

Legislative Report on Water Permit Streamlining for Transportation Projects

January 2013



Minnesota Department of
Transportation

Minnesota Department of
Natural Resources

Minnesota Pollution
Control Agency

Water Permit Streamlining for Transportation Projects

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- MnDOT and partner agency staff time
- University of Minnesota Center for Transportation Studies contract costs for writing and editing
- Consultant to assist local road authorities

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Legislative Directive

Laws of Minnesota 2012, Regular Session
Chapter 287, Article 3, Section 63

REPORT ON WATER PERMITTING PROCESSES FOR TRANSPORTATION PROJECTS.

By January 15, 2013, the commissioners of transportation, natural resources, and the Pollution Control Agency, in consultation with local road authorities and the Board of Water and Soil Resources, shall submit recommendations to the house of representatives and senate committees and divisions with primary jurisdiction over environment and natural resources policy and finance and transportation policy and finance on how water-related permitting for transportation projects can best be streamlined through creation of a single-point-of- issuance system.

The recommendations shall:

- (1) outline a single-point-of- issuance system in which road authorities applying for state water permits would interact with a single state agency serving as the sole intermediary on behalf of all state agencies with an interest in a road authority's water permit application;
- (2) provide a goal for the maximum number of days the state believes are necessary to issue final water permitting decisions;
- (3) identify how state entities with current oversight authority over water permitting decisions would allocate resources to accommodate a single-point-of-issuance system; and
- (4) suggest strategies to enhance the coordination of federal and state water permitting information gathering and decision-making.

Executive Summary

This report on streamlining water permitting processes for transportation projects was undertaken in response to Laws of Minnesota 2012, Chapter 287, Article 3, Section 63, directing the commissioners of the Minnesota Department of Transportation, the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency, in consultation with local road authorities and the Minnesota Board of Water and Soil Resources, to provide recommendations on how water-related permitting for transportation projects can best be streamlined by creating a single-point-of-issuance system.

Local road authorities supported the legislation requiring this report in the belief that while a multitude of state and federal entities will continue to be involved in water permitting, the processes employed by those entities can be improved through increased communication, risk-based evaluation and sustained collaboration between state agencies and local road authorities. (In this report, the terms "risk" and "environmental risk" are used to reflect a project's potential to cause harm to the environment.)

This report is the result of a collaborative effort between local road authorities and the named state agencies. Its recommendations identify recently implemented practices that should continue and expand, new initiatives and new technologies to streamline water permitting processes. Some recommendations require additional state investment for full implementation; however, many can begin to be implemented at existing resource levels. In addition, the report identified process improvements already underway that should continue.

Summary of water permit streamlining committee recommendations:

- Build on current initiatives
 - Conduct joint training and coordinate federal, state and local permit streamlining efforts
 - Incorporate Section 401 water quality certifications into the 150-day timeline goal for permits
- Begin new initiatives using existing resources
 - Create an interagency water permit facilitator for local road authorities
 - Review and proactively address inconsistent and conflicting permitting requirements
 - Coordinate other state permit streamlining efforts with the recommendations in this report
 - Monitor progress on established goals for permit processing timelines
- Invest in longer-term initiatives
 - Establish an electronic single-point application process for water permits
 - Create consistent risk-based permit application and review processes

When implemented, these recommendations will lead to a more efficient and effective permitting process that increases transparency and predictability for local road authorities while maintaining environmental protections.

I. Introduction

To develop this report, the state agencies and local road authorities built on existing programs, relationships and expertise by forming a cooperative committee focused on improving the process for water-related permitting for transportation projects in Minnesota. The committee members made it their goal to identify the most effective options for streamlining the permitting process while meeting the needs of stakeholders.

The committee considered water permitting broadly to include water and wetlands certifications, permits and other approvals required by the MPCA, DNR and federal agencies. Discussions also

addressed Wetlands Conservation Act approvals overseen by BWSR and the role of the U.S. Army Corps of Engineers. Throughout this report, “water permits/permitting” refers to all relevant state and federal agency water and wetlands permits, certifications and approvals required for transportation projects in Minnesota.

The committee held biweekly meetings on a schedule designed to ensure that local government representatives could participate and proactively provide input. At the same time, the local government task force initiated a statewide county engineer engagement effort to solicit and compile feedback on a set of overarching principles important to local governments. Information from this process was made available to the committee.

Through these collaborative meetings and information exchanges, the committee developed the recommendations in this report. These recommendations identify recently implemented streamlining practices that should continued and expand, new initiatives and new technologies to streamline water permitting processes.

Some recommendations require additional state investment for full implementation; however, the committee also identified initiatives that can be implemented at existing staff and funding levels. In addition, the committee identified process improvements already underway that should continue.

Members of the committee plan to continue meeting in order to expand cooperative efforts and advance the recommendations in this report.

II. Evaluating a single-point permitting system

A process that provides a single point of issuance for all state water permits for transportation projects would allow local road authorities to interact with a single state agency that serves as the sole intermediary on behalf of all state agencies with an interest in the permit application.

As state agencies and local road authorities began to explore water permit streamlining, all agreed there were opportunities to improve the current system without transitioning to a completely redesigned system. While local road authorities believe that a single-point-of-issuance system may offer potential benefits, all project stakeholders recognize that the time, costs and risks associated with the development and implementation of a completely redesigned system would be significant. These challenges reduce the potential net benefit of a single-point- of-issuance model.

However, modifying the current process offers significant benefits to state agencies and local road authorities. Therefore, state agencies and local road authorities focused their effort on developing recommendations to create a single-point-of-application and information system and improve existing processes. These recommendations improve transparency, timeliness and accountability throughout the water permitting process for transportation projects.

Recommendation: Establish an electronic single-point application process for water permits

State agencies should coordinate with local road authorities to develop a comprehensive water permitting process with a single-point application to increase efficiency and provide accessible real-time information.

A single-point application process should allow a local road authority to submit all information for a water permit to all relevant state agencies at one time. This avoids the need to submit information to multiple agencies in a variety of formats. It also avoids the need for the local authority to determine exactly what information is required by which agency, since all information required by all agencies

would be included on the application form. Upon submittal, all state agencies with jurisdiction over the permit would receive the application and begin their review. A single-point application process would not alter state agency review authority, but would simplify the initial application process.

A single-point application process should have a feedback mechanism that allows tracking permits through the application, review and, if necessary, appeals process. This would provide the applicant with up-to-date information on the status of their application. It would also provide the agencies with performance data that can be used in future assessments of permitting processes.

Existing documents and processes provide a foundation from which to build a comprehensive single-point application process for water permits related to transportation projects. Currently the DNR, MPCA and U.S. Army Corps of Engineers accept a paper "Joint Application Form" for water and wetland permits and authorizations. The Minnesota Wetlands Conservation Act process also uses this application form for certain applications and reports. In addition, the DNR, with the involvement of BWSR, MPCA and the U.S. Army Corps of Engineers, is developing online permit-application and data-tracking systems. The DNR expects the completion of this project by July 1, 2013. While this system will only accommodate permit submittals for the DNR, it should be possible to expand the concept in the future to provide a comprehensive single-point application for all water permits for local transportation projects.

Recommendation: Create an interagency water permit facilitator for local road authorities

State agencies should collectively establish an interagency water permit facilitator position to assist local road authorities as they navigate the state and federal water permitting process.

Currently no one at the state level addresses water permitting comprehensively, requiring local road authorities to work directly with each agency requiring a permit, certification or other approval. The facilitator would be available to assist local road authorities on an as-needed basis by coordinating between state agencies, local road authorities, the U.S. Army Corps of Engineers and other relevant agencies during the permitting process. When issues arise, the facilitator would work to ensure all agencies are communicating and coordinating their activities. Examples of existing coordinated inter-agency staffing (provided in Appendix E) serve as a general template for this position.

One primary role of the permit facilitator would be assisting project proposers to ensure that their application includes all information necessary for state agencies to make decisions. The issues of what information is clarifying data versus missing data (making an application incomplete) and the timeliness of an agency or applicant's response weigh heavily into the number of days necessary to reach a decision on an application.

Projects undergoing a lengthy review, although infrequent when compared to the total number of permits processed, are a key area of concern and can skew perceptions about general water permitting timelines and processes. Lengthy permit reviews, whether due to project complexity or systemic challenges such as conflicting evaluation criteria, need attention and improvement. Both of these types of challenges (unique and systemic) could be addressed by the interagency water permit facilitator. State agencies and local road authorities anticipate that as the interagency water permit facilitator assists local road authorities through the permit process, the facilitator will be able to identify and assess both types of challenges.

As a state entity already funded by local road authorities to assist local governments on transportation issues, the MnDOT State Aid for Local Transportation division is uniquely positioned to develop and support the position of interagency water permit facilitator. The MnDOT State Aid division has agreed to establish this position as a one-year pilot. Other state agencies will help develop mutually agreed upon protocols under which the interagency permit facilitator will operate.

Recommendation: Review and proactively address inconsistent and conflicting permitting requirements

State agencies should work together to proactively resolve inconsistent and conflicting permit requirements, both at the individual project level and systemically.

The local government task force expressed interest in having consistent permitting criteria that allow them to know in advance what restrictions or limitations to expect. The agencies, by design, have differing goals and must act under their governing laws, which provides for more robust protection of state resources and the public interest. However, when faced with conflicting priorities or where the implementation of various agency requirements work at cross purposes, the agencies should work together to resolve these discrepancies.

In one instance of interagency progress in this area, MPCA and DNR collaborated over the past year to increase lateral coordination between the agencies and develop a process to attain resolution in cases where agency priorities conflict. For example, the use of a silt curtain for storm water and erosion control is a common best practice required by MPCA; however, the configuration can block turtle migration, which is a concern to DNR. The two agencies are developing guidance on techniques for silt curtain placement to meet the goals of both agencies.

Beyond simply addressing conflicts as they pertain to a given permit, the facilitator would be in a position to identify these systemic conflicts and recommend strategies to minimize or prevent them. The facilitator would not have decision-making authority over interagency conflicts that cannot be resolved at the staff level, but would elevate the review to higher levels within the agencies.

III. Streamlining permit processing time

A variety of efforts in recent years encourage streamlining and reduce the review time required for permit applications. Table 1 summarizes recent and ongoing streamlining efforts, including the objective and the anticipated date of completion for each initiative.

Table 1: Other recent streamlining efforts

Streamlining effort	Objective(s)	Expected date of completion
Minnesota Executive Order No. 11-04	Establishes goals and procedures to ensure that certain environmental permits are issued more efficiently.	Completed
Minnesota Executive Order No. 12-04	Supports and strengthens implementation of the state's wetlands policy.	Completed
Water Governance Evaluation required by Laws of Minnesota 2011, Chapter 2, Art. 4, Sec. 33	MPCA to collaborate with other water agencies and the University of Minnesota on improved policies, processes, and requirements across distinct, but sometimes overlapping, water management roles.	January 15, 2013
Minnesota Executive Order No. 11-32	EQB to coordinate statewide environmental and strategic planning activities. Four activities are specified in the executive order.	November 15, 2012 and January 15, 2013
Laws of Minnesota 2012, Chapter 150 and Laws of Minnesota 2011, Chapter 4	Amends Minnesota Statutes related to the state's goal that environmental and resource management permits be issued or denied within 150 days of the submission.	Completed
DNR and MnDOT interagency agreement	DNR and MnDOT have been working under an interagency agreement. One product of this was the	Ongoing

	development of a best practices guidance manual for meeting state environmental and permitting regulations. This manual is an integral part of a DNR general permit that streamlines permitting of state highway projects for replacement of bridges and culverts within public waters without loss of environmental protection. This has resulted in increased environmental compliance, increased consistency and reduced delay on MnDOT projects.	
DNR and MPCA collaboration	DNR and MPCA are working together to address stakeholder confusion around DNR's public waters work permitting and MPCA's construction storm water general permit, water quality violations and enforcement actions.	Ongoing
DNR General Permits Enabling Law: Minnesota Statutes, Chapter 103G	General permits have been issued for classes of activities where the authorized work must be completed in accordance with specific, approved standards. These have been issued to the general public, other agencies, counties, soil and water conservation districts, watershed districts and cities. Issuing general permits to other regulatory units eliminates the need for duplicate permits.	Ongoing
DNR Permitting and Reporting System	DNR is designing an online system for water use reporting, permitting processes for work in public waters and water appropriation permit applications. This system will ensure a standardized and streamlined application process statewide and improve transparency. Clean Water Fund dollars have made this project possible.	July 1, 2013
Permit Efficiency Reporting Required by Minnesota Statutes 84.027 Subd. 14a and 116.03 Subd. 2b	DNR and PCA must report on the average time it takes to make a permit decision.	February 1st and August 1st of each year
Implementation of Office of Legislative Auditor Permitting Recommendations	DNR improved data management and permit tracking. They established new timelines for permit review and developed clear guidance for DNR staff as to what constitutes a complete EAW submittal. The MPCA created a new permit tracking database that consolidated data from four other databases that serve the agency's 13 permitting programs and standardized numerous permit application forms and permit process steps to meet the law's requirements and goals.	Completed
DNR, BWSR, MPCA and USACE Single Point of Application	This process is for any project affecting a lake, river, stream or wetland needing local government unit approval pursuant to the Minnesota Wetlands Conservation Act , a DNR permit to work in public waters and a Department of the Army permit (33 CFR 325). MPCA also uses this form for 401 certification on these projects.	Completed

Recommendation: Coordinate other state permit streamlining efforts with the recommendations in this report

State agencies and local road authorities should invite stakeholders from the other permit streamlining initiatives to participate in future efforts stemming from this report.

In addition to this report, other ongoing initiatives resulting from legislation and executive orders have implications for water permitting timelines in Minnesota. These efforts should be coordinated to avoid duplicative efforts among and between state agencies.

Recommendation: Incorporate Section 401 water quality certifications into the 150-day timeline goal for permits

MPCA Section 401 certification should continue to meet the 150-day timeline established in Executive Order 11-04.

State agencies are already working to fully comply with Executive Order 11-04. The MPCA does not consider Section 401 water quality certification to be a state permit for purposes of Executive Order 11-04. However, in May 2012, after discussions with local road authorities, the MPCA agreed to follow, track and report on timelines for issuing Section 401 certifications. In addition, the MPCA implemented a number of process improvements designed to speed up Section 401 certifications. At this time, all 401 certifications meet the goals of the executive order.

Currently, the average time for 401 certification for all high-risk, individually permitted projects is 91 days. There are generally about 50 high-risk individual projects per year, with transportation projects being a subset of those. There are about 2,000 low-risk projects per year that are handled through general permits. The processing time for 401 certification for these low-risk projects is zero days because they are “pre-certified.” For all projects (low- and high-risk combined), the average time for certification is slightly more than two days.

Recommendation: Monitor progress on established goals for permit-processing timelines

State agencies should continue to monitor the processing of permit applications. In addition, state agencies and local road authorities should convene on a regular basis (at least annually) to share progress and to identify further opportunities to improve water permit streamlining in Minnesota.

Ongoing monitoring ensures permits are processed efficiently and that accurate information is available when considering future improvements to the permitting process. Appendix C provides links to DNR and MPCA permit performance reports.

IV. State and federal coordination

The water permitting process can be enhanced through increased state and federal coordination during the collection of information, project review, decision making and training.

Recommendation: Conduct joint training and coordinate federal, state and local permit streamlining efforts

State agencies should convene meetings with local, state and federal water permitting stakeholders in the months ahead to ensure all available opportunities for permitting efficiency and coordination are explored and, when possible, implemented. In addition, additional joint training should be pursued, including training to increase state and federal agency awareness of local processes and concerns.

While initial progress can occur through the recommendations in sections II and III of this report, long-term success requires federal participation.

State agencies see the potential for progress in the recently reauthorized federal transportation bill (MAP-21), which emphasizes streamlining of environmental documents, processes and permits for state and local transportation projects that use federal funding. MAP-21 supports earlier coordination and the use of programmatic approaches. It also establishes a framework for setting decision-making deadlines and issue resolution.

Other relevant opportunities include, but are not limited to, the following:

- The Federal Highway Administration’s Every Day Counts initiative seeks to identify and deploy innovation aimed at speeding project delivery, enhancing roadway safety and protecting the environment. In the area of project delivery, one priority is to expand the use of programmatic agreements. FHWA will continue to focus on general expansion of programmatic approaches under this initiative, but also on agreements with the U.S. Army Corps of Engineers and the US Fish and Wildlife Service. For more information, see www.fhwa.dot.gov/everydaycounts.
- Continued coordination between BWSR and U.S. Army Corps of Engineers for projects requiring both WCA and 404 approvals. A long-term goal would be for the federal government to recognize the overall protection and service delivery outcomes under WCA, effectively eliminating the need for separate Section 404 permitting in situations where program permitting outcomes are the same. In the shorter term, the issuance of a general permit or blanket certification by the USACE that would allow projects funded under the BWSR local road wetland replacement program to avoid getting a project-specific Section 404 permit should be actively pursued.
- A newly developed reference guide to the U.S. Army Corps of Engineers permitting process may provide information for improvement of state-level permitting.
- Joint training by BWSR and U.S. Army Corps of Engineers has been provided. This coordination should continue and be expanded.

V. Resource allocation

Ultimately, projects affecting the state’s most environmentally sensitive areas should receive greater attention than routine projects with little environmental impact.

Recognizing this, agencies should continue to develop consistent risk-based approaches to permitting so permit application requirements and review periods are commensurate with a project’s potential to cause environmental harm. This would reserve the maximum requirements for information and the highest level of review only for those projects with the greatest potential environmental impact.

While significant progress can be made on water permit streamlining initiatives with current staff and funding levels, additional resources should be provided to fully implement the recommendations in this report, including the establishment of an electronic single-point application system for water permits and the creation of risk-based permit applications and review processes consistent with a project’s potential environmental impact.

Recommendation: Create consistent risk-based permit application and review processes

State agencies and local road authorities should review thresholds currently used by various agencies and make recommendations for aligning them to agreed-upon criteria that delineate high- and low-risk projects based on the a project’s potential environmental impact. Once consistent thresholds are identified, state agencies should begin integrating these criteria into water permitting processes.

State agencies should also engage the U.S. Army Corps of Engineers, the US Fish and Wildlife Service and the Minnesota State Historic Preservation Office in future conversations regarding risk-based permitting.

Environmental risk is based on the potential for a project to cause harm to the environment; the higher the risk, the more time and resources go into the preparation and evaluation of a project's permit application. All stakeholders will ultimately benefit from a permitting process that focuses resources on less predictable, more environmentally sensitive projects, as opposed to the low-impact, predictable projects that comprise the majority of local transportation projects. State agencies currently apply some risk-based approaches to the review of water permits submitted by local road authorities. However, the system is not comprehensive and thresholds vary by program.

State agencies should continue to develop risk-based application processes that build on the foundational ideas of DNR general permits and MPCA storm water permits, with a tiered application and review process that incorporates potential environmental impact into the criteria.

More importantly, triggers for considering a project proposal to have a high potential impact should be refined across state agencies so local road authorities can anticipate this and prepare accordingly. To establish consistent triggers across state agencies, the agencies and local road authorities should compare current agency thresholds, and state agencies should provide recommendations for aligning thresholds to consistently delineate high- and low-impact projects. These thresholds should then be integrated into state water permitting processes.

VI. Summary of recommendations

This section summarizes the recommendations in this report, grouping them according to the level of resources needed for implementation.

While significant progress can be made to streamline the permitting process at current staff and funding levels, additional resources will be required to implement some of the recommendations in this report. The resulting improvements will benefit Minnesota's transportation system while maintaining environmental protections.

Build on current initiatives

The following initiatives are underway and, given a continuation of existing resources and priorities, agency staff plans to continue and expand these activities.

- **Conduct joint training and coordinate federal, state and local permit streamlining efforts**
State agencies should meet with local, state and federal water permitting stakeholders for transportation projects in the months ahead to ensure that all opportunities for permitting efficiency and coordination are explored and, when possible, implemented.

Coordination between agencies is occurring, but should be expanded.

Joint training, such as that conducted by BWSR and U.S. Army Corps of Engineers, should be continued and expanded. Other training opportunities should also be pursued, including training that increases state and federal agency awareness of local processes and concerns.

- **Incorporate Section 401 water quality certifications into the 150-day timeline goal for permits**
Section 401 certification should continue to meet the 150-day timeline in Executive Order 11-04.

The MPCA has agreed to meet this goal. In addition, the MPCA implemented a number of process improvements designed to speed up the 401 certification process. At this time, all 401 certifications meet the goals of the Executive Order.

Begin new initiatives using existing resources

The following initiatives were identified by state agency staff as activities that could be undertaken based on existing priorities, staff and funding.

- **Create an interagency water permit facilitator for local road authorities**

State agencies should collectively establish an interagency water permit facilitator position to assist local road authorities as they navigate the state and federal water permitting process.

MnDOT is taking the lead on this recommendation, with the State Aid Division agreeing to establish this position as a one-year pilot. The pilot will help determine the scope of the position and whether or not this recommendation can be implemented over the long term without additional resources.

- **Review and proactively address inconsistent and conflicting permit requirements**

State agencies should work together to proactively resolve inconsistent and/or conflicting permit requirements, both at the individual project level and systemically.

The interagency water permit facilitator will be in an ideal position to identify inconsistent or conflicting permit requirements. State agencies and local road authorities should cooperate with the facilitator when either project-specific or systemic inconsistencies and/or conflicting requirements are identified.

- **Coordinate other state permit streamlining efforts with the recommendations in this report**

State agencies and local road authorities should invite stakeholders from other permit streamlining initiatives to participate in future efforts stemming from this report.

- **Monitor progress on established goals for permit processing timelines**

State agencies should continue to internally monitor application processing performance so this information is available when assessing goals and future process improvements.

In addition, the state agencies and local road authorities agree to convene on a regular basis (at least annually) to share progress and to identify further opportunities to streamline the water permitting process.

Invest in longer-term initiatives

The following recommendations require additional resources for full implementation:

- **Establish an electronic single-point application process for water permits**

State agencies should coordinate with local road authorities to develop a comprehensive single-point application process for water permitting that increases efficiency and provides transparency through accessible real-time information.

The DNR is currently developing online permit application and data-tracking systems. With additional resources, there may be an opportunity to expand this system to include transportation-related water permit applications for all agencies.

- **Create consistent risk-based permit application and review processes**

State agencies and local road authorities should review the thresholds currently used by various agencies and make recommendations for aligning them to agreed-upon criteria that based on a project's potential environmental impact. Once consistent thresholds are identified, state agencies should begin integrating these criteria into the state's water permitting processes.

State agencies should also engage the U.S. Army Corps of Engineers, the US Fish and Wildlife Service and the Minnesota State Historic Preservation Office in future conversations regarding risk-based permitting.

Appendix A

Laws, Regulations and Executive Orders

Laws of Minnesota

- Laws of Minnesota 2012: Chapter 150 – Permitting and Environmental Review <https://www.revisor.mn.gov/laws/?id=150&doctype=Chapter&year=2012&type=0>
- Laws of Minnesota 2011: Chapter 4 – Permitting Efficiency <https://www.revisor.mn.gov/laws/?id=4&doctype=Chapter&year=2011&type=0>

Minnesota Statutes

- Minnesota Statutes: 15.99 (Time Deadline for Agency Action) <https://www.revisor.mn.gov/statutes/?id=15.99>
- Minnesota Statutes: 103G.222 (Replacement of Wetlands) <https://www.revisor.mn.gov/statutes/?id=103G.222>
- Minnesota Statutes 103G (Waters of the State) <https://www.revisor.leg.state.mn.us/statutes/?id=103G>

Minnesota Administrative Rules

- 7001.0040 (Application Deadlines) <https://www.revisor.mn.gov/rules/?id=7001.0040>
- 7001.1430 (Application Deadlines for Section 401 Certification) <https://www.revisor.mn.gov/rules/?id=7001.1430>
- 8420.0544 (Wetlands Replacement for Public Transportation Projects) <https://www.revisor.mn.gov/rules/?id=8420.0544>
- 6115 (*Public Water Resources*) <https://www.revisor.leg.state.mn.us/rules/?id=6115>

Recent Executive Orders

- EO 11-04: Establishing Goals and Procedures to Ensure that Certain Environmental Permits are Issued More Efficiently <http://www.leg.mn/archive/execorders/11-04.pdf>
- EO 12-04: Supporting and Strengthening Implementation of the State's Wetlands Policy <http://www.leg.mn/archive/execorders/12-04.pdf>

Appendix B

Water Permit Processes for Transportation Projects

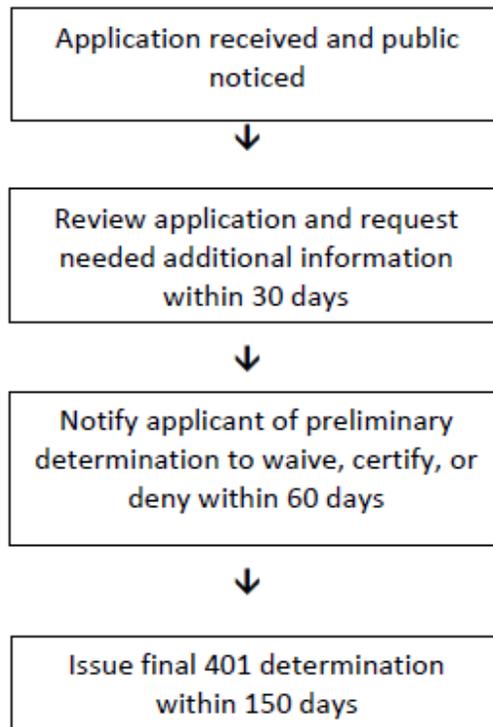
Minnesota Local Road Authority Reference Guide to U.S. Army Corps Of Engineers (Corps): Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Permits; May 2012, Version 1 <http://www.dot.state.mn.us/stateaid/>

Overview of the Minnesota Pollution Control Agency 401 Certification Process <http://www.pca.state.mn.us/index.php/water/water-permits-and-rules/water-permits-and-forms/clean-water-act-section-401-water-quality-certifications.html>

Note: This on-line information is under revision to better address customer needs for information and guidance to enable project managers to better predict MPCA regulatory response to 401 Certification applications. The revised information should be available by the end of January, 2013.

Overview of Minnesota Pollution Control Agency 401 Certification Process

Receipt of a joint application for a 404 permit/ state 401 certification triggers MPCA review.



DNR's Public Waters and Water Appropriation Permit Application Process

Visit <http://www.mndnr.gov> for DNR permit application information.

Contact the Area Hydrologist for the County in which the project will occur:

http://files.dnr.state.mn.us/waters/dow_area_staff_2008.pdf

A DNR Water Appropriation permit is required for pumping water at or exceeding 10,000 gallons per day or 1 million gallons per year. For temporary projects that are completed within one year where water appropriation will not exceed 50 million gallons, DNR General Permit 1997-0005 might apply. Water appropriation permit application forms and the General Permit notification forms are available from the DNR's website, specifically:

http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/permits.html

A DNR Public Water Work permit is required for working within or crossing a public water. Public waters are defined in Minnesota Statutes, section 103G.005 and maps are available from DNR's website. Permit applications are specifically found here:

http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/applications.html

For transportation projects affecting public waters a long and short form application is available. The short form is for maintenance projects on existing public roads for minor or emergency work, work involving existing crossings, or for work affecting wetland areas where DNR has waived permitting authority. See the application forms for specific information on which form to use:

http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/applications.html

Step	DNR's Permit Application Process
1	DNR receives permit application or General Permit Notification Form
2	<p>Within 15 days of receiving an application, a determination is made as to whether or not a permit is required. This includes a decision on waiving permitting authority to the local government unit responsible for implementation of the Wetland Conservation Act.</p> <p>General Permit Notifications are processed within 5 days where no Infested Waters are involved.</p>
3	The application is logged into DNR's database and a permit number is obtained.
4	<u>Within 30 days of receiving an application</u> the applicant is notified that it was received and if any additional information is needed those items are noted.
5	An invoice for the application fee is sent to the applicant <u>within 15 days of receiving the application.</u>
6	Requests for Comments from permit application reviewers are sent within 15 days of receiving the application or when the application is complete.
7	Arrangements are made with the applicant to address comments, if needed.
8	After comments are satisfactorily addressed and any changes to the application have been considered, a decision on the application is prepared.
9	The Decision on a Permit Application is issued. Total time typically around 45-60 days but can be longer if applicant is slow in providing needed information or if there are significant design changes late in the process. Goal is no more than 150 days.

WCA Process for the Three Categories of Linear Public Transportation Projects (non-linear projects must follow the Replacement Plan process)

Parallel Corps permit category *I ----Standard Individual Permit-----Letter of Permission or GP-----GP if < ½ acre-----I*

<u>WCA Category</u>	<u>Replacement Plan</u>	<u>Project Notification</u>	<u>Project Notification</u>
Level of qualifying project	New road/solely capacity increase	Existing road repair/replace/rehab	Existing road minor/emergency
Threshold of wetland impact	any amount	over 10,000 sq. ft.	Up to 10,000 sq. ft
Typical duration of process	Long	Short	Shortest
Early coordination w/ TEP & Corps	Strongly recommended	Encouraged	Optional
Transportation form to use	Standard (long) form	Standard (long) form	Short form
WCA process	Replacement plan application	Project notification	Project notification
Length of review time	15 – 60 day public review	must notify 30 days prior	must notify 30 days after start
LGU involvement	coordinate TEP / public review	coordinate TEP review	coordinate TEP review as requested
	LGU makes WCA decision	No LGU WCA decision	No LGU WCA decision
TEP involvement	review / approve application	review notification	review notification
	Provide input to LGU	provide use of road program	no approval required
Responsibility for replacement	Road authority	BWSR road program	BWSR road program

Appendix C

Environmental Permit Performance Reports

Minnesota Department of Natural Resources (DNR) Environmental Permit Performance Report for Fiscal Year 2012: 150-Day Permit Decision Goal

http://files.dnr.state.mn.us/aboutdnr/reports/legislative/2012_environmental_permit_performance_report.pdf

Environmental Permitting: MPCA's Semiannual Permitting Efficiency Report

<http://www.pca.state.mn.us/index.php/view-document.html?gid=18143>

Appendix D

MPCA Process Improvements

Since 2003, the MPCA has been progressively focused on systematically reviewing, improving and designing more efficient and effective processes. The MPCA has integrated process improvement tools such as Six Sigma and Lean into our culture, resulting in agency-wide improvements. The MPCA's permitting programs, in particular, have gone through significant evaluation and improvement. Those efforts continue as part of our day-to-day operations.

In response to the permit efficiency law, the MPCA created a new permit tracking database that consolidated data from four other databases that serve the agency's 13 permitting programs, and have standardized numerous permit application forms and permit process steps to meet the law's requirements and goals.

These efforts include:

- Continue to update our application forms and guidance documents to provide clarity and promote quality and timely permit applications.
- Continue to meet with our customers and partners to understand needs, share ideas, manage expectations and improve services.
- Continue to explore the use of electronic tools and services to provide increased efficiency.
- Continue to assess how to best provide information required by the permitting efficiency law regarding reporting the number of days from initial submission to the determination that an application is complete for projects that exceed the 150-day goal. While the MPCA is resolving nearly every application within 30 days, tracking re-submitted applications versus new modifications is challenging and will require additional analysis and changes to the process.
- Continue to train MPCA staff in the use of the new permitting database to ensure timely, consistent and accurate data.
- Hold a day-long permit writers summit during the fall of 2012 to provide focused training to permitting staff, encourage communication and share creative solutions across the 13 permitting programs.
- The MPCA has also committed to redesigning our legacy permitting databases. While this will be an extensive effort, likely requiring a number of years, we expect significant benefits in our ability to efficiently process and provide data on permits.

Appendix E

Examples of Coordinated Agency Staffing

MnDOT and BWSR

Sarma Straumanis is in a mobility position created by MnDOT's Office of Environmental Stewardship and BWSR. In her mobility with BWSR, she works with the local government road replacement program, which involves evaluating local road authority applications for wetland replacement and entering them into the agency data base. Sarma also provides technical assistance to both local road authorities as well as BWSR staff regarding Wetland Conservation Act issues and transportation issues. She has been involved in BWSR wetland bank site selection, wetland banking policy development and has been a trainer at Corps and BWSR sponsored wetland training workshops designed for transportation authorities.

MPCA and MnDOT

Dan Sullivan has been an environmental engineer with the Minnesota Pollution Control Agency for the past 20 years. He currently serves as a liaison between MnDOT and the MPCA to ensure compliance with the federally-delegated temporary (during construction) and permanent (post construction) storm water management requirements on transportation projects.

MnDOT and the U S Army Corps of Engineers

Linda Pate, in a new position created by MnDOT Cultural Resources and MnDOT State Aid, is assigned to work for the USACE performing cultural resource reviews for local agency bridge projects that require a Corps Section 404 Permit. While facilitating USACE review of local transportation projects involving state and federal funding, she will assist USACE project managers and local governments in identifying and resolving historic property issues and provide an interface between the MnDOT State Aid program, USACE and the local government to resolve conflicts between MnDOT State Aid and federal historic preservation requirements.

DNR and MnDOT

Peter Leete, a DNR assigned liaison, is based in MnDOT's Office of Environmental Stewardship to support early coordination of the DNR public waters work permit process with MnDOT staff and other interagency coordination under the terms of an interagency agreement. This position is the principal representative and contact for DNR's water and related land use management programs for MnDOT's transportation system. Communication, coordination and decision making between DNR Waters, MnDOT and stakeholders concerning water and related land management problems occur principally at this level.