UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REISSUANCE
Permit No. MN-0067423-2

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
INDIVIDUAL PERMIT FOR DISCHARGES OF STORM WATER FROM
REGULATED MS4 IN SHAKOPEE MDEWAKANTON SIOUX COMMUNITY INDIAN
RESERVATION IN THE STATE OF MINNESOTA

In compliance with the provisions of the Clean Water Act (CWA), as amended, (33 U.S.C. 1251 et. seq.), the Urbanized Area of the Shakopee Mdewakanton Sioux Community (SMSC) is a regulated Municipal Separate Storm Sewer Systems (MS4) community and is authorized through this permit by the United States Environmental Protection Agency (EPA), Region 5, to discharge storm water from its MS4 within the SMSC Indian Reservation located in Prior Lake, Minnesota, to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit and the authorization to discharge shall expire at midnight, **[Insert Date]**. The permittee shall not discharge after the above date of expiration without authorization from EPA. In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and forms as required by the EPA, Region 5 no later than 180 days prior to the above date of expiration.

This permit will become effective on the date of signature.

Signed and issued this _____day of _____, 2014.

_____
Tinka Hyde, Director, Water Division

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National Pollutant Discharge Elimination System Individual Permit for Discharges of Storm Water from a Regulated MS4 in Shakopee Mdewakanton Sioux Community Indian Reservation in the State of Minnesota

1. Coverage under this Permit

1.1 Permit Area

This permit covers the Municipal Separate Storm Sewer System (MS4) of the Shakopee Mdewakanton Sioux Community (or also permittee) of Minnesota (Prior Lake), as identified in Appendix 1 to Preamble, "Federally-Recognized American Indian Areas Located Fully or Partially in Bureau of the Census Urbanized Areas," 64 Fed.Reg. 68722, 68803 (December 8, 1999).

1.2 Authorization to Discharge

1.2.1 This permit authorizes discharges of storm water from the permittee's MS4 identified above, as defined in 40 CFR §122.26(b)(16). The permittee is authorized to discharge under the terms and conditions of this permit.

1.2.2 The following are types of authorized discharges:

1.2.2.1 *Storm water discharges.* This permit authorizes storm water discharges to waters of the United States from the permittee's MS4, except as excluded in Section 1.3.

1.2.2.2 *Non-storm water discharges*. The permittee is authorized to discharge the following non-storm water sources provided that EPA has not determined these sources to be substantial contributors of pollutants to the MS4:

- Water line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground waters
- Uncontaminated ground water infiltration (infiltration is defined as water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.)
- Uncontaminated pumped groundwater
- Discharges from potable water sources
- Foundation drains
- Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases and liquids
- Irrigation water
- Springs

- Water from crawl space pumps
- Footing drains
- Lawn watering
- Individual residential car washing
- Flows from riparian habitats and wetlands
- Dechlorinated swimming pool discharges
- Street wash water
- Discharges or flows from fire fighting activities

1.2.3 Where the operator changes, or where a new operator is added after submittal of the permit application, a letter must be submitted to EPA. The letter must include a statement that no other change in the permit is necessary and a copy of a written agreement between the current and new permittee(s) containing a specific date for transfer of permit responsibility, coverage, and liability. The letter must be sent to the address below:

EPA, Region 5
NPDES Programs Branch (WN-16J)
Storm Water Program
77 West Jackson Boulevard
Chicago, Illinois 60604

1.3 Limitations on Coverage

This permit does not authorize:

1.3.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:

- In compliance with a separate NPDES permit, or
- Are authorized pursuant to Section 1.2.2 of this permit.

1.3.2 Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).

1.3.3 Storm water discharges associated with construction activity as defined in 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15).

1.3.4 Storm water discharges currently covered under another permit.

2. Effluent Limitations

2.1 The permittee shall reduce the discharge of pollutants to the maximum extent practicable in compliance with the management practices, control techniques, systems, design and engineering methods, and other provisions required under this permit.

2.2 Except for discharges authorized in Section 1.2.2 of this permit, the permittee shall effectively prohibit non-storm water discharges into the MS4.

2.3 The permittee shall not discharge the following substances from the MS4:

A. Solids that settle from putrescence or otherwise objectionable sludge deposits.
B. Oil, grease, or other floating material that form noticeable accumulations of debris, scum, foam, or sheen.
C. Color or odor that is unnatural and to such a degree as to create a nuisance.
D. Toxic substances in amounts harmful to aquatic life, wildlife, or humans.
E. 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.
F. Any other substances that impair, or threaten to impair, beneficial uses of the receiving waters.

3. Special Conditions

3.1 Comply with Water Quality Standards

3.1.1 The permittee must comply with applicable federal and tribal water quality standards and discharges may not cause or contribute to violations of State water quality standards downstream of the MS4 discharges.

3.1.2 This permit does not authorize storm water discharges, allowable non-storm water discharges, or discharge-related activities that would cause, have the reasonable potential to cause, or contribute to in-stream exceedance of water quality standards. The storm water pollution prevention plan (SWPPP) must include appropriate control measures to ensure that this will not occur.

3.1.3 This permit does not authorize discharges of any pollutant into any waterbody for which a total Maximum Daily Load (TMDL) has been approved by EPA (for that pollutant), unless the discharge is consistent with that TMDL.

3.2 Comply with Endangered Species Act

3.2.1 The permittee must ensure that discharges or discharge related activities are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act (ESA).

3.2.2 This permit does not authorize storm water discharges, allowable non-storm water discharges, or discharge-related activities that are likely to jeopardize the continued existence of any species listed as endangered or threatened ("listed") under the ESA, or which will result in the adverse modification or destruction of habitat that is designated as critical under the ESA ("critical habitat"). Submission of a signed Permit application will be deemed to also constitute certification of eligibility under the ESA.

3.2.3 The permittee is not authorized to discharge if the discharges or discharge related activities cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the ESA and 50 CFR §17.3), unless such takes are authorized under sections 7 or 10 of the ESA.

3.2.4 "Discharge related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the location, construction and operation of BMPs to control, reduce or prevent storm water pollution.

3.3 Comply with National Historic Preservation Act

3.3.1 The permittee must comply with applicable laws concerning the protection of historic properties and places.

3.3.2 This permit does not authorize storm water discharges, allowable non-storm water discharges, or discharge-related activities with unconsidered adverse effects on properties that are listed or are eligible for listing in the National Register of Historic Places as maintained by the Secretary of the Interior.

3.3.3 This permit does authorize storm water discharges, allowable non-storm water discharges, or discharge-related activities that are in compliance with a written agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures to be taken to mitigate or prevent adverse effects to historic properties.

3.4 Outstanding Resource Waters

3.4.1 The permittee shall determine whether any part of its MS4 discharges to a waterbody designated as an outstanding resource value water (ORVW) or to waters which flow into an ORVW. State-classified ORVWs are described and identified in Minn. R. 7050.0460 and 7050.0470.

3.4.2 The permittee may not establish a new or increased MS4 discharge of pollutants into or upstream of an ORVW unless the SWPPP required under this permit is designed and implemented with the objective of ensuring that any new or increased MS4 discharge of pollutants will not exceed background levels of substances in the ORVW.

3.5 Impaired Waterbodies

3.5.1 The permittee shall determine whether any part of its MS4 discharges to an impaired waterbody listed in accordance with section 303(d)(1) of the federal Clean Water Act, 33 USC §1313(d)(1), and 40 CFR §130.7(1) or discharges to waters which flow into such impaired waters. Impaired waters are those that are not meeting applicable water quality standards. A list of State-identified impaired waterbodies in Minnesota may be found at: "http://www.pca.state.mn.us/water/tmdl/index.html"\1"tmdl". This determination shall be documented in the SWPPP.

3.5.2 If any part of the MS4 discharges to an impaired waterbody or discharges to waters which flow into impaired waters, the permittee shall plan and document in the SWPPP management practices and control measures to reduce the discharge of pollutant(s) of concern to the MEP. Pollutant of concern means a pollutant that is causing an impairment(s) of a waterbody.

3.5.3 After the date of permit issuance, the permittee shall not establish a new discharge of a pollutant of concern to an impaired waterbody or to waters which flow into impaired waters, or an increased MS4 discharge of a pollutant of concern to an impaired waterbody or to waters which flow into impaired waters, unless the new or increased discharge of the pollutant of concern:

A. Causes the impaired water to meet applicable water quality standards for the pollutant of concern, or
B. Is consistent with the Wasteload Allocation(s) and other provisions of an approved TMDL.

3.6 TMDLs

3.6.1 The permittee shall determine whether it discharges to an impaired waterbody for which EPA has approved a TMDL or to a water which flows to a TMDL water. Information on approved TMDLs in Region 5 can be found at: http://www.epa.gov/region5/water/wshednps/topic_tmdls.htm#states

If the permittee does discharge to an impaired waterbody for which EPA has approved a TMDL or to a water which flows to a TMDL water, the permittee shall review the TMDL and assess whether the TMDL wasteload allocation for the MS4 is being met through the existing storm water management controls, or whether additional or enhanced control measures are necessary. This determination shall be documented in the SWPPP.

3.6.2 If based on the assessment(s) conducted pursuant to Section 3.6.1 of this permit, the permittee determines additional or enhanced management practices and control measures are necessary, the permittee must plan and document in the SWPPP the additional or enhanced practices and measures to be implemented to meet the TMDL wasteload allocation and any other requirements applicable to the permittee specified in the TMDL. The updated SWPPP must be implemented in accordance with Section 4 of this permit.

4. Storm Water Management Program

The permittee's Storm Water Management Program encompasses systems and activities implemented to minimize the discharge of pollutants from the MS4 and to comply with the terms of this permit. As a key element of the Storm Water Management Program, the permittee must implement and enforce its SWPPP, and update and/or improve the SWPPP as necessary, to minimize the discharge of pollutants from the permittee's MS4 to the MEP, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act.

4.1 Minimum Control Measures

4.1.1 The permittee must implement Section 5 - "Storm Water Pollution Prevention Program Minimum Control Measures" - of the permittee's MS4 SWPPP, dated March 7, 2013, which the permittee submitted as a component of the NPDES permit application. The six minimum control measures must be implemented in conformance with the measurable goals and timelines identified in the SWPPP for the storm water program:

A. *Public Education and Outreach on Storm Water Impacts*

Objective: To reduce pollutant loading to waterbodies to the MEP by providing educational materials, outreach, and communications to Tribal members, Tribal leaders, Tribal enterprise employees, and other stakeholders.

B. *Public Involvement/Participation*

Objective: To have Tribal members and other stakeholders actively involved in planning and implementation of the Storm Water Management Program.

C. *Illicit Discharge Detection and Elimination*

Objective: To develop, implement, and enforce an effective program to identify and address illicit discharges to the MS4.

D. *Construction Site Storm Water Runoff Control*

Objective: To develop, implement, and enforce a program to reduce pollutants in storm water runoff to the permittee's MS4 from construction activities that result in a land disturbance of greater than or equal to one acre (or less than one acre, but is part of a common plan of development or sale that will disturb one or more acres).

E. *Post-Construction Storm Water Management*

Objective: To control, following the completion of construction projects, the loadings of pollutants in storm water runoff from areas of new development and redevelopment, and the volume and energy of storm water discharges. Excessive storm water discharge volumes can erode downstream riparian and lakeshore areas, contribute sediment loadings, and impair waterbodies. Post-construction storm water control measures are required for sites where construction occurs and there is a land disturbance of greater than or equal to one acre (or less than one acre, but is part of a common plan of development or sale that will disturb one or more acres). The criteria in Section 4.1.2 of this permit must be met as part of the permittee's post-construction storm water management control measures.

F. *Pollution Prevention/Good Housekeeping for Tribal Operations*

Objective: To develop and implement an operation and maintenance program with the goal of preventing or reducing pollutant runoff from Tribal properties, enterprises, and operations to the MEP.

4.1.2 To manage/minimize the volume of storm water discharges from new development and redevelopment sites, the permittee shall implement the following as part of its Post-Construction Storm Water Management minimum control measure:

4.1.2.1 Site designs must provide for management measures that infiltrate, evapotranspirate, reuse, or otherwise retain, at a minimum, the first one-half inch of rainfall runoff from

new impervious surfaces from a 24-hour storm. The first one-half inch of rainfall runoff from new impervious surfaces must be retained/managed on-site with no discharge to surface waters.

4.1.2.2 Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.

4.1.2.3 Infiltration BMPs must be drawn down within 48 hours.

4.1.2.4 *Exemption*: Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the bottom of the infiltration system are not required to meet the infiltration performance standards enumerated in sub-section 4.1.2.1 above.

4.1.2.5 *Exclusions*. The runoff from the following post-construction areas is excluded from meeting the infiltration requirements enumerated above, and stormwater shall not be infiltrated without specific approval from EPA:

A. Storage, loading, or industrial processing areas at a facility in a SIC/NAICS code regulated under the NPDES stormwater program for industrial discharges.
B. Fueling and vehicle maintenance areas.
C. Areas within 1,000 feet up gradient or within 100 feet down gradient of karst features.
D. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
E. Areas with runoff from industrial, commercial, and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
F. Areas within 400 feet of a community water system well or within 100 feet of a private water supply well.
G. Areas where the soil through which stormwater would infiltrate is contaminated, through natural processes or past activities on or near the site.
H. Any area where the soil does not exhibit one of the following characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater, or at least a 5-foot soil layer with 10% fines or greater.

4.1.2.6 Where alternative uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph. Such alternate measures must be fully documented in the post-construction stormwater management plan for the site.

4.1.2.7 Systems/practices to infiltrate stormwater shall, to the maximum extent practicable, minimize the level of pollutants infiltrating to groundwater.

4.1.2.8 The permittee must ensure adequate long-term operation and maintenance of post-construction BMPs.

4.1.3 Failure to implement the SWPPP constitutes a violation of this permit.

4.2 Reviewing and Updating the Storm Water Management Program

4.2.1 *Storm Water Management Program Review:* The permittee must evaluate permit compliance, the appropriateness of BMPs, and progress towards achieving measurable goals identified in the SWPPP. The permittee must complete an annual review of the SWPPP, in conjunction with preparation of the annual report required under Section 4.3.2 of this permit.

4.2.2 *SWPPP Updates:* The permittee may change the SWPPP during the life of the permit in accordance with the following procedures:

A. Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWPPP may be made at any time upon written notification to the EPA Region 5 Office at the address indicate on Section 1.2.2.3.

B. The conditions of Sections t 2.1 - 2.3 of this permit apply to all BMPs that the permittee seeks to add to the SWPPP.

C. Changes replacing an ineffective or unfeasible BMP specifically identified in the SWPPP with an alternate BMP may be requested at any time to the EPA, Region 5 office at the address indicated in Section 1.2.2.3. Unless denied by EPA, Region 5, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If request is denied, EPA will send a written response giving a reason for the decision. The modification requests must include the following:

C.1. An analysis of why the BMP is ineffective or infeasible (including cost prohibitive);

C.2. Expectations on the effectiveness of the replacement BMP;

C.3. An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced; and

C.4. Change requests or notifications must be made in writing and signed in accordance with Section 7.11 of this permit.

D. If substantive changes that are proposed downscale or eliminate a component of the SWPPP, such modification must be submitted in writing for EPA review.

4.3. Changes to Service Area, Ownership, or Operational Authority related to the Storm Water Management Program

4.3.1 The permittee must implement the Storm Water Management Program on all new areas added to the existing MS4 as described in Section 1.1 (or for which the permittee becomes responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

4.3.2 Within 90 days of a change or transfer of ownership, operational authority, or responsibility for storm water management program implementation, the permittee must have a plan for implementing the Storm Water Management Program on all affected areas. The plan must include schedules for implementation. Information on all new annexed areas and any resulting updates required to the Storm Water Management Program must be included in the annual report.

4.3.4 Only those portions of the Storm Water Management Program specifically required as a condition in this permit shall be subject to the modification requirements of 40 CFR §124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWPPP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the Storm Water Management Program and not modifications to the permit.

4.4 Sharing Responsibility

Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. The permittee may rely on another entity only if:

4.4.1 The other entity, in fact, implements the control measure;

4.4.2 The particular control measure, or component of that measure, is at least as stringent as the corresponding permit requirement.

4.4.3 The other entity agrees to implement the control measure on your behalf. Written acceptance of this obligation is required. This obligation must be maintained as part of the description of the storm water management program. If the other entity agrees to report on the minimum measure, SMSC must supply the other entity with the applicable reporting requirements contained in this permit. If the other entity fails to implement the control measure, then SMSC remains liable for any discharges due to that failure to implement.

5. Monitoring, Recordkeeping, and Reporting

5.1 Monitoring

The permittee must plan and conduct monitoring as necessary to evaluate program effectiveness, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals.

5.1.1 Discharge Monitoring

Monitoring of MS4 discharges must be conducted to evaluate compliance with the effluent limitations in Section 2.3.1, sub-sections A, B, C, and E. At a minimum, monitoring must include visual observations/assessments of discharges during or soon after precipitation events as specified in Section 5.1.3. For example, fish kills may be a sign of toxicity in storm water discharges; algal blooms may be an indication of effects of nutrient contribution, foam or oil sheen may be a due to an illicit connection.

5.1.2 Storm Water Discharge Visual Observations

The permittee must conduct a visual observation and assessment of discharges from a Tribal MS4 outfall location at least six times each calendar year. For the purposes of this section of the permit, “outfall locations” are places where the Tribal MS4 releases storm water to a non-Tribal MS4 or to local surface waters (streams, rivers, lakes, wetlands). The outfalls to be visually assessed shall be rotated, such that all outfall locations are assessed at least once during the permit term. A visual observation/assessment must be conducted within ½ day after the start of a measureable storm event. For the purposes of this section of the permit, a “measurable storm event” is any rain event that results in a discharge from the MS4.

5.1.2.1 Storm water Discharge Observation/Assessment Procedures

5.1.2.1.1 The permittee must examine the storm water discharge, if still occurring, and the receiving water. The permittee shall examine the discharge and receiving waters and check the following water quality characteristics:

- Color;
- Odor;
- Clarity;
- Floating solids;
- Settled solids;
- Suspended solids;
- Foam;
- Oil sheen; and
- Other obvious indicators of storm water pollution.

5.1.2.1.2 The permittee shall also examine the outfall, the spillway, rip rap or other flow/energy dissipating systems (if present), and/or any land area over which the discharge flows before entering the water. The permittee check these features for:

- Non-natural discoloration;
- Odor;
- Trash;
- Settled solids;
- Foam;
- Oil sheen; and
- Other obvious indicators of storm water pollution.

5.1.2.1.3 The permittee must document the results of storm water discharge observations/assessments and maintain this documentation with the SWPPP. The permittee is not required to submit observation/ assessment findings to EPA, unless specifically requested to do so. At a minimum, discharge observation/assessment documentation must include:

- Observation/assessment dates, times, and locations;
- Precipitation information regarding the storm on that date(s);
- Results of observations of the storm water discharge, including any indicators of storm water pollution;
- Probable sources of any observed storm water contamination; and
- Personnel performing the visual assessment and their signatures.

5.1.2.1.4 Follow-up actions shall be implemented to investigate and address the sources of pollutants where a visual observation/assessment indicates the presence of pollutants

in the storm water (e.g., foam, oil sheen). Follow-up investigations and corrective actions shall be integrated with storm water management program control measures undertaken pursuant to Section 4 of this permit. Documentation of follow-up actions shall be maintained with the SWPPP.

5.1.3 The permittee may also conduct sampling and analysis of samples to characterize storm water discharge quality. When the permittee conducts sampling, the following are required:

A. *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

B. *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR § 136.

5.1.4 Records of sampling results shall be maintained with the SWPPP. Records of monitoring activities and results shall include:

A. The date, exact place, and time of sampling or measurements;

B. The names(s) of the individual(s) who performed the sampling or measurements;

C. The date(s) analyses were performed;

D. The names of the individuals who performed the analyses;

E. The analytical techniques or methods used; and

F. The results of such analyses.

5.2 Recordkeeping

5.2.1 The permittee must retain records of all monitoring information, including: all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit and the SWPPP, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request by EPA at any time.

5.2.2 The permittee must submit records to EPA, Region 5 office, at the address indicated in Section 1.2.2.3, when specifically asked to do so. The permittee must retain a copy of the SWPPP at a location accessible to EPA, Region 5 or local officials. The permittee must make its records and the SWPPP available to the public if requested to do so in writing. Confidential business information (CBI) may be withheld from the public but may not be withheld from those staff cleared for CBI review within EPA.

5.3 Reporting

The permittee must submit annual reports to EPA, Region 5 office, at the address indicated in Section 1.2.2.3 by March 10, during each year of the permit term. The first report is due March 10, 2014, covering the activities of the permittee during calendar year 2013. The report must include:

A. The status of compliance with permit conditions, an assessment of the appropriateness of the identified BMPs, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measurable goals for each of the minimum control measures as described in the SWPPP;

B. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

C. A summary of the storm water activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

D. Proposed changes to the Storm Water Management Program, including changes to the SWPPP, BMPs or any identified measurable goals as described in the SWPPP; and

E. Notice that the permittee is relying on another government entity to satisfy some of the permittee's permit obligations (if applicable).

6. Re-opener Clause

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with the Federal regulations at 40 CFR §§122.62, 122.63, 122.64, and 124.5. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate new finding regarding such things as endangered and threatened species and critical habitat protection (based on consultation with U.S. Fish and Wildlife Service) or historic preservation requirements to provide for additional consideration of effects to properties either listed in or eligible for listing in the National Register of Historic Places.

6.1 If there is evidence indicating that storm water discharges authorized under this permit is later determined to cause or have the reasonable potential to cause or contribute to the violation of applicable water quality standards, the permit may be modified to include different limitations and/or requirements.

6.2 If there is evidence indicating that storm water discharges authorized under this permit is later determined to impact federally listed endangered or threatened species or critical habitat, the permit may be modified to include different requirements which are protective of endangered or threatened species or critical habitat.

6.3 If there is evidence indicating that storm water discharges authorized under this permit is later determined to impact properties listed in or eligible for listing in the National Register of Historic Places, the permit may be modified to include requirements which are protective of historic properties.

7. Standard Permit Conditions

7.1 *Duty to Comply*. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

7.1.1 The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

7.1.2 The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty. The CWA provides that any person who *negligently* or *knowingly* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, is subject to criminal penalties and/or imprisonment.

7.1.3 Any person may be assessed an administrative penalty by the Administrator of EPA for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act.

7.2 *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

7.3 *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

7.4 *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

7.5 *Proper operation and maintenance.* The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

7.6 *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

7.7 *Property rights.* This permit does not convey any property rights of any sort or any exclusive privilege.

7.8 *Duty to provide information.* The permittee shall furnish to the EPA, Region 5, within a reasonable time, any information which the EPA, Region 5 may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to EPA, Region 5 upon request, copies of records required to be kept by this permit.

7.9 *Inspection and entry.* The permittee shall allow EPA, Region 5, or an authorized representative (including an authorized contractor acting as a representative of the Administrator of EPA), upon presentation of credentials and other documents as may be required by law, to:

A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA any substances or parameters at any location.

7.10 *Monitoring and records.*

7.10.1 Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

7.10.2 Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the permitting authority at any time.

7.10.3 Records of monitoring information shall include:

A. The date, exact place, and time of sampling or measurements;
B. The individual(s) who performed the sampling or measurements;
C. The date(s) analyses were performed;
D. The individual(s) who performed the analyses;
E. The analytical techniques or methods used; and
F. The results of such analyses.

7.10.4 Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.

7.10.5 The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine or by imprisonment or both.

7.11 *Signatory requirement.*

7.11.1 All applications, reports, or information submitted to EPA, Region 5 shall be signed and certified.

7.11.2 The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine or by imprisonment or by both.

7.12 *Reporting requirements.*

7.12.1 Planned changes. The permittee shall give notice to EPA, Region 5 as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

A. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or
B. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).
C. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

7.12.2 Anticipated noncompliance. The permittee shall give advance notice to EPA, Region 5 of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

7.12.3 Transfers. This permit is not transferable to any person except after notice to EPA, Region 5. EPA, Region 5 may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

7.12.4 Monitoring reports. Monitoring results shall be conducted and reported at the intervals specified elsewhere in this permit. If the permittee conducts monitoring/testing beyond what is required in this permit, records shall be maintained and results shall be summarized in annual reports.

7.12.5 Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule shall be submitted no later than 14 days following each schedule date.

7.12.6 Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause(s); the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7.12.6.1 The following shall be included as information which must be reported within 24 hours under this paragraph.

A. Any unanticipated bypass which exceeds any effluent limitation in the permit.
B. Any upset which exceeds any effluent limitation in the permit.

7.12.6.2 EPA, Region 5 may waive the written report on a case-by-case basis for reports under sub-section 7.12.6 of this section if the oral report has been received within 24 hours.

7.12.7 Other noncompliance. The permittee shall report all instances of noncompliance not reported specifically under this section, at the time annual reports are submitted. The reports shall contain the information listed in sub-section 7.12.6 of this permit.

7.12.8 Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to EPA, Region 5, it shall promptly submit such facts or information.

7.13 *Bypass*

7.13.1 Definitions.

A. *Bypass* means the intentional diversion of waste streams away from or around a portion of a treatment facility or treatment device.
B. *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

7.13.2. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of sub-sections 7.13.3 and 7.13.4 of this section.

7.13.3 Notice - Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

7.13.4 Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in sub-section 7.12.6 of this section (24-hour notice).

7.13.5 Prohibition of bypass. Bypasses are prohibited, and the permitting Authority may take enforcement action against a permittee for bypass, unless:

A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
C. The permittee submitted notices as required under sub-section 7.13.3 of this section.

7.13.5.1 EPA, Region 5 may approve an anticipated bypass, after considering its adverse effects, if EPA, Region 5 determines that it will meet the three conditions listed above in sub-section 7.13.5 of this section.

7.14 *Upset*

7.14.1 Definition: *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

7.14.2 Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of sub-section 7.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

7.14.3 Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

A. An upset occurred and the permittee can identify the cause(s) of the upset;
B. The permitted facility was at the time being properly operated;
C. The permittee submitted notice of the upset as required in sub-section 7.12.6 of this section (24 hour notice); and
D. The permittee complied with any remedial measures required under sub-section 7.4 of this section.

7.14.4. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7.15 *False Statements.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine or imprisonment or by both.

7.14 *Tribal Environmental Laws*

7.14.1 Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Tribal law or regulation under authority preserved by section 510 of the Act.

7.14.2 No condition of this permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.

7.15 *Severability.* The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

7.16 *Procedures for Modification or Revocation*. permit modification or revocation will be conducted according to 40 CFR §§122.62, 122.63, 122.64 and 124.5 unless otherwise specified herein.

8. Definitions

All definitions contained in Section 502 of the Act and 40 CFR §122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the event of a conflict, the definition found in the Statute or Regulation takes precedence.

Best Management Practices means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Control Measure as used in this permit refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA or the Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

Discharge, when used without a qualifier, refers to “discharge of a pollutant” as defined at 40 CFR §122.2.

Discharge-related activities include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the location, construction and operation of BMPs to control, reduce or prevent storm water pollution.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a MS4.

Illicit Discharge is defined at 40 CFR §122.26(b)(2) and refers to any discharge to a MS4 that is not entirely comprised of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from firefighting activities.

MS4 is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to a Large, Medium, or Small Municipal Separate Storm Sewer System (e.g. "the Dallas MS4"). The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities (e.g., the Houston

MS4 includes MS4s operated by the city of Houston, the Texas Department of Transportation, the Harris County Flood Control District, Harris County, and others).

Municipal Separate Storm Sewer is defined at 40 CFR §122.26(b)(8) and means 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.

New MS4 discharge of pollutants means a MS4 discharge that would first occur after the permittee's start date of coverage under this permit to a water of the United States to which the MS4 did not previously discharge storm water, and does not include an increase in a MS4's discharge to surface water to which the MS4 discharge on or before coverage under this permit.

SWPPP refers to the approved "Storm Water Pollution Prevention Plan" of the "Shakopee Mdewakanton Sioux Community MS4 Storm Water Pollution Prevention Program" dated March 10, 2004, which is a component of the NPDES permit application submitted by the SMSC.

Storm Water is defined at 40 CFR §122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Management Program (SWMP) refers to the Permittee's complete program to manage the storm water discharged from the MS4. This encompasses implementation of measures to comply with the conditions of this permit, including implementation of the SWPPP.