

Public Comments and Responses on MCWD's Proposed Revised Rules

| # | Rule | Section | Comment | Commenter | MCWD Response | Revision Made |
|----|----------------|----------|---|---------------------|--|---------------|
| 1 | 4 - Floodplain | 2.a. | 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? | CenterPoint Energy | The District reviews all projects involving floodplain disturbance to ensure that there will be no loss of storage and appropriate erosion and sediment control practices will be utilized. | N |
| 2 | 5 - Stormwater | 2.a.3. | 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? | CenterPoint Energy | Yes, this section only refers to permanent changes. The District has revised the text to indicate that the permit requirement applies to mass grading and other significant changes to land contours. | Y |
| 3 | 3 - Erosion | Addendum | 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. | City of Minneapolis | Section 4 of the rule incorporates the applicable Construction GP terms by reference. The addendum is informational and included for the convenience of the applicant. If the MPCA amends a Construction GP term, the District may substitute an updated addendum without a rulemaking. The District has deleted reference to the addendum in Section 4 so that the initial version of the addendum is not considered as an element of the rule itself. | Y |
| 4 | 3 - Erosion | 3.b.4. | Consider change to “one-mile aerial radius” so that there is a clear measurement metric for applicants. | City of Minneapolis | This change has been made for improved clarity. | Y |
| 5 | 5 - Stormwater | | 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. | City of Minneapolis | MCWD's proposed rule regulates stormwater in a way that is consistent with the MPCA and establishes volume and rate control requirements based on change in impervious cover. As discussed with the TAC, changing the District's rule to regulate impacts at a receiving waterbody would be a significant change in standards that is beyond the scope and intent of these rule revisions. The District also believes that some of these concerns may be better addressed as a planning rather than regulatory matter. The District understands the commenter's concerns, and will consider these recommendations further as part of the District's upcoming climate planning and engagement process with its communities. | N |
| 6 | 7 - Wetland | 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. | City of Minneapolis | Subsection 5.a states: “An applicant is not obligated to acquire property to meet the applicable buffer width under this rule.” This term applies to both private and public applicants. To offer added clarity, the District has added a reference to right-of-way. | Y |
| 7 | 9 - Dredging | 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. | City of Minneapolis | Excavation in a non-public water wetland is regulated under the Wetland Conservation Act and the Wetland Protection rule, not under the Dredging rule. | N |
| 8 | 2 - Procedures | 4.a. | The City would request that a timeline be established for reviewing permit applications. A 60-calendar day review period is suggested. | City of Plymouth | District review of permit applications is subject to the 60-day timeline of Minnesota Statutes 15.99, and related terms there. A reference has been added to the rule. | Y |
| 9 | 3 - Erosion | 6.c-e | Items c, d and e appear to be redundant. We would suggest combining these three items into one. | City of Plymouth | These three items may not occur at the same time in all cases. In cases where all three are met at the same time, the applicant need only notify the District once. | N |
| 10 | 3 - Erosion | 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. | City of Plymouth | Section 4 of the rule incorporates the applicable Construction GP terms by reference. The addendum is informational and included for the convenience of the applicant. If the MPCA amends a Construction GP term, the District may substitute an updated addendum without a rulemaking. The District has deleted reference to the addendum in Section 4 so that the initial version of the addendum is not considered as an element of the rule itself. | Y |
| 11 | 4 - Floodplain | 2.b. | Low-floor elevations also need to be 2+ feet above the 100-year high water elevation of a waterbody per FEMA rules. | City of Plymouth | The question of whether or not to align the District's freeboard requirement with FEMA and DNR was discussed by the TAC. The DNR has different requirements for principal structures vs. critical facilities, as well as for structures in floodway or flood zones. It was determined that trying to align would make the rule more complicated and would increase standards in some cases while decreasing in others, as compared to the current rule. For these reasons, the general consensus of the TAC was to keep the District's freeboard requirement as it is. | N |

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| 12 | 5 - Stormwater | 2.a.3. | <p>["Grading or otherwise changing land contours, except for agricultural activity, so as to affect the direction, peak rate, volume or water quality of runoff."]</p> <ul style="list-style-type: none"> • 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. | City of Plymouth | The District has revised the text to indicate that the permit requirement applies to mass grading and other significant changes to land contours. The District does not wish to specify a threshold acreage as the risk of an action to surface water resources will depend on circumstances. The District's intent by its edit is to make clear that homeowner or other smaller-scale disturbances will not require a permit. Those intending more substantial land changes will be developers or public agencies that can be expected to consult with the District before undertaking the proposed work. | Y |
| 13 | 5 - Stormwater | 2.b.1-4 | Suggest that if the District is deviating from the MPCA rules, have a good reason for doing so. | City of Plymouth | The purpose of this section is to carry forward existing exemptions from the District's current rule where allowed under the MS4 permit. | N |
| 14 | 5 - Stormwater | 3.b. | 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. | City of Plymouth | The District has replaced the term "abstraction" with "volume reduction" and adjusted similar terms within the stormwater management rule. | Y |
| 15 | 5 - Stormwater | 4.a. | <p>Suggest changing the wording as follows:</p> <ul style="list-style-type: none"> ▪ An action may not increase the peak runoff rate from the site, in aggregate, for the one, or two, 10 or and 100-year design storm event. | City of Plymouth | The intent of this language is to allow applicants to submit modeling for either the 1 or 2-year event, not both. This is meant to provide additional flexibility for applicants based on the District's understanding that some cities within the watershed require the 1-year event while others require the 2-year. The rule has been revised to improve clarity under section 9.a.7. | Y |
| 16 | 5 - Stormwater | 6 | [... vertical separation between the 100-year high water elevation of a waterbody or stormwater practice and the low opening <u>and low floor</u> of any structure,...] | City of Plymouth | The question of whether or not to align the District's freeboard requirement with FEMA and DNR was discussed by the TAC. The DNR has different requirements for principal structures vs. critical facilities, as well as for structures in floodway or flood zones. It was determined that trying to align would make the rule more complicated and would increase standards in some cases while decreasing in others, as compared to the current rule. For these reasons, the general consensus of the TAC was to keep the District's freeboard requirement as it is. | N |
| 17 | 5 - Stormwater | 7.b. | 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. | City of Plymouth | <p>In the event the waterbody was on-site, rate control to the waterbody would not necessarily be reviewed, since rate control is evaluated at site boundaries. This provision allows for consideration of impacts to natural resources themselves, as opposed to at site boundaries.</p> <p>Also, there could be a scenario where peak rates are managed and rate control is satisfied, but discharge volume is released over a long duration, such that the inundation period of a receiving waterbody may be prolonged longer than in the existing condition.</p> | N |
| 18 | 5 - Stormwater | 9.b. | Clarify that a double ring infiltration test or approved equal would be an acceptable method of soil testing for submittal. | City of Plymouth | This section has been revised to allow for other methods of demonstrating infiltration feasibility, as identified in the MN Stormwater Manual. | Y |
| 19 | 5 - Stormwater | 10.b. | Confirm existing agreement between Plymouth and MCWD complies with this section. | City of Plymouth | Yes, the City's existing Programmatic Maintenance Agreement with MCWD satisfies this requirement (now at section 10.c). | N |
| 20 | 5 - Stormwater | Table 1 | Row 1, columns 1 and 2: There should be a minimum size that doesn't require this permit or a BMP listed here. | City of Plymouth | The BMP requirement for sites <1 acre is consistent with the current rule. The District's approach with the Stormwater rule revision was to increase standards where required to comply with the MS4 permit, but to otherwise keep existing standards. There are some exemptions to this requirement under 2.b, such as for single-family homes. Also, the BMP requirement has no specific treatment scope or standard, so the applicant has the flexibility to select a structural or non-structural practice that works for the site. | N |
| 21 | 5 - Stormwater | Table 1 | Row 1, column 3: Shouldn't there be a number here? Is this saying that no site disturbance still requires a BMP? | City of Plymouth | No, it is saying that disturbance area is not relevant in determining treatment requirements for this category of development. | N |
| 22 | 5 - Stormwater | Table 1 | Row 3, column 4: 9%? | City of Plymouth | The row in question is for sites with a 0-50% <u>increase</u> in impervious surface. The row above this is for sites with a 0-9% <u>decrease</u> in impervious surface. | N |

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| 23 | 5 - Stormwater | Table 1 | Row 4, columns 2 and 4: What does the N/A mean here? | City of Plymouth | Impervious surface area and impervious surface change are not relevant in determining treatment requirements for this category of development. These have been changed from "N/A" to "-" for consistency with row 1 of this table. | Y |
| 24 | 5 - Stormwater | Table 2 | Rows 1-3, column 3: Treatment to extent reasonable and feasible | City of Plymouth | Section 3.d has been revised to require equivalent phosphorus control "to the extent feasible" for linear projects. | Y |
| 25 | 7 - Wetland | 2.a. | Provide clarification on the applicability of this rule where a municipality is an LGU. Suggest the following language: <ul style="list-style-type: none"> 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. | City of Plymouth | Where a municipality is the WCA LGU, the municipality will administer WCA. However, a District permit may still be required for wetland buffers and mitigation of any non-WCA regulated excavation, as described in Section 2.b. | N |
| 26 | 7 - Wetland | 3.b. | Clarify that this is more stringent than current WCA rules. If so, explain reasoning. | City of Plymouth | It is unclear which requirement this comment is referencing. Section 3.b pertains to two areas of regulation that are not addressed by WCA: (1) excavation in wetland types that are not regulated by WCA, and (2) buffers for wetlands that are impacted or subject to increased runoff from impervious surface. Both requirements are intended to support the Board's policy under 1.a. to "protect and enhance the quantity, quality, and biological diversity of MN wetlands ..." | N |
| 27 | 7 - Wetland | 4.a.2. | Suggest adding "if feasible for linear projects" <ul style="list-style-type: none"> Acquiring land to install wetland buffers on linear projects typically isn't a cost effective practice. | City of Plymouth | Subsection 5.a states: "An applicant is not obligated to acquire property to meet the applicable buffer width under this rule." This term applies to both private and public applicants. To offer added clarity, the District has added a reference to right-of-way. | Y |
| 28 | 7 - Wetland | 4.a.3. | Clarify the intent of this rule. As written, this will make many existing lots unbuildable and unable to build new homes. <ul style="list-style-type: none"> Recommend that this rule exempt any projects that disturb less than one (1) acre. | City of Plymouth | The intent of the buffer requirement is to protect wetlands from encroachment and degradation from stormwater runoff produced by new impervious surface. Under subsection 5.e, buffers for New Principal Residential Structures are reduced in width as compared to other land uses to account for this concern. In addition, the rule states that the required buffer will not render the property unbuildable. | N |
| 29 | 7 - Wetland | 4.d. | Encumbering existing right of way is duplicative and not needed. | City of Plymouth | The declaration includes vegetation maintenance requirements that are specific to buffer areas and may differ from typical vegetation maintenance within right-of-way. Public entities have the option to execute a programmatic maintenance agreement with the District in place of project-specific declarations, as Plymouth has done. | N |
| 30 | 7 - Wetland | 5.e. | [... and the wetland, or 25 feet, whichever is greater...] <ul style="list-style-type: none"> 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. | City of Plymouth | This subsection specifically states that the required buffer will not render the property unbuildable. In addition to the reduced width allowed for New Principal Residential Structures, the rule allows for buffer averaging down to 50 percent of the base width. The requirements of this section are consistent with the current rule, and in the District's experience, applicants have been able to meet the requirement without the need for a variance. | N |
| 31 | 7 - Wetland | 6.d. | [...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....] <ul style="list-style-type: none"> 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. | City of Plymouth | The purpose of this language is to allow for an access path to the wetland, and it is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b. If the purpose of the path or trail is not for wetland access, then an applicant would be expected to meet the minimum buffer width requirements. | N |
| 32 | 8 - Shoreline | 2.a. | Suggest adding an exception for docks | City of Plymouth | Installation of a dock typically does not create a significant disturbance to the bank and is therefore not regulated under this rule. If there were bank grading or stabilization work associated with a dock installation, a permit would be required. | N |

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| 33 | 8 - Shoreline | 2.b.3. | Suggest adding the underlined language: <ul style="list-style-type: none"> [...if the riprap complies with MnDOT Standard Plates 3133, 3134, and 3139, or <u>guidelines of the applicable local agency and appropriate...</u>] | City of Plymouth | The proposed language would create a broad exemption. The District prefers to reference specific standards where possible. | N |
| 34 | 9 - Dredging | Title | Fix the spelling error in the title of rule to Dredging Rule | City of Plymouth | This typo has been corrected. | Y |
| 35 | 9 - Dredging | 4.c.2. | Consider adding the following: [... within other waterbodies: four feet below the ordinary high water elevation, <u>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).</u>] | City of Plymouth | This section is specific to navigation, and four feet is a depth that the District considers to be reasonable for that purpose. In addition, the District may consider deeper dredging in accordance with paragraph 3.b. | N |
| 36 | 9 - Dredging | 7.c.1-2 | Consider adding the following text to the rule: " <u>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).</u> " | City of Plymouth | This General Permit is specific to public agencies. The District, in consultation with the TAC, has established minimum requirements that it believes are reasonable to qualify for General Permit coverage. | N |
| 37 | 10 - Illicit Discharge | 2.d.5. | [A discharge associated only with a residential property use] <ul style="list-style-type: none"> • This language is very vague, please verify the intent. | City of Plymouth | The MS4 General Permit, at sections 3.2 and 18.4, excepts "non-regulated" discharges from coverage under the illicit discharge rule, where the permittee finds them to be a non-significant contributor of pollutants. The District reads the list of these discharges to encompass nearly all of the types of discharges to stormwater that a residential owner would produce. The District also finds that monitoring of residential discharges to its MS4s is not likely to be a sound use of its resources, and that there is a benefit in expressing clearly that the rule does not apply to residences. | N |
| 38 | 10 - Illicit Discharge | 3.b-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." | City of Plymouth | The District has considered regulatory burden in developing the rule, and does not find that the documentation requirement of subsection 3.b or the notice requirement of subsection 3.c is likely to be an undue burden. First, the rule applies only to that part of the District that drains to its limited set of MS4s. Subsection 3.b simply says that if a (non-residential) property owner has an interior direct connection to a District MS4 conveyance, the owner has a responsibility to determine that the connection is not putting a prohibited discharge into the District's conveyance. The requirement is simply to have a piece of paper that documents that the owner made the determination. The requirement of notice and District approval under 3.c applies to both existing and new Direct Connections, but those that are external to buildings and other enclosed structures. Because existing connections may have been constructed at a time less attentive to waste discharge into surface waters, the District should have a vehicle by which these old connections can be noted and, if appropriate, discontinued. As to new Direct Connections, a property owner can avoid the notice and approval requirement by foregoing a new connection and managing stormwater on the property. | N |
| 39 | 10 - Illicit Discharge | 3.d. | Contradictory language in paragraph 3c, 3d and Section 5. | City of Plymouth | There was a typo in the first sentence of 3.c. where it should have said "Direct" connection rather than "Indirect". This has been corrected. | Y |
| 40 | 10 - Illicit Discharge | 5.e. | [Stormwater runoff volume and rate analysis for the one and two-, 10-, and 100-year critical events, existing and proposed conditions, <u>or as required by the District.</u>] <ul style="list-style-type: none"> • 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. | City of Plymouth | The critical events under this section have been changed back to the two-, 10-, and 100-year, as in the current rule, to reduce confusion. Under Section 1 of the Procedures rule, District staff has the ability to waive requirements that it finds unnecessary for a specific application. | Y |
| 41 | 10 - Illicit Discharge | Addendum | 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. | City of Plymouth | Major roads have been added to the map as requested. | Y |

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| 42 | 10 - Illicit Discharge | Addendum | Add the "MS4 Ditch" layer to the online geospatial map the District maintains. | City of Plymouth | The District will create an online map of the District's MS4 and contributing drainage area and link to it from the District's website. The District will also share a shapefile of its MS4 boundary through its OpenData portal, making it easily accessible for downloading (https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search). | Y |
| 43 | 10 - Illicit Discharge | Addendum | Confirm there are no MCWD MS4 ponds in Plymouth. <ul style="list-style-type: none"> ▪ Plymouth staff recalls the 3 ponds on the north side of Gleason lake are maintained by MCWD. | City of Plymouth | The District's determination of whether or not a pond is part of its MS4 is based on whether or not the District owns or operates the conveyances connected to it. Maintenance obligations are documented through project-specific agreements with each city, regardless of whether or not it is part of the District's MS4. | N |
| 44 | 10 - Illicit Discharge | Addendum | Confirm that there are MS4 Ditches in Plymouth. <ul style="list-style-type: none"> ▪ Plymouth staff believe that some of the MS4 Ditches are actually storm sewer pipe based on the map. | City of Plymouth | The District is the drainage authority for County Ditches 10, 14, 15, 17, 27, 29, and 32 and Judicial Ditch 2, as described in Section 2.2.4 of the District's Watershed Management Plan. County Ditches 15 and 32 lie entirely within the City of Plymouth. The first is a series of ponds connected by pipe, and the second lies within Gleason Creek. These two systems, a combination of open channel and subsurface pipe, no longer serve agricultural drainage purposes but provide drainage for residential development and associated roads. The drainage code allows for a drainage system to be transferred to a municipality or other body when the system is better managed as stormwater conveyance infrastructure rather than under the drainage code. The District, in cooperation with the relevant local government units, may consider whether one or more of its urban systems is appropriately subject to a shift in management pursuant to these drainage code provisions. | N |
| 45 | 15 - Enforcement | 1 | What legal authority does MCWD have to enter private property without permission to investigate possible violations? | City of Plymouth | Minnesota Statutes §103D.335, subdivision 14, provides : "The managers may enter lands inside or outside the watershed district to make surveys and investigations to accomplish the purposes of the watershed district. The watershed district is liable for actual damages resulting from entry. | N |
| 46 | 5 - Stormwater | | 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. | City of Richfield | The District has replaced the term "abstraction" with "volume reduction" and adjusted similar terms within the stormwater management rule. | Y |
| 47 | 5 - Stormwater | 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. | City of Richfield | The 2x requirement is carried forward from the current rule and is based on the MN Stormwater Manual guidance that says sand filters remove approximately 50% of influent total phosphorus (TP), as compared to infiltration systems which remove 100% of influent TP. Section 3.c allows for other methods of demonstrating equivalent phosphorus control besides the 2x calculation. Recognizing that linear projects are often more space-constrained, section 3.d has been revised to require equivalent phosphorus control "to the extent feasible", similar to item 20.7 of the MS4 permit. | Y |
| 48 | 5 - Stormwater | 7.a. | "Point Source" is not defined in the proposed rule or definitions. Please clarify. | City of Richfield | A definition has been added to the Definitions rule: "A discrete point of discharge to water, such as a pipe or ditch". | Y |
| 49 | 5 - Stormwater | 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. | City of Richfield | The BMP requirement for sites utilizing a regional facility is carried forward from the current rule and is intended to help mitigate localized impacts. The District's approach with the Stormwater rule revision was to increase standards where required to comply with the MS4 permit, but to otherwise keep existing standards. The BMP requirement has no specific treatment scope or standard, so the applicant has the flexibility to select a structural or non-structural practice that works for the site. This requirement applies to any project utilizing off-site facility. | N |

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| 50 | 6 - Waterbody Crossing | 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. | City of Richfield | Public permittees have the option of entering into a programmatic maintenance agreement (PMA) with the District rather than individual project agreements. These PMAs are in place with many cities within the watershed and can be used to satisfy maintenance requirements under this rule as well as the Stormwater Management and Wetland Protection rules. | N |
| 51 | 7 - Wetland | 5.a and 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. | City of Richfield | An applicant first determines their base width, which may be reduced on the basis of favorable slope or soil conditions down to the minimum width listed under 5.a (e.g. 16 ft for a Manage 3 wetland). Then, the applicant can apply averaging to reduce down to 50 percent of that base width (8 ft) provided that the buffer is widened in other areas to provide the same total buffer area as would be provided by a buffer of uniform width (16 ft). | N |
| 52 | 7 - Wetland | 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. | City of Richfield | This language is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b. | N |
| 53 | 9 - Dredging | Title | Typo – "Dreding" instead of "Dredging" | City of Richfield | This typo has been corrected. | Y |
| 54 | 9 - Dredging | 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? | City of Richfield | In the case of a restoration project, the District would use best available information regarding the historic shoreline, and likely review the project in coordination with the DNR, who may require an individual permit. It is difficult to assess whether a variance would be needed in this case. | N |
| 55 | 9 - Dredging | 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. | City of Richfield | The text change was intended to simplify, and not to change meaning. The text has been edited to be less of a change from the existing language, and hopefully to not create the uncertainty that the commentor has conveyed. | Y |
| 56 | 9 - Dredging | 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? | City of Richfield | That is correct. This refers to the native bed elevation as referenced under 7.a.2. | N |
| 57 | 10 - Illicit Discharge | 3.c-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. | City of Richfield | There was a typo in the first sentence of 3.c. where it should have said "Direct" connection rather than "Indirect". This has been corrected. | Y |
| 58 | 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. | Hennepin County | The District agrees that MSE-3 is currently best practice, and the definition has been updated accordingly. | Y |
| 59 | 1 - Definitions | | 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. | Hennepin County | This definition has been revised to improve clarity. Due to risks the District sees with the design and maintenance of permeable pavements (asphalt, concrete, pavers), these will be treated as impervious but may be eligible to count as a volume reduction practice with appropriate design and maintenance agreements. This explanation has been added at 2.e of the Stormwater Management rule. | Y |

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|----|------------------------|------------|---|-----------------|---|---------------|
| 60 | 1 - Definitions | | No-Rise Standard – does “modeling error” need to be defined? | Hennepin County | This definition has been revised for clarity to mean an increase in 100-year high water level of no more than 0.00 ft from existing to proposed condition. | Y |
| 61 | 1 - Definitions | | 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? | Hennepin County | This language is primarily intended for applicant-developed, site-specific modeling. | N |
| 62 | 5 - Stormwater | 2.a. | The proposed language for linear 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. | Hennepin County | The MPCA has issued guidance for the application of the Common Plan of Development concept. The District has determined that with this guidance, the concept is well-developed enough that the District need not seek to further define it in the rule. Accordingly, the District has removed the “ten year” criterion. | Y |
| 63 | 5 - Stormwater | 3 | 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. | Hennepin County | The District has replaced the term “abstraction” with “volume reduction” and adjusted similar terms within the stormwater management rule. | Y |
| 64 | 5 - Stormwater | Appendix A | 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. | Hennepin County | This change is required to comply with MS4 permit. The MPCA does not consider soil amendments to be a volume reduction practice. | N |
| 65 | 5 - Stormwater | Appendix A | 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? | Hennepin County | The 2x requirement is carried forward from the current rule and is based on the MN Stormwater Manual guidance that says sand filters remove approximately 50% of influent total phosphorus (TP), as compared to infiltration systems which remove 100% of influent TP. The proposed rule allows for the use of other BMP types, including wet ponds (see footnote 4 in Appendix A), and section 3.c allows for other methods of demonstrating equivalent phosphorus control besides the 2x calculation. Recognizing that linear projects are often more space-constrained, section 3.d has been revised to require equivalent phosphorus control "to the extent feasible", similar to item 20.7 of the MS4 permit. | Y |
| 66 | 7 - Wetland | 4.d. | 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. | Hennepin County | Under 4.d, public entities have the option to execute a programmatic maintenance agreement with the District in place of project-specific declarations. Under 4.c, public entities are allowed to provide a vegetation maintenance plan instead of installing monumentation. | N |
| 67 | 7 - Wetland | 6.d. | Should consider an exception for public roads, trails, and sidewalks. | Hennepin County | The purpose of this language is to allow for an access path to the wetland, and it is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b. If the purpose of the path or trail is not for wetland access, then an applicant would be expected to meet the minimum buffer width requirements. | N |
| 68 | 8 - Shoreline | 2.b. | Should consider an exception for riprap maintenance work on bridges. An example being the Plymouth Road bridge we are coordinating on. | Hennepin County | Based on discussions with the County, it was determined that this is a fairly infrequent issue, and maintenance of a previously approved design could be processed efficiently, therefore an exception has not been added. | N |
| 69 | 9 - Dredging | | Typo in the rule title “Dreding” | Hennepin County | This typo has been corrected. | Y |
| 70 | 10 - Illicit Discharge | | Suggest linking to an online map vs a static one. | Hennepin County | The District will create an online map of the District's MS4 and contributing drainage area and link to it from the District's website. The District will also share a shapefile of its MS4 boundary through its OpenData portal, making it easily accessible for downloading (https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search). | Y |

Public Comments and Responses on MCWD's Proposed Revised Rules

| # | Rule | Section | Comment | Commenter | MCWD Response | Revision Made |
|----|------------------------|---------|--|--------------------|--|---------------|
| 71 | 5 - Stormwater | 3.b. | We propose the additional infiltration prohibitions: - Within 50 feet of any drinking water well (including private wells). - Within 100 feet of any sensitive public water supply well. | MN Dept. of Health | These additional prohibitions have been added as requested. | Y |
| 72 | 9 - Dredging | 4.f. | We propose that a spoil disposal site must not be within 50 feet of any drinking water well (4f) | MN Dept. of Health | This revision has been made as requested. | Y |
| 73 | 4 - Floodplain | | 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. | MN DNR | Thank you for your comment. | N |
| 74 | 6 - Waterbody Crossing | | 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. | MN DNR | As a fast-track permit, these projects will still receive the same level of District review. The fast-track designation simply eliminates the public notice step and the minimal impact analysis since, generally, in kind replacement will be the minimal impact solution. The DNR can require an individual permit whether or not the District allows for a fast-track permit. The District generally does not wish to make its approvals contingent on another agency's review, therefore we would prefer not to add this exception. The District will develop internal review guidance for staff to help ensure that applicants are directed to the DNR for an individual permit in these instances. | N |
| 75 | 8 - Shoreline | | 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. | MN DNR | The District does not view these requirements as being in conflict. Riprap conforming with either section 2.b.3 or 4 of this rule is not considered floodplain fill and therefore does not require compensatory storage. If the riprap is in a watercourse, it must meet the No-Rise standard. This would include any streambank projects that intersect the FEMA-designated floodway, as requested. | N |
| 76 | 9 - Dredging | | 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. | MN DNR | Thank you for your comment. | N |
| 77 | 5 - Stormwater | | 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? | MPCA | The District has edited subsection 8.a to provide that water quality volume must be treated on site unless the applicant demonstrates that it is not cost-effective. The rule requires that an applicant provide the required water quality volume through either on-site or downgradient treatment. In the latter case, the District has edited subsection 8.a to state that off-site treatment must be located upgradient of the first receiving water. | Y |

Public Comments and Responses on MCWD's Proposed Revised Rules

| # | Rule | Section | Comment | Commenter | MCWD Response | Revision Made |
|----|----------------|---------|---|-----------|---|---------------|
| 78 | 5 - Stormwater | | <p>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?</p> | MPCA | <p>The District has edited subsection 8.a to provide that water quality volume must be treated on site unless the applicant demonstrates that it is not cost-effective. The rule requires that an applicant provide the required water quality volume through either on-site or downgradient treatment. In the latter case, the District has edited subsection 8.a to state that off-site treatment must be located upgradient of the first receiving water.</p> | Y |
| 79 | 5 - Stormwater | | <p>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]</p> | MPCA | <p>The District does not find it necessary to state in the rule that maintenance of a BMP required by the General Permit (and therefore already subject to an enforceable maintenance obligation) cannot be used to meet the requirement for post-construction treatment of impervious surface. It isn't logically or reasonably argued that already-obligatory maintenance should meet the requirement. A principal goal of the District rulemaking is to simplify rule text for better applicant understanding. The District therefore values avoiding inclusion of unneeded text.</p> | N |
| 80 | 5 - Stormwater | | <p>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]</p> | MPCA | <p>The District has added a subsection 10.a to state that an off-site BMP must be completed and functional within 24 months of the start of construction.</p> | Y |
| 81 | 5 - Stormwater | | <p>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]</p> | MPCA | <p>The District rule does not provide for the District to receive payment from a permittee in exchange for providing off-site treatment. Therefore, item 20.14 of the General Permit is inapplicable.</p> | N |
| 82 | 5 - Stormwater | | <p>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.</p> | MPCA | <p>The rule requires a permittee to execute and record a declaration that requires the property owner to maintain BMPs required by the permit in perpetuity. Public permittees are permitted to execute a non-recorded maintenance agreement, in that such permittees have advised of legal complications in encumbering public property and such property is much less likely to be conveyed. The maintenance agreement also creates a perpetual maintenance obligation and the public permittee is required to assign that obligation to any successor owner that is a public agency, and to provide for a recorded declaration as to any successor private party. The District maintains template documents for use. The declaration/agreement allows the District to enter and perform maintenance, and to be reimbursed for the cost. Watershed districts don't have the legal authority simply to assess for costs. The maintenance obligation prohibits an owner from altering a BMP without replacing its water quality treatment function.</p> | N |

Public Comments and Responses on MCWD's Proposed Revised Rules

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|----|----------------|---------|---|-----------|--|---------------|
| 83 | 2 - Procedures | 1 | 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. | MPRB | The District intends that in completing an application submittal, an applicant be able to rely on the guidance of permitting staff handling the application. Specifying particular authorized job titles in the rule is counterproductive, as titles may change. The rule has been edited to provide that staff waiver of a submittal will be in writing, to improve the basis for applicants' reliance. | Y |
| 84 | 3 - Erosion | | 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. | MPRB | Thank you for your comment. | |
| 85 | 3 - Erosion | 1.b. | 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. | MPRB | Section 4 states that the specified sections of the Construction General Permit apply "as amended," so that the District rule will not need to be revised on issuance of the new Construction GP unless it is changed substantially. Subsection 1.b has been edited for clarity. The reference to the addendum in section 4 has been deleted, however the District will retain the addendum for informational purposes and update it when there are relevant changes to the Construction Stormwater General Permit. The meaning of your comment that not all MS4s are subject to the MS4 GP (e.g., Minneapolis) is not clear. The District is subject to the MS4 GP, and therefore is incorporating terms from the Construction GP as the MS4 GP requires. | Y |
| 86 | 3 - Erosion | 2.c. | Regarding exposed stockpiling. Comment: Please define the term "structural", as it is unclear what level of protection would comply with this term (Tarp? Tent?) | MPRB | This language is intended to apply to more permanent structures such as a building or shed. A tarp or similar protection would be considered an erosion control practice and not something that would be exempted under this section. | N |
| 87 | 3 - Erosion | 3.b.4. | 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. | MPRB | This change has been made for improved clarity. | Y |
| 88 | 5 - Stormwater | | 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. | MPRB | MCWD's proposed rule regulates stormwater in a way that is consistent with the MPCA and establishes volume and rate control requirements based on change in impervious cover. As discussed with the TAC, changing the District's rule to regulate impacts at a receiving waterbody would be a significant change in standards that is beyond the scope and intent of these rule revisions. The District also believes that some of these concerns may be better addressed as a planning rather than regulatory matter. The District understands the commenter's concerns, and will consider these recommendations further as part of the District's upcoming climate planning and engagement process with its communities. | N |
| 89 | 8 - Shoreline | 2.b.2. | 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. | MPRB | This section has been revised to ensure that it does not discourage the planting of deep-rooted native vegetation. Under the revised paragraph, a permit is not required to plant vegetation (deep-rooted or not) when not accompanied by bank disturbance other than for ordinary planting purposes. | Y |
| 90 | 8 - Shoreline | 3.a. | 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. | MPRB | This section references section 5.a. for the calculation method. Section 3.b. states that an applicant may deviate from the requirement of 3.a on demonstrating that the intensity calculation does not accurately capture the erosion potential because of site-specific conditions (such as those listed in the comment). | N |
| 91 | 8 - Shoreline | 4.a. | 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. | MPRB | These types of site-specific considerations are addressed under 3.b. | N |

Public Comments and Responses on MCWD's Proposed Revised Rules

| # | Rule | Section | Comment | Commenter | MCWD Response | Revision Made |
|----|------------------------|---------|--|------------------------|--|---------------|
| 92 | 9 - Dredging | 4.c. | Should depth be specified at 4-feet or to original contours with no removal of native material? | MPRB | This section is specific to navigation and establishes a maximum depth that the District considers to be reasonable for that purpose. In determining the allowable depth up to that maximum, the District will consider any available information on the depth to native bed material. | N |
| 93 | 6 - Waterbody Crossing | 2 | The statement "No person shall conduct horizontal drilling under ... any waterbody" is specific to one construction technique. There is a loss of clarity on whether proposed utilities crossing waterbodies require a permit or not. If the intent of the MCWD is to require a permit for all utilities crossing a waterbody, I would suggest replacing the words with "No person shall construct a utility crossing under ... any waterbody". | Met Council (informal) | It appears that this comment is based on the current rule language and is already addressed in the proposed rule which states that "One may not... place any such structure beneath a waterbody". | N |
| 94 | 6 - Waterbody Crossing | 3.g. | In reference to our recent conversation about whether a culvert would be considered a "jurisdictional" waterbody, my recent reading has concluded that it may depend on circumstance. Paragraphs and subparagraphs in this article focus on the protections and conditions of construction near or within the bank or bed of a waterbody. These conditions do not practically hold for a utility crossing of a culvert. I would suggest adding the clarifying sentence "Culvert crossings are exempt from the criteria of this paragraph." This may seem redundant as the current criteria apply only to the stream bed and banks but it would be helpful to applicants and reviewers. | Met Council (informal) | This section has been revised so that the 3 ft clearance requirement does not apply for culvert or pipe crossings, and the 100 ft setback is measured from the nearest non-piped part of the watercourse. | Y |
| 95 | 6 - Waterbody Crossing | 3.h. | Sanitary sewer force mains and siphons inherently carry more risk than gravity sewer pipes. The introduction of mechanical control or diversion piping on a gravity sanitary sewer would be prone to mechanical failure and debris obstruction. I would suggest rewording to "(h) Shall provide a design for avoiding sanitary force main or siphon discharge to ... ". I am not aware of how many fuel lines are located within the MCWD jurisdiction but there may be a reason to consider other utilities in this scope. | Met Council (informal) | This section has been revised to apply only to force mains and siphons, as requested. | Y |