

**MINNESOTA COASTAL NONPOINT PROGRAM
NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL**

FOREWORD

This document contains the basis for the National Oceanic and Atmospheric Administration's (NOAA) and the U.S. Environmental Protection Agency's (EPA) decision to fully approve Minnesota's Coastal Nonpoint Pollution Control Program (CNP). It discusses how the state has met each of the conditions of approval placed on the coastal nonpoint program submitted by Minnesota pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Findings for Minnesota's coastal nonpoint program were issued on June 23, 2003. Since that time, Minnesota has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials the state has provided to document how the conditions have been met, NOAA and EPA find that Minnesota has satisfied all conditions of approval.

This document is organized in the same fashion as the Findings for Minnesota's coastal nonpoint program. Where the Findings included a condition, this document repeats the condition, and discusses how the condition has been satisfied. For further understanding of terms in this document and the basis for these decisions, the reader is referred to the following: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, January 1993); *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993); *Flexibility for State Coastal Nonpoint Programs* (NOAA and EPA, March 1995); and *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998)

FINAL APPROVAL DECISION

NOAA and EPA find that the state of Minnesota has satisfied all conditions placed on approval of the Minnesota coastal nonpoint program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, Minnesota's coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Minnesota coastal nonpoint program does not relieve the state of any requirements under the Endangered Species Act.

URBAN

NEW DEVELOPMENT

CONDITION: Within two years Minnesota will demonstrate that all areas within the Lake Superior Basin not subject to the State Shoreland Management Act (M.S. 103F) or subject to NPDES Phase I or II of the MS4 program will implement the Section 6217(g) new development management measure via water plans or some other mechanism. Within two years the state will also demonstrate through a pilot project or further data/information sharing with NOAA/EPA that its management practices taken in combination provide for 80 percent reduction of total suspended solids (TSS) by design or performance.

FINDING: Minnesota has met this condition.

RATIONALE: Minnesota satisfied the original request by explaining how local water plans and other processes ensure implementation of the new development management measure. Detailed examples from multiple local plans were provided to NOAA and EPA. Each of these local plans contains goals, funding mechanisms and procedures for implementing the new development management measure. The information submitted clarified the exact percentage (17.5%) of the Minnesota coastal nonpoint management area that was of greatest concern to NOAA and EPA (i.e., not subject to Phase I/II or other state regulatory oversight), and then went on to identify planning processes and programs that explicitly incorporate language from the management measure. Specifically, the North Shore Management Plan (Appendix F) and the active participation of state staff in the review of local water plans help to ensure that the new development management measure is implemented throughout the entire coastal nonpoint area. Region 5 EPA and NOAA are especially impressed with the success and scope of the Northland Nonpoint Education for Municipal Officials (NEMO) program and its ability to reach local decision-makers.

NOAA and EPA also found that the practices in use in Minnesota to address new development are consistent with the practices called for in the 6217 (g) guidance to achieve post-development TSS loadings at a level no greater than pre-development loadings. These practices are outlined in various Best Management Practices (BMPs) and stormwater guidance documents provided by the state. The federal partners found the suite of practices to be equivalent to practices that EPA believes will result in 80% TSS removal by design or performance. Examples of the Minnesota new development management measure implementation practices can be found in the comprehensive management measure guidance for Lutsen (<http://www.co.cook.mn.us/sw/Lutsenpoplarriver.pdf>) and in various local adaptations of Minnesota guidance manuals, such as: <http://www.metrocouncil.org/environment/Watershed/BMP/manual.htm>

In addition to active state participation in the development and implementation of local water plans, the work performed by the Minnesota Erosion Control Association appears to be on the cutting edge of cold-climate stormwater management research and implementation.

WATERSHED PROTECTION AND SITE DEVELOPMENT

CONDITION: Within two years, Minnesota will demonstrate how the state ensures implementation of the watershed protection and site development measures throughout the entire 6217 management area when the Local Government Unit (LGU) does not implement the management measures. Particular emphasis should be provided for those elements of the measures designed to be preventive.

FINDING: Minnesota has met these conditions.

RATIONALE: Local governments are the primary land use authorities in Minnesota. However, in order to ensure statewide protection of environmental resources, the state has instituted a number of statewide planning and permitting laws, programs and resources, and has actively adopted associated federal permitting and financial incentive programs. Minnesota uses the following laws and programs to ensure implementation of the watershed protection and management of site development throughout the 6217 management area.

A combination of regional and local planning efforts, state and federal regulations, incentive grants, local and state implementation, and state agency oversight provide effective measures to ensure watershed protection and management of site development throughout the 6217 management area. Land use authority in Minnesota is vested primarily in local governments, with state requirements for specific public health, safety and welfare concerns, including environmental protection. State programs and policies provide assistance and incentives for effective planning and implementation of environmental protection, as well as procedures for state oversight and enforcement of key programs and associated requirements.

Examples of specific programs, plans and projects that directly address the preventative elements of the watershed protection and site development management measures include the following:

- 1) The Comprehensive Lake Superior Basin Plan: Chapter 7 of this plan contains a comprehensive watershed assessment that uses Total Maximum Daily Load (TMDL) listings to focus local governments on potential retrofits to achieve water quality standards. A Programmatic Work Group (PWG) established for the Basin Plan includes members from all levels of government. The PWG meets regularly with local governments to coordinate implementation efforts, which include defining priority areas for protection in addition to determining suitable restoration strategies.
- 2) Comprehensive Local Water Management (CLWM) Program: Comprehensive Local Water Plans help enable counties and Soil and Water Conservation Districts in Minnesota to identify priority issues and opportunities for preservation and improvement of water resources. State agencies provide input in developing goals aligned with state and basin-wide objectives. Regular updates allow the Minnesota Department of Natural Resources (MDNR), the Minnesota Pollution Control Agency (MPCA) and the Board of Water and Soil Resources (BWSR) in Minnesota to provide a consistent message to help ensure that LGUs are addressing basin-wide nonpoint issues, including watershed protection and site development. All four counties in the Lake Superior Basin have Comprehensive Local

Water Plans that are a primary mechanism for defining and addressing priority concerns for coastal nonpoint management. The state agencies approve the plans based on key components and implementation of federal, state and local water management programs. Incentives for LGUs to approve and implement an adequate Comprehensive Local Water Plan are the associated state Natural Resource Block Grants for local water planning, shoreland management and Wetland Conservation Act implementation, as well as state Local Water Management Challenge Grants for implementation projects. An approved Local Water Plan is a requirement for these and other state grants. The BWSR enforces this requirement during annual grant allocations. Local Water Plans in the Lake Superior Basin are encouraged to include Coastal Management Measures, including watershed protection and site development.

- 3) **Wetland Conservation Act (WCA):** The WCA provides effective authority and processes to avoid, minimize and/or mitigate impacts to wetlands in the Lake Superior Basin, including sensitive wetland areas in the watersheds and floodplains of Lake Superior tributary streams and rivers. Sixteen local government units (LGUs) administer the WCA locally in the Basin. The WCA includes provisions for technical assistance to LGUs (via Technical Evaluation Panels (TEPs)) and state oversight of LGU decisions (via audits and appeal procedures). The TEPs involve local and state government representatives with substantial knowledge of sensitive water resources in the Lake Superior Basin, including areas particularly susceptible to erosion and sediment loss that could impact existing wetlands. The TEPs conduct on-site reviews early in the permitting process. The TEPs in the Basin have gained substantial knowledge, experience and effectiveness since the WCA was adopted in 1991. The required submittal of a Joint Notification Form triggers project review by the BWSR, MDNR, the United States Army Corps of Engineers (USACE), and the LGU. State agencies can and do provide recommendations including standards and criteria for land subdivisions and site development to avoid, minimize and/or mitigate effects on jurisdictional wetlands and associated natural drainage systems that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota. Joint review of applications helps ensure that development is sited to protect, to the extent practicable, the integrity of natural drainage systems and water bodies consistent with the watershed protection and site development management measures. All project plans that involve existing jurisdictional wetlands may be reviewed by MDNR, MPCA, and the BWSR for consistency with 6217 watershed protection requirements and watershed based planning efforts.
- 4) **Alternative Urban Areawide Review (AUAR):** The AUAR's key feature is that its focus is on a development scenario or several scenarios for an entire geographical area rather than a specific project. LGUs considering the AUAR process consult with the Minnesota Environmental Quality Board early in the planning stages. All AUARs must contain a mitigation plan, which is a key result of the AUAR process, commanding careful attention by both the regional government unit and reviewers. This plan must specify not only the physical measures, but also the legal (enforcement) and financial measures and institutional arrangements to ensure mitigation. The plan is not merely a list of ways to avoid significant environmental effects, but an action plan for how effects will be

avoided, minimized, and/or mitigated. A significant goal of these plans is to proactively protect and preserve naturally significant areas of the region, the critical element of watershed protection.

- 5) NEMO Water Quality Management Ordinance Training and Model Ordinances: This local effort, coordinated by Minnesota Sea Grant and working in conjunction with a statewide NEMO effort, produces accessible presentations to LGUs addressing ordinance development, ordinance components, and model ordinance language with explanations to help decision-makers protect natural areas and create the best water quality protection tools for their area. Ordinances that address water quality include stormwater, shoreland, erosion control, and subdivision ordinances. Minnesota NEMO helps communities implement components of their comprehensive land use plans by providing policy advice and education on appropriate ways to protect water quality.

EXISTING DEVELOPMENT

CONDITION: Within two years, Minnesota will include in its program management measures in conformity with the Section 6217(g) guidance for existing development and demonstrate how the program includes enforceable policies and mechanisms to ensure implementation throughout the 6217 management area. NOAA and EPA request that Minnesota provide, within two years, a list of retrofit opportunities in the 6217 management area and a schedule for implementing retrofits. Minnesota should also provide examples of how watershed management programs are addressing the priorities identified in the 6217 management area (through implementation of the existing development management measures).

DECISION: Minnesota has met this condition.

RATIONALE: As evidence of Minnesota's commitment to fully implementing its Coastal Nonpoint Program, the state provided detailed project descriptions of retrofit projects consistent with the existing development management measure for all watersheds referenced in the original condition. In addition, the state has awarded a NOAA Coastal Program Grant, for the period extending from June 2005 – July 2006, to address retrofit opportunities on drainage ways associated with U.S. Highway 61 from Duluth to the Minnesota border with Ontario. Highway 61 is a primary transportation corridor along the North Shore of Lake Superior that crosses numerous tributary rivers and streams. The BWSR will partner with the Minnesota Department of Transportation (MnDOT) and LGUs along the North Shore to identify opportunities to retrofit existing conveyance systems. This grant will also explore situations where townships and municipalities are working to incorporate sound planning practices within the Highway 61 corridor with respect to maintaining water quality by addressing pollutant loading and increased stormwater capacity issues. Sites identified as retrofit opportunities will be conveyed to the municipality, county, and MnDOT for consideration during future road corridor repair or improvement. The BWSR will provide literature and plans of similar case studies and propose solutions to be incorporated to best protect and restore water quality while ensuring safety for the traveling public with regard to roadway flooding.

In addition to the new efforts and more detailed descriptions provided by the state, Minnesota implements existing development management measures, including both new and retrofit BMPs, throughout the 6217 management area via a number of existing programs and processes. The TMDL development process and active technical assistance from state agency personnel ensure that existing development retrofit and restoration opportunities are identified and addressed. Overarching programs and priorities are described below:

- The Lake Superior Basin Plan, which provides a comprehensive assessment of watershed conditions and vulnerabilities in relation to water quality, is a basis for more refined watershed prioritization and watershed project implementation. The Implementation Framework outlined in the Basin Plan includes guiding principles that help define priorities for addressing existing development management measures. The Implementation Framework also includes a proposed structure for coordination, plans for an Implementation Inventory of current projects, players and funding, and plans for an Implementation Work Plan. The Implementation Inventory is currently in process. Development of the Implementation Work Plan will be the next step. Cooperation is strong among involved state and federal agencies, LGUs, nonprofit organizations and industry.
- The TMDL program and process is well established in the Lake Superior Basin. This is a key focal point for nonpoint pollution control for both new and existing development. TMDL projects in the 6217 management area have been, and will continue to be, prioritized and scheduled. TMDL implementation includes both new and retrofit BMPs.
- Comprehensive Local Water Management Plans are an existing tool used to implement management measures within all counties of the 6217 management area. During the plan update period, state agencies have the ability to request that counties assess potential retrofit opportunities and/or align TMDL objectives with plan priorities. The Minnesota Local Water Management Program provides an existing mechanism for integrating state and local priorities for restoration of impaired waters and protection of unimpaired waters. Where appropriate, these existing local water plans will be adapted to implement TMDLs to ensure that existing development contributing to NPS pollution is addressed.
- The Minnesota Legislature is considering a Minnesota Clean Water Legacy Act to help integrate and fund planning and implementation for restoration of impaired waters, as well as protection of unimpaired waters.

In addition, Minnesota has the following programs that directly address the protection of natural conveyance systems and buffers:

- Public Waters Work Permits protect natural conveyances, including buffers. These permits, administered by MDNR, are required for a wide array of work in public waters of the state.
- The Minnesota Wetland Conservation Act provides protections for riparian wetlands, which are a common type of natural stream buffer in the Lake Superior Basin.
- The Minnesota Shoreland Management Act requires counties to implement standards for protection of shoreland areas at a minimum within 1,000 feet of a lake and 300 feet of a public watercourse. The North Shore Management Plan serves this function along the North Shore of Lake Superior.

- Minnesota Forest Management Guidelines, and the associated Minnesota Forest Resources Council, provide comprehensive and consistent guidance, compliance monitoring and periodic audits for commercial and private forest management to protect water quality.

Minnesota provided many examples of both urban and rural watershed restoration and protection projects to illustrate the state's commitment to implement both new and retrofit BMPs to restore and protect water resources throughout the 6217 management area. The Lake Superior Basin Plan and TMDL program are current overarching programs for prioritization and implementation of watershed restoration and protection, including the existing development management measures. The very active planning, prioritization and implementation efforts in the Lake Superior Basin demonstrate that state agencies and local government units in Minnesota are implementing the existing development management measure.

ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within two years, Minnesota will demonstrate how the MDNR Protected Waters Permit Program, or another state program, ensures implementation of the practices contained within this Section 6217(g) management measure for all local roads, highways, and bridges, including roads and highways that do not cross waterbodies outside of designated MS4 areas.

DECISION: Minnesota has met this condition.

RATIONALE: In addition to existing regulatory programs, Minnesota provided information on training and certification programs, as well as coordination and cooperation between road authorities, inspectors, contractors and agencies, which are effectively implementing the practices identified in the management measures for Operations and Maintenance for RHBs. Especially impressive are the new education programs, such as the Circuit Training and Assistance Program, which provides training in the latest transportation-related technologies to personnel from townships, cities, counties, and the state. These programs are reaching the right audiences and the majority of stakeholders involved in Road, Highway, and Bridge (RHB) operation and maintenance.

TECHNICAL ASSISTANCE

CONDITION: Within two years, Minnesota will include methods in its CNP that demonstrate how technical assistance will be provided to local governments and the public for the implementation of additional management measures.

DECISION: Minnesota has met this condition.

RATIONALE: The state has demonstrated that well-established programs, functions, and partnerships among federal, state and local government units, the University of Minnesota, and industry and nonprofit organizations exist in Minnesota to deliver technical assistance for planning and implementation of BMPs to protect and improve water quality, including the

development and implementation of new or additional management practices. Technical assistance for additional management measures in the CNP planning area of Minnesota will be provided through these programs, functions and partnerships. Information and education is an integral part of the technical assistance delivery system for conservation and nonpoint pollution control in Minnesota. NOAA and EPA are confident that the CNP requirement for providing technical assistance for additional management measures will be amply fulfilled in Minnesota as necessary to achieve restoration of impaired waters in the Lake Superior Watershed.

ADDITIONAL MANAGEMENT MEASURES

CONDITION: Within two years, Minnesota's CNP will provide for the identification of additional management measures and the continuing revision of management measures applicable to critical coastal areas in cases where Section 6217(g) measures are fully implemented but water quality threats or impairments persist.

DECISION: Minnesota has met this condition.

RATIONALE: Minnesota plans to focus the CNP on implementing the baseline management measures for the first five years after full program approval. The state recognized the need to develop additional management measures in those areas where baseline measure implementation fails to achieve water quality standards.

There are a number of processes in place in Minnesota to define the need for additional management measures/BMPs, to develop these additional management measures/BMPs and to periodically update current BMPs. These processes involve strong partnerships among federal, state and local government units, as well as nonprofit organizations and industry. Partnership processes and demonstration projects to develop and periodically update BMPs in Minnesota are ongoing and effective. For example, as part of the state's TMDL planning and implementation efforts, technical committees and adaptive management processes are used to identify needed additional management measures for immediate implementation, as well as additional management measures based on performance monitoring of TMDL plans. These processes are focused on ensuring that impaired waters throughout Minnesota, including the 6217 management area, are brought into compliance with water quality standards. NOAA and EPA recommend that Minnesota continue to use existing impaired waterbodies, such as those contained in the state 303(d) list of impaired waters, as the basis for targeting areas in need of additional management measures.