

# HENNEPIN COUNTY

## MINNESOTA

### Hennepin County, Board of Commissioners RESOLUTION 22-0391

2022

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The following resolution was moved by Commissioner Debbie Goettel and seconded by Commissioner Kevin Anderson:

BE IT RESOLVED, that the Hennepin County Board of Commissioners adopt Hennepin County Regulatory Enforcement Standards for the Minnesota Pollution Control Agency (MPCA) Small Municipal Separate Storm Sewer System (MS4) General Permit

The question was on the adoption of the resolution and there were 7 YEAS and 0 NAYS, as follows:

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**County of Hennepin  
Board of County Commissioners**

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**YEAS:** Anderson, Conley, Fernando, Goettel, Greene, LaTondresse, Lunde

**NAYS:**

**ABSTAIN:**

**ABSENT:**

**RESOLUTION ADOPTED ON 10/11/2022**

**ATTEST:** M. Roge  
Deputy/Clerk to the County Board

**Hennepin County** Board of Commissioners  
300 South Sixth Street, Minneapolis, MN 55487  
hennepin.us



# **HENNEPIN COUNTY REGULATORY ENFORCEMENT STANDARDS FOR THE MINNESOTA POLLUTION CONTROL AGENCY (MPCA) SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) GENERAL PERMIT**

## **SECTION 1: PURPOSE**

The purpose of these Enforcement Standards is to establish regulatory requirements to prohibit illicit discharges to the Small Municipal Separate Storm Sewer System (MS4) and to guide land disturbing activities and post-construction stormwater management in Hennepin County. These measures are taken to minimize the negative environmental impacts of stormwater runoff and to ensure compliance with the National Pollutant Discharge Elimination System Permit (NPDES Permit) process.

## **SECTION 2: SCOPE**

These Enforcement Standards apply within Hennepin County to facilities that discharge to Hennepin County's MS4 and/or construction activities under Hennepin County's jurisdiction. The Hennepin County MS4 area is limited to those portions of the County located in urbanized areas; that is, areas with stormwater conveyance systems and infrastructure. Hennepin County does not exercise zoning and land use authority for development and/or redevelopment within the MS4 area outside of Hennepin County road right-of-way. A website featuring the MS4 mapping tool is maintained by the MPCA and depicts the current MS4 area for Hennepin County.

## **SECTION 3: AUTHORITY**

These Enforcement Standards have been adopted by Hennepin County Resolution [22-0391] pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), 40 CFR Part 122, Minnesota Statutes Chapters 115, 373, and 375, Minnesota Rules Chapter 7090, and the Minnesota Pollution Control Agency (MPCA) Small Municipal Separate Storm Sewer System (MS4) General Permit (MNR040000) or any reissued MPCA MS4 General Permit.

## **SECTION 4: INCORPORATION BY REFERENCE**

For the purposes of these Enforcement Standards, the definitions and requirements set forth in Minnesota Statutes Chapters 115 and 373, Minnesota Rules Chapter 7090, the requirements of the Minnesota Pollution Control Agency Small Municipal Separate Storm Sewer System General Permit (MNR040000) (MS4 General Permit), and the MPCA Construction Stormwater General Permit (MNR100001) (CSW Permit), all as amended or reissued from time to time, are incorporated by reference.

## **SECTION 5: HIGHEST STANDARDS PREVAIL**

Except as expressly set forth at Sections 9.02 (B) and 10.01 (C) herein, where the conditions imposed by a provision of these Enforcement Standards are either more restrictive or less restrictive than comparable conditions imposed by a provision of any other applicable law, ordinance, rule, or regulation, the provision that establishes the higher standard for the promotion and protection of the public health, safety, and general welfare shall prevail.

## **SECTION 6: STANDARD OPERATING PROCEDURES AND ENFORCEMENT RESPONSE PROCEDURES**

The Hennepin County Stormwater Standard Operating Procedures (SOP) outlines standards and requirements that must be met for compliance with these Enforcement Standards. The SOP is available upon request or at the following website:

<https://www.hennepin.us/residents/transportation/water-quality-protection>

The Hennepin County Enforcement Response Procedures (ERP) are included within the SOP and provide further information regarding penalties and procedures for noncompliance with these Enforcement Standards.

## **SECTION 7: ADMINISTRATION**

Hennepin County is required to administer these Enforcement Standards pursuant to the terms of the MS4 General Permit issued by the MPCA. Any powers granted or duties imposed are hereby delegated to the Hennepin County Highway Engineer or their designees.

## **SECTION 8: DISCHARGE PROHIBITIONS**

### **Section 8.01 Prohibition of Illicit Discharges**

No person shall discharge or cause to be discharged into the MS4 any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except as expressly allowed by Section 3.2 of the General Permit.

### **Section 8.02 Prohibition of Illicit Connections**

- A.** The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- B.** It is a violation of these Enforcement Standards if a person connects a line conveying wastewater, sewage or other pollutants to the MS4, or allows such a connection to continue.

- C. Improper connections in violation of these Enforcement Standards must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system.
- D. Any drain or conveyance that has not been documented in plans, maps, or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the County requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the County.

### **Section 8.03 Prohibition of Animal Waste**

It is unlawful for any person in control of any animal on County property to fail to remove feces left by such animal and to dispose of it properly as described herein. Proper disposal of animal waste shall be limited to burial where lawfully permitted, flushing in the toilet, bagging for disposal in the owner or keeper's waste receptacle, or bagging for disposal in a waste receptacle in a public park. Disposal of animal waste in the County's stormwater drains is expressly prohibited.

## **SECTION 9: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

### **Section 9.01 Industrial Stormwater Discharge**

Any person subject to an industrial NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County prior to the allowing of any discharges to the MS4.

The operator of a facility required to have a NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent to the County at the same time the operator submits the original Notice of Intent to the EPA or MPCA as applicable. The Notice of Intent must be delivered to the County in writing by emailing it to:

[roadpermits@hennepin.us](mailto:roadpermits@hennepin.us)

### **Section 9.02 Construction Activity Discharge**

Construction Activities with land disturbance greater than or equal to one (1) acre, including projects that are less than one acre and part of a larger common plan of development or sale, that are within the County's jurisdiction and that discharge into the County's MS4 are subject to the MPCA Construction Stormwater General Permit (MNR100001) (CSW Permit) or any reissued

CSW Permit. In addition to meeting the requirements of the CSW Permit, the owner or operator of the construction activity must follow the requirements outlined below:

**A. Site Plan Review.** Prior to the start of construction activity, owners and/or operators of such construction activity must submit a site plan to the County for review and confirmation that construction site stormwater runoff control requirements have been met. The site plan at a minimum must meet the erosion, sediment, and waste control requirements of the current CSW Permit and the MS4 General Permit. Owners and operators of construction activities must keep site plans up to date regarding stormwater runoff controls.

Required site plan information must be submitted together with any requested supporting documentation prior to or concurrent with submittals for any applicable road/right-of-way permits. In granting approval under this section, the County may impose such conditions as reasonably necessary to prevent creation of a nuisance or unreasonable hazard to person or to public or private property. County approval of site plans for erosion and sediment controls will take no more than twenty (20) calendar days.

**B. Local Requirements.** Projects in the County MS4 that are also located in a local, municipal MS4, must comply with any local municipality requirements for site plan reviews and submittals. To the greatest extent allowed by the MS4 General Permit or CSW Permit as applicable, projects directly impacting County road right-of-way may comply with County requirements for the County-sanctioned portion of such projects where conflicting or more restrictive local regulations exist.

## **SECTION 10: POST-CONSTRUCTION STORMWATER MANAGEMENT**

### **Section 10.01 Post-Construction Activity Discharge.**

Construction Activities for new development and redevelopment projects with land disturbance greater than or equal to one (1) acre, including projects that are less than one acre and part of a larger common plan of development or sale, that are within the County's jurisdiction and that discharge into the County's MS4 are subject to the CSW Permit, and the MS4 General Permit. In addition to meeting the requirements of the CSW Permit and MS4 General Permit, the owner or operator of the construction activity must follow the requirements outlined below:

**A. Post-Construction Site Plan Review.** Prior to the start of construction activity, owners and/or operators of such construction activity must submit a site plan to the County for review and approval of post-construction stormwater management best management practices (BMPs). Approved BMPs shall be designed with accepted engineering practices and must meet the most restrictive criteria outlined in the CSW Permit and Sections 20.4 -20.15 of the General Permit. Exceptions, limitations, and alternate mitigation provisions will be considered to the extent allowable under the General Permit.

Required site plan information must be submitted together with any request supporting documentation prior to or concurrent with submittals for any applicable road/right-of-way permits. In granting approval under this section, the County may impose such conditions as reasonably necessary to prevent creation of a nuisance or unreasonable hazard to persons or to public or private property. County approval of site plans for post construction stormwater management BMPs will take no more than twenty (20) calendar days.

**B. Long Term Maintenance of Structural Stormwater BMPs.** Any BMP directly connected to the County MS4 or sited in or adjacent to County road right-of-way shall be subject to a maintenance agreement between the BMP owner and the County. The maintenance agreement will establish long-term ownership of and maintenance responsibilities for the BMP and must be executed prior to completion of the construction activity. The maintenance agreement shall be a legally binding contract that includes, at a minimum, the following provisions:

- i. The maintenance agreement must include provisions allowing the County to conduct inspections and perform any deferred maintenance required for the safe and effective operation of the BMP. The agreement must further allow the County to assess any unrecovered costs to the BMP owner and/or operator.
- ii. The maintenance agreement must run with the land where the BMP is sited.
- iii. The agreement must include provisions requiring implementation of a new stormwater BMP if then-existing conditions of the MS4 General Permit are not being met.

**C. Local Requirements.** Projects in the County MS4 that are also located in a local, municipal MS4, must comply with any local municipality requirements for site plan reviews and submittals. To the greatest extent allowed by the MS4 General Permit or the CSW Permit as applicable, projects directly impacting County road right-of-way may comply with County requirements for the County-sanctioned portion of such projects where conflicting or more restrictive local regulations exist.

## **SECTION 11: COMPLIANCE MONITORING**

### **Section 11.01. Inspections, Right of Entry, Notice of Violation.**

**A. Inspections.** Hennepin County Public Works will carry out routine inspections for compliance with the provisions of these Enforcement Standards.

**B. Right of Entry.** Public Works employees or contractors shall be permitted to enter, inspect, and monitor stormwater facilities and immediately adjacent property as reasonably necessary to determine compliance with these Enforcement Standards. The County shall provide the owner of private property with reasonable notice prior to

entering upon the owner's property unless emergency conditions exist to prevent such notice.

**C. Notice of Violation.** Whenever the County has reason to believe a provision of these Enforcement Standards has been violated, it may order compliance by written Notice of Violation. The Notice of Violation should include as much information as necessary to identify the alleged violator, the nature of the violation, and any remedial measures, requirements for compliance, or penalties to be imposed.

**D. Appeals.** Any person receiving a Notice of Violation, site plan denial, or permit application denial may appeal the determination of the County. A written notice of appeal to the County Engineer must be received within 10 days from the date of the Notice of Violation or final determination. The County Engineer shall timely act on the written request. Should the matter not be resolved to the satisfaction of the appealing party, the appealing party may submit a request for appeal to the County Board of Commissioners. The Board shall act on a timely written request for appeal at its next regularly scheduled meeting occurring at least 10 business days from receipt of the request. A decision by the Board shall not require a public hearing and shall be issued in writing, supported by written findings establishing the reasonableness of the decision. The decision of the County Board shall be final.

**E. Noncompliance Penalties.** When any person, owner, or operator fails to conform to any provision of these Enforcement Standards, the County may take the following actions:

- i. Issue a stop work order, withhold the scheduling of inspections, and/or withhold the issuance or approval of a permit.
- ii. Suspend or revoke any permit issued by Hennepin County to the owner/operator for the site in question or any other of the owner/operator's sites within the County's jurisdiction.
- iii. Decline approval of any future County-issued permit to owner/operator until compliance has been completed by the violator.
- iii. If circumstances exist such that noncompliance with these enforcement standards poses an immediate danger to the public health, safety and welfare, as determined by Hennepin County, the County may take emergency preventative action to correct the deficiency or hire an independent contractor to correct the deficiency. The issuance of a permit constitutes a right-of-entry for the County or its contractors to enter upon the site for the purpose of correcting deficiencies.
- iv. Require reimbursement to Hennepin County for all costs incurred in correcting storm water pollution control deficiencies. If payment is not made within 30 days after costs are incurred by the County, then the County may

invoke the penalties set forth under this Section 11 and/or pursue reimbursement under any other legally authorized method.

- v. In lieu of enforcement proceedings, penalties, and remedies authorized by law, the County may offer alternative compensatory actions such as storm drain stenciling, attendance at compliance workshops, or creek cleanup.

## **SECTION 12. VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement processes and penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of these Enforcement Standards is considered a threat to public health, safety, and welfare, and may be declared and deemed a public nuisance. Such a public nuisance may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

## **SECTION 13 REMEDIES NOT EXCLUSIVE**

The remedies listed in these Enforcement Standards are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the County to seek cumulative remedies.

## **SECTION 14 SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or portion of these Enforcement Standards is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## **SECTION 15 EFFECTIVE DATE**

These Enforcement Standards shall be in full force and effect from and after its passage of Resolution 22-0391.