.</p> <p>The existing NPDES general stormwater permit for industrial activity (MN G611000) has expired. Therefore, until the general permit is reissued, regulated industrial facilities should continue operating under the terms of the expired permit</p>	<p>MPCA</p>	<p>Person who owns an industrial facility or part of an industrial facility under part M.R. 7090.3000.</p>	<p>Any point source discharger in receipt of an NPDES permit.</p>	<p>State of Minnesota</p> <p>Waters of the State as defined at M.S. 115.01, Subd. 22 and the Permit (page 19 of 19).</p> <p>Watershed is not used in the permit.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>MPCA FEEDLOT PROGRAM</p> <p>M.S. 116.06 and Section 116.07, Subd. 7</p> <p>M.R. Chapter 7020 M.R. Sections 7001.0040; 7001.0050; 7001.0100, Subp. 4 & 5; and 7001.0110</p>	<p>The MPCA regulates collection, transportation, storage, processing and disposal of animal manure. All aspects of livestock waste management including location, design, construction, operation and management of feedlots and manure handling facilities are covered.</p> <p>Feedlots meeting Concentrated animal feeding operation (CAFO) and State Disposal System (SDS) requirements under M.R. 7020.0405, Subp. 1B are issued NPDES permits by MPCA.</p> <p>Counties are delegated regulatory authority for feedlots with fewer than 1,000 animal units. MPCA issues NPDES/SDS permits for non-delegated counties and for feedlots designated as CAFOs.</p>	<p>MPCA</p>	<p>Owner as defined in M.R. 7020.0300, Subp. 17.</p>	<p>Jurisdiction remains with the MPCA for feedlots larger than 1,000 animal units through a general permit. Permits are issued by delegated counties for feedlots less than 1,000 animal units (M.R. 7020.1500 – M.R. 7020.1900).</p>	<p>State of Minnesota</p> <p>Waters of the State as defined in M.R. 7020.0300, Subp. 26.</p> <p>County-based, not watershed-based.</p>
<p>Water Quality Planning and Management</p> <p>Impaired Waters and Total Maximum Daily Load (TMDL) programs M.S. Section 115.03 M.R. 7050.</p> <p>MPCA - TMDL Work Plan Guidance, June 2005</p>	<p>The Clean Water Act, Section 303(d) requires states to publish, every two years, an updated list of streams and lakes that are not meeting their designated uses based on violations of water quality standards (impaired waters) and is organized by river basin. A TMDL study is completed on the impaired water comprising the total allowable loads of a single pollutant from all point and nonpoint sources along with a margin of safety is completed. The TMDL study, requiring approval of EPA includes a reduction plan and a public process documentation.</p>	<p>MPCA</p>	<p>Any person as defined under M.S. 115.01, Subd. 10</p>	<p>Point source and nonpoint source contributors are identified. Responsible parties must be identified for implementation.</p>	<p>State of Minnesota</p> <p>The 303(d) list is based upon the ten major river basins or watersheds in the State.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>Water Quality Standards</p> <p>M.S. 115.03 and 115.44 M.R. Chapter 7050</p>	<p>The program includes general provisions applicable to the maintenance of water quality and aquatic habitats; definitions of water use classes; standards for dischargers of sewage, industrial, and other wastes; numeric and narrative standards of quality and purity for specific water use classes; and nondegradation requirements. The program applies to point source and nonpoint source discharges and physical alterations of wetlands.</p>	<p>MPCA</p>	<p>Any person as defined under M.S. 115.01, Subd. 10</p>	<p>Any point or nonpoint source discharger causing a nuisance condition under M.R. 7050.0210, Subp. 2.</p>	<p>State of Minnesota</p> <p>Waters of the State as defined at M.S. 115.01, Subd. 22.</p>
<p>Nonpoint Source Pollution Control Program</p> <p>(CWA Section 319) and Clean Water Partnership (CWP) programs M.S. 103F.701 – 103F.761 M.R. Chapter 7076</p>	<p>Clean Water Act (CWA) in 1987 established the Section 319 Nonpoint Source (NPS) Management Program. Starting with the 2003 federal fiscal year, 43 % of the Section 319 grant money (\$3M annual total) is to be spent on Total Maximum Daily Load (TMDL) implementation. Section 319 funds cannot be spent on diagnostic work, other than TMDL development.</p> <p>The Clean Water Partnership (CWP) program started in 1987 annually awards about \$2.3M in grants and \$3.4M in loans. The program focus is control of nonpoint pollutant sources through watershed management to protect and improve surface and ground water in Minnesota.</p> <p>Section 319 or CWP funds are not eligible for projects under enforcement action, permitted wastewater treatment plants, and projects addressing feedlot NPDES or stormwater permit requirements</p>	<p>MPCA administers both federal grants and state grant loan program funds.</p>	<p>Section 319 eligibility is very broad, although certain projects cannot be awarded to individuals. The CWP program is limited to local units of government as defined at M.S. 103F.711, Subd. 5.</p>	<p>A local unit of government must sponsor a CWP project. The applicant can be a lake association, joint powers board or other entity but it must involve a local unit of government, which becomes the fiscal agent. While the CWP is limited to local units of government, Section 319 is open to all entities except federal agencies.</p>	<p>State of Minnesota</p> <p>Waters of the State as defined at M.S. 115.01, Subd. 22</p> <p>M.R. 7076.0110, Subp. 23 - Waters of Concern defined and tied into funding eligibility if shown within a local water plan.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>Dredge and Fill Material Permits</p> <p>CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 Title 33 CFR Part 325</p>	<p>Under Section 404, a Corps’ permit is required for the discharge of dredged or fill material into waters of the U.S., including wetlands. Regulated discharges include filling wetlands for development, grading or pushing material around within a wetland, disturbing wetland soil during land clearing, etc. The general rule is that for an activity to receive a 404 permit it must comply with the EPA’s Section 404(b)(1) guidelines.</p> <p>Most activities covered under GP/LOP-98-MN.</p> <p>Under Section 10, a Corps’ permit is required to do any work in, over, under or affects a Navigable Water of the U.S.</p>	<p>U.S. Army Corps of Engineers (COE) and U.S. Environmental Protection Agency (EPA)</p>	<p>Person who desires to undertake the proposed activity (i.e. the applicant) or by a duly authorized agent</p>		<p>Waters of the United States (Title 33 CRF Part 328) and Navigable Waters of the U.S. (Title 33, CFR Part 329), the latter being a subset of the former.</p> <p>Not watershed based</p>
<p>Wetland Conservation Act (WCA), as amended</p> <p>M.S. 103B.2241 – 103B.2243; 103B.3355 M.R. Chapter 8420</p>	<p>Requires persons proposing to impact a wetland by draining, excavating, or filling (either wholly or partially) to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value.</p>	<p>Board of Water and Soil Resources</p>	<p>A person, corporation, government agency, or organization that applies for an exemption, no-loss, wetland boundary, wetland type, replacement plan, or banking plan determination or equivalent, or someone who makes an application to withdraw wetland banking credits from the wetland bank</p>	<p>The local government unit responsible for making exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans shall be determined by MBWSR in accordance with M.R. 8420.0200 Items A to D.</p>	<p>Wetlands defined under M.S. 103G.005, Subd. 19 and not Public Waters Wetlands under M.S. 103G.005, Subd. 15a and mapped under M.R. 8420.0110, Subp. 52.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>PUBLIC WATERS WORK PERMIT PROGRAM</p> <p>M.S. 103G.315 M.R. 6115.0160 – 6115.0280</p>	<p>Activities that change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters. Also, activities that construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters requires a permit.</p> <p>MDNR may waive a permit requirement for certain categories of impacts to public waters wetlands that will be regulated as well under WCA.</p>	<p>Minnesota Department of Natural Resources (MDNR)</p>	<p>The state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit</p>	<p>The MDNR may delegate public waters work permit authority to a county, municipality, watershed district, or watershed management organization that has elected to assert local authority over public waters (M.S. 103G.245, Subd. 5)</p>	<p>Public Waters as defined at M.S. 103G.005, Subd. 15, Public Waters Wetlands as defined under M.S. 103G.005, Subd. 15a, 103G.201 and M.R. 6115.0170</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>Watershed Law</p> <p>M.S. Chapter 103D Related statutes: M.S. 14.57 – 14.69; 84A.55; 103B; 103E; 103F.701 – 103F761; 117.155; 351.02; 429.031; 429.041; 429.051; 429.061; 429.071; 471.59; 471.64; 473.165; and 475.61</p> <p>Minnesota Rules (M.R.), Chapter 8415, Watershed District Appeals; Chapter 8410, Local Water Management, Section 8410.0060, Subp. 4A, Land and Water Resource Inventory.</p>	<p>A watershed district may be established to conserve the state’s natural resources by land use planning, flood control, and other conservation projects through using sound scientific principles for the protection of the public health and welfare and providing for future use of natural resources.</p> <p>Program purposes are enumerated within M.S., Section 103D.201, Subd. 2.</p>	<p>BWSR</p>	<p>Watershed districts organized under M.S. Chapter 103D</p>	<p>Shared implementation authority by the WMO and local governments for watershed management plan and local water plan.</p>	<p>Applies to ditches, lakes, streams, watercourses water basins and wetlands within the boundary of the watershed district, but not defined in statute.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>Comprehensive Local Water Management Act</p> <p>M.S. 103B.301 – 103B.355 Related statutes: M.S. 14.63 – 14.69; 103B.205; 103B.231, Subd. 1; 103B.311, Subd. 4, clause (4); 103G.2243; 375.51; and 471.59</p>	<p>Each county outside the seven county metropolitan area must develop a comprehensive local water management plan that reviews local governments water and related land resources plans, official controls, and has the necessary powers to implement it. Local water management plan purposes are to:</p> <ol style="list-style-type: none"> 1) Identify priority concerns impacting or changing local land and water resources; 2) Specify goals and objectives for the priority concerns; 3) Contain an implementation program including a schedule of actions addressing the goals and objectives; and 4) Identify the lead and supporting entities that will carry out the actions along with the estimated costs. 	<p>BWSR</p>	<p>Counties outside the metropolitan area.</p>	<p>Shared implementation authority by the county and other local governments for local water management plan.</p>	<p>80 counties across state of Minnesota.</p> <p>The plan must address water problems in the context of watershed units and groundwater systems. The watershed units and groundwater systems as defined in M.S. 103B.305, Subd. 10 and 4.</p>
<p>METROPOLITAN LAND PLANNING ACT</p> <p>M.S. 473.175; 473.851 – 473.871 M.S. 462.351 – 462.364</p>	<p>M.S. Chapter 473, requires Metropolitan Council to prepare metropolitan system plans (e.g. water resources) defined in 473.852, Subd. 8. Local governments prepare comprehensive plans in accordance with 462.364 – 462.364. Comprehensive plans must incorporate local water management plans (473.859, Subd. 2) prepared in accordance with 103B.235.</p>	<p>Metropolitan Council</p>	<p>Local government as defined in M.S. 473.852, Subd. 7.</p>	<p>Shared implementation authority between Met Council and local government.</p>	<p>Seven county metropolitan area with respect to local water plan inclusion.</p>

Program Name and Regulatory Citation	Overview/Purpose	Administration	Responsible Entity	Applicable Jurisdiction	Geographic Scale
<p>SECTION 401 WATER QUALITY CERTIFICATION</p> <p>M.S. 115.03, Subd. 4a M.R. 7001.0150, Subp. 3; 7001.1400 – 7001.1470; 7050.0186, Subp. 6.</p>	<p>Water quality certification has been waived by the MPCA for federal permits (USCOE, FERC and Coast Guard) involving discharges into waters of the United States. Projects involving environmental review and been completed, MPCA will issue a waiver. Specifically, certification is waived for GP/LOP-98-MN of the COE, thus no requirement for compensatory mitigation is necessary pursuant to M.R. 7050.186, Subp. 6.</p>	<p>MPCA</p>	<p>Person who desires to undertake the proposed activity (i.e. the applicant) or by a duly authorized agent</p>	<p>N.A.</p>	<p>Waters of the United States (Title 33 CRF Part 328) and Navigable Waters of the U.S. (Title 33, CFR Part 329), the latter being a subset of the former.</p> <p>Not watershed based</p>

Barriers, Challenges, Opportunities, Strengths, Weaknesses for Watershed-based Permitting

MS4 PERMIT

- **STRENGTH:** MS4 permit (Part IV.C. and Part V. D) contains several components [303(d) listing, TMDL implementation planning; SWPPP development] as a partial framework for a watershed-based approach.
- **WEAKNESSES:**
 1. MS4 permit and administrative rule, Chapter 7090 does not address co-permittee approach or a sharing of MCM implementation responsibilities as allowed under federal rule.
 2. Minnesota statutes, Chapters 115, 116 and Minnesota Rule, Chapter 7090 do not address existing watershed management planning statutes and rules.
- **OPPORTUNITY:** FORMULATE CHANGES TO MS4 PERMIT, STATUTE AND/OR RULE TO ACCOMMODATE PORTIONS OF A WATERSHED-BASED APPROACH.

CONSTRUCTION PERMIT

- **CHALLENGE:** NPDES Construction permit program overlaps with MS4 permit – MCM #4. If located in a small MS4, construction site owners/operators must comply with requirements in both NPDES permits and potentially local government (city, county and/or WMO) requirements.
- **OPPORTUNITY:** Some states require MS4s to ensure compliance (ordinance or other legal instrument) by having the construction site owner/operator show permit coverage (copy of NOI) under the NPDES construction storm water permit program.
- **OPPORTUNITY:** REGULATORY PROVISION (40CFR, SECTION 122.44) ALLOWS FOR A “QUALIFYING LOCAL PROGRAM” PROVISION TO BE INCLUDED WITHIN THE NPDES GENERAL CONSTRUCTION PERMIT. THE WCA PROGRAM IS AN EXAMPLE OF JOINT PERMIT APPLICATION APPROACH.

INDUSTRIAL PERMIT

- **WEAKNESS:** No stormwater permitting relationship with between MS4 local government permit holders and industrial stormwater permit holders, except for MCM #3 investigations.
- **OPPORTUNITY:** Integrate both MS4 and Industrial permits in so far as practical and in concert with new *draft* EPA permit.
- **CHALLENGE:** Including MS4 and Industrial permits within a watershed-based approach may be difficult.
- **BARRIER:** Coordination of both permits would likely require increased MPCA funding.

ANIMAL FEEDLOT PROGRAM

- **STRENGTH:** Partial program delegation to counties, except for NPDES permit designated CAFOs. Further investigation maybe necessary in Task 2.

Barriers, Challenges, Opportunities, Strengths, Weaknesses for Watershed-based Permitting

WATER QUALITY PLANNING AND MANAGEMENT

- **WEAKNESS:** The 303(d) listings and subsequent TMDLs are completed on a major basin and watershed basis. The MPCA TMDL Guidance does not address strategies for implementation programs involving “highly complex TMDLs” (wastewater, stormwater, feedlots and unregulated sources) through responsible parties in a watershed-based fashion.
- **OPPORTUNITY:** Watershed-based permitting may be the first step in the process.
- **BARRIER:** Geographic limitation on watershed organizations statewide, except for metropolitan area.

WATER QUALITY STANDARDS (NON-DEGRADATION)

- **WEAKNESS:** Non-degradation rules are not tied into watershed authorities and programs.
- **CHALLENGE:** How to integrate existing rule requirements into watershed-based program framework?

NONPOINT SOURCE POLLUTION CONTROL PROGRAM

- **WEAKNESS:** The 303(d) listing and TMDL programs are **not** specifically tied to Minnesota statute or rule requirements. Priority funding for BMP implementation can occur except for an NPDES permit sources (e.g. MS4 permit areas), thus eliminating most of Metro Area.
- **OPPORTUNITY:** Program integration is necessary for better overall understanding and management.

DREDGE AND FILL PROGRAM, WETLAND CONSERVATION ACT, PUBLIC WATERS WORK PERMITS, AND WETLAND MITIGATION - MPCA

- **STRENGTH:** A joint permit application form is used for all three programs, although the MPCA – Mitigation rule is not referenced or mentioned on the form.
- **WEAKNESS:** While the joint application form was a major improvement in the administrative process, there remains 3 to 5 agencies with jurisdictional authority over wetland permitting.
- **CHALLENGE:** Additional streamlining of wetland authorities is necessary to reduce program overlap and redundancy.

Barriers, Challenges, Opportunities, Strengths, Weaknesses for Watershed-based Permitting

SOURCE WATER ASSESSMENT PROGRAM

- **STRENGTH:** Water management organizations are included in the development and review of wellhead protection plans by the water supplier. However, the plans are completed on a community basis not watershed-based.
- **WEAKNESS:** It is not clear how plans are to be reviewed or what official controls may need to be added or amended by governments during implementation.
- **CHALLENGE:** Wellhead protection areas do not necessarily follow traditional “height-of-land” watershed boundaries, thus presenting a unique problem for management alternatives.
- **BARRIER:** There are few regulatory options for MDH to implement source water protection programs besides interagency cooperation.

METROPOLITAN WATER MANAGEMENT PROGRAM AND WATERSHED LAW

- **WEAKNESS:** Program purposes related to the Clean Water Act and Minnesota Statutes, Chapter 115 are not cited and integrated.
- **WEAKNESS:** Specific integration of permit programs (MS4 and Industrial) and other non-permitted stormwater discharges into M.S. 103B and 103D is a shortcoming in comprehensive watershed/local planning.
- **WEAKNESS:** Applicable jurisdiction authority is not clear in statute. Indirect authority given to Districts within the metro area through rule definitions (M.R. 8410.0020, Subp. 15 and 22) and statute (M.S. 103B.231).
- **CHALLENGE:** How to facilitate integration of permit and watershed management programs that respect individual government authorities and administrative processes while accomplishing resource restoration and protection.
- **OPPORTUNITY:** Take advantage of existing law and rule authorities to craft successful framework and detailed approaches.

COMPREHENSIVE LOCAL WATER MANAGEMENT PROGRAM

- **WEAKNESS:** Clear implementation authority within county water plans over local governments (i.e. municipalities) is lacking.
- **BARRIER:** Lack of watershed authorities statewide.
- **CHALLENGE:** Pilot another regulatory program for implementation on a watershed-based framework.

Barriers, Challenges, Opportunities, Strengths, Weaknesses for Watershed-based Permitting

METROPOLITAN LAND PLANNING ACT

➤ **WEAKNESSES:**

- 1. Program focus by statute by Met Council integrates local governments (cities and towns), but not WMOs, thus watershed planning not necessarily aligned.
- 2. Program integration may not be well understood by practitioners in terms of a failure to implement.
- **STRENGTH:** Local government implementation for developments shifts emphasis for natural resources protection.
- **CHALLENGE:** How to better integrate a metropolitan framework into watershed and local planning.

PROGRAM INTEGRATION

- **WEAKNESS:** Program Integration: Permitting; TMDLs, 319 & Watersheds; Water Quality Standards; Dredge & Fill; and Source Water Assessment Water Management programs are spread across three agencies (MPCA, MDH and BWSR).
- **STRENGTH:** Governor’s Clean Water Cabinet and Environmental Quality Board may be a solution long-term towards achieving integration.
- **CHALLENGE:** Difficulty in perceived loss of authority or influence in resource protection programs.

**Watershed-based NPDES Stormwater Management and Permitting Potential in Minnesota
Task A-2: Evaluation of Element Alternatives**

Table A-2: Common Element Interrelationships and Obstacles Preventing Integration on a Watershed Basis

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
Federal Programs							
National Pollutant Discharge Elimination System (NPDES)	Public notice of draft permit must allow for 30 day public comment period; potential for public hearing based on interest	NPDES permit limits based on applicable technology or state water quality standards; most stringent set of effluent limits applied in the permit	EPA maintains the Point Source Compliance System (PCS) that houses information NPDES permits, including monitoring data. NPDES permitting authorities have separate reporting and tracking systems that should feed into PCS. EPA reviews and approves general permitting packages for NPDES permitting authorities.	NPDES permittee (or co-permittees) responsible for meeting the NPDES permit conditions	NPDES permitting authority is responsible for verifying compliance with permit conditions and taking enforcement actions	[Will insert selected decisions and guidance.]	NPDES permits used to implement wasteload allocations (WLAs) assigned to point sources.
NPDES Stormwater Municipal	EPA recommends GP NOI	Performance-based standard "Maximum Extent	NPDES permitting authority responsible for	MS4 permittee or co-permittees	NPDES permitting authority	Environmental Defense Center et al v EPA No	NPDES-regulated storm water discharges must

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
Separate Storm Sewer (MS4) Program	made available 30 days before authorization to discharge; opportunity to request public hearing	Practicable (MEP)” which does not require immediate compliance - requires compliance per the schedule set by the permitting authority	tracking and reviewing permit applications; reviewing storm water management programs and annual reports to ensure permit compliance	responsible for meeting NPDES permit requirements, including implementation of storm water management program to fulfill six minimum control measures; where a QLP is used, permittee is still ultimately liable; where a permittee is relying on another program to satisfy a minimum control measure, permittee is not held liable	responsible to verify compliance and take enforcement action as necessary.	70014 & consolidated cases (9 th Cir., Sept. 15, 2003): NOI requirements violate provisions of CWA section 402. Guidance available. See Appendix A	have a WLA under a TMDL in numeric form but WQBELs to implement WLAs may be in the form of BMPs. See Appendix A.
NPDES Construction Stormwater	NOIs for EPA issued construction	Performance-based standard “Maximum Extent	NPDES permitting authority responsible for	NPDES permittee responsible to	NPDES permitting authority		NPDES-regulated storm water discharges must

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
Program	general permits are posted on EPA’s website; SWPPPs required to be made available onsite	Practicable (MEP)” which does not require immediate compliance requires compliance per the schedule set by the permitting authority	tracking and reviewing permit applications; conducting inspections and verifying storm water pollution prevention plans	comply with permit conditions (Construction site owner/operator)	responsible to verify compliance and take enforcement action as necessary.		have a WLA under a TMDL in numeric form but WQBELs to implement WLAs may be in the form of BMPs. See Appendix A.
NPDES Industrial Stormwater Program	NOIs for EPA issued multi-sector general permit are posted on EPA’s website; SWPPPs required to be made available onsite at permitted facility	Performance-based standard “Maximum Extent Practicable (MEP)” which does not require immediate compliance requires compliance per the schedule set by the permitting authority	NPDES permitting authority responsible for tracking and reviewing permit applications; conducting inspections and verifying storm water pollution prevention plans	NPDES permittee responsible to comply with permit conditions (industrial facility owner/operator)	NPDES permitting authority responsible for verifying compliance with NPDES permit requirements and taking enforcement actions		NPDES-regulated storm water discharges must have a WLA under a TMDL in numeric form but WQBELs to implement WLAs may be in the form of BMPs. See Appendix A.
NPDES Confined Animal Feeding Operations		Zero discharge unless caused by precipitation at a facility designed, constructed, operated, and maintained to store	NPDES permitting authority responsible for tracking and reviewing permit applications; conducting				[Verifying if 11/22/02 storm water memo applies to CAFOs for TMDL implementation]

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
		all process-generated wastewater plus the runoff and direct precipitation from a 25-year, 24-hour storm event, and compliance with the additional requirements at 40 CFR 412.4	inspections and verifying storm water pollution prevention plans				
Water Quality Planning and Management (Total Maximum Daily Load Program)	Public notice and review throughout the TMDL process; varies from state to state	State water quality standards	EPA conducts reviews of state 303(d) lists, TMDL submittals; States responsible for assessing and scheduling TMDL development, conducting TMDL development and public review	States required to develop TMDLs and are subject to third-party lawsuits	EPA conducts program audits of states	[Determining which are applicable] Litigation status available at http://www.epa.gov/owow/tmdl/lawsuit.html	Drives TMDL program
Water Quality Standards	Public hearings held once every three years by states and tribes during water quality review process	Comprised of designated uses, water quality criteria (numeric and narrative), antidegradation policy, other general policies.	EPA conducts review of state-adopted water quality standards and either approves or disapproves. Requirements for				Approved water quality standards serve as the basis for making assessments and determining waterbody impairments that

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
			standards submission at 40 CFR 131.6				lead to listing on state 303(d) lists of impaired waterbodies
Nonpoint Source Pollution Control Program (CWA Section 319)	N/A	Nine minimum elements. See Appendix A.	EPA provides Section 319 funds to states and tribes to fund nonpoint source implementation grant projects	[Need to determine liability implications for the state and the grantees]	N/A	N/A	Prioritizes NPS implementation measures to reduce pollutant loads to impaired waters.
State Programs							
National Pollutant Discharge Elimination (NPDES) System	In accordance with M.R. 7001.0100, Subp. 5.	Technology or water quality - based discharge standards. Nondegradation requirements under MPCA rule are cumbersome.	Permit does not convey a property right. Permittee must properly operate and maintain facilities and systems related to the permit.	Permit issuance does not release permittee from any liability or future more stringent permit requirements.	Compliance and enforcement requirements in M.R. 7001.0150, Subp. 3. J – O.	See Appendix A.	NPDES permits used to implement wasteload allocations (WLAs) assigned to point sources.
NPDES STORMWATER MUNICIPAL SEPARATE STORM SEWER (MS4) PROGRAM	Under review from 2003 Appeals Court decision as it applies to a General permit (see Appendix A).	The MS4’s SWPPP must be designed and managed to “reduce” the discharge of pollutants to the Maximum Extent	Under 40 CFR 122.33(b) & (c), 122.34(c), and 122.35, an MS4 may share use alternative approaches for the six MCM	See NPDES discussion. Liability remains with the “owner” of the MS4 in M.R. 7000.0080	See discussion under NPDES.	See Appendix A	The MS4 permit, Part IV.C. ties together the TMDL program and SWPP together.

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
		Practicable (MEP). Implementation of a program of BMPs consistent with the SWPPP constitutes compliance with MEP. See Appendix A.	implementation responsibilities. However, the MS4, retains ownership and responsibility for its system.	Subp. 11.A. However, liability may remain for entities assisting in the implementation of MS4 permit.			
NPDES Construction Stormwater Program	See NPDES permit requirements, note 2003 Appeals Court decision (see Appendix A).	Specific design standards are given in the permit for temporary and permanent BMPs.	Remains with the “operator” and “owner” as defined in M.R. 7090.0080, Subp. 10.B. & 11.B.	See discussion under NPDES and Construction Permit, Part V. E.	See discussion under NPDES.	N. A.	Existing permit Part I.B.7. & Part III.A.4.d. ties together TMDL program and SWPPP.
NPDES Industrial Stormwater Program	See NPDES permit requirements, however, note 2003 Appeals Court decision (see Appendix A).	The permittee’s SWPPP must be designed and managed to “reduce” the discharge of pollutants to the Maximum Extent Practicable (MEP) with specific BMPs per the schedule in Part II. C. 1 & 2 of the expired permit.	Remains with the “operator” and “owner” as defined in M.R. 7090.0080, Subp. 10.C. & 11.C.	See discussion under NPDES and under Part III. G of expired permit.	See discussion under NPDES.	N.A.	TMDL program not addressed within expired permit. As a regulated point source, it’s subject to WLA results in a TMDL with potential for additional BMPs.

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
MPCA Feedlot Program	Notifications follow M.S. 116.07, Subd. 7a – 7c. M.R. 7020.2000, Subparts 4 & 5 for MPCA and delegated counties. Permit application reviews by Co. Feedlot Poll. Con. Officer (M.R. 7020.0300, Subp. 9) and M.R. 7020.1600.	CAFOs must meet effluent limitations of 40 CFR Part 412. Other feedlots must meet effluent limitations in M.R. 7050.0215. Feedlots with < 300 animal units must meet the criteria in M.R. 7020.2003, Subp. 4, 5 and 6.	Remains with the “owner” as defined in M.R. 7020.0300, Subp. 17.	See discussion under NPDES.	See Appendix A.	See Appendix A.	CAFOs would be treated as a point source in a WLA if a direct discharge to waters of the state.
Water Quality Planning and Management (Total Maximum Daily Load Program)	30-day public notice in State Register (SR). MPCA Web site and interested parties list. MPCA Board may review. EPA Reg. 5 review and approval	Lake Superior Basin specific standards (M.R. 7050.0010, 7052.0200, 7052.0210, & 7052.0220). TMDL requirements in 40CFR 130.7.	Not applicable except as may apply for a point source as noted above.	See discussion under NPDES. With an approved TMDL Plan and schedule, point sources would have to comply within permit re-issuance cycle.	See discussion under NPDES.	See Appendix A	N. A.

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
	required in 30 days from receipt.	Technology or water quality - based discharge standards.		Liability for LA or nonpoint sources is less apparent.			
Water Quality Standards and Non-degradation rules	Triennial standards review process requiring public notice in SR and MPCA Board review and approval. Subject to M.S. 14.001 – 14.69.	40 CFR, Section 130.3 and Part 130, Subparts A – C. M.S. 115.01, Subd. 19; 115.03; and 115.44. Non-degradation rules M.R. 7050.180 and 7050.185 relate to more to point source technology and water quality-based standards.	Generally not applicable, except as it may apply to a point source as noted above.	Any “person” as defined at M.S. 115.01 that violates a permit effluent limitation or water quality standard is liable under administrative, civil and criminal penalties pursuant to M.S. 115.071.	Compliance and enforcement of violations under M.S. 115.07 and 115.071.	See Appendix A, two pertinent decisions.	Approved water quality standards serve as the basis for making assessments and determining waterbody impairments on MPCA’s 303(d) list of impaired waterbodies
Nonpoint Source Pollution Control Program	A 60 day public notice in SR on availability of grants. MPCA reviews and ranks eligible projects for funding within 90 days of	Project ranking criteria under M.S. 103F.735, Subd. (b) – (e) and the criteria in M.R. 7076.0170, Subp. 2 & 3. See Appendix A for further discussion.	Responsibility engendered to local government as defined in M.S. 103F.711, Subd. 5.	Local government is responsible for expenditure of funds appropriately under penalty of law.	Enforcement authority provided in M.S. 103F.741, Subd. 3 as a civil action for misuse of funds under Subd. 1.	N. A.	Statutory and rule authority silent. May tie directly into TMDL program, if it is reflected in local water plan priorities.

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
	application receipt.						
Metropolitan Water Management Program	No public notice requirements. Review procedures follow M.S. 103.231, Subd. 7 – 10.	Watershed Plan criteria in M.S. 103B.231 and M.R. Chapter 8410. Local Plan criteria within M.S. 103B.235.	Water management organizations (WMO) and local government have infrastructure authority as may be taken by statute or rule to implement plans.	M.S. 103B.225 identifies property liability for outstanding indebtedness as a result of WMO termination or boundary changes.	Watershed plan content [103B.231, Subd. 6(a)(8)] and local water plans (103B.235, Subd. 1) are tied to local comprehensive plans (473.859).	See Appendix A	No specific mention of TMDL program, but could be included as an existing problem under M.R. 8410.0090 within watershed plan.
Watershed Law	Public notice in legal paper(s) and hearing under 103D.401, Subd. 4. Review and approval under 103D.401, Subd. 2 – 3.	M.S. 103D.335, Subd. 23 grants Metropolitan Watershed Districts the powers in 103B.211 for watershed plan preparation and review and approval of local water plans. Therefore, applicable standards and criteria are same as	District purposes for infrastructure responsibility are in M.S. 103D.201, Subd. 2.	M.S. 103D.265, Subd. 4 related to consolidation of districts. Performance liability for managers and/or employees not covered by a bond. Other liabilities applicable to Districts under 103D.335.	Metropolitan Council has review authority for watershed plan under M.S. 473.165, although not well defined.	See Appendix A regarding Appeals Court decision on M.S. 103D.261, Subd. 2(a).	See above, but could also be included as a “water-related problem” (M.S. 103D.401, Subd. 1).

Program Name	1. Public Notice and Review	2. Applicable Standards and Criteria	3. Infrastructure Responsibility	4. Liability	5. Compliance and Enforcement Processes	6. & 7. Applicable Court Decisions and Guidance	9. TMDL Program Relationship
		required in M.S. 103B.231 and 103B.235, respectively.					
Metropolitan Land Planning Act	At least one public hearing must be held by the local government (462.355, Subd. 2). Public notice in newspaper at least ten days prior. Met Council reviews Plan in accordance with 473.175.	Met Council’s Water Resources Management Policy Plan (May 25, 2005), Appendix B-2b includes requirements. Further guidance within Local Planning Handbook (September 2005), pp. 5-12 through 5-17. Met Council will develop target pollution loads for major watersheds by 2008 in accordance with M.S 473.157.	Infrastructure responsibility resides with local government as defined in 473.852, Subd. 7 and 462.355, Subd. 2.	Resides with the local government. Because local water management plans and other items must be included in the Comp. Plan, updates to planning and zoning ordinances are also in suspense unless compliance achieved.	Metropolitan Council has compliance and enforcement authority in 473.175, Subd. 3 as a civil proceeding in district court. A local government can request a contested case hearing process (M.S. Chapter 14) with respect to Comp. Plan modifications requested by Met Council.	See Appendix A.	Item 10, Appendix B-2b, page 84 requires information on TMDL program to be included.