



Memo

Engineering Services Division
Mail Stop 120
395 John Ireland Blvd.
St. Paul, Minnesota 55155

Office Tel: 651 296-3156
Fax: 651 296-6135

Date: December 24, 2003

To: Transportation District Engineers

From: Richard A. Stehr
Division Director

A handwritten signature in black ink, appearing to read 'RAS', written over the name 'Richard A. Stehr'.

Re: Memorandum of Understanding Between Mn/DOT and Minnesota Pollution Control Agency (MPCA) on National Pollution Discharge Elimination System (NPDES) Phase II Construction Storm-water Permit

I am please to announce the implementation of a memorandum of understanding (MOU) between the Minnesota Department of Transportation and the Minnesota Pollution Control Agency. The MOU sets forth a working relationship between Mn/DOT and the MPCA on the National Pollution Discharge Elimination System (NPDES) Phase II Construction Storm-water Permit. Both Mn/DOT and the MPCA have committed to a streamlined process for permitting transportation projects, while at the same time, obtaining the desired outcomes set forth in permit provisions. The process included in the MOU should help minimize resources required to develop and review plans, keep construction costs in line and improve construction compliance procedures. A copy of the MOU is attached.

Highlights of the MOU are as follows:

Best Management Practices

Mn/DOT and MPCA will work together in developing and publishing a set of BMPS for transportation projects. Narratives required in the permit can be in the form of plan notes or special provisions.

MPCA Plan Review on Longer/Critical Projects

Plan review by MPCA required in the permit for the larger/critical projects will be conducted in the concept stage; not upon completion of the project plans. This allows projects to proceed through the Mn/DOT letting schedule without last minute delays and changes. Plan review by the MPCA at the concept stage also provides a mechanism for Design/Build projects to proceed and obtain desired storm-water management requirements.

Storm-water Management Technical Provisions

Storm-drain inlet protection provided on Mn/DOT projects will include emergency safety overflow to ensure safety to the traveling public driving through construction sites

Chitosan, a natural based flocculent, can be used for treating storm-water in retention basins.

Long slopes frequently encountered on Mn/DOT projects can be constructed and stabilized in sections.

Temporary sediment basins can be constructed concurrent with soil disturbance activities.

Alternative methods can be used for the treatment of storm-water and MPCA and Mn/DOT will work together on designing or monitoring the results.

Stakeholder Training

Mn/DOT and MPCA will partner with the University of Minnesota on a training and certification program for storm-water management. The training will target designers, contractors, Mn/DOT personnel and MPCA personnel. The goal of the training is to promote sound storm-water management practices as well as consistent inspection activities.

Construction Compliance and Communication

MPCA will follow a consistent and clear communication process when inspecting Mn/DOT projects. The MOU sets forth a step-by-step process for contacting Mn/DOT construction personnel and documenting inspections conducted by the MPCA. Mn/DOT will resolve technical and/or compliance issues in a timely manner and at the lowest level in the organization as possible.

Issue Resolution

The policy of both Mn/DOT and MPCA will be to resolve issues at the lowest level in the organizations. Unresolved matters will be referred up the appropriate chain of command of the two agencies.

Attachment - MOU

**Water Quality and National Pollutant Discharge Elimination System Permit Requirements
Memorandum of Understanding
Between Minnesota Department of Transportation and Minnesota Pollution Control Agency
November 2003**

This Memorandum of Understanding (MOU) is between the Commissioner of the Minnesota Pollution Control Agency (MPCA) and the Commissioner of Minnesota Department of Transportation (Mn/DOT).

The MPCA, in partnership with other Agencies and the citizens of the state, protects surface and ground waters. The MPCA enforces federal and state requirements for storm water management to reduce erosion from construction sites, and to minimize damage to the water resources of the state. The MPCA has promulgated rules for storm water and issues National Pollutant Discharge Elimination System (NPDES) Permits for construction storm water projects pursuant to the Clean Water Act (40 CFR Part 122.28; 33USC 1342(p) and Minn. Stat. ch. 115, 116, Minn. R. 7000 and Minn. R. 7001.

Mn/DOT must plan, construct and reconstruct roads pursuant to Minn. Stat. ch 174 and Federal Law (Transportation Equity Act (TEA 21)). Many road projects cross, or are located adjacent to, waters of the state, and have storm water runoff discharges into waters of the state. Transportation projects are a unique category of construction projects that frequently involve existing roads adjacent to private property with established land uses. This makes changes in location controversial and avoidance of some impacts to surface waters difficult. These projects can extend for many miles crossing multiple watershed boundaries and potentially impact lakes, streams, and wetlands.

This MOU describes the application of the MPCA promulgated rules and Storm Water Permits to this category of construction projects. It describes the commitment of the MPCA and Mn/DOT (Agencies) to work towards a streamlined process for permitting road projects and towards a common interpretation of the rules and how Mn/DOT will meet those requirements. The Agencies commit to using best practices to protect the environment, and also allow transportation projects to proceed without undue delay. The processes and practices adopted should minimize the time and resources required to develop and review permit applications and plans, minimize construction costs and complexity, and improve construction compliance and enforcement procedures.

I. TERM OF MOU AND CANCELATION

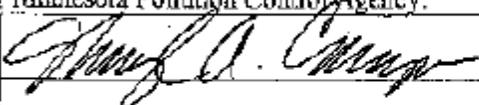
This MOU is effective upon execution by the Agencies, and will remain in effect until canceled by either Agency. Thirty days notice shall be given by the Agency wishing to cancel this agreement.

II. AMENDMENTS

Any amendments or modifications to this MOU must be in writing and will not be effective until executed by the Agencies.

III. ENTIRE AGREEMENT

This MOU and attached appendix contains the entire agreement between the Agencies.

Minnesota Pollution Control Agency:

Commissioner Sheryl A. Corrigan
Date 12/02/03

Minnesota Department of Transportation:

The Honorable Carol Molnar Lt. Governor and Commissioner
Date 12-17-03

The attached Appendix A addresses several areas of agreement listed by topic. Additional issues may be amended onto this agreement as they are completed and approved by the Agencies.

Appendix A Contents:

- PART I. Permit Requirements and Storm Water Pollution Prevention Plans for Highway Construction Projects.
- PART II. Process for Review and Approval of Alternative Method Best Management Practices for Storm Water.
- PART III. Stakeholder Training Programs.
- PART IV. Process for Permit Compliance Inspections, Communication and Follow-up.
- PART V. Issue Resolution.

List of Tables

- Table 1 Types of Permits and Time Frames
- Table 2 List of Provisional Erosion Certification Testing Contacts
- Table 3 Personnel in Steps of Accountability for the Construction Phase
- Table 4 Steps in Issue Resolution
- Table 5 Mn/DOT & MPCA Representatives for Steps in Issue Resolution

List of Figures

- Figure 1 Process for Inspections and Follow-up

APPENDIX A

PART I. Permit Requirements and Storm Water Pollution Prevention Plans for Highway Construction Projects.

The Detail Design Engineer will initiate the NPDES Permit application process. Mn/DOT will implement procedures in the design phase that include identification and mapping of environmentally sensitive/critical areas within the project area. Identification of critical areas will aid in design of the SWPPP and help to maintain awareness of contractors during construction. Where appropriate, Mn/DOT will include a narrative on the plans describing Best Management Practices (BMP) implementation/staging in the form of “plan notes” or in contractual special provisions to assist in reaching environmental goals.

The MPCA will assist Mn/DOT in developing a set of BMPs for highway design engineers that are typically considered acceptable and appropriate for meeting permit requirements under a given set of circumstances.

Table 1 below is a summary of timeframes for permit applications, SWPPP submittals and turnaround times. For projects disturbing less than 50 acres there is no plan review required by the MPCA; applications can be filled out by the Detailed Design Engineer upon completion of the project design plans. The procedure in Table 1 for “Alternative Methods in SWPPP” is detailed in Part II of this Appendix. Projects that cannot conform to the general permit conditions must obtain an individual permit; that process should begin early in the project development to avoid delays in the design and letting schedule. Projects that have a new or expanded discharge to a calcareous fen must obtain an individual permit if more than one acre is disturbed.

Table 1 Types of Permits and Time Frames

General Permit	Submittals	Permit Issued
Typical projects	No SWPPP review; submit permit application after letting contract	Seven days after receipt of application
When Plan Review is required	SWPPP sent to PCA at 30 percent plan stage	Seven days after receipt of application with copy of plan approval letter from MPCA
Alternative Methods for permanent storm water treatment	Proposal to MPCA more than 90 days before Mn/DOT final plan review date; MPCA provides preliminary review letter within 30 days after receipt of proposal	Seven days after receipt of application with copy of method approval letter from MPCA
Individual Permit		
Projects that are excluded from or can not meet the conditions of the general permit	SWPPP to MPCA more than 180 days before MN/DOT final plan review date; 180 day review includes public notice of draft permit, revisions, approval	Upon approval

SWPPP Review for Construction Projects

Projects disturbing more than 50 acres that have a discharge point within 2000 feet of, and flows into an impaired water or special waters, requires up to a 30 day SWPPP review by the MPCA. A “Special Waters” identification and mapping tool can be found on the MPCA web site at www.pca.state.mn/water/stormwater. The process for SWPPP review should be accomplished to incorporate feedback and revisions during project development. The content of the SWPPP should be based on the project’s hydraulics plan, indicate how all water resource features will be protected, major storm water management features such as ponds and conveyances, approved layout and the highway concept design provisions at 30 percent plan stage. Plans should also be reviewed by other federal, state or local permitting authorities in the same timeframe to coordinate feedback. The MPCA will provide Mn/DOT with an approval letter if the SWPPP meets the permit requirements. No significant changes can be made to the SWPPP that decrease protection of water quality after that point without the MPCA review and approval. The MPCA reserves the right to a second review and approval of the final plan and SWPPP for any project. The Mn/DOT project manager will attach the MPCA SWPPP approval letter to the permit application, which when submitted, will be accepted for a seven day turn-around period. For Design/Build projects the SWPPP review process will be initiated by Mn/DOT prior to award of the contract.

Construction Contract Administration

After a project has been awarded and a permit has been obtained, the project engineer is responsible for administering both the contract and the storm water permit. During construction the project engineer is responsible for administering provisions of the erosion/sediment control plan (SWPPP), enforcement of the specifications and compliance with the “owner’s” requirements of the permit. For Design/Build projects the Design/Build Contractor takes primary responsibility for meeting the requirements of the SWPPP related to the project; however, Mn/DOT remains the owner unless the application and permit indicate otherwise.

Technical Issues:

Storm Water Inlet Protection

The MPCA acknowledges that on highway construction projects open to the traveling public there may be safety constraints associated with inlet protection-type BMPs placed in catch basins of curb and gutter systems. In situations where public safety would be at risk, Mn/DOT may use inlet protection with a safety overflow for curb and gutter systems and use additional BMPs at the source of the sediment to meet the goal of inlet protections. Mn/DOT will include measures in SWPPPs to control erosion and sediment on project drainage areas that drain to the storm water inlets modified for safety reasons.

Dewatering

Information from the State of Washington and others indicate that the natural-based flocculant, Chitosan, is a safe and acceptable BMP for treating turbid water to reduce sediment in the water column prior to discharging to natural surface waters. The MPCA approves the use of Chitosan for treatment of storm water prior to discharge under the following conditions to protect aquatic biota and water quality:

- Chitosan may be used in a temporary or permanent storm water treatment basin or other temporary dewatering structures. The discharge pipe from basins must be closed during Chitosan treatment. The water must be evaluated prior to discharge to determine the effectiveness of the treatment.
- Adequate time for sedimentation must be allowed prior to discharge of storm water to a surface water or wetland. Adding Chitosan during discharge, in a pump intake or outlet pipe, is not treatment acceptable for discharge to waters connected to a surface water body.

- Chitosan may not be applied directly to a natural surface water body.
- The application rate of Chitosan must not exceed the manufacturer's suggested application rate.
- The pH of the storm water must be tested and be within the manufacturer's specified pH and temperature range.

Long Slopes

The MPCA will approve staged construction of a total soil slope length greater than 75 feet, and 3:1 height to vertical, or steeper, constructed as a single unbroken slope if justified in the SWPPP due to economic and/or right-of-way constraints. For slopes greater than 75 feet in length with 3:1 (H:V) or steeper grades, Mn/DOT will seed and mulch the disturbed slope in increments. The disturbed increments will not exceed 75 feet in slope length. Each incremental portion of the slope will be stabilized according to the temporary stabilization requirements in the permit before a new increment is constructed or disturbed. Permanent seeding and mulching or blanket placement will be accomplished with a maximum of three days once the incremental portion of the slope has been constructed to its final grade.

Temporary Sediment Basins

Mn/DOT will construct temporary sediment basins concurrent with the start of soil disturbance whenever possible. Installation of temporary sediment basins may be delayed or only partially constructed pending completion of other activities. For example, delays may occur when underground utilities, building demolition or contaminated soils must be removed before basin excavation can be completed. In these situations, partial construction and/or alternative sediment control BMPs will be used until staged construction allows the temporary basin to be completed

PART II. Process for Review and Approval of Alternative Method Best Management Practices for Storm Water

This streamlined process for Alternative Methods as defined in the permit can provide more options for storm water treatment on highway projects. Alternative Methods are permanent storm water treatment methods that may be developed for review and approval by the MPCA. This process may also be used by Mn/DOT to propose alternative methods independent of a specific project that may become Mn/DOT Standard Design Methods.

Mn/DOT will submit a SWPPP for a project that includes an alternative method as early in the design process as possible but no less than 90 days prior to Mn/DOT final plan approval to avoid a delay in the letting schedule. Mn/DOT project manager will attach the MPCA method approval letter to the permit application.

The MPCA will respond with a comment letter on preliminary review of the method within 30 days of receiving a complete alternative treatment method package. The MPCA will complete the alternative method review within 90 days and send a letter with method approval. If the MPCA review determines modifications are required, the method can be resubmitted and the MPCA will respond within 30 days. The MPCA will process permit applications with an attached method approval letter and authorize permit coverage within seven days.

Alternative methods are considered unproven until there is an adequate amount of data on performance for highway projects. Alternative methods previously approved with good monitoring data available will likely require significantly less review time.

Contents of a Submittal

Mn/DOT will provide a proposal with the information necessary to evaluate the alternative method for storm water treatment and describe the circumstances under which the treatment method is proposed to be used. It is recommended that Mn/DOT staff contact the MPCA storm water engineering staff in St. Paul to discuss and agree on the contents of the treatment method package prior to submittal. Agreement on the package contents is intended to eliminate the need for multiple requests for additional information and facilitate a timely MPCA review.

For example, information needed in the submittal would include information on the project site, design specifications, appropriate slopes, soil and vegetation types, size of drainage area, include any peer reviewed research or field tests and existing monitoring that has been conducted by others to demonstrate the utility and effectiveness of the alternative method. A minimum two-year monitoring plan is required in the permit for alternative method applications. The submittal for the alternative method should demonstrate (by calculation or other methods) that the method is capable of removing approximately 80 percent of Total Suspended Solids on an average annual basis.

PART III. Stakeholder Training Programs

The Agencies will partner with the University of Minnesota (U of M) to plan and conduct a training and certification program for erosion and sediment control. Three different audience categories of training are expected: 1) Erosion/Sediment Control for Site Inspectors/Installers; 2) Erosion/Sediment Control for Site Managers; and 3) Erosion/Sediment Control for Designers.

The MPCA Actions

The MPCA will assist the U of M in the development of curriculum and materials for the training and certification program. The MPCA will assist the U of M on the regulatory and administrative aspects of the Construction Storm Water Permit. The MPCA will provide staff to assist in training, depending on need, availability and scheduling, for the permit related aspects of the U of M courses. The MPCA has established contacts in each regional office for testing to obtain provisional certification through the U of M's erosion and sediment control courses (see Table 2). The MPCA may modify Table 2 as necessary.

The MPCA staff and contractors assigned to construction storm water site inspections will be required to attend and be certified in the Site Inspectors/Installers and Site Managers courses. Staff assigned to review and approve large project plans will attend and be certified in the course for designers from the U of M within one year after execution of this agreement.

The MPCA will develop training for the MPCA staff, contractors and local partners to promote program consistency including inspection and enforcement activities. Internal staff training will be done in phases to keep pace with changes in the administrative and regulatory program as well as implementation of new BMPs. Persons under contract with the MPCA will be trained within three months after contract execution. The MPCA will also provide training for appropriate staff to promote understanding of this agreement.

Mn/DOT Actions

Mn/DOT will assist the U of M in the development of curriculum and materials for the training and certification program. Mn/DOT will co-chair the U of M Steering Committee and will assist with the development of highway specific aspects of the training and certification materials for the program.

Mn/DOT will integrate topics such as protecting water quality, erosion control, stream geomorphology, or new BMPs wherever appropriate into other relevant internal or external training courses for Mn/DOT staff and contractors.

Mn/DOT will establish the following requirements:

- U of M Certified design professionals for the design aspects related to erosion and sediment control on all projects requiring NPDES Storm Water Permit coverage.
- U of M Certified contractors for the construction aspects related to erosion and sediment control on all projects requiring NPDES Storm Water Permit coverage.
- U of M Certified staff for inspectors and site managers for aspects related to erosion and sediment control on all projects requiring NPDES Storm Water Permit coverage.

Table 2. Provisional Erosion Certification Testing Contacts

<i>Office Location</i>	<i>Contact Name</i>	<i>Location Address</i>	<i>Phone Number</i>	<i>E-mailAddress</i>
Brainerd	Lance Poyzer	1800 College Road S Baxter, MN 56425	(218) 828-6063	lance.poyzer@pca.state.mn.us
Brainerd	Teri Anderson	1800 College Road S Baxter, MN 56425	(218) 828-2492	teri.anderson@pca.state.mn.us
Detroit Lakes	Joyce Cieluch	714 Lake Avenue Suite 220 Detroit Lakes, MN 56501	(218) 846-7387	joyce.cieluch@pca.state.mn.us
Detroit Lakes	Sheri Berg	714 Lake Avenue Suite 220 Detroit Lakes, MN 56501	(218) 846-0463	sheri.berg@pca.state.mn.us
Duluth	Kathy Tilander	525 Lake Ave S Suite 400 Duluth, MN 55802	(218) 723-4661	kathy.tilander@pca.state.mn.us
Duluth	Patty Parker	525 Lake Ave S Suite 400 Duluth, MN 55802	(218) 723-4660	patty.parker@pca.state.mn.us
Marshall	Sharri VanDeWiele	1420 E College Dr Suite 900 Marshall, MN 56258	(507) 537-7146	sharri.vandewiele@pca.state.mn.us
Metro Region	Colleen Ripley	520 Lafayette Rd N St. Paul, MN 55155	(651) 297-8363	colleen.ripley@pca.state.mn.us
Rochester	Mary Beth Linder	18 Wood Lake Dr SE Rochester, MN 55904	(507) 280-3537	marybeth.linder@pca.state.mn.us
Rochester	Brenda Phillips	18 Wood Lake Dr SE Rochester, MN 55904	(507)280-5561	brenda.phillips@pca.state.mn.us
Willmar	Sheri Reuss	201 – 28 th Ave SW Willmar, MN 56201	(320) 214-3786	sheri.reuss@pca.state.mn.us

PART IV. Process for Permit Compliance Inspections, Communication and Follow-up

The MPCA will continue to refine an inspection process and documentation that clearly communicates expectations for response actions and timeframes for permit violations. The procedures developed for Mn/DOT projects are summarized in Figure 1 plus Tables 3 and 4. Inspections, follow-up activities, roles and responsibilities for compliance are identified below. Inspection steps are described to provide a better understanding of the inspection process and compliance determinations.

All Mn/DOT operations and their contractors have a duty to avoid, notify and abate water pollution under Minn. Stat. § 115.061. Mn/DOT or their contractor must call the MPCA and ask for the regional office storm water staff person or call St. Paul office toll free at (800) 657-3864 or (651) 296-6300 to report discharges of pollutants to surface waters. To report oil or chemical spills or other environmental emergency call the 24 hour State Duty Officer toll free at (800) 422-0798 or (651) 649-5451.

Compliance Inspection Process and Communication

An inspection will generally cover the entire project, be comprehensive in nature and include an inspection report. Whenever practical, the MPCA will contact the appropriate Mn/DOT staff in advance to arrange for a meeting at the site. Personal schedules will not be allowed to delay an inspection. Mn/DOT District Construction Office Managers can identify the name and phone number of the project engineer and contractor for each project and are the best first contact in each district for the MPCA. A list of contacts will be provided to the MPCA inspection staff. When inspecting a Mn/DOT project, the MPCA will wear appropriate safety equipment and attempt to make contact with the Project Engineer, Mn/DOT Chief Inspector or Contractor Supervisor (in that order of preference) to indicate they are inspecting the project.

Following the inspection, a report will be prepared and signed by the MPCA inspector and, whenever possible, signed by Mn/DOT staff or a contractor representative. The report will summarize compliance issues, any violations and, when possible, include a schedule for necessary corrective actions. Mn/DOT field staff (or the contractor representative if Mn/DOT is not present) will be notified of the issues and deadlines for corrective actions through the on-site conversation and receiving a copy of the inspection report at the time of the inspection. If field staff can not be located, an on-site report may be faxed to the Mn/DOT Construction Office Manager. Mn/DOT project staff will see that a copy of the report is sent to the Mn/DOT resident engineer in the District Office. The MPCA inspector will follow up, based on the schedule in the inspection report, with Mn/DOT staff to determine if the corrective actions have been completed. Verification of corrective actions may be arranged by providing pictures of the project, by a phone conversation or by another site visit.

Unresolved issues will receive follow-up as described below.

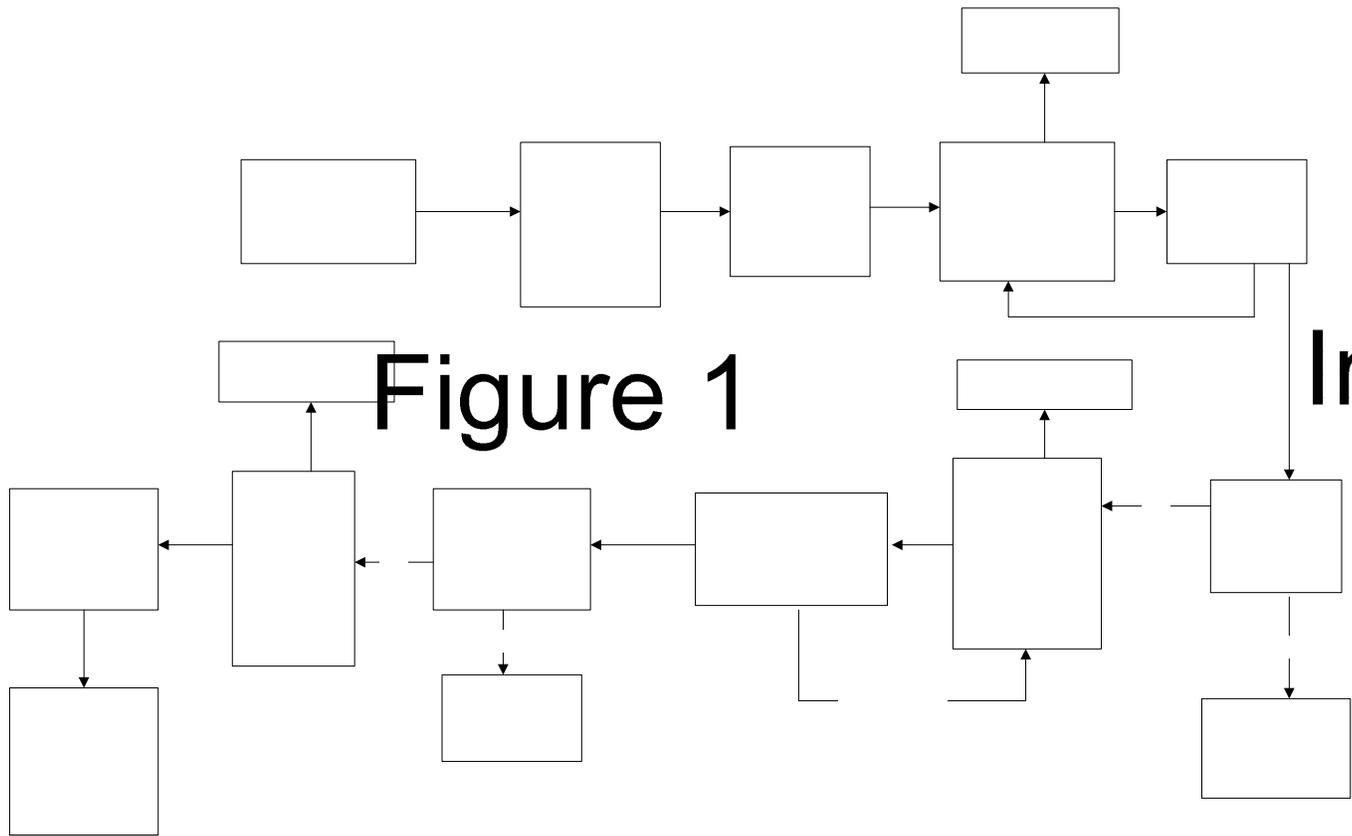


Figure 1

Insp

MPCA Inspector
 prepares for on-site
 inspection contact
 District Construction
 Office Manager

Enforcement action
 will be taken

Follow-up and Accountability for Construction

This process is intended to resolve technical and compliance issues at the lowest level in the organization as possible, however, there may be serious situations which are very sensitive that require that the normal process is bypassed to address the situation. For the purpose of this discussion the initial inspection described above is called “Step 1”. Accountability will be elevated to Step 2 if corrective actions have not been completed by the scheduled dates and there are no reasonable mitigating circumstances. The MPCA will contact the District Construction Office Manager who will contact the project engineer, resident engineer and the contractor to set up a follow-up meeting within five days of the request. The MPCA inspector will inform the MPCA program supervisor and may also consult with the enforcement forum on the project in this step. Following the second inspection, a Step 2 schedule for corrective actions, expressed in number of days or specific date(s), will be established as well as a tentative date for a follow-up visit, verification by photos or phone. The MPCA will send a copy of the Step 2 inspection report and any other appropriate enforcement process documentation to the Resident Engineer.

New violations may be added as a result of subsequent inspections and/or additional work being done on the project. Unresolved violations may be treated as repeated violations when determining the seriousness of noncompliance and environmental harm, resulting in a higher degree of enforcement.

If the project remains out of compliance with the permit after the steps above, then it will move to accountability Step 3. When a project enters this step, the MPCA has determined that the response to the corrective actions and justification for continued noncompliance during Step 2 was inadequate. The MPCA inspector and Mn/DOT Construction Office Manager will arrange follow-up with the appropriate MPCA and Mn/DOT managers, including copies of the inspection reports and compliance responses.

Procedures have been developed for tracking response to compliance and enforcement documents. Response letters from Project and Resident Engineers are necessary to indicate how the problems were addressed, remaining issues or to bring closure to the compliance process. The letters indicated in Table 4 from the Assistant or District Engineers will indicate not only how the problems have been resolved but also the disposition of any penalties or other agreements between the two Agencies. In some cases documents require signature by both Agencies in order to execute the document.

Table 3. Personnel in Steps of Accountability for the Construction Phase

MN/DOT Staff	MPCA Staff
Step 1 Project Engineer, Chief Inspector, Contractor Representative	MPCA Inspector
Step 2 Resident Engineer	Enforcement Supervisor
Step 3 District Engineer and or Division Director	Division Director and or Assistant Commissioner

Table 4. Document Tracking for Construction Phase Compliance/Enforcement

Enforcement Document	Mn/DOT Responder	Closure Document	MPCA Response
Inspection Report with corrective actions & violations	Project Engineer	Response letter from Project Engineer	No response needed
Notice of Violation	Resident Engineer	Response letter for Resident Engineer	Acknowledgment and determination of case status.
Administrative Penalty Order (APO)	Assistance District Engineer	Letter of resolution from District Engineer with payment of penalty	Concurrence by MPCA and determination of case status.
Stipulation Agreement	District Engineer	Signature of Stipulation Agreement and payment of penalty	Signature of Stipulation Agreement and case closure.

MPCA Enforcement Process:

The MPCA or its agent will inspect projects to determine compliance with the NPDES Permit. Other than citizen lawsuits under Section 505 of Clean Water Act, only the MPCA or U.S. Environmental Protection Agency can take enforcement action based on the NPDES Permit. The primary goal of the permit and the inspection is to protect water quality, natural resources and the environment. The following elements are important in evaluating NPDES Permit water quality violations: 1) the degree of deviation from compliance; 2) degree of environmental harm; and 3) the quality and speed of response with corrective actions. These elements will always be taken into consideration when determining the nature and extent of enforcement action. Repeated violations by a permittee will also influence enforcement decisions as well as the history of Mn/DOT staff, contractor and contractor performance management. Enforcement action may not result from every inspection that reveals violations. Prompt response with corrective actions may not necessarily prevent enforcement action; however, the response action is taken into consideration and may reduce the amount of a penalty. The MPCA enforcement actions are determined by a panel of staff from the specific program and enforcement specialists with assistance from the Attorney General’s office.

In fairness to all NPDES permittees the MPCA enforcement process must remain consistent and independent of this agreement. The purpose of this appendix is to improve compliance and better protect the environment by streamlining the communication process and improve response time. There are many activities being implemented by the MPCA and Mn/DOT to improve and ensure compliance with NPDES Permits on Mn/DOT construction projects; however, these activities in themselves cannot guarantee consistent and adequate performance of duties. Following the process contained in this MOU does not preclude or restrict the MPCA in any way from taking enforcement action at any point on any Mn/DOT project.

PART V. ISSUE RESOLUTION

Questions or issues related to project design, construction solutions, rules, policies, and regional or statewide matters may result in unresolved issues between the two Agencies. The policy of each Agency will be that such issues will be resolved cooperatively at the lowest possible level in each organization, where staff are most familiar with the issue. Project design and construction solutions should be address by following the process set out in Table 4. Functionally equivalent positions in the two Agencies, for the purposes of all other types of issue resolution, are set forth in Table 5, below.

If Agencies staff directly involved cannot resolve the issues raised by either Agency staff will refer the issue to the attention of the appropriate supervisory or management staff in the respective agencies according to Tables 4 and 5.

Every effort will be made to resolve the above issues at a level no higher than Step 2. Matters not resolved at Step 3 will be referred to the Deputy Commissioners for a final decision.

**Table 5
Mn/DOT and MPCA Representatives for Steps in Issue Resolution**

<u>Mn/DOT Staff</u>	<u>MPCA Staff</u>
<u>Step 1</u> Mn/DOT Unit Supervisor, or Section Director	MPCA Program Supervisor in Regional Environmental Management (REM) Division
<u>Step 2</u> Mn/DOT Office Director of Environmental Services, and/or Mn/DOT District Engineer	MPCA Regional Manager REM Division
<u>Step 3</u> Mn/DOT Division Director	MPCA Division Director REM Division and/or MPCA Assistant Commissioner

