



## **DNR Issues Public Notice on Major Phase I MS4 Permit July 2018**

In late June, DNR published draft MS4 Phase 1 permit renewals for two AMCA members. Public comments are due on July 23, 2018.

With a few notable exceptions, DNR's latest template for Phase I MS4 permits is appropriate, with achievable requirements that mirror federal regulations. We were pleased to see that DNR recognized the importance of the maximum extent practicable (MEP) standard for MS4s. Specifically, DNR's Draft Fact Sheet acknowledges that the MEP standard replaced the requirement for strict compliance with water quality standards (WQS) in 1987.

That said, the Draft Fact Sheet still includes a reference to the need for MS4s to go beyond MEP "if the MS4 is subject to a TMDL..." That is incorrect. TMDLs allocate available loadings to meet water quality standards. If the MS4 MEP standard replaced the obligation to meet WQS, the same must be true for TMDLs (which specify allocations to meet those same WQS).

It is important that DNR corrects the Draft Fact Sheet discussion above before it issues the final permit. It is critical that MS4s are held to the proper legal standard; any references to requiring more than MEP can result in enforcement by EPA or the state, or even citizen suits.

In addition to the MEP discussion, we note several other remaining issues in the Draft Permit itself:

**Monthly Milestones** – The Draft Permit requires that the permittee develop a TMDL Assumptions and Requirements Attainment Plan (ARAP) for any area of the MS4 that has a WLA in an established TMDL. The ARAP must include an implementation schedule "including beginning and ending milestones by month and year." We believe monthly milestones are inappropriate for BMP-based implementation activities and could trigger non-compliance for minor delays. Annual milestones should be sufficient to ensure the permittee is making progress towards addressing WLAs.

**Good Housekeeping** – The Draft Permit directs the permittee to implement an employee training program to "prevent and reduce stormwater pollution" from certain municipal activities. DNR should revise the text to read "prevent **or** reduce..."

**Spill Prevention** -- DNR requires that the permittee store paints, solvents, petroleum products, and petroleum waste products so that they are not exposed to stormwater. The permittee must also have spill prevention controls for these pollutants and build any containment systems



to address this requirement to “also minimize the contamination of groundwater.” Storage requirements are legitimate, however, the spill prevention controls and the requirement to address groundwater are not. These are not typical MS4 permit management measures.

Please let us know if you believe there are significant issues with any of the Phase I MS4 draft permits that we have missed.