

Statement of Basis

NPDES Permit for Storm Water Discharges from The Shakopee Mdewakanton Sioux Community's Regulated Municipal Separate Storm Sewer System (MS4) To Waters of the United States

Permit No.: **MN0067423-2**

Public Notice No.: **14-04-01-A**

Statutory and Regulatory Background

EPA published Phase I of the national storm water regulations in 1990 and required medium-sized and large municipal separate storm sewer systems (MS4s) to apply for a National Pollutant Discharge Elimination System (NPDES) permit for their storm water discharges (Federal Register/Vol. 55, No. 222, 11/16/1990, pg.47990). In 1999, EPA published Phase II of the national storm water regulations. Operators of regulated small MS4s were required to apply for permit coverage by March 2003 (Federal Register/Vol. 64, No. 235, 12/8/1999, pg.68722). NPDES permits issued to Phase II MS4s require the small MS4s to develop and implement a storm water management 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 reduce pollutants in discharges to the maximum extent practicable, establish measurable goals for each BMP, and assign a responsible person to ensure the BMPs and measurable goals are met.

The Shakopee Mdewakanton Sioux Community's (or permittee) 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. A Federal NPDES permit is being reissued for the permittee's MS4 discharges located within the boundaries of the Reservation. NPDES permits for discharges in Indian Country are issued by EPA. *Indian Country*, as defined in 18 USC 1151, means: (a) all land within the limits of any

Indian reservation under the jurisdiction of the United States Government, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished. This definition includes all land held in trust for a Federally-recognized American Indian Tribe. Pursuant to the definition, the permittee's reservation is part of Indian Country and permits for discharges within the reservation boundaries are the responsibility of EPA.

SMSC Application History

The permittee is a regulated small MS4 community. The population within the reservation is 338, as reported in the permittee's NPDES Permit Renewal Application under Required Contents of Notice of Intent (NOI), submitted to EPA.

On March 24, 2010, EPA sent a letter to the permittee requesting renewal application information, including general information codified at 40 CFR 122.21(f) and minimum measures listed in 40 CFR 122.34, and information on whether discharges from its small MS4 affect Federally-listed endangered or threatened species or critical habitat, or historic properties. On March 26, 2010, the permittee responded with the requested information addressing the general requirements and minimum measures. The requirements related to endangered species and historic properties are addressed in Requirements of Federal Law.

The permittee has developed and submitted to EPA an updated Storm Water Pollution Prevention Plan (SWPPP) which describes the storm water program activities and control measures that will be carried out by the permittee, with a focus on the six minimum measures. EPA reviewed the SWPPP and found it addresses the six minimum measures and is suitable for the permittee's MS4 storm water program.

On the basis of preliminary staff review and applicable standards and regulations, the Regional Administrator of the EPA, Region 5, proposes to reissue the permit for discharges from the permittee's MS4.

Why EPA regulates MS4s and what kinds of pollutants may discharge to U.S. waters

Storm water discharges from MS4s in urbanized areas are a concern because of the presence of human made pollutants in these discharges. Common pollutants include oil and grease from roadways, pesticides and nutrients from lawns, sediment from construction sites, and trash such as cigarette butts, paper wrappers, and plastic bottles. Storm water picks up and transports these pollutants and then discharges them, untreated, to waterways via separate storm sewer systems. When left uncontrolled, these discharges may impair the waterways, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with habitat of fish, other aquatic organisms, and wildlife.

There are also impacts associated with the volumes and release rates of storm water from MS4s. The volumes and release rates can cause erosion of shorelines, stream banks, and channel substrates in downstream water bodies, resulting in increased releases of sediment and other pollutants and degradation of aquatic habitat.

Requirements of Federal Law

Comply with Endangered Species Act

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat. Based on mutual agreement between EPA and the U.S. Fish and Wildlife Service, no further action is required, since this is an existing facility that has been permitted by EPA in the past. We do not have any records indicating any critical habitat located in the area of potential effect nor will there be any construction in the area and therefore, the discharge from SMSC's MS4 should not have any adverse impacts. EPA has determined that reissuance of the permit will not affect the Bald Eagle or other threatened or endangered species.

Comply with National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that Federal agencies having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking or independent agency having authority to license any undertaking shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. Federal agencies shall afford the Advisory Council on Historic Preservation established under Title II of NHPA a reasonable opportunity to comment with regard to such undertaking.

EPA believes that no historic or archeological sites will be affected by reissuance of the permit. In a November 3, 2010 letter, the Minnesota State Historical Society concurred with EPA's findings that issuance of the permit will have no impact on historical or cultural sites within the project area. In a March 11, 2013 email message, the Tribe's Director of Cultural Resources has also concurred with EPA's findings.

Summary of Permit Conditions

Permit Coverage

The proposed permit will cover storm water discharges to waters of United States from all existing and new outfalls of the permittee's MS4 located within the reservation. This permit also

authorizes the discharge of certain non-storm water sources provided, as described in Part 1.2.2.2 of the permit, provided that EPA has not determined these sources to be substantial contributors of pollutants to the MS4.

Storm Water Pollution Prevention Program (SWPPP) and Six Minimum Control Measures

The permit requires the permittee to develop and implement a storm water management program on an on-going basis. The program is described in the permittee's SWPPP, which includes BMPs and measurable goals for each of the following six minimum control measures:

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

Objective: To reduce pollutant loading to water bodies to the maximum extent practicable (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 SWPPP.

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 water bodies. 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 permit establishes specific requirements and performance standards for the control of storm water runoff at sites where construction has occurred:

- Site designs must provide for management measures that infiltrate, evapotranspire, 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 and managed on-site with no discharge to surface waters.¹
- Infiltration BMPs must be drawn down within 48 hours.

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.

The permit requires permittee to implement the SWPPP submitted to EPA as part of the permit application. The SWPPP describes specifically how the permittee will implement the minimum control measures. The permit lays out requirements addressing changes/updates to the SWPPP.

Effluent Limits

Section 2 of the permit contains non-numeric effluent limits. This section of the permit requires the permittee to reduce the discharge of pollutants to the maximum extent practicable (MEP) in compliance with the management practices, control techniques, systems, design and engineering methods, and other provisions required under this permit. 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.

¹ Post-construction storm water discharges need to be controlled to both reduce pollutant loadings and to protect downstream water bodies from erosion and habitat degradation. Retaining the flows associated with a 90th or 95th percentile storm event is generally thought to be protective of downstream water bodies. The requirement in this permit, for the SMSC to retrain the first ½ inch of rainfall, is an incremental step in the direction of sustainable post-construction storm water management. The post-construction storm water management requirements applicable to SMSC's MS4 discharges may be strengthened in subsequent permits.

- 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.

Controlling Discharges to the Maximum Extent Practicable (MEP)

The permittee must reduce the discharge of pollutants to the 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 MEP as an iterative process -- MEP should continually adapt to current conditions and new BMPs and technologies. Successive iterations of BMPs and measurable goals will be driven by the objective of ensuring discharges support achievement of water quality standards.

For the purposes of this permit and this permit cycle, EPA, Region 5 considers MEP to be implementation of measures to meet Sections 2 (Effluent Limitations), 3 (Special Conditions) and 4 (Storm Water Management Program) of the permit.

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 measureable 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. Seeking out and addressing illicit discharge to the MS4 is one of the six minimum control measures required in the permit.

If the permittee discharges to surface waters for which a total maximum daily load (TMDL) has been approved, the permittee will describe an evaluation program to determine whether the storm water controls are adequate to meet the applicable waste load allocation(s) in the approved TMDL. Currently, EPA has not approved any TMDLs for water bodies to which the SMSC's MS4 discharges. Information on approved TMDLs in Region 5 can be found at: http://www.epa.gov/region5/water/wshednps/topic_tmdls.htm#states.

The permittee must also evaluate program effectiveness, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals. 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 Part 4.3.2 of the permit. Annual reports are due by March 10 of each year during the term of the permit.

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 records and the SWPPP available to the public if requested to do so in writing.

Procedures for reaching a final decision on the proposed permit

Comment Period: Interested parties may submit written comments on the draft permit within 30 days of the date of the public notice. Comments should be delivered or mailed to:

Attention: Brian Bell
U.S. Environmental Protection Agency, Region 5
NPDES Programs Branch (WN-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Interested parties may also send electronic comments via email to: bell.brianc@epa.gov.

Where to find a copy of the proposed permit: Send your request to the above address or via email to bell.brianc@epa.gov, or an electronic copy of the draft permit can be found at the following internet address: <http://www.epa.gov/region5/water/npdestek/notices.htm>.

Procedures for requesting a hearing: Any person may request a public hearing on the issuance of this permit. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. The request must be submitted in writing within 30 days of the date of the Public Notice, and should be mailed or delivered to the above address or via email to: bell.brianc@epa.gov. EPA, Region 5 will hold a public hearing if there is a significant degree of public interest in the draft permit.

For additional information: Please contact Brian Bell at the above address, via email to: bell.brianc@epa.gov or by calling (312) 886-0981.