
Appendix D

State and Federal Roles and Responsibilities

D State and Federal Agency Responsibilities

Various units of state and federal government are involved in regulating water and natural resource management within the planning area. The roles of these agencies are described in this section.

D.1 Minnesota Department of Natural Resources (MDNR)

The MDNR Division of Ecological and Water Resources manages water resources through a variety of programs related to lakes, rivers and streams, watersheds, wetlands, groundwater, and climate. The MDNR Division of Ecological and Water Resources administers the Public Waters Work Permit Program, the Water Use (Appropriations) Permit Program, and the Dam Safety Permit Program. The MDNR Division of Fish and Wildlife administers the Aquatic Plant Management Program and other fishery related permits. The MDNR supports the WCA by providing technical and coordination assistance and by providing recommendations in the development of state wetland regulations, programs, and policies. The MDNR's shoreland program provides technical assistance to local governments in the adoption of shoreland ordinance controls and comments on land use applications within shoreland districts. The MDNR also has model shoreland ordinances that cities and counties can adopt.

Public Waters

The MDNR's Public Waters Work Permit Program (Minnesota Statutes 103G) requires an MDNR permit for any work below the Ordinary High-Water Level (OHWL) or any work that will alter or diminish the course, current, or cross-section of any public water, including lakes, wetlands and streams. For lakes and wetlands, the MDNR's jurisdiction extends to designated U.S. Fish and Wildlife Service Circular #39 Types 3, 4, and 5 wetlands which are 10 acres or more in size in unincorporated areas, or 2.5 acres or more in size in incorporated areas. The program prohibits most filling of public waters and public waters wetlands for the purpose of creating upland areas. The Public Waters Work Permit Program was amended in 2000 to minimize overlapping jurisdiction with the WCA. Under certain conditions, work can be performed below the OHWL without a Public Waters Work Permit. Examples include docks, watercraft lifts, beach sand blankets, ice ridge removal/grading, riprap, and shoreline restoration. The MDNR public waters in the planning area are shown in Figure C-13.

Water Appropriations and Transport

The MDNR regulates surface water and groundwater usage rate and volume as part of its charge to conserve and use the waters of the state. Water appropriations are regulated under Minnesota Rule 6115.0620. Generally, all appropriations of more than 10,000 gallons per day, or one million gallons per year, including construction dewatering, flood control, emptying storm water ponds for maintenance, and stormwater use for irrigation, need to be approved under a MDNR water appropriation permit. Appropriation permits from the MDNR are not required for domestic uses serving less than 25 persons for general residential purposes. An additional permit is required to appropriate or transport water from waters designated as infested with invasive species, regardless of the volume appropriated or transported.

Groundwater

In addition to regulating appropriations from groundwater, the MDNR is also responsible for mapping sensitive groundwater areas, conducting groundwater investigations, addressing well-interference problems, and maintaining the observation well network.

Dam Safety

The MDNR administers the state's Dam Safety Program (MN Rules 6115.0300 – 6115.0520), which applies to all impoundments that pose a potential threat to public safety or property. Dams 6 feet or lower in height and dams that impound 15 acre-feet or less of water are exempt from the rules. Dams less than 25 feet high that impound less than 50 acre-feet of water are also exempt unless there is a potential for loss of life. The dam safety rules require that the downstream impacts of a dam failure be analyzed under high-flow conditions (i.e., greater than a 100-year flood).

Other Regulations

In addition to permit programs, the MDNR oversees the Floodplain Management Program, the Public Waters Inventory Program, the Shoreland Management Program, the Flood Damage Reduction Grant Program, the Wild and Scenic Rivers Program, various surface and groundwater monitoring programs, and the Climatology Program.

Questions concerning the MDNR's role in water resource management should be directed to the MDNR Division of Ecology and Water Resources, Metro Region, 1200 Warner Road, St. Paul, MN 55106 (651-259-5774). More information is available at the MDNR website: <http://www.dnr.state.mn.us>.

D.2 Minnesota Department of Agriculture (MDA)

The Minnesota Department of Agriculture (MDA) is the lead agency for addressing agricultural chemicals in groundwater and developing and evaluating best management practices and other agricultural practices to protect water resources as directed by the Groundwater Protection Act (Minnesota Statute 103H). The MDA's roles include but are not limited to the following:

- Serve as lead agency for groundwater contamination from pesticide and fertilizer nonpoint source pollution
- Conduct monitoring and assessment of agricultural chemicals (pesticides and nitrates) in ground and surface waters
- Oversee agricultural chemical remediation sites and incident response
- Regulate use, storage, handling and disposal of pesticides and fertilizer

The MDA is statutorily responsible for the management of pesticides and fertilizer other than manure to protect water resources. The MDA implements a wide range of protection and regulatory activities to ensure that pesticides and fertilizer are stored, handled, applied and disposed of in a manner that will protect human health, water resources and the environment. The MDA works with the University of Minnesota to develop pesticide and fertilizer best management practices (BMPs) to protect water

resources, and with farmers, crop advisors, farm organizations, other agencies and many other groups to educate, promote, demonstrate and evaluate BMPs, to test and license applicators, and to enforce rules and statutes. The MDA has broad regulatory authority for pesticides and has authority to regulate the use of fertilizer to protect groundwater.

The MDA also administers the Minnesota Agricultural Water Quality Certification Program (MAWQCP). MAWQCP offers four endorsements on top of the Water Quality Certification. These include Integrated Pest Management, Wildlife, Soil Health and Climate Smart. These endorsements recognize producers for going above and beyond in their management and adoption of conservation practices that are beneficial to water quality. By going through the endorsement process, producers have an additional educational opportunity to see what activities and practices address resource concerns and how impactful each might be. The newest endorsement is particularly beneficial to producers as they can learn what they can do to address climate change as well as to be best able to take advantage of emerging carbon markets. The linkage of practices that reduce emissions and sequester carbon and soil health is strong and by promoting the Climate Smart endorsement gains in soil health and water quality are sure to follow. MAWQCP activities can correspond with implementation efforts described in Section 6 of this Plan.

Beginning in 2020, the MDA will oversee implementation of the Groundwater Protection Rule, adopted by the Minnesota Legislature in 2019. The rule will restrict application of fertilizer in areas of the state where soils are prone to leaching and where drinking water supplies are threatened (as defined by the MDA).

Questions concerning MDA's role in water resource management should be directed to the Minnesota Department of Agriculture, 625 Robert Street North, St. Paul, MN 55155 (651-201-6000). More information is available at the MDA website: <https://www.mda.state.mn.us/>

D.3 Minnesota Board of Water and Soil Resources (BWSR)

BWSR oversees the state's watershed management organizations (joint powers, county and watershed district organizations), oversees the state's Soil and Water Conservation Districts (SWCDs), and administers the rules for the WCA and metropolitan area watershed management. BWSR, in cooperation with the MDNR, Counties, and SWCDs, administers the statewide buffer rule (MN Statutes 103F.48) which establishes minimum buffer requirements for certain public waters. BWSR also administers the Clean Water Fund (CWF) grant program, funded by the Clean Water Land and Legacy amendment passed in 2008. The purpose of the CWF is to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater and drinking water sources from degradation. Applicants eligible for CWF grants include counties, watershed districts, watershed management organizations, soil and water conservation districts, and cities working under a current BWSR-approved and locally adopted local water management plan.

Questions concerning BWSR's role in water resource management should be directed to the Minnesota Board of Water and Soil Resources, 520 Lafayette Road North, St. Paul, MN 55107 (651-296-3767). More information is available at the BWSR website: <http://www.bwsr.state.mn.us>.

D.4 Minnesota Pollution Control Agency (MPCA)

The MPCA administers the State Discharge System/National Pollutant Discharge Elimination System (NPDES) Permit program (point source discharges of wastewater), the NPDES General Stormwater Permit for Construction Activity, the NPDES General Industrial Stormwater Permit Program, the NPDES/SDS Individual Stormwater Permit program, the Small Municipal Separate Storm Sewer Systems General Permit (MS4 General Permit), and the individual sewage treatment system regulations (7080 Rules). The MPCA also reports the state's "impaired waters" to the U.S. Environmental Protection Agency. Spills should be reported directly to the MPCA.

The MPCA administers and enforces laws relating to pollution of the state's waters, including groundwater. The MPCA monitors ambient groundwater quality and administers subsurface sewage treatment system (SSTS) design and maintenance standards. The MPCA is responsible for administering the programs regulating construction and reconstruction of SSTS. The MPCA requires an inspection program for SSTS that meets MPCA standards. Minnesota Rules 7080 govern administration and enforcement of new and existing SSTS. The Tanks and Spills Section of the MPCA regulates the use, registration, and site cleanup of underground and above-ground storage tanks.

The MPCA resumed selective administration of Section 401 of the Clean Water Act Water Quality Certification program in 2007. The program is primarily administered by the U.S. Army Corps of Engineers (USACE). Section 401 Certification is required to obtain a federal permit for any activity that will result in a discharge to navigable waters of the United States. Formal applications for 401 Certification must be sent to the MPCA.

Construction Stormwater Permitting

Proposers of construction activity disturbing more than 1 acre of soil (or less than 1 acre if that activity is part of a larger common plan of development or sale that is more than 1 acre) must obtain permit coverage. The NPDES General Stormwater Permit for Construction Activity (construction stormwater permit), which went into effect in 2003, regulates discharges of stormwater affected by construction activity to waters of the state. The MPCA updated the construction stormwater permit in 2018. A key permit requirement is the development and implementation of a stormwater pollution prevention plan (SWPPP) with appropriate best management practices (BMPs). The SWPPP must be a combination of narrative and plan sheets that address foreseeable conditions, include a description of the construction activity, and address design requirements including temporary and permanent BMPs to control the discharge of stormwater, sediment, and/or other potential pollutants from the site. The project's plans and specifications must incorporate the SWPPP before applying for NPDES permit coverage. The permittee must also ensure final stabilization of the site, which includes final stabilization of individual building lots.

The SWPPP must address the following construction activity requirements:

- BMP selection and installation (Section 7)
- Erosion prevention practices (Section 8)
- Sediment control practices (Section 9)

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- Dewatering and basin draining (Section 10)
 - Inspections and maintenance (Section 11)
 - Pollution prevention management measures (Section 12)

BMP-specific requirements and guidance are provided for:

- Temporary sediment basins (Section 14)
- Permanent stormwater treatment system (Section 15)
- Infiltration systems (Section 16)
- Filtration systems (Section 17)
- Wet sedimentation basins (Section 18)
- Regional wet sedimentation basins (Section 19)

A key element of the construction stormwater permit is a requirement for permanent stormwater treatment: For projects that replace vegetation or other pervious surfaces with 1 or more acres of cumulative impervious surface, the permittee must retain on-site a volume of stormwater equal to 1 inch of runoff over the new impervious surface. In situations where infiltration is prohibited, the construction stormwater permit requires stormwater treatment using wet ponds, filtration, regional ponding, or other equivalent methods.

Additional information about the MPCA construction stormwater permit is available at:

<https://www.pca.state.mn.us/water/construction-stormwater>

Municipal Separate Storm Sewer System (MS4) Permitting

The federal Clean Water Act (CWA) established the National Pollutant Discharge Elimination System (NPDES) to regulate point sources of pollution, with the MPCA as the delegated permitting authority. This program was later expanded to include both point and non-point sources of pollution, including the regulation of stormwater runoff, and created a two-phase comprehensive national program to address stormwater runoff. After its initial implementation, the program was expanded to include construction sites, municipally owned or operated industrial activities, and municipalities with populations over 10,000 (MS4s).

In 2020, the MPCA reissued the MS4 General Permit. The permit generally contains the same or similar stormwater treatment performance standards, but several elements of the general permit have been updated. Some of the requirements of the reissued MS4 permit, briefly, include:

- Increased emphasis on chloride issues (through education, training, and operations)
- Revisions to documentation, tracking, and reporting of progress towards meeting waste load allocations (WLAs)
- Consideration for education and outreach to traditionally underserved populations
- Additional requirements regarding prioritizing and addressing illicit discharge
- Written procedures for prioritizing sites for inspection
- Clarification of water quality volume treatment standards for linear projects

Cities in the planning area required to maintain an MS4 permit from the MPCA include Rochester, Red Wing, and Lake City. As part of the permit program, each City must annually submit an MS4 report to the MPCA.

More information about the MPCA's MS4 stormwater program can be found at:

<https://www.pca.state.mn.us/water/2020-ms4-general-permit>

Impaired waters and Total Maximum Daily Loads (TMDLs)

In administering the CWA in Minnesota, the MPCA also maintains a list of impaired waters (see also Section C.8). The CWA requires the development of a total maximum daily load (TMDL) study for impaired waterbodies. A TMDL is a threshold calculation of the amount of a pollutant that a waterbody can receive and still meet water quality standards. A TMDL establishes the pollutant loading capacity within a waterbody and develops an allocation scheme amongst the various contributors, which include point sources, non-point sources, and natural background levels, as well as a margin of safety. As a part of the allocation scheme a waste load allocation (WLA) is developed to determine allowable pollutant loadings from individual point sources (including loads from storm sewer networks). A load allocation (LA) establishes allowable pollutant loadings from non-point sources and natural background levels in a waterbody.

A watershed restoration and protection strategy (WRAPS) is similar to a TMDL and may examine other waterbodies in the watershed in addition to impaired waterbodies. Both TMDLs and WRAPSs may result in implementation plans to address water quality issues of the affected waterbodies. The MPCA has completed TMDL and WRAPS studies for the Mississippi River-Lake Pepin watershed and the Zumbro River watershed (see Section C.8).

Guidance for Dredged Materials

The MPCA considers material excavated below the OHWL of public waters (as defined by Minnesota Statutes 103G.005) to be dredged material. Dredged material is defined as waste and regulated by the MPCA. The MPCA provides guidance for the management of dredged material on its website:

<http://www.pca.state.mn.us/index.php/water/water-types-and-programs/wastewater/dredged-materials-management.html>.

Additional information is available from the MPCA regarding the management of material removed from stormwater ponds: <https://www.pca.state.mn.us/sites/default/files/wq-strm4-16.pdf>

More information is available at the MPCA website: <http://www.pca.state.mn.us>.

D.5 Minnesota Department of Health (MDH)

The MDH is the official state agency responsible for addressing all public health matters, including drinking water protection. The MDH administers the Well Management Program, the Wellhead Protection Program, and the Safe Drinking Water Act rules. The MDH also issues fish consumption advisories. The MDH is responsible for ensuring safe drinking water sources and limiting public exposure to

contaminants. Through implementation of the federal Safe Drinking Water Act, the MDH conducts the Public Water Supply Program, which allows the MDH to monitor groundwater quality and train water supply system operators. The 1996 amendments to the federal Safe Drinking Water Act require the MDH to prepare source water assessments for all of Minnesota's public water systems and to make these assessments available to the public.

Through its Well Management Program, the MDH administers and enforces the Minnesota Water Well Code, which regulates activities such as well abandonment and installation of new wells. The MDH also administers the Wellhead Protection Program, which is aimed at preventing contaminants from entering public water supply wells.

The Wellhead Protection Program rules (Minnesota Rules 4720.5100 to 4720.5590) went into effect in 1997. These rules require all public water suppliers that obtain their water from wells to prepare, enact, and enforce wellhead protection plans (WHPPs, see Section C.5.3). The MDH prepared a prioritized ranking of all such suppliers in Minnesota. Regardless of the ranking, Minnesota Rules 4720 required all public water suppliers to have initiated wellhead protection measures for the inner wellhead management zone prior to June 1, 2003. If a city with an existing WHPP drills a new well and connects it to the distribution system, the WHPP must be amended.

Wellhead protection plans include delineation of groundwater "capture" areas (wellhead protection areas), delineation of drinking water supply management areas (DWSMA), an assessment of the water supply's susceptibility to contamination from activities on the land surface, management programs such as identification and sealing of abandoned wells, and education/public awareness programs. As part of its role in wellhead protection, the MDH developed the guidance document *Evaluating Proposed Stormwater Infiltration Projects in Drinking Water Supply Management Areas* (MDH 2016).

See the Minnesota Department of Health website for more information about these programs: <http://www.health.state.mn.us/divs/eh/water/index.html>.

D.6 Minnesota Environmental Quality Board (EQB)

The EQB administers the state's environmental review program, including Environmental Assessment Worksheets (EAW), Environmental Impact Statements (EIS), and Alternative Urban Area-wide Reviews (AUAR). With respect to water resources, the EQB is responsible for developing the state water plan, a state water monitoring plan, biennial water policy and priorities reports, and biennial reports on trends in water quality and availability and research needs.

More information is available at the EQB website: <http://www.eqb.state.mn.us>

D.7 Minnesota State Historic Preservation Offices (SHPO)

Following the National Historic Preservation Act of 1966, Minnesota's State Historic Preservation Office (SHPO) was established by state statute in 1969. The director of the Minnesota Historical Society serves as State Historic Preservation Officer. The mission of the SHPO is to preserve and promote Minnesota history

by identifying, evaluating, registering, and protect Minnesota's historic and archaeological properties and assisting government agencies in carrying out their historic preservation responsibilities. The SHPO maintains the National Register of Historic Places (NRHP) for the state. This includes listed or eligible to be listed places within the planning area. To ensure the protection of places eligible for listing or listed in the NRHP, SHPO review is required for all state and federally funded projects, and all United States Army Corps of Engineers (USACE) projects.

More information is available at the SHPO website: <http://www.mnhs.org/shpo/>.

D.8 Minnesota Department of Transportation (MnDOT)

The MnDOT is responsible for major maintenance and reconstruction of stormwater infrastructure associated with state highways. In the planning area, these locations include Interstate 90, US Highway 14, US Highway 52, US Highway 61, US Highway 63, and several State Highways. The Partnership will cooperate with MnDOT to identify water storage opportunities that reduce flood flows in the watershed to protect infrastructure and public safety.

More information is available at the MnDOT website: <http://www.dot.state.mn.us>.

D.9 U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS)

The NRCS works in close partnerships with farmers and ranchers, local and state governments, and other federal agencies to maintain healthy and productive working landscapes. The NRCS manages conservation programs that help people reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters. The NRCS offers technical and financial assistance services.

NRCS Technical Assistance

The NRCS is the USDA's principal agency for providing conservation technical assistance to private landowners, SWCDs, tribes, and other organizations. NRCS delivers conservation technical assistance through its voluntary Conservation Technical Assistance Program (CTA). CTA is available to any group or individual interested in conserving natural resources and sustaining agricultural production. The CTA program functions through a national network of locally based, professional conservationists.

This assistance can help land users:

- Maintain and improve private lands and their management
- Implement better land management technologies
- Protect and improve water quality and quantity
- Maintain and improve wildlife and fish habitat
- Enhance recreational opportunities on their land
- Maintain and improve the aesthetic character of private land
- Explore opportunities to diversify agricultural operations and

- Develop and apply sustainable agricultural systems

This assistance may be in the form of resource assessment, practice design, resource monitoring, or follow-up of installed practices. Although the CTA program does not include financial or cost-share assistance, clients may develop conservation plans, which may serve as a springboard for those interested in participating in USDA financial assistance programs. CTA planning can also serve as a door to financial assistance and easement conservation programs provided by other Federal, State, and local programs.

All owners, managers, and others who have a stake and interest in natural resource management are eligible to receive technical assistance from NRCS. To receive technical assistance, the individual may contact their local NRCS office or the local conservation district.

NRCS Financial Assistance

The NRCS provides financial assistance to its partners through a variety of programs. Not all programs are available in all states or regions. A complete list of available financial assistance programs is available from the NRCS website at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/>

An available financial assistance program available within the planning area is the Environmental Quality Incentives Program (EQIP). Through EQIP, NRCS provides agricultural producers with financial assistance to plan and implement conservation practices. Financial assistance covers part of the costs from implementing conservation practices. NRCS offers about 200 practices depending on location. These practices are geared towards working farms, ranches and forests and provide producers with many options for conservation. Payment rates for conservation practices are reviewed and set each fiscal year. The EQIP program is implemented through local NRCS offices.

Easement Programs

The Agricultural Conservation Easement Program (ACEP) provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements component, NRCS helps Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements component, NRCS helps to restore, protect and enhance enrolled wetlands.

The Healthy Forests Reserve Program (HFRP) helps landowners restore, enhance and protect forestland resources on private lands through easements and financial assistance. Through HFRP, landowners promote the recovery of endangered or threatened species, improve plant and animal biodiversity and enhance carbon sequestration.

Contact information for the NRCS offices in Minnesota may be found from the NRCS website at: <https://offices.sc.egov.usda.gov/locator/app?agency=nrcs>

D.10 U.S. Department of Agriculture (USDA) Farm Service Agency (FSA)

The Farm Service Agency (FSA) is an agency of the USDA that provides services to farm operations. The FSA administers farm commodity loan and purchase programs, farm ownership and operating loans, and the conservation reserve program, in order to maintain a self-sustaining food supply in the United States. It also provides disaster assistance and administrative support to the Commodity Credit Corporation, which funds most of the commodity and export programs of the USDA. Programs in the FSA include:

- Farm Loan Programs
- Conservation Programs
- Disaster Assistance Programs
- Energy Programs
- Financial Management Programs
- Farm Payment Programs
- Commodity Operations

The FSA Minnesota office is located at 375 Jackson Street, Suite 400, St. Paul, MN 55101 (651-602-7700). Additional information about FSA programs is available from the FSA website at: <https://www.fsa.usda.gov/programs-and-services/index>

D.11 U.S. Army Corps of Engineers (USACE)

The USACE administers several regulatory permit programs, including Section 10 of the Rivers and Harbors Act permit program, the Section 404 permit program, and Section 401 Certifications. The USACE updated Section 10 of the Rivers and Harbors Act Permit and the Section 404 Permit in March 2012 to streamline the requirements of the Clean Water Act (CWA). The updated permits provide expedited review of projects that have minimal impact on the aquatic environment. These projects may include linear transportation projects, bank stabilization activities, residential development, commercial and industrial development, aids to navigation, and some maintenance activities. Permit programs are described briefly in this section.

Through Section 10 of the Rivers and Harbors Act, the USACE is responsible for administering this program, which regulates the placement of structures and/or work in, or affecting, navigable waters of the United States.

The Federal Clean Water Act requires that anyone who wants to discharge dredged or fill material into U.S. waters, including wetlands, must first obtain a Section 404 Permit from the USACE. Examples of activities that require a Section 404 Permit include: construction of boat ramps, placement of riprap for erosion protection, placing fill in a wetland, building a wetland, construction of dams or dikes, stream channelization, and stream diversion. When Section 404 Permit applications are submitted to the USACE, the applications are typically posted for the U.S. Fish and Wildlife Service, the U.S. Forest Service, the U.S. EPA, and other federal agencies to review and provide comments. The USACE evaluates permit requests for the potential impact to various functions and values of the wetland.

Section 401 Certification is required to obtain a federal permit for any activity that will result in a discharge to navigable waters of the United States. The program is primarily administered by the USACE along with the MPCA. A Section 401 Water Quality Certification may be granted if the applicant demonstrates that the proposed activity “will not violate Minnesota’s water quality standards or result in adverse long-term or short-term impacts on water quality.” Greater protection is given to a category of waters designated by the MDNR as Outstanding Resource Value Waters (ORVW). The waters in this category have received this designation because of their exceptional value. These waters include such groups as scientific and natural areas, wild, scenic and recreational river segments, and calcareous fens.

More information is available at the USACE website: <http://www.usace.army.mil/>.