



Title: Review of Public Comments on the Rule Revisions

Prepared by: Name: Becky Christopher
Phone: 952-641-4512
bchristopher@minnehahacreek.org

Purpose:

At the February 22, 2024 Policy and Planning Committee (PPC) meeting, staff will provide an overview of comments received during the public comment period for the proposed rule revisions. Staff will return with proposed responses to comments and any associated revisions to the rules at the March 14, 2024 Board Meeting.

Background:

The Minnehaha Creek Watershed District (District) has prepared [proposed revisions](#) to its permitting rules as part of its [Land & Water Partnership Initiative](#). The primary goals for the rule revisions are to:

- Align the District's regulatory scope and standards with state agencies for consistency and compliance
- Simplify and streamline rule language, submittals, and processes to enhance clarity and improve customer service
- Improve program efficiency and effectiveness by tailoring regulations and field presence to potential natural resource risk and opportunity

At the [October 27, 2023 Board Meeting](#), the Board authorized the release of the proposed rules for public comment. On December 18, 2023, notice was published in the Star Tribune and on the District website and sent to public transportation authorities (MnDOT, counties, cities, townships), state agencies, TAC members, major contractors and engineering firms, and frequent applicants. The District accepted comments over a period of 45 days, which closed on February 1, 2024. In addition, a public hearing was held at the January 11, 2024 Board Meeting. No members of the public attended the hearing.

Summary:

Comments were submitted by the following entities during the public comment period (see attached):

- CenterPoint Energy
- City of Minneapolis
- City of Plymouth
- City of Richfield
- Hennepin County
- Minneapolis Park and Recreation Board
- Minnesota Department of Health
- MN Department of Natural Resources
- MN Pollution Control Agency

The comments generally support the goals of the rule revision process and provide recommendations to further align the rules with state requirements, improve clarity, and streamline the permitting process for low risk activities. Staff is in the process of developing responses and final revisions to the rules, in coordination with the District engineer and legal counsel.

At the PPC meeting, staff will provide a brief overview of the comments received and highlight any significant rule changes that are recommended based on the comments. Staff anticipates bringing the proposed responses and final rule revisions forward for Board action at the March 14, 2024 Board Meeting.

Supporting documents:

Comment letters



Colton Peshek
Senior Environmental Specialist
Colton.Peshek@CenterPointEnergy.com

January 31, 2024

Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

RE: Comments of CenterPoint Energy on the December 18, 2023 Minnehaha Creek Watershed District Proposed Rule Revisions

Minnehaha Creek Watershed District Staff:

Please see the following comments of CenterPoint Energy for review and consideration. These comments were identified during 45-day public comment and review period for the Minnehaha Creek Watershed District Proposed Rule Revisions which opened on December 18, 2023.

- 1) Rule 4, Part 2a states, "A permit is required to fill, excavate or grade within the floodplain of a waterbody."

Comment:

Please clarify if a floodplain permit is required for projects that have temporary impacts to the floodplain but will not alter the final floodplain grade. Will permit exemptions be considered for non-permanent temporary-only impacts resulting in no alteration in post-construction final grade?

- 2) Rule 5, Part 2.a.3 states, "A permit under this rule is required for the following actions: Grading or otherwise changing land contours, except for agricultural activity, so as to affect the direction, peak rate, volume or water quality of runoff."

Comment:

Please clarify if this is only referring to permanent grade changes or if this includes temporary disturbance as well when the area will be returned to pre-construction grade and contours. Will permit exemptions be considered for non-permanent temporary-only impacts resulting in no alteration in post-construction final grade?

Please let us know if you have any questions or require any further clarification regarding our comments.

Regards,

Colton Peshek

Colton Peshek
CenterPoint Energy Natural Gas Operations

Cc: Madelyn Nierengarten – CenterPoint Energy

February 1, 2024

Minnehaha Creek Watershed District
c/o Becky Cristopher, Policy Planning Director
15320 Minnetonka Blvd
Minnetonka, MN 55345

RE: Minnehaha Creek Watershed District (MCWD) Rules Revisions

Thank you for the opportunity to provide comments on the MCWD rule revisions. City of Minneapolis staff were an active part of the rules development and would like to provide additional comment on the final draft rules.

1. Rule 3.0: Erosion and Sediment Control
 - a. MN Construction Stormwater General Permit (CSGP) Addendum – For consistency across regulatory bodies the City supports aligning the erosion and sediment control requirements with that of the CSGP. These requirements should be incorporated by reference rather than as an addendum. This way there is less need to update the District’s rules upon updates to the CSGP.
 - b. Section 3.b.4. – consider change to “one-mile aerial radius” so that there is a clear measurement metric for applicants.
2. Rule 5.0: Stormwater Management
 - a. There are cases where it is not enough that a project removes pollutants to the current Stormwater Management rule standard and be in compliance at the project boundary. If the project leads to a negative impact at the receiving water, then there needs to be a higher standard imposed. The purpose of stormwater regulations is to protect our natural water bodies so the rule should reflect improvements at the receiving water and not just looking at the project in a vacuum. Please add a requirement that there be no negative impact to the receiving water quality. Future rulemaking may be required to fully address this request.
3. Rule 7.0 Wetland Protection
 - a. Section 5.b. Please amend the language to state that public entities are not obligated to acquire additional right of way or easements to meet the applicable buffer width requirements.
4. Rule 9.0 Dredging
 - a. Section 2.(a) per the proposed language, the rule is applicable for dredging within public water wetlands. Please clarify if this rule also be applicable to wetlands that are not a part of the public water inventory.

Thank you for allowing the City of Minneapolis to comment on the proposed rule amendments. If you have any questions or need any clarification, please contact me at Elizabeth.stout@minneapolismn.gov.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Stout". The script is cursive and elegant, with the first letter of each word being capitalized and prominent.

Elizabeth Stout, PE
Principal Professional Engineer – Water Resources Manager

January 19, 2024

Minnehaha Creek Watershed District
c/o Becky Christopher, Policy Planning Director
15320 Minnetonka Blvd
Minnetonka, MN 55345

RE: Minnehaha Cree Watershed District Rules Revisions

The City of Plymouth appreciates the opportunity to comment on the planned amendments to the Watershed Management District (MCWD) Rules. Comments on the proposed rule changes and where applicable, staff have provided suggested edits to the proposed rule(s) in **bold & blue text** below:

1) Procedures Rule

- Section 4a
 - The City would request that a timeline be established for reviewing permit applications. A 60-calendar day review period is suggested.

2) Erosion & Section Control Rule

- Section 6c-e
 - Items c, d and e appear to be redundant. We would suggest combining these three items into one.
- Minnesota Construction Stormwater General Permit (MCSGP) Addendum
 - Consider striking the addendum and including the MPCA permit by reference.
 - If the Minnesota Pollution Control Agency (MPCA) permit text is copied, the MCWD rules would need to be updated if/when there are changes to the MPCA rules.

3) Floodplain Alteration Rule

- Section 2b
 - Low-floor elevations also need to be 2+ feet above the 100-year high water elevation of a waterbody per FEMA rules.

4) Stormwater Management Rule

- Section 2a-3
 - ["Grading or otherwise changing land contours, except for agricultural activity, so as to affect the direction, peak rate, volume or water quality of runoff."]
 - This language captures any construction work of any size. Is the intent to require a permit and a stormwater BMP with any size project?
 - We suggest establishing a baseline disturbance area that would trigger a review by MCWD.
- Section 2b-1,2,3 & 4
 - Suggest that if the District is deviating from the MPCA rules, have a good reason for doing so.
- Section 3b
 - MPCA permit requires volume reduction, not abstraction.



- Volume reduction and abstraction are not the same thing and do not align fully with one another. We would suggest MCWD consult with MPCA on this language to confirm compliance with MS4 Permit.
- Section 4a
 - Suggest changing the wording as follows:
 - An action may not increase the peak runoff rate from the site, in aggregate, for the one, or two, 10 and 100-year design storm event.
- Section 6
 - [... vertical separation between the 100-year high water elevation of a waterbody or stormwater practice and the low opening and low floor of any structure,...]
- Section 7b
 - Allowing an increase in duration of inundation of up to 21 days on a downgrading waterbody appears to contradict the rate control requirement. Please provide explanation.
- Section 9b
 - Clarify that a double ring infiltration test or approved equal would be an acceptable method of soil testing for submittal.
- Section 10b
 - Confirm existing agreement between Plymouth and MCWD complies with this section.
- Table 1 and Table 2

shouldn't there be a number here? Is this saying that no site disturbance still requires a BMP?

9% ?

There should be a minimum size that doesn't require this permit or a BMP listed here

What does the N/A mean here?

*For sites with no existing impervious on-site, impervious surface change = proposed site impervious surface (percent)

Site Size	New and fully reconstructed impervious area	Site Disturbance	Impervious Surface Change*	Requirement
< 1 acre	> 0 sq ft	-	0-9% decrease or any increase	BMP
			0 - 9% decrease	BMP
	< 1 acre	< 40%	> 0 - < 50% increase	Volume from net added impervious surface, Rate
			≥ 50% increase	Volume from entire site impervious surface, Rate
≥ 1 acre	≥ 1 acre	< 40%	< 50% increase	Volume from new and fully reconstructed impervious surface, Rate
			≥ 50% increase	Volume from entire site impervious surface, Rate
	N/A	≥ 40%	N/A	Volume from entire site impervious surface, Rate

New and reconstructed impervious area	Net increase in impervious area	Requirement
< 1 acre	10,000 sf - 1 acre	Volume from net added impervious surface, Rate
	< 10,000 sf	Volume equal to the larger of: one inch of volume from new impervious surface OR 0.5 inches of volume from new impervious and reconstructed impervious surface
≥ 1 acre	≥ 10,000 sf	Volume equal to the larger of: one inch of volume from new impervious surface OR 0.5 inches of volume from new impervious and reconstructed impervious surface, Rate

Treatment to extent reasonable and feasible

5) Wetland Protection Rule

- Section 2a
 - Provide clarification on the applicability of this rule where a municipality is an LGU. Suggest the following language:
 - Where a municipality is the LGU, that municipality will administer MnWCA in accordance with Minnesota Statutes and Minnesota Rules, and permitting under the District's Wetland Protection Rule for WCA purposes is not required.



- Section 3b
 - Clarify that this is more stringent than current WCA rules. If so, explain reasoning.
 - Section 4a-2
 - Suggest adding “if feasible for linear projects”
 - Acquiring land to install wetland buffers on linear projects typically isn’t a cost effective practice.
 - Section 4a-3
 - Clarify the intent of this rule. As written, this will make many existing lots unbuildable and unable to build new homes.
 - Recommend that this rule exempt any projects that disturb less than one (1) acre.
 - Section 4d
 - Encumbering existing right of way is duplicative and not needed.
 - Section 5e
 - [... and the wetland, or 25 feet, whichever is greater...]
 - 25’ is a large amount of some properties abutting wetlands in the City. Further restricting this buildable area will remove back/side yards and could make some properties unbuildable. Consider an exemption for projects under 1 acre in size to avoid all such circumstances having to go through the variance process.
 - Section 6d
 - [...No new structure or impervious surface may be placed within a buffer, except that for access to the wetland, a path or trail of pervious or impervious surface, no more than four feet in width, may be located within a buffer and will be considered part of the buffer....]
 - Recommend adding an exception for public roads, trails and sidewalks. Public sidewalks are a minimum of 5’ and trails are often 8’-12’. There are situations where a public road or trail project would not be able to meet the buffer requirements.
- 6) Shoreline & Streambank Stabilization Rule
- Section 2a
 - Suggest adding an exception for docks
 - Section 2b-3
 - Suggest adding the underlined language:
 - [...if the riprap complies with MnDOT Standard Plates 3133, 3134, and 3139, or [guidelines of the applicable local agency](#) and appropriate...]
- 7) Dredging Rule
- Fix the spelling error in the title of rule to [Dredging](#) Rule
 - Section 4c-2
 - Consider adding the following: [... within other waterbodies: four feet below the ordinary high water elevation, [except when work is completed by a public agency for a public purpose and the project has been approved by the District and other agencies \(as required\).](#)]
 - Section 7c-1&2
 - Consider adding the following text to the rule: “[except when work is completed by a public agency for a public purpose and the project has been approved by the District and other agencies \(as required\).](#)”





8) Illicit Discharge Rule

- Section 2d-5
 - [A discharge associated only with a residential property use]
 - This language is very vague, please verify the intent.
- Section 3b&c
 - This record keeping and request for authorization seem to be an undue burden on all property owners.
 - Suggested edit would be: “all illicit discharges are unauthorized.”
- Section 3d
 - Contradictory language in paragraph 3c, 3d and Section 5.
- Section 5e
 - [Stormwater runoff volume and rate analysis for the one and two-, 10-, and 100-year critical events, existing and proposed conditions, or as required by the District.]
 - this section may not apply in all illicit discharge situations so adding the underlined sentence gives staff the ability to not require when not necessary.

9) Minnehaha Creek Watershed District MS4 Map

- Recommend showing and labeling County, State and major city roads on map. The subwatershed boundaries do not help much for special location throughout the watershed for most users of the rules.
- Add the “MS4 Ditch” layer to the online geospatial map the District maintains.
- Confirm there are no MCWD MS4 ponds in Plymouth.
 - Plymouth staff recalls the 3 ponds on the north side of Gleason lake are maintained by MCWD.
- Confirm that there are MS4 Ditches in Plymouth.
 - Plymouth staff believe that some of the MS4 Ditches are actually storm sewer pipe based on the map.

10) Enforcement Rule

- Section 1
 - What legal authority does MCWD have to enter private property without permission to investigate possible violations?

Thank you for allowing the City of Plymouth to comment on the proposed rule amendments and for hearing our concerns.

Sincerely,

A handwritten signature in blue ink that reads 'Ben Scharenbroich'.

Ben Scharenbroich
Water Resources Supervisor



From: [Mattias Oddsson](#)
To: [Rule Revisions](#)
Cc: [Chad Donnelly](#)
Subject: Richfield comments to MCWD regarding rule revisions
Date: Tuesday, January 30, 2024 4:36:52 PM
Attachments: [image001.png](#)

You don't often get email from moddsson@richfieldmn.gov. [Learn why this is important](#)

Hello,

Thank you for the opportunity to comment on the proposed MCWD permitting rule revisions. The City of Richfield supports efforts to streamline the permitting process through general permits and alignment with state stormwater requirements. My comments are as follows:

- Stormwater Management Rule
 - Proposed Rule, Throughout
 - The MS4 permit uses “Water Quality Volume”, while the proposed stormwater management rule uses “Abstraction Volume”. Since the requirement appears to be the same, we recommend adopting the same language as the state permit.
 - Proposed Rule, Paragraph 3.c.
 - The proposed rule states that “Equivalent phosphorus control may be demonstrated by modeling or, for filtration practices, by treating twice the required abstraction volume”. The requirement to treat twice the water quality volume with filtration practices is not in the MS4 permit or CSW general permit. Recommend that the rule align with state requirements. Also – please clarify whether modeling demonstrating equivalent phosphorus removal can substitute for the requirement to treat twice the abstraction volume.
 - Proposed Rule, Paragraph 7.a.
 - “Point Source” is not defined in the proposed rule or definitions. Please clarify.
 - Proposed Rule, Paragraph 8.b.
 - If an applicant fully meets stormwater requirements using an off-site facility, it is unclear why an onsite BMP is still required. Also – does this apply to linear project sites and/or those using regional stormwater facilities? Please clarify.
- Illicit Discharge Rule
 - Proposed Rule, Paragraph 3.c. and 3.d.
 - The language used here is unclear. Paragraph c states that “An Indirect Connection that inlets directly to an MS4 outside of a closed structure is permitted pursuant to owner or operator notice and District written approval”. On the other hand. Paragraph d states that an owner or operator “may maintain an Indirect Connection without notice to the District or District approval”. Please clarify.
- Wetland Protection Rule
 - Proposed Rule, Paragraph 5.a. and 5.d.
 - Paragraph a states that “A Base Width is established and may be reduced on the

basis of favorable slope or soil condition, but not below the Base Width Minimum”, while paragraph d states that “Buffer width at any point may be reduced to no less than 50 percent of Base Width”, which is less than the Base Width Minimum. Please clarify.

- Proposed Rule, Paragraph 6.d.
 - “...for access to the wetland, a path or trail of pervious or impervious surface, no more than four feet in width, may be located within a buffer”. Four feet is relatively narrow for a trail. Recommend allowing slightly wider trails, perhaps 6 feet.
- Dredging Rule
 - Proposed Rule, Title
 - Typo – “Dreding” instead of “Dredging”
 - Proposed Rule, Paragraph 3.d.
 - “The applicant may not dredge... Where the dredging would alter the natural shoreline or streambank”. Many waterbodies, including public waters, have been extensively modified in the past. On what basis is the natural shoreline determined? If determination of the ‘natural shoreline’ is based on present-day conditions, would reshaping/restoration of a historically filled or modified public water then require a variance?
 - Proposed Rule, Paragraph 4.b.
 - “If dredging is to remove sediment that was transported into the waterbody, the plan must remedy the cause of sediment transport for the future, to the extent the applicant reasonably can do so”. In urbanized watersheds, fully remedying the root causes of sediment transport may be extremely challenging or infeasible. Depending on how stringently it is interpreted, this requirement could pose a significant burden to permittees.
 - Proposed Rule, Paragraph 7.c.
 - The rule states that “...Dredging may not materially change the elevation or contour of the bed of the affected waterbody”. Please clarify – is accumulated sediment not considered part of the bed of the waterbody?
- Waterbody Crossings & Structures Rule
 - Proposed Rule, Paragraph 7.
 - Requiring a maintenance agreement for every pipe, culvert and outfall maintained under this rule could quickly become cumbersome. Perhaps explore creating general or template agreements with cities and agencies within the MCWD to simplify this process.

If MCWD staff would like to discuss any of these comments further, please let me know.

Best,
Mattias Oddsson

Mattias Oddsson (He/Him)
Water Resources Engineer

HENNEPIN COUNTY

MINNESOTA

January 31, 2024

Becky Christopher, Policy Planning Director
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345

RE: Minnehaha Creek Watershed District Rule Revisions

Hennepin County appreciates the opportunity to suggest changes through the technical advisory committee and through the public comment process. Overall, we appreciate the watershed's efforts to streamline the permitting process. Summarized below are our comments on the proposed rules.

- Rule 1 – Definitions
 - Design Storm – Hennepin County, MnDOT and virtually every hydraulic report received through design review and plat review is using an MSE 3 rainfall distribution. I rarely see NRCS Type II anymore and the MN Stormwater Manual recommends moving away from it ([MN Stormwater Manual](#); please see the 'Rainfall Distribution' section). I foresee issues if the watershed requires projects to submit using NRCS Type II when it was originally designed with MSE 3. I suggest considering changing to MSE 3 or at a minimum allow it as an option.
 - Impervious – “non-pervious concrete” is confusing. Is non-pervious concrete regular concrete and if so, should we say concrete? Suggest including asphalt or porous asphalt depending on the intent of this definition. The MPCA indicated pervious asphalt / concrete was viewed as a pervious surface for rate / quality calculations.
 - No-Rise Standard – does “modeling error” need to be defined?
 - 100-year high water elevation – “in each case subject to the District’s concurrence as to modeling adequacy” Does this add unnecessary responsibility on to the watershed? Does this imply that the watershed is indirectly certifying other models?
- Rule 5 – Stormwater Management
 - Section 2a – The proposed language for liner projects and a common plan of development over a 10-year period is interesting. If this isn't being required by the MPCA it seems unnecessary. The staff time to track and evaluate this vs. the frequency this happens, and the corresponding minimal water quality benefit doesn't seem in alignment.
 - Section 3 – Volume Control – The MPCA doesn't use the term abstraction. They refer to it as volume reduction practices. Consider changing the proposed language to align with the MPCA.
 - APPENDIX A – Abstraction Practice Credit Schedule
 - Note 2 – Amending the soil in the boulevard area and taking credit for abstraction is a valuable tool towards hitting volume goals on a linear project. Not allowing this on projects over 1 acre of new / fully reconstructed could make it more difficult to meet requirements in areas of the watershed with poor soils.



Note 5 – Twice the volume on a linear project for filtration is very challenging and will likely force more projects down the maximum extent practicable path. The MCM 5 flow chart does not impose a 2WQv for filtration. The MCM 5 flow chart allows for wet ponds when infiltration is not possible. What if a manufactured treatment device is being used, do you still require twice the volume?

- Rule 7 – Wetland Protection
 - Section 4d – On many linear projects the existing ROW isn't going to change and requiring a buffer with signage or monuments is not needed. The time spent by city, county, state, and watershed staff to document and implement these is out of alignment with any additional benefits it may provide.
 - Section 6d – Should consider an exception for public roads, trails, and sidewalks.
- Rule 8 – Shoreline & Streambank Stabilization
 - Section 2b – Should consider an exception for riprap maintenance work on bridges. An example being the Plymouth Road bridge we are coordinating on.
- Rule 9 – Dredging
 - Typo in the rule title "Dredging"
- Rule 10 – Illicit Discharge
 - Suggest linking to an online map vs a static one.

Sincerely,

Andrew C. McGovern

Drew McGovern
Water Resources Engineer

From: [Crabb, Rachael C.](#)
To: [Rule Revisions](#)
Cc: [Becky Christopher](#); [Sorensen, Michael L. "Mike"](#); [Pilger, Debra L.](#); [Arvidson, Adam R.](#); [Hudek, Madeline](#); [Swenson, Clifton](#); [Liz Stout \(Elizabeth Stout\) \(Elizabeth.stout@minneapolismn.gov\)](#); [Barrick, Jeremy](#)
Subject: MPRB comments on MCWD Rule Revisions
Date: Thursday, February 1, 2024 4:30:51 PM

Some people who received this message don't often get email from rcrabb@minneapolisparcs.org. [Learn why this is important](#)

Thank you for the opportunity to comment on the MCWD rule revisions. MPRB staff have reviewed the proposed revisions and have the following comments:

Rule 2.0: Procedures

Regarding section 1 giving staff authority to omit submittals that staff find to be unnecessary for the application.

Comment: Should the procedure define which staff members have this authority? Does the authority extend to all staff members? It may be prudent to define staff roles to whom this ability applies in order to prevent confusion and misunderstanding.

Rule 3.0 Erosion and Sediment Control

Regarding alignment of the ESC standards with the CSGP

Comment: For clarity and efficiency, MPRB supports this alignment in areas where there is not a specific goal/initiative or need for MCWD to be more restrictive than rules described in the MS4 and CSGP permits.

Section 1b

Comment: Listing the date of the MS4 permit may create the situation that when a new permit is issued, that rules must be revised. Additionally, not all MS4's are regulated under the Small MS4 General Permit.

Section 2c

Regarding exposed stockpiling.

Comment: Please define the term "structural", as it is unclear what level of protection would comply with this term (Tarp? Tent?)

Section 3b4

Comment: Consider change to "one-mile aerial radius" so that applicants do not base measurements on a meandering path of a stream, storm sewer routing, or other meandering flow path.

Rule 5.0 Stormwater Management

Comment: In this section regulation of volume, water quality, and impervious surface changes are interrelated but may not cover all situations where a project creates impacts downstream or creates impacts that could degrade a waterbody. If projects contain other elements that change water volume or pollutant load leaving the site, such as through

pumping, these aspects, and their impacts downstream to infrastructure and receiving waters should be considered and impacts minimized. It could be considered that no net increase to volume or no net increase in TP is allowed following construction, regardless of change in impervious area. Additional future rulemaking may be needed to fully address these types of situations.

Rule 8 Shoreline and Streambank Stabilization

Section 2b2

Comment: In part 2b, part 2 there is a double negative and the phrase meaning is unclear. Clarification is needed so that the rule does not unintentionally discourage native vegetation and should ideally encourage native vegetation where the plant community chosen has root structure sufficient to stabilize the shore.

Section 3a Erosion intensity

Comment: Should a method or standard equation be mentioned here?

- An exception for historic preservation may be needed where shoreland armoring may now be considered historic and regulated by the Minnesota State Historic Preservation Office.
- In publicly accessible areas with heavy use, wave-generated erosion is often not the most significant erosive source. Consideration must be made for areas where intensive stabilization is needed due to the need to provide access that receives heavy public use.

Section 4a Standards for Stabilization Designs #1

Comment: Should there be specific criteria mentioned for showing a need for a stabilization practice? Additionally, a projected significant increase in public use may necessitate a more intensive stabilization practice.

Rule 9 Dredging

Section 4c

Comment: Should depth be specified at 4-feet or to original contours with no removal of native material?

Thank you for the opportunity to comment on this rulemaking effort.

Rachael Crabb

Water Resources Supervisor

From: Becky Christopher <BChristopher@minnehahacreek.org>

Sent: Monday, December 18, 2023 3:29 PM

Subject: [External]MCWD Rule Revisions - Public Comment Period

[External] This email originated from outside of the Minneapolis Park & Recreation Board. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Technical Advisory Committee Members,

I am reaching out to provide notice that the public comment period for Minnehaha Creek Watershed District (MCWD)'s rule revisions is now open.

Purpose:

As you know from your participation on the Technical Advisory Committee (TAC) for the Land & Water Partnership Initiative, we are working to improve our permitting process and rules to promote partnership and integration of land and water planning. With the review and input of the TAC, we have updated our rules to simplify and clarify language, streamline the review process, and align with state standards. These changes will improve the permitting experience while ensuring the watershed's resources remain protected. The majority of revisions are focused on the Erosion Control and Stormwater Management rules, which must be updated to align with the [Minnesota Pollution Control Agency \(MPCA\)](#)'s National Pollutant Discharge Elimination System (NPDES) standards.

Rule Revision Materials:

[MCWD's rule revision webpage](#) includes the rule drafts, side-by-side comparisons of the current and proposed rules, and a [guidance document](#) that summarizes the proposed rule changes and the process conducted. We are also providing a link to [Additional TAC Materials](#). These include an Excel workbook with all comments received during the TAC review process and MCWD staff's responses indicating whether and how these comments were addressed in the revised rule drafts. Also, in response to TAC comments, we've developed a few draft guidance documents as supplements to the rules. While not part of the official rulemaking, we welcome the TAC's comments on these draft guidance documents.

Submitting Public Comments:

Please direct any comments on the proposed rule revisions to rulerevisions@minnehahacreek.org by **February 1, 2024**. Comments are most helpful when they are specific and detailed as to concerns or potential impacts, and when they include specific alternatives. MCWD will host a public hearing on the rule revisions on **January 11, 2024**, during the regular MCWD Board meeting at 7:00 at the MCWD Offices, 15320 Minnetonka Blvd, Minnetonka. Following the close of the public comment period, MCWD will review and respond to all comments and make final revisions based on the feedback received. The new rules are expected to take effect in April 2024.

Thank you for your continued support and engagement in MCWD's Land & Water Partnership Initiative. Please feel free to reach out if you have questions.

Sincerely,

Becky Christopher
Policy Planning Director
Minnehaha Creek Watershed District
15320 Minnetonka Blvd., Minnetonka, MN 55345
952-641-4512 | | www.minnehahacreek.org

January 29, 2024

Becky Christopher
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345
rulerevisions@minnehahacreek.org

Dear Ms. Christopher,

This letter is in response to your notification on December 18, 2023, concerning the public comment period for the Minnehaha Creek Watershed District's (MCWD) rule revision process. Thank you for the opportunity to submit comments regarding the proposed rules.

The Minnesota Department of Health's (MDH) mission is to protect, maintain, and improve the health of all Minnesotans. An important aspect to protecting Minnesotans' health is the protection of drinking water sources. MDH is the agency responsible for implementing programs under the Safe Drinking Water Act.

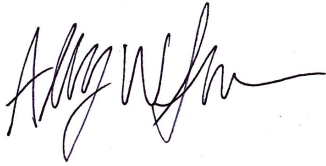
Source Water Protection (SWP) is the framework MDH uses to protect drinking water sources. The broad goal of SWP in Minnesota is to protect and prevent contamination of public and private sources of groundwater and surface water sources of drinking water using best management practices and local planning.

With the mission of MDH and the goal of SWP in mind, we present the following comments on MCWD's proposed rules:

- Rule 5: Stormwater Management
 - We propose the additional infiltration prohibitions (3b):
 - Within 50 feet of any drinking water well (including private wells).
 - Within 100 feet of any sensitive public water supply well.
- Rule 9: Dredging
 - We propose that a spoil disposal site must not be within 50 feet of any drinking water well (4f).

Thank you again for the opportunity to comment on the proposed MCWD rules. If you have any questions, please feel free to contact me at (651) 201-4386 or abby.shea@state.mn.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abby Shea', with a long horizontal flourish extending to the right.

Abby Shea, Principal Planner
Minnesota Department of Health
Source Water Protection Unit
PO Box 64975
St. Paul, MN 55164-0975
www.health.state.mn.us

CC: Anneka Munsell, MDH Source Water Protection Unit
 Mark Wettlaufer, MDH Source Water Protection Unit
 Danielle Nielsen, MDH Source Water Protection Unit
 Brad Wozney, BWSR
 Jeffrey Berg, MDA
 Megan Moore, DNR
 Katie Kowalczyk, DOT
 Water Resources Planning, Metropolitan Council
 Jeff Risberg, MPCA



Ecological and Water Resources
1200 Warner Road
St. Paul, MN 55106

TRANSMITTED VIA EMAIL TO:
rule revisions@minnhahacreekwd.org

January 31, 2024

Becky Christopher
Policy Planning Director
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55343

Re: Rule Revisions

Dear Becky Christopher:

We appreciate the opportunity to review and comment on the Minnehaha Creek Watershed District (MCWD) rule revision process. We understand the MCWD has updated the rules to simplify and clarify language, streamline the review process, and align with state standards. We commend the MCWD for its extensive vetting with both a Technical Advisory Committee of local agencies and the MCWD's Citizens Advisory Committee.

For over two decades the DNR and MCWD have successfully partnered through a General Permit approach to streamline the regulatory process related to public waters. We wish to express DNR's support for the District's ongoing commitment to integrate and align local, state and federal regulation at a watershed level.

We understand the majority of revisions are focused on the Erosion Control and Stormwater Management rules to better align with the Minnesota Pollution Control Agency (MPCA)'s National Pollutant Discharge Elimination System (NPDES) standards. The focus of our review is instances where the MCWD rules overlap with the DNR's jurisdiction under state public water regulations. Few and minor changes are proposed in those areas of overlap.

Rule 4, Floodplain Alteration, is simplified and clarified to accept a No-Rise standard for demonstrating compliance. We value this alignment with standards that the DNR applies in its public waters programs and that are used in federal floodplain management.

Rule 6, Waterbody Crossings and Structures, the proposed rule adds a Fast-Track permitting mechanism for a public entity replacing a culvert or other hydraulic control. The rule would exempt such applications from the "minimal impact" element of the application, which requires examining alternatives to the proposed action. We agree with the MCWD's perspective to allow such work by general permit, or another method that does not require review and affirmative approval by District staff, is not appropriate. While the Fast-Track approach is a suitable option, we caution the MCWD about situations where a structure may serve as an outlet or water level control to a public water. In those instances, a DNR Individual Permit is required and unwaivable regardless of any particulars. **Therefore, we highly recommend the proposed rule specifically state that where a structure is**

known or found to serve as an outlet or water level control to a public water, such applications are not eligible for Fast-Track review.

Rule 8, Shoreline and Streambank Stabilization, proposes that neither riprap conforming to paragraph 2.b.3, nor a stabilization design conforming to section 4, constitutes floodplain fill for the purpose of the Floodplain Alteration rule. This seemingly obviates the need to meet the No-Rise Standard now proposed in the floodplain rule. Yet Rule 8 (paragraph 4.a.2.b) maintains encroachment of a streambank design into the channel must be minimized, may not reduce channel cross-section, and must meet the No-Rise standard. **We recommend reconciling this language to avoid any potential confusion. We suggest streambank stabilization projects that intersect with a FEMA-designated floodway (not to be confused with the broader floodplain) conduct a No-Rise analysis.**

Rule 9, Dredging, features enhancements to streamline authorization for public agencies removing non-native sediments at a stormwater conveyance outfall into a public water or public water wetland. The rule describes the new Fast Track procedure for maintenance dredging of a navigational channel or access. The rule also adds several clarifications, some specifically related to the DNR's General Permit and public water rules. We believe all these revisions will add value to the MCWD's regulatory process.

Again, we appreciate the opportunity to review and comment on the Minnehaha Creek Watershed District (MCWD) rule revision. We compliment the MCWD on launching the Land and Water Planning initiative as an overarching mechanism beyond the use of rules to engage stakeholders early in project development, encourage collaboration, and improve resource protection and overall outcomes.

Please do not hesitate to contact me directly at (651) 259-5822, or wes.saunders-pearce@state.mn.us if you would like to discuss this matter further.

Sincerely,



Wes Saunders-Pearce
North Metro Area Hydrologist

CC:

Jeffrey Berg, MDA
Katie Kowalczyk, DOT
Megan Moore, DNR
Anneka Munsell, MDH Source Water Protection Unit
Danielle Nielsen, MDH Source Water Protection Unit
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Mark Wettlaufer, MDH Source Water Protection Unit
Water Resources Planning, Metropolitan Council
Jeff Risberg, MPCA
Brad Wozney, BWSR

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From: [Timm, Amy \(MPCA\)](#)
To: [Rule Revisions](#)
Subject: MPCA comment - review rules
Date: Monday, January 29, 2024 9:31:59 AM
Attachments: [image001.png](#)

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Hello,

Thank you for the opportunity to review the rule revisions. I appreciate the organized content of the pre and post revisions along with the summary document.

Keeping these rules up to date, easy to follow, and consistent across municipalities helps promote good practices which can lead to less pollutant runoff and impacts to the waters. Your work on updating these to align with the NPDES standards is appreciated.

Thank you,
Amy Timm

Amy Timm | *Watershed Project Manager*
Minnesota Pollution Control Agency (MPCA)
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Mission: Protect and improve the environment and human health

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Becky Christopher

Subject: MCWD Proposed Rule Discussion
Location: Microsoft Teams Meeting

Start: Wed 1/24/2024 11:00 AM
End: Wed 1/24/2024 12:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Duncanson, Duane (MPCA)

Good afternoon Becky,

Thank you for taking the time to meet with the MPCA regarding MCWD's proposed stormwater rules.

The MPCA has a couple of general clarifications and questions for the Erosion and Sediment Control portion of the rule.

For the post-construction stormwater management portion of the rule, we would like to discuss the following parts of the MS4 permit to get a better understanding of where they are addressed in the proposed rule.

- 20.8 Volume reduction practices (e.g., infiltration or other) to retain the water quality volume on-site must be considered first when designing the permanent stormwater treatment system. The General Permit does not consider wet sedimentation basins and filtration systems to be volume reduction practices. If the General Permit prohibits infiltration as described in item 20.9, other volume reduction practices, a wet sedimentation basin, or filtration basin may be considered. [Minn. R. 7090] **Where does the rule require on-site treatment to be considered first?**
- 20.10 For non-linear projects, where the water quality volume cannot cost effectively be treated on the site of the original construction activity, the permittee must identify, or may require owners of the construction activity to identify, locations where off-site treatment projects can be completed. **If the entire water quality volume is not addressed on the site of the original construction activity, the remaining water quality volume must be addressed through off-site treatment** and, at a minimum, ensure the requirements of items 20.11 through 20.14 are met. [Minn. R. 7090] **Please help clarify how the proposed rule achieves the highlighted piece of 20.10. The rule appears to allow off-site treatment easily, without pushing for on-site treatment as the option to be considered first?**

We could not find in the proposed rule where the following three requirements are addressed.

- 20.12 Off-site treatment projects must involve the creation of new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP. Routine maintenance of structural stormwater BMPs already required by the General Permit cannot be used to meet this requirement. [Minn. R. 7090]
- 20.13 Off-site treatment projects must be completed no later than 24 months after the start of the original construction activity. If the permittee determines more time is needed to complete the treatment project, the permittee must provide the reason(s) and schedule(s) for completing the project in the annual report. [Minn. R. 7090]
- 20.14 If the permittee receives payment from the owner of a construction activity for off-site treatment, the permittee must apply any such payment received to a public stormwater project, and all projects must comply with the requirements in items 20.11 through 20.13. [Minn. R. 7090]
- 20.15 The permittee's regulatory mechanism(s) must include the establishment of legal mechanism(s) between the permittee and owners of structural stormwater BMPs not owned or operated by the permittee, that have been constructed to meet the requirements in Section 20. The legal mechanism(s) must include provisions that, at a minimum:

- a. allow the permittee to conduct inspections of structural stormwater BMPs not owned or operated by the permittee, perform necessary maintenance, and assess costs for those structural stormwater BMPs when the permittee determines the owner of that structural stormwater BMP has not ensured proper function;
- b. are designed to preserve the permittee's right to ensure maintenance responsibility, for structural stormwater BMPs not owned or operated by the permittee, when those responsibilities are legally transferred to another party; and
- c. are designed to protect/preserve structural stormwater BMPs. If structural stormwater BMPs change, causing decreased effectiveness, new, repaired, or improved structural stormwater BMPs must be implemented to provide equivalent treatment to the original BMP. [Minn. R. 7090]

The MPCA can clearly see the proposed rule requires a project owner to sign a legal agreement, but the details of a., b., and c., are not in the rule. We are hoping you can help us understand how the District implements these concepts in a legal agreement.

We look forward to meeting with you tomorrow.

Thank you!

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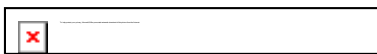
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