

**STATEMENT OF BASIS FOR THE REISSUANCE
OF A
NPDES PERMIT**

U.S. Environmental Protection Agency
Region 5, Permits Branch, Water Division - WP-15J
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-0981

Public Notice No.: 19-11-01-A

Public Notice Issued On: November 19, 2019

Comment Period Ends: December 19, 2019

Permit No.: MN-0067423-3 (REISSUANCE)

Application No.: MN-0067423-3

Name and Address of Applicant:

Shakopee Mdewakanton Sioux Community (SMSC)
2330 Sioux Trail NW
Prior Lake, Minnesota 55372

Name and Address of Facility:

Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, Minnesota 55372

Located NW ¼ of Section 33, T115, R22W, Scott County, Minnesota
Approximate MS4 center: Latitude 44°00'00" N, Longitude 93°28'15" W

Receiving Waters:

The SMSC's MS4 is physically connected to the Prior Lake and City of Shakopee MS4s. Please refer to Section 4.2 of the Stormwater Pollution Prevention Plan for a map of the MS4 outfalls and connections.

DESCRIPTION OF APPLICANT'S FACILITY AND DISCHARGE

The above-named applicant has re-applied for NPDES Permit coverage to discharge into the designated receiving waters. The discharge is located within the boundaries of the SMSC. The EPA has retained the authority to issue NPDES permits to facilities with discharges to waters of the United States within Indian Country. The EPA is reissuing this NPDES permit under the authorities of the Clean Water Act.

A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) Owned or operated by a State, city, town, borough, county, parish, 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 tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

A small MS4 is any MS4 not already covered by the Phase I program for large and medium MS4s. The Phase II rule automatically designates for permit coverage small MS4s located in urbanized areas.

The SMSC's MS4 is a regulated small MS4 as indicated in Appendix I to the Preamble - Federally - Recognized American Indian Areas Located Fully or Partially in Bureau of The Census Urbanized Areas (Federal Register/Vol. 64, No. 235, 12/8/1999, pg.68803).

An urbanized area as delineated by the Bureau of Census is defined as a central place or places and the adjacent densely settled surrounding area that together have a residential population of at least 50,000 people and overall population density of at least 500 people per square mile. The SMSC reservation is located partially within the Minneapolis-St. Paul Urbanized Area.

MS4 Remand Rule

On November 17, 2016, EPA finalized the General Permit Remand Rule. The rule promotes greater public engagement through clear requirements on the opportunities for public participation in the general permitting process. The rule establishes alternative approaches an NPDES permitting authority can use to issue and administer small MS4 general permits that address a partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit.

SMSC's small MS4 is regulated by an individual permit. Regardless of the type of permit issued to a small MS4, the permitting authority must establish what is necessary for the MS4 to "reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," referred to as the "MS4 permit standard," and that the public participation requirements of the CWA are met. (See "Meeting the MS4 Permit Standard" below)

The terms and conditions of small MS4 permits must adhere to the requirements of § 122.34. The final rule also clarifies that it is the permitting authority's responsibility, and not that of the small MS4 permittee, to establish permit terms and conditions that meet the MS4 permit standard and to delineate the requirements for implementing the six minimum control measures, other terms and conditions deemed necessary by the permitting authority to protect water quality, as well as any other requirement. The final rule emphasizes that permit requirements must be expressed in "clear, specific, and measurable" terms, which may include narrative, numeric, or other types of requirements (*e.g.*, implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).

Storm Water Pollution Prevention Program

NPDES permits issued to Phase II MS4s require the small MS4s to develop a storm water pollution prevention program which addresses the six minimum control measures described in the rule. These include:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Erosion and Sediment Control
- Post-Construction Storm Water Management
- Pollution Prevention/Good Housekeeping

For each of the minimum control measures, the operator must develop and implement best management practices (BMPs) to meet the MS4 standard (See "Meeting the MS4 Standard" below). Section 5 of the SMSC's SWPPP contains enforceable requirements for each of the minimum control measures above. The SWPPP is included with the permit documents available for public notice and comment.

Effluent Limitations

Section 2 of the permit contains non-numeric effluent limits. This section of the permit also prohibits non-storm water discharges into the storm sewer system (except as allowed pursuant to Section 1.2.2.2 of the permit) and requires that the permittee shall not discharge the following substances from the MS4:

- Solids that settle to form putrescence or otherwise objectionable sludge deposits.

- Oil, grease, or other floating material that form noticeable accumulations of debris, scum, foam, or sheen.
- Color or odor that is unnatural and to such a degree as to create a nuisance.
- Toxic substances in amounts harmful to aquatic life, wildlife, or humans.
- Nutrients conducive to excessive growth of aquatic plants and algae to the extent that such growth is detrimental to desirable forms of aquatic life, creates conditions that are unsightly, or is a nuisance.
- Any other substances that impair, or threaten to impair, beneficial uses of the receiving waters.

Section 5 of the permit contains discharge observation/assessment requirements to assess compliance with the effluent limits and the minimum control measures enumerated in the permit.

Meeting the MS4 Permit Standard

The permittee must reduce the discharge of pollutants to the maximum extent practicable (MEP), to protect water quality, and satisfy the applicable water quality requirements of the Clean Water Act. The federal Clean Water Act (CWA) requires that regulated MS4s “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator (of EPA) or the State determines appropriate for the control of such pollutants.” EPA sees the MS4 standard as an iterative process – the standard should continually adapt to current conditions and new stormwater controls and technologies. Successive iterations of stormwater controls will be driven by the objective of ensuring discharges support achievement of water quality standards.

Two provisions in the permit have been revised to improve the quality of stormwater discharges. Others remain the same or similar to those in the previous permit:

In the previous version of the permit, Section 4.1.2.1 of permit (Post-Construction Stormwater Management for New Development and Redevelopment MCM) required site designs to provide for management measures the infiltrate, evapotranspire, reuse or otherwise retain the first one-half inch of rainfall from newly impervious surfaces from a 24-hour storm. This requirement was an incremental step in the direction of sustainable post-construction storm water management. The requirement is being increased to 1 inch in this permit which will result in increased pollutant reductions from these activities. It also aligns with the infiltration requirement for the State of Minnesota.

The infiltration rate in the exemption in Section 4.1.2.4 was decreased from 0.6 inches/hr. to 0.44 inches/hr. to align with Section 5.5.5.4 of the SWPPP which requires SMSC to require low impact design alternatives on soils where the infiltration rate is greater than 0.44 inches/hr.

The Public Education and Outreach, Public Involvement/Participation, Construction Site Stormwater Runoff Control, and Pollution Prevention and Good Housekeeping remain the same.

For the purposes of this permit and this permit cycle, EPA, Region 5 considers the MS4 standard to be met by implementation of measures to meet Sections 2 (Effluent Limitations), 3 (Special

Conditions), 4 (Storm Water Management Program) and 5 (Monitoring); and Section 5 of the SWPPP.

Compliance Monitoring and Assessment of Program Effectiveness

EPA regulations require permits to prescribe monitoring as needed to assure compliance with the effluent limits. See 40 CFR § 122.44(i). The proposed permit contains discharge observation and assessment requirements. The objective of these requirements is to assess storm water management program performance and to determine compliance with the narrative effluent limitations in Section 2 of the permit. The importance of these objectives is weighed against logistical considerations and the burden to the MS4 operator. Under this permit, the permittee will need to conduct a visual observation and assessment of discharges from a Tribal MS4 outfall location at least six times each calendar year. Visual observation/assessments must be conducted within ½ day after the start of a measurable storm event.

In addition to conducting visual observations/assessments during or soon after wet weather events, the Illicit Discharges Detection and Elimination program requires field screening during dry weather. Flow in the MS4 during dry weather is a strong indication there may be an illicit connection conveying flows to the storm water system or illegal dumping. Finding and addressing illicit discharges to the MS4 is one of the six minimum control measures required in the permit.

The permit must require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its storm water management program, and the status of achieving the measurable requirements in the permit. The evaluation of program effectiveness will consider a variety of metrics and data sources including any sampling/ monitoring that is conducted. Program reviews must be conducted annually. The results of annual program reviews will be reported on in annual reports to EPA.

Annual Report

In accordance with 40 CFR § 122.34(g)(3), the permittee must submit annual reports to EPA, Region 5, as described in Section 4.3.2 of the permit. Annual reports are due by March 10 of each year beginning in 2021 for the year 2020.

Recordkeeping

The permittee must retain records of all information required to be generated under the permit for a period of at least three years. In accordance with 40 CFR § 122.34(g)(2), the permittee must make the record the records and the SWPPP available to the public if requested to do so in writing.

Basis for Permit Requirements

The limits were developed to ensure compliance with 40 CFR § 122.34. NPDES permit issued to small MS4s require small MS4s to meet the permit terms and conditions to meet the MS4 Standard.

Significant Changes

Following are the significant changes in the draft permit:

- The infiltration requirement is being increased from 0.5 inches to 1 inch to increase the amount of stormwater managed on-site and to reduce the amount of pollutants discharged from new development or redevelopment sites. (Section 4.1.2.1 of the Permit)
- The infiltration rate in the exemption in Section 4.1.2.4 was decreased from 0.6 inches/hr. to 0.44 inches/hr. to align with Section 5.5.5.4 of the SWPPP which requires SMSC to require low impact design alternatives on soils where the infiltration rate is greater than 0.44 inches/hr. (Section 4.1.2.4 of the Permit)
- The minimum control measures in the SWPPP are expressed in clear, specific and measurable term in compliance with 40 CFR § 122.34(a). (Section 5 of the SWPPP)

The permit is based on an application dated April 29, 2019 and subsequent information submitted November 1, 2019. This information and additional supporting documents can be found in the administrative record.

The permit can be effective for five years from the date of reissuance as allowed by 40 CFR § 122.46.

Written By: Brian C. Bell
U.S. EPA, Region 5, WP-16J
77 West Jackson Blvd.
Chicago, IL 60604
Phone No.: (312) 886-0981

November 4, 2019