

CHAPTER 7090
MINNESOTA POLLUTION CONTROL AGENCY
STORM WATER REGULATORY PROGRAM

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7090.0010 SCOPE.

This chapter establishes the storm water permit program to regulate discharges of storm water from municipal separate storm sewer systems, construction activities, and industrial activities for purposes of abating water pollution associated with storm water discharges from these sources.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.0020 PERMIT PROCESS.

Unless otherwise specifically stated under this chapter, the process of applying for, issuing, reissuing, revoking, or modifying storm water permits is as stated for National Pollutant Discharge Elimination System (NPDES) permits under chapter 7001.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.0030 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** A National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) storm water permit is required:

- A. for municipal separate storm sewer systems under part 7090.1010;
- B. for construction activities under part 7090.2010;
- C. for industrial activities under part 7090.3010; and

D. if a water quality management plan adopted pursuant to section 208 of the Clean Water Act, United States Code, title 33, section 1288, recommends that pollution control requirements be applied to the discharge.

Subp. 2. **NPDES/SDS permit.** If a person who discharges storm water into the waters of the state is required by Minnesota statutes or rules to obtain both a NPDES permit and a SDS permit, the issuance of a NPDES permit under this chapter satisfies the requirement to obtain both permits.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.0040 PERMIT FEES.

Application and annual fees for storm water permits are established under parts 7002.0210 to 7002.0310.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.0060 INCORPORATION BY REFERENCE.

For the purposes of parts 7090.2000 to 7090.2060, the storm water discharge design requirements, construction activity requirements, and the requirements of Appendix A in the

Minnesota Pollution Control Agency document General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit (NPDES/SDS) Program (construction storm water permit) are incorporated by reference. This document is subject to change every five years. For purposes of parts 7090.2000 to 7090.2060, all references to the construction storm water permit must be construed as referring to the most current version, which at the time this chapter was adopted was Permit No: MN R 100001, issued on August 1, 2003. This document can be found at the Minnesota State Law Library, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul, Minnesota 55155, the Minnesota Pollution Control Agency offices, and the Minnesota Pollution Control Agency Internet site at the following address:

<http://www.pca.state.mn.us/water/stormwater/stormwater-c.html>.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.0080 DEFINITIONS.

Subpart 1. Scope. Terms employed in this chapter for which definitions are given in Minnesota Statutes, sections 115.01 and 116.06, have the meanings given them in those sections. The terms specified in this part have the meanings given them in this part.

Subp. 2. Best management practices. “Best management practices” or “BMP’s” means practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practice, and also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge, or waste disposal or drainage from raw material storage.

Subp. 3. Common plan of development or sale. “Common plan of development or sale” means one proposed plan for a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. “One proposed plan” is broadly defined to include design, permit application, advertisement, or physical demarcation indicating that land-disturbing activities may occur.

Subp. 4. Construction activity. “Construction activity” means activities for the purpose of construction, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre, including the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. This includes a disturbance to the land that results in a change in the topography, existing soil cover, both vegetative and nonvegetative, or the existing soil topography that may result in accelerated storm water runoff which may lead to soil erosion and movement of sediment. Construction activity does not include a disturbance to the land of less than five acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility.

Subp. 5. Decennial census. “Decennial census” means the census of population and housing taken in each year ending in zero, as defined by the United States Census Bureau.

Subp. 6. Industrial activity. “Industrial activity” means the 11 categories of industrial activity which are directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, as defined in Code of Federal Regulations, title 40, section 122.26(b)(14)(i)–(xi).

Subp. 7. Municipality. “Municipality” means a county, a city, a town, the Metropolitan Council when acting under the provisions of Minnesota Statutes, chapter 473, or other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution.

Subp. 8. Municipal separate storm sewer system. “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

A. owned or operated by a state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district or similar entity, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of the federal Clean Water Act, United States Code, title 33, section 1288, that discharges into waters of the state;

B. designed or used for collecting or conveying storm water;

C. that is not a combined sewer; and

D. that is not part of a publicly owned treatment works as defined in Code of Federal Regulations, title 40, section 122.2.

Municipal separate storm sewer systems do not include separate storm sewers in very discrete areas, such as individual buildings.

Subp. 9. **No exposure.** “No exposure” means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, or runoff. “Industrial materials or activities” include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

Subp. 10. **Operator.** “Operator” means:

A. the person with primary operational control and legal responsibility for the municipal separate storm sewer system under part 7090.1000;

B. the person designated by the owner who has day-to-day operational control or the ability to modify project plans and specifications related to the storm water pollution prevention plan under part 7090.2000; or

C. the person responsible for the overall operation of an industrial facility under part 7090.3000.

Subp. 11. **Owner.** “Owner” means:

A. the person that owns the municipal separate storm sewer system under part 7090.1000;

B. the person or party possessing the title of the land on which the construction activities will occur; if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity under part 7090.2000; or

C. the person who owns an industrial facility or part of an industrial facility under part 7090.3000.

Subp. 12. **Storm water or stormwater.** “Storm water” or “stormwater” means storm water runoff, snow melt runoff, and surface runoff and drainage. It includes the term “stormwater” as used in agency documents.

Subp. 13. **Urbanized area.** “Urbanized area” means a land area consisting of one or more places and the adjacent urban fringe as defined by the United States Census Bureau. These areas contain at least 50,000 people and an overall population density of at least 1,000 people per square mile of land.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.1000 MUNICIPAL SEPARATE STORM SEWER SYSTEM PROGRAM.

Parts 7090.1000 to 7090.1040 state the requirements for municipal separate storm sewer systems (MS4's) that are regulated in accordance with Code of Federal Regulations, title 40, section 122.26(a)(1)(iii) and (iv), and (a)(9)(i)(A), section 123.35(b), and Minnesota Statutes, section 115.03.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.1010 MS4 PERMIT REQUIREMENTS.

Subpart 1. **Permits required.** An NPDES/SDS storm water permit is required for MS4's identified in items A to C. An owner or operator of an MS4 must submit a complete permit application requesting a permit. Once an MS4 is required to obtain a permit, the requirement remains in effect until the requirement is removed pursuant to subpart 4, item B.

A. MS4's located in an urbanized area in whole or in part, that are regulated in accordance with Code of Federal Regulations, title 40, section 122.26(a)(1)(iii) and (iv), and (a)(9)(i)(A), including any publicly owned entity, such as a military base, hospital, prison or correctional facility, college, or university, with a potential resident capacity, bed count occupancy, or average daily user population of 1,000 or more.

B. MS4's that meet the following criteria must submit a complete application for a permit within 18 months of meeting the criteria:

(1) the entire jurisdiction of a city or township that is partially regulated in accordance with Code of Federal Regulations, title 40, section 122.26(a)(9)(i)(A);

(2) the MS4 is owned or operated by a municipality with a population of 10,000 or more based on the most recent decennial census or approved municipal boundary adjustment under the provisions of Minnesota Statutes, chapter 414; or

(3) the MS4 is owned or operated by a municipality with a population of at least 5,000 based on the most recent decennial census or approved municipal boundary adjustment under the provisions of Minnesota Statutes, chapter 414, and:

(a) discharges or has the potential to discharge storm water into an outstanding resource value water as identified in part 7050.0180, subparts 3 and 6; or

(b) discharges or has the potential to discharge storm water into a trout lake or trout stream as identified in part 6264.0050, subparts 2 and 4; or

(c) discharges or has the potential to discharge to a water listed as impaired under section 303(d) of the Clean Water Act, United States Code, title 33, section 1313, except those waters listed as impaired solely for mercury (Hg) or polychlorinated biphenyls (PCB's).

C. MS4's designated by the commissioner in accordance with subparts 2 and 3 must submit a complete application for a permit within 18 months of designation.

Subp. 2. **Designation criteria.** For purposes of this part, "designation" means a determination by the commissioner that an MS4 is subject to the permit requirements of this part. The commissioner may designate an MS4 based on the following criteria:

A. the MS4 contributes substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program in accordance with Code of Federal Regulations, title 40, section 123.35(b)(4); or

B. the MS4 is determined to be a significant contributor of pollutants to waters of the state or to have an adverse impact on water quality based on any of the following factors:

(1) high growth or growth potential;

(2) high population density;

(3) high seasonal population;

(4) impervious land cover;

(5) contiguity to an urbanized area as designated by the United States Census

Bureau;

(6) ineffective protection of water quality by other programs;

(7) an approved or established total maximum daily load that requires reduction of a pollutant associated with storm water beyond what can be achieved with existing programs; or

(8) proximity to a high quality water such as an outstanding resource value water as identified in part 7050.0180, subparts 3 and 6, or trout stream as identified in part 6264.0050, subpart 4.

Subp. 3. Designation process.

A. The commissioner shall issue a public notice identifying MS4's that meet the designation criteria in subpart 2 and the commissioner's preliminary determination that the designation should be granted.

B. The public notice must include, at a minimum:

(1) the address and telephone number of the main agency office and the applicable agency regional office and a statement that additional information may be obtained at these offices;

(2) the name and address of the MS4, and if different, of the facility or activity that is the subject of the draft designation;

(3) a concise description of the facility or activity that is the subject of the draft designation;

(4) the criteria under which the MS4 is proposed for designation and the basis for designation;

(5) a statement that during the public comment period a person may submit comments to the agency on the draft designation or on the preliminary determination, and a statement of the dates on which the comment period begins and ends. The public comment period is 30 days unless a different public comment period is specifically established by another agency rule; and

(6) a brief description of the procedures for reaching a final decision on the designation, including procedures for requesting a public information meeting or a contested case hearing and the nature of the two types of proceedings; and any other procedures by which the public may participate in the agency's consideration of the designation.

C. The commissioner shall distribute the public notice in accordance with part 7001.0100, subpart 5.

D. A person may request a contested case hearing or public information meeting regarding the designation determination in accordance with part 7001.0130. If a contested case hearing is held, the commissioner shall comply with the procedures in part 7000.2000 before making a final determination.

E. The commissioner may make a final determination designating an MS4 by finding that the MS4 meets the criteria set forth in subpart 2.

Subp. 4. **Petition process.**

A. Any person may petition the commissioner for the designation of an MS4. Upon receiving a signed written petition for designation, the commissioner shall evaluate the petition and determine if designation is appropriate under subpart 2. If the commissioner determines that the designation should be granted, the process for designation shall be followed in accordance with subpart 3.

B. Any person may petition the commissioner to reevaluate the designation of an MS4 for a determination that the MS4 does not meet the criteria in subparts 1 and 2 and does not need a permit. Upon receiving a signed written petition for the reevaluation of a designation, the commissioner shall evaluate the petition and determine if the MS4 no longer meets the requirements for a permit under this part.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.1040 MS4 MINIMUM REQUIREMENTS.

Subpart 1. **Storm water pollution prevention program required.** Owners or operators of permitted MS4's must have a storm water pollution prevention program to address environmental concerns related to storm water discharge. The program must address the following minimum measures in accordance with Code of Federal Regulations, title 40, section 122.34(b):

- A. public education and outreach;
- B. public participation/involvement;
- C. illicit discharge detection and elimination;
- D. construction site runoff control;
- E. postconstruction runoff control; and
- F. pollution prevention/good housekeeping.

Subp. 2. **Record keeping.** Owners or operators required to have a storm water pollution prevention program under subpart 1 must maintain a copy of the program and make it available to the agency upon request.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.2000 CONSTRUCTION PROGRAM.

Parts 7090.2000 to 7090.2060 state the requirements for regulating storm water discharges to abate water pollution during construction activities, which are regulated in accordance with Code of Federal Regulations, title 40, section 122.26(a)(1) and (9)(i)(B), and Minnesota Statutes, section 115.03.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.2010 CONSTRUCTION ACTIVITY PERMIT REQUIREMENTS.

Subpart 1. **Permits required.** An NPDES/SDS construction storm water permit is required if:

A. a person is conducting construction activity; or

B. the commissioner determines that a discharge may cause or contribute to a violation of an applicable state or federal water quality rule or regulation. In making this determination, the commissioner shall consider factors including size of discharge, quantity and nature of discharge, and location of discharge.

Subp. 2. Permit application deadline.

A. Owners and operators proposing activities that require a construction storm water permit under this part must submit a complete permit application provided by the agency before conducting construction activity, or where a construction site is covered under an existing construction storm water permit, meet the subdivision registration requirements under part 7090.2060, if applicable.

B. The permit application or subdivision registration required under item A may be submitted electronically if such a method of submittal is approved by the commissioner. Notwithstanding the conditions of the construction storm water permit, the effective date of a permit under an electronic submittal must be established by the commissioner.

Subp. 3. **Compliance requirements for unpermitted construction activity.** Owners and operators of construction activities required to have a construction storm water permit under this part that fail to submit a permit application or subdivision registration under subpart 2 shall comply with the storm water discharge design requirements, construction activity requirements, and the requirements of Appendix A in the construction storm water permit as incorporated by reference in part 7090.0060.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.2020 NPDES/SDS CONSTRUCTION STORM WATER GENERAL PERMIT COVERAGE.

Subpart 1. **Scope.** The commissioner shall notify owners and operators of construction activities that disturb one to less than five acres of soil and meet the requirements in subpart 2 or 3 that they are covered under the NPDES/SDS construction storm water general permit even if the owner or operator has not submitted a permit application. Owners and operators that meet the requirements of subpart 2 or 3 may request an individual NPDES/SDS construction storm water permit in accordance with chapter 7001.

Subp. 2. Emergency construction.

A. Construction activities are required to minimize the impacts of an emergency situation, including but not limited to floods, tornadoes, and severe storms, presenting imminent threat to human health, public drinking water, or the environment. The owner must notify the commissioner when the construction activity begins.

B. Emergency construction notification must be completed by letter, telephone, or facsimile and include:

- (1) the owner's name, and the name of the construction company if different than the owner;
- (2) the address or description of the location where the construction activity is occurring;
- (3) a list of the cities, counties, and townships where the construction activity is occurring;
- (4) the approximate acres to be disturbed by the construction activity; and
- (5) a brief description of the emergency situation.

Subp. 3. **Feedlots.** Construction activities are for the purposes of building a new or expanded animal feedlot or manure storage area, or performing related maintenance. The owner or operator must apply for and obtain the appropriate permit under part 7020.0405, other than an NPDES permit, and if no permit is required under part 7020.0405, the owner or operator must complete the preconstruction notification submittal requirements under part 7020.2000, subpart 5.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.2040 CONSTRUCTION ACTIVITY MINIMUM REQUIREMENTS.

Subpart 1. **Storm water pollution prevention plan required.** Owners of construction activities required to have a construction storm water permit under part 7090.2010, subpart 1, must complete a storm water pollution prevention plan before submitting a permit application and before conducting construction activity.

Subp. 2. **Record keeping.** The storm water pollution prevention plan must be kept on site and made available to the agency within 72 hours of a request for review.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.2060 SUBDIVISION OWNER REGISTRATION.

For a construction site that is covered under an existing construction storm water permit where the owner or operator changes, the new owner or operator must:

A. obtain a permit and develop and implement the storm water pollution prevention plan; or

B. submit to the commissioner a subdivision registration form provided by the agency within seven days of assuming operational control of the site, conducting construction activity on their portion of the site, or of legal transfer, sale, or closing on the property, and:

- (1) implement the provisions of the site's original storm water pollution prevention plan for the portion of the site which the construction activities will impact; or
- (2) develop and implement a storm water pollution prevention plan for the portion of the site which the construction activities will impact according to the requirements of the construction storm water permit for the site.

C. The new owner or operator must comply with all applicable requirements of the permit and the storm water pollution prevention plan.

D. The new owner or operator must ensure that activities do not render another party's erosion prevention and sediment control BMP's ineffective.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.3000 INDUSTRIAL PROGRAM.

Parts 7090.3000 to 7090.3080 state the requirements for industrial activities that are regulated in accordance with Code of Federal Regulations, title 40, section 122.26(a)(1)(ii), section 122.26(g)(1)–(4), and Minnesota Statutes, section 115.03.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.3010 INDUSTRIAL ACTIVITY PERMIT REQUIREMENTS.

Subpart 1. **Permits required.** An NPDES/SDS industrial storm water permit is required:

A. for industrial activity; or

B. if the commissioner determines that a discharge may cause or contribute to a violation of an applicable state or federal water quality rule or regulation. In making this determination, the commissioner shall consider factors including size of discharge, quantity and nature of discharge, and location of discharge.

Subp. 2. **Permit application deadline.** If a person proposes to construct a new facility or engage in a new activity for which a permit is required, the person shall submit a complete permit application at least 180 days before the planned date of the commencement of facility construction or of the planned date of the commencement of the activity, whichever occurs first.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.3040 INDUSTRIAL ACTIVITY MINIMUM REQUIREMENTS.

Subpart 1. **Storm water pollution prevention plan required.** Owners or operators of industrial activities required to have an industrial storm water permit under part 7090.3010, subpart 1, must complete a storm water pollution prevention plan before submitting a permit application.

Subp. 2. **Record keeping.** The storm water pollution prevention plan must be kept at the industrial facility and made available to the agency within 72 hours of a request for review.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.3060 CONDITIONAL EXCLUSION FOR NO EXPOSURE.

Subpart 1. **No exposure.** Discharges composed entirely of storm water are not discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt, or runoff, and the facility meets the requirements of this part.

Subp. 2. **Applicability.** An owner or operator required to obtain an industrial storm water permit under part 7090.3010, subpart 1, must either obtain a permit or certify a condition of no exposure.

Subp. 3. **Application requirements.** An operator certifying a condition of no exposure must submit to the commissioner an application for no-exposure certification on a form provided by the agency. An application for no-exposure certification must be submitted to the commissioner once every five years.

Subp. 4. **Certification issuance.** A certification of no exposure must be issued to facilities:

A. where a complete and signed application has been submitted to the commissioner; and

B. where the commissioner has verified that there is no contact of storm water with industrial activities through:

- (1) a review of the application;
- (2) an inspection of the facility; or
- (3) other means that the commissioner finds reasonably reliable.

Subp. 5. Limitations.

A. Construction activities that require a permit under part 7090.2010, subpart 1, are not eligible for the conditional no-exposure exclusion.

B. The conditional no-exposure exclusion is available on a facilitywide basis only. Where exposure to industrial materials or activities exists at some but not all areas of the facility, a permit is required for storm water discharges from the exposed areas.

C. The no-exposure exclusion is conditional. If circumstances change and the conditions for the no-exposure exclusion no longer apply to the facility, the operator must comply with the requirements of part 7090.3010. Where the operator anticipates a change in circumstance and the conditions for the no-exposure exclusion no longer apply, the operator shall apply for and obtain a permit under part 7090.3010 before the change of circumstance.

D. A certification of no exposure is nontransferable.

E. The commissioner retains the authority to deny the no-exposure certification and require permit authorization as provided under part 7090.3010.

Statutory Authority: *MS s 115.03*

History: *30 SR 125*

7090.3080 NO-EXPOSURE CERTIFICATION.

The application for no-exposure certification must include a no-exposure certification statement. A person who signs an application for no-exposure certification must certify a condition of no exposure in accordance with Code of Federal Regulations, title 40, section 122.26(g)(4)(iv).

Statutory Authority: *MS s 115.03*

History: *30 SR 125*