

**Preliminary Approval for Design Build Projects under the
National Pollutant Discharge Elimination System Permit Requirements
Memorandum of Understanding
between the
Minnesota Pollution Control Agency
and the
Minnesota Department of Transportation**

June 2011

1. BACKGROUND AND INTRODUCTION

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

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

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

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

2. TERM OF MOU AND CANCELATION


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

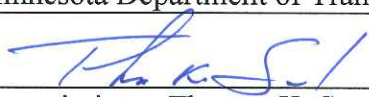
3. AMENDMENTS

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

4. ENTIRE AGREEMENT

This MOU and the attached Appendix contain the entire agreement between the Agencies.

Minnesota Pollution Control Agency:

Commissioner Paul Aasen
Date: 6/30/2011

Minnesota Department of Transportation

Commissioner Thomas K. Sorel
Date: 5/23/11

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

Appendix A Contents:

PART I. Principles and Process for Managing Permits for Design-Build Projects

PART II. Development of Preliminary Stormwater Pollution Prevention Plan (SWPPP)

PART III. Development of Final Stormwater Pollution Prevention Plan (SWPPP) for Each Phase

PART IV. Continual SWPPP Improvement

PART V. Example Design-Build SWPPP Approval Process for a Four Phase Project

Appendix A

PART I. Principles and Process for Managing Permits for Design-Build Projects

The purpose of this Memorandum of Understanding (MOU) is to establish the process which will be used for obtaining and managing permits for Design-Build projects. Design-Build projects are unique since the contracts are awarded based on a preliminary plan. Design-Build is a contracting process that brings designers and contractors into the detailed design portion of a project much earlier than conventional projects. For these projects Mn/DOT will use information gathered during the early planning process including the DNR questionnaire, environment review documents, and field surveys to identify the natural and environmentally sensitive resources within the project area.

PART II. Development of Preliminary Stormwater Pollution Prevention Plan (SWPPP)

Mn/DOT must complete a preliminary SWPPP for any Design-Build project before making application for a permit. See Part V for document flow and approximate timelines. The content of the preliminary SWPPP shall:

- contain a SWPPP Narrative;
- include total amount of land to be disturbed and the amount of new impervious surface;
- indicate the location of all surface water features, including impaired and special waters, on the plans and within 1 mile of the project's limits;
- identify wetlands and any wetland impacts within the project, including any required mitigation;
- be based on the project's hydraulics plan, showing the location, and demonstrating capacity, of major storm water management features, such as ponds and conveyances, to treat runoff from new impervious surfaces; and
- show the approved layout and the highway's concept design provisions at the 30 percent plan stage.

With this process in place it will be practical for Mn/DOT to apply for an NPDES Permit for the entire project at the 30 percent plan stage of a Design-Build project with a preliminary SWPPP completed for the project.

Mn/DOT, as the project owner and the Design-Build Contractor (DBC) as the operator (contractor), may apply for a permit using this process or MnDOT can apply initially as both owner/operator and then apply for a permit modification adding the prime or general (DBC) following the award.

PART III. Development of Final Stormwater Pollution Prevention Plan (SWPPP) for Each Phase

Each subsequent major phase of the project will need to submit a complete SWPPP at least 7 days before starting construction on that phase. If the DBC is having trouble completing a SWPPP 7 days before the start of any particular major phase, the MPCA should be contacted and a mutual solution must be agreed to before starting work on the next phase.

PART IV. Continual SWPPP Improvement

The permit assumes that it will be necessary to improve upon the SWPPP as the project develops and indeed there is an expectation that the owner/operator will use a continual process of evaluating effectiveness and modification to maintain effectiveness of the SWPPP throughout the project until final stabilization. The SWPPP must contain appropriate BMPs to protect water quality for the project. The SWPPP should include a supplemental menu of Mn/DOT approved temporary erosion prevention and sediment control BMPs for the known physical and environmental features of the project and typical construction methods. The SWPPP must prompt the project design engineers and contractors in the field to insert necessary measures which could not be specified in advance for all locations or anticipate the appropriate timing. Increased flexibility along with clear accountability should increase the chance for the SWPPP to be successful in protecting water quality. The DBC would be expected to modify the SWPPP appropriately and record any major changes as the project plans develop and as the project landscape changes. The DBC should be encouraged to develop and add its own BMPs for situations that were not anticipated when the original SWPPP was developed.

PART V. Example Design-Build SWPPP Approval Process for a Four Phase Project

