

**7090.1010 MS4 PERMIT REQUIREMENTS.**

Subpart 1. **Permits required.** An NPDES/SDS stormwater 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 stormwater into an outstanding resource value water as identified in part 7050.0335; or

(b) discharges or has the potential to discharge stormwater 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 stormwater 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 stormwater 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 7050.0335, 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; 41 SR 545*

**Published Electronically:** *January 30, 2024*