

Public Comments and Responses on 2021 Proposed Rule Revision

Public comment period: 5/24/21 through 7/7/21

Reference	Commenter/Affiliation	Comment	Response
Definitions	Bryan Gruidl, City of Bloomington	Consider adding a definition for fully-reconstructed impervious or clarifying within the Rules how the District interprets fully-reconstructed impervious surfaces. Fully-reconstructed is a common term used by many MS4 communities and is used in MPCA MS4 permit	NMCWD thoroughly considered adding a definition of "fully reconstruction impervious" to the rules not only in this rulemaking, but in 2018 as well. As it did last time, NMCWD has determined that including multiple regulatory provisions that would affect determination of the application of the NMCWD stormwater to the rules would produce confusion. The exemption in subsection 4.2.2b is premised on an applicant's refraining from disturbing underlying soils, consistent with the definition of "rehabilitation," as used in 4.2.2b. To date NMCWD has been able to consistently utilize the "rehabilitation" definition for purposes of setting the scope of this exemption, such that definition of "fully reconstructed" is not necessary.
Definitions	Bryan Gruidl, City of Bloomington	The Right-of-way definition is confusing as it seems to state that a public project needs to be in place for ROW to exist. Suggest clarifying the Right-of-way term to: Delineated, legally defined property reserved for transportation purposes or other public use.	NMCWD recognizes that the definition of "right-of-way" could be clarified, and has made changes along the lines Mr. Gruidl suggests. However, it is critical that public infrastructure be in place for ROW to qualify for the limited stormwater-management requirements applicable to such properties.
15 locations beginning 2.4.4	Bryan Gruidl, City of Bloomington	The terms "licensed civil engineer", "professional engineer", "registered professional engineer", "NMCWD engineer", "District Engineer", and "engineer" are used interchangeably throughout the Rules document. Suggest using consistent terms throughout document for added clarity.	NMCWD has revised the references to harmonize and clarify.
3.4	Bryan Gruidl, City of Bloomington	Section 3.4 indicates buffers must be provided around the entirety of wetlands disturbed by the activity and on the upgradient edge of all wetlands downgradient from the activity. a) In instances where the property owner owns the entire perimeter of a wetland area it may not be reasonable or feasible to require a buffer around the entirety of the wetland for projects that impact only a small portion of a wetland area. Rules should provide the District the ability to work with the applicant to determine an appropriate buffer area to be restored. b) The addition of "upgradient edge" is confusing. Clarify what the District means by upgradient edge.	As to the first comment presented: Like all regulatory bodies, NMCWD must be as clear and definitive as possible in its rules, and provisions requiring case-by-case analysis are to be avoided as potentially raising concerns about arbitrary and capricious decisionmaking. The provision requiring buffer around the entirety of a wetland disturbed by a project reflects the NMCWD managers' interest in protecting wetlands. Circumstances making preservation or creation of such buffer area a challenge need to be reviewed as a variance request. As to the second comment, NMCWD sees the uncertainty created by having both "downgradient" and "upgradient" in this provision, and will clarify that only the portion of a wetland potentially affected by land-disturbing activity needs to be buffered.
4.1.1d	Bryan Gruidl, City of Bloomington	Section 4.1.1 (d) refers to nondegradation. Consider updating of "nondegradation" term to "antidegradation". MPCA has generally replaced the term nondegradation with antidegradation citing alignment with Federal antidegradation regulatory requirements. Antidegradation is the common term used with MPCA MS4 permitting rather than non-deg.	NMCWD has made this change.
4.2.6	Patrick Sejkora, City of Eden Prairie	Rule 4.2.6 includes language that allows NMCWD, at its Engineers' discretion, to "impose monitoring, performance evaluation, additional compliance measures or other requirements for the purposes of demonstrating performance stands are being met." However, it is not clear in the Rule what facilities may or may not fall into this category. It is also not clear in the rule language what terms, length, frequency, and measures of the monitoring or performance evaluation may be. The City is concerned this could lead to lengthy, complicated, and burdensome commitments to monitoring BMPs. Additionally, it may discourage manufacturers of proprietary BMPs from recommending their products on projects, as they may be wary of their devices being required to be tested outside their purview. Developing a policy explaining what BMPs will and will not be subject to this rule as well as guidelines on the length and measures of the performance monitoring would be beneficial to permittees.	As noted in the matrix of supporting information released with the draft revisions, the performance-monitoring provision in 4.2.6 is meant to facilitate, rather than discourage, use of innovative technologies. The provision allows the NMCWD engineer to recommend approval of a permit even when it relies on unproven technology, as opposed to leaving the engineer with no option but to recommend against approval (because the facility/ies proposed are unproven) or provide no recommendation, leaving the managers to make a technically difficult determination. NMCWD cannot specify the monitoring terms, length, frequency and measures to be required in this rule to apply to all permittees, because these need to be carefully delineated to respond to the specifics of the technology proposed, and NMCWD wants this provision to be flexible. NMCWD understands that permit approvals relying on ongoing performance monitoring and proving will need to explicitly include, in writing, the specific requirements for monitoring unique to the project that is proposed. These specifics will need to be supported by the NMCWD technical review. NMCWD will consider developing policy or guidance material to support this provision, and appreciates that suggestion.
4.3.2	Ross Bintner, City of Edina	I would like to request that the District consider changing its rules to align with the 2021 MS4 and 2018 Construction Site permit prohibiting infiltration on D soils. Talking it over with the MPCA, I ran through several options, my notes are below. Notes from conversation with Cole Landgraf: Thoughts behind 16.18; it is in both the construction site permit and the MS4 permit, to meet the 48hr, the size would be prohibitive. Todd Smith may have more background if we need it. In 2013 MPCA had the higher level of review, but reversed that in 2018. Based on the emails, Cole thought MCWD was in alignment, and 9Mile was not.	(Note that the comment pertains to an existing provision in the NMCWD Rules that is proposed to be modified only by the addition of "reasonably" to the contamination finding. Also, the prohibition on infiltration on Hydrologic Soil Group type D soils has been in the state Clean Water Act construction general permit since at least 2018, without producing conflict with application in any specific circumstance with application of the NMCWD rules.) While NMCWD's rules do not prohibit infiltration in D soils or other circumstances where infiltration may be counterproductive to environmental protection, such circumstances are specifically cited as possible bases for the reduced stormwater-volume management criterion under the restricted-site provisions in subsection 4.3.2. As such, there is no conflict with the state's general permits, but rather a different approach. NMCWD's approach is consistent with NMCWD's general regulatory approach, which is to set performance standards and allow applicants to develop systems to meet the standards that work for their sites (such as meeting volume retention through stormwater reuse instead of infiltration), rather than directing the means and manner in which an applicant designs a project.

4.3.2	Bryan Gruidl, City of Bloomington	Section 4.3.2 describes restricted sites as related to stormwater management volume retention requirements. In some instances, an MS4 community's definition of a restricted site may differ from the District due to MPCA related permit requirements. The District is encouraged to review section 20.9 of the MPCA MS4 permit and sections 16.14 through 16.21 of the MPCA CSW permit to ensure District rules related to restricted sites regarding to infiltration are not in conflict with other permitting agencies. For example infiltration located in an Emergency Response Area (ERA) within a City's Drinking Water Supply Management Area (DWSMA) classified as moderate or high vulnerability is largely prohibited by most MS4 communities and the MPCA.	Please see the response above to Ross Bintner's question on the same provision.
4.3.4	Jessica Wilson, City of Edina	Regarding Chloride management rule 4.3.4, we request that an exemption be added for cities regulated under the Small Municipal Separate Storm Sewer Systems (MS4) General Permit MNR040000 issued by the Minnesota Pollution Control Agency. The MS4 General Permit far exceeds the District rule. The MS4 General Permit requires an inventory map of facilities that contribute pollutants (item 21.3), best management practices at salt storage areas (item 21.5), a written snow and ice management policy (item 21.6), annual winter maintenance training (item 21.7), documentation of the amount of deicer applied each winter maintenance season to all permittee owned/operated surfaces (item 22.5), and annual assessment of winter maintenance operations to identify opportunities for improvement (item 22.6). All of these requirements under the MS4 General Permit should be sufficient to meet the intention of rule 4.3.4. Not exempting MS4 regulated cities adds documentation burden for both parties while not adding any value.	(Note please that the comment does not pertain to a change proposed by NMCWD; the chloride-management plan requirement applies to public entities under the current rules.) An applicant can comply with the chloride management-plan requirement by submitting a plan that works for the applicant's site and circumstances. While the template is provided to facilitate a permittee's completing the requirement, a plan developed to satisfy state requirements also meets the NMCWD requirement. Generally speaking, reporting on chloride-minimization efforts undertaken for other regulatory purposes will meet NMCWD reporting requirements. As such, the only increased burden on public entities is submission of existing materials to NMCWD. The NMCWD Board of Managers, in adopting the chloride-plan requirement in 2018, determined that it was important to require all land owners to be subject to the same requirement, and that policy driver continues to align with NMCWD goals.
None	Jeff Berg, Minnesota Department of Agriculture	Greeting Lauren, The MDA has no comments regarding Nine Mile Creek Watershed District's proposed revisions to its regulatory rules. Thanks for the opportunity to review.	Thank you for reviewing.
None	Joe Mulcahy, Metropolitan Council Environmental Services	The Metropolitan Council has no comments on the District's proposed regulatory rule revisions. Thank you for the opportunity to review them. Please contact me if you have questions.	Thank you for reviewing.