



Policy 3: MS4 Exemption

Buffer Law Implementation

August 25, 2016

Policy

It is the policy of the Board of Water and Soil Resources that:

1. NPDES/SDS Program municipal separate storm sewer system (MS4) permittees are not required to take any action regarding this exemption.
2. Actions that meet the “water resources riparian protection” provision of M.S. 103F.48, Subd. 5 (4) include, separately or in combination:
 - a. Perennially rooted vegetation as prescribed in M.S. 103F.48, Subd. 3(a), or
 - b. Alternative riparian water quality practices as prescribed in M.S. 103F.48, Subd. 3(b), or
 - c. Projects with comparable water quality protection provided by MS4 managed or sponsored infrastructure.
3. NPDES/SDS Program municipal separate storm sewer system (MS4) permittees that choose to take action to support this exemption must:
 - a) have implemented a MS4 permittee sponsored project(s) which provides water quality protection comparable to a buffer for the parcel seeking the exemption; and
 - b) provide evidence of (a) to the landowner and the respective SWCD.

Background

This policy provides direction to cities, townships, watershed districts, soil and water conservation districts (SWCD), counties and landowners regarding the implementation of Minnesota Statutes 103F.48, subdivision 5(4). This provision provides an exemption to landowners from the requirements of the Buffer Law if the following conditions are met:

- (1) The land is subject to a NPDES/SDS Program municipal separate storm sewer system (MS4) permit;
and
- (2) Water resources riparian protection is provided; and
- (3) The site is not inconsistent with the requirements of the state shoreland rules.

A MS4 permit does not have water resources riparian protection as a required component of the permit and the MS4 permit does not provide water resources riparian protection for areas outside the infrastructure subject to and managed by the MS4 permittee. Therefore, a MS4 permittee is not expected to provide water quality protection comparable to the buffer protection as part of the permit.

The Minnesota Pollution Control Agency (MPCA) oversees the NPDES/SDS Programs and can provide information on entities regulated under this program including specific requirements for each permit.

Policy Need:

- 1) Landowners need to know if the MS4 Permittee has or is planning an infrastructure project with water quality protection comparable to the buffer protection for their parcel.
- 2) The MS4 needs to know that they may be able to help landowners with cultivated lands achieve eligibility for an exemption from the buffer law requirements by accomplishing a project with comparable water quality protection.
- 3) SWCDs need to know, for progress tracking and compliance validation, if an infrastructure project with water quality protection comparable to a buffer for a parcel is being provided by the MS4 permittee.

Statutory Basis.

- Section 103F.48 Subd. 5(4)(i). Exemptions
- Section 103F.48 Subd. 7. Corrective Actions
- Section 103B.101 Subd. 12(a). Administrative Penalty Orders
- Section 103F.48 Subd. 9. Appeals and Validations of Penalty Orders