Guidance for Complying with Carver County Water Management Organization's Alternative Compliance Option

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Purpose of this Guidance Document

This guidance document is intended to assist applicants in complying with the Alternative Compliance (153.56.D.[1]) section of the CCWMO rules. It provides more information including helpful definitions, sequencing requirements, and submittal expectations. Alternative Compliance (i.e. complying with stormwater treatment requirements via Banked Credits or In-Lieu Fee payment) is not intended to become automatically applied whenever onsite compliance becomes difficult, so this document serves as a resource to ensure that all treatment options are fully explored.

Through the issuance of the Small Municipal Separate Storm Sewer Systems Permit (MS4 Permit), the Environmental Protection Agency established stormwater performance standards for construction and linear projects. As an MS4 permit holder, the Carver County Water Management Organization (CCWMO)

[1] Permits | Carver County, MN (carvercountymn.gov)

is responsible for complying with these standards which includes ensuring that projects provide the required stormwater treatment within the MS4 area.

> The MS4 Permit requires that, at a minimum, construction projects provide treatment for one (1) inch times the sum of the new and fully reconstructed impervious surface [MNR040000.20.6.]. Linear projects must provide, at a minimum, the larger of one (1) inches times the new impervious surface or one-half (0.5) inch times the sum of the new and the fully reconstructed impervious surface.[2]

However, the MS4 Permit recognizes that treatment may not always be feasible due to a variety of constraints. In these cases, projects are instead required to pursue offsite alternatives through a sequencing process. The MS4 does not dictate exactly how this process should be implemented; instead, it gives the discretion to the MS4 permittee to design that process. It is expected that if a MS4 permittee allows for offsite treatment, it should be integrated into its stormwater permit review process.

Definitions & Terminology

1. Alternative Compliance- Providing volume and/or water quality treatment through other methods such as purchasing Banked Credits or paying into the In-Lieu Fee fund.

2. Banked Credits- An Alternative Compliance approach whereby volume and/or water quality treatment requirements are met through the purchase of credits from a qualifying credit bank.

3. In-Lieu Fee- An Alternative Compliance approach whereby volume and/or water quality treatment requirements are met by paying into Carver County's Stormwater Treatment In-Lieu Fee Fund to cover the cost of implementing equivalent stormwater treatment requirements through Onsite or Offsite Treatment.

4. Maximum Extent Practicable (MEP)- When applicants have made all reasonable efforts to do a complete evaluation of all possible volume and/or water quality treatment options to meet the required standards.

5. Offsite Treatment/Offsite- Approach whereby volume and/or water quality treatment practices are implemented at a location outside of the project area following the required sequencing order.

6. Onsite Treatment/Onsite- Approach whereby volume and/or water quality treatment practices are implemented in the Project Area.

7. Project Area- Location of construction activity.

[2] 2020 MS4 general permit | Minnesota Pollution Control Agency (state.mn.us)

Sequencing Steps

1. Demonstrate that pursuance of Alternative Compliance is necessary through:
    a. Onsite Treatment to the Maximum Extent Practicable
    b. Offsite Treatment to the Maximum Extent Practicable
2. Pursue one or more of the the Alternative Compliance options below:
    a. Banked Credits*
    b. In-Lieu Fee

One or more of the above steps may be combined depending on site/project conditions.

*See Banked Credits section below for more information on how public entities should utilize existing banked credit options and bypass the MEP process.

Expectations Prior to Requesting Alternative Compliance- Maximum Extent Practicable Process

This section describes the steps and extent to which the CCWMO expects applicants to pursue full stormwater treatment. However, this is not an exhaustive document. Every project is different, and it is not possible to list every single item the CCWMO may expect. Alternative Compliance Sequencing is only available if specific site conditions make water quality treatment and/or volume control treatment difficult, undesirable, or impossible and Onsite AND Offsite Treatment is not feasible (per CCWMO ordinance 153.56.D). Additionally, the cost of providing treatment alone does not qualify an applicant to pursue Alternative Compliance, it must be a combination of difficulty factors. The Maximum Extent Practicable (MEP) process should help applicants either A) identify creative options to provide treatment or B) show that treatment is difficult, undesirable, or impossible. The goal is to use one or more of the sequencing steps to meet full treatment requirements.

Onsite Treatment Expectations

It is expected that applicants provide treatment to the Maximum Extent Practicable (MEP) Onsite. Pursing MEP indicates a serious intent to comply with stormwater treatment requirements. Treatment options need to be exhaustively explored and described in detail through narratives, concept designs, feasibility studies, cost estimates, etc., to name a few of the potential items the CCWMO may request. The burden of proof lays on the applicant, not the CCWMO. The CCWMO may assist, but it is ultimately up the to the applicant project team. Expect this to be an iterative process with feedback from the CCWMO to ensure all onsite options are fully explored. Because it is impossible to list out every expectation due to the variety of projects, the below example has the goal of conveying how MEP should be pursued.

Example #1: Onsite Treatment MEP Example (Public, no banked credits available)

Project: A city is proposing to fully reconstruct several downtown streets, including sidewalks and storm sewer.

Site Constraints: The downtown area is 90% built out, limited green space, limited city-owned land, low-permeability soils.

Submittals (In addition to the general submittals under the CCWMO rules):

- Narrative describing each treatment option considered and any constraints that cause them to be infeasible. See Table 1 for more information. Constraints should be supported by one or more of the following-
    - Concept plans of assessed BMPs.
    - Utility maps showing location and depths of water, sewer, electric, fiber, etc.
    - Building/road/project footprint map including design reconfigurations that would allow for treatment to be included.
    - Any relevant cost information such as funding for potential projects like cost-share grants.
    - Timeline information- when the project is planned, any future projects in city area that would allow treatment to be met with future BMPs, etc.
    - Any relevant city, county, national, or grant requirements. For example:
        - ADA requirements that are prioritized which require wider sidewalks, limiting space for treatment
        - Parking stalls
        - Site lines or turn radius
        - Density
- Geotechnical report or Carver County soils data to show low permeability soils.

BMPs Considered:

- Raingardens and/or tree boxes in bump outs
- Underground treatment
- Stormwater reuse with above/underground storage
- Existing BMP retrofits (example: IESF filter bench, pond expansion, etc.)
- Stormsewer retrofit (example: proprietary filter addition, etc.)
- Pervious pavement
- Conversion of red rock areas
- Reduction of impervious surface on other property
- Other: See Minnesota Stormwater Manual[3] to see full list of approved BMPs

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Once it is shown that the maximum amount of treatment possible onsite has been achieved, the applicant must then move forward to explore offsite options so that full treatment requirements are met. The applicant should utilize the checklists included in the Appendix. The WMO encourages frequent communication during this stage and checking in before moving to Offsite treatment expectations. Onsite MEP options will be reviewed and approved by the CCWMO prior to moving to Ofsite MEP options

[3] Minnesota Stormwater Manual (state.mn.us)

Offsite Treatment Expectations

If full treatment cannot be provided Onsite, the remainder of the treatment (or in some cases all of the treatment) should be provided through Offsite Treatment.

Similar to the Onsite MEP process and example, it is expected that applicants identify all feasible treatment options and provide the CCWMO with their complete assessment. The main difference between Onsite and Offsite MEP is the assessment should include a location map. See Tables 1 and 2 for submittals that would be required. Per rule section 153.56.C.1.c., Offsite Treatment will assess locations in the below order for water quality while volume treatment must be provided in the same major subwatershed:

1. A location that yields benefits to the same receiving waterbody that receives runoff from the original construction activity
2. Within the same DNR catchment area as the impact
3. In the next adjacent DNR catchment area upstream
4. Any feasible location with the CCWMO

As noted in Table 2, it is expected that the applicants provide narratives and maps identifying all feasible locations explored. To extrapolate from MEP example #1, the CCWMO would expect that all city-owned parcels, right-of-way areas, etc. were explored following the sequencing order above. Additionally, for non-linear and new linear projects, if water quality treatment is provided to a waterbody other than the receiving waterbody, treatment must be provided at a 2:1 ratio, to comply with rule section 153.56.C.1.a.

The CCWMO recognizes that Offsite Treatment may not be possible for private entities. There may be instances, however, where a private entity owns other land that may be used for treatment; this is expected to be pursued. Additionally, there may be scenarios where a public and private partnership can be pursued. The CCWMO does not expect private entities to buy additional land to meet treatment requirements. Because there may be limited offsite options for private entities, applicants may move more quickly to the alternative compliance options of Banked Credits or In-Lieu Fee.

Applicants should be aware that if treatment is provided Offsite, submittals may require additional review from other regulatory agencies to ensure that all local standards are met.

Once it is shown that the maximum amount of treatment has been provided onsite and offsite, the applicant may then move to exploration of the Alternative Compliance options.

Alternative Compliance Options

Once Offsite and Onsite Treatment to the MEP has been achieved, Alternative Compliance options become available. Either of these options may be pursued depending on banked credits availability. As noted above, applicants should be aware that not meeting requirements on site may require additional review and approval by other regulatory agencies.

Banked Credits Expectations

Banked Credits are available once Onsite and Offsite treatment are provided to the MEP. Credits can be used to comply with both volume and water quality requirements. Credits to satisfy volume treatment are only applicable if the bank exists within the same major watershed. If water quality credits are

purchased outside of the receiving waters subwatershed, water quality must be satisfied at a 2:1 ratio. To inquire about banks and available credits, contact the CCWMO.

Submittals-

- Items in Tables 1 and 2 to demonstrate compliance with Onsite and Offsite Treatment,
- Narrative or correspondence describing amount of credit purchase

Public Entities with Existing Credit Bank

There are scenarios where a community has preplanned for development by creating a credit bank to provide treatment credits for future public projects. In this case, the public applicant may bypass the Onsite and Offsite MEP expectations by utilizing credits in a preapproved bank. The CCWMO aims to support the creation and use of credit banks.

In-Lieu Fee Expectations

In-Lieu Fee is available as a final option once Onsite and Offsite treatment is provided to the MEP and banked credits are exhausted. Pursuing In-Lieu Fee shifts the burden onto the CCWMO to locate, design, build, and maintain a BMP in perpetuity, so this option will only be approved if there are truly no other options. It may be used in conjunction with Banked Credits, depending on the situation. For example, projects may purchase Banked Credits to provide volume treatment and then meet water quality treatment through In-Lieu Fee.

Payments made into the In-Lieu Fee fund will be used to design, build, and manage stormwater treatment facilities within the CCWMO. The CCWMO will select projects based on its Watershed Management Plan and through coordination with Local Water Plans.

Submittals required-

- Items in Tables 1 and 2 to demonstrate compliance with Onsite and Offsite Treatment
- Site map identifying location(s) that have sufficient space and site conditions to support installation of a stormwater BMP that provides the required treatment and property owner approval. This should be accompanied by a narrative that describes why these locations were identified and how they followed the Offsite sequencing order (i.e. if all of the locations proposed are in in the same DNR catchment area or an adjacent DNR catchment). It is expected that there is complete justification for not finding suitable locations within the same watershed.
- Cost estimates of planning, designing, constructing, and maintaining stormwater BMP(s) that provide the required volume and/or water quality treatment.
- Volume and water quality treatment calculator showing that proposed stormwater BMP(s) provide required treatment.
- Payment information to comply with one of payment options (see below)

As it is with MEP, this will be an iterative process and the applicant should expect back and forth with the CCWMO to identify suitable locations.

Payment Options

There are two options for how to pay into the County's In-Lieu Fee fund:

1. Flat fee per cubic foot of stormwater treatment required based on the Carver County Fee schedule.
2. 80% of the estimated cost provided by the applicant, provided as an itemized list, and as reviewed and approved by the County.

Permit Approval and Timelines

Once the process above is completed, CCWMO will deem compliance with treatment standards has been met and issue the permit. For any projects within Carver County's MS4 area (right-of-ways and county owned property within the urbanized property), if offsite treatment is pursued, construction must be completed within 24 months from the start of construction Per section 20.13 of the MS4 permit. If that timeline cannot be met, reasoning must be submitted to the WMO for submission with the annual MS4 report.

Appendix.

Table 1

Documentation of Onsite Treatment Compliance to the MEP		
Limitation	*Specific Condition*	*Submittal*
All		Narrative should provide detailed description of efforts made to comply with MEP and describe any attachments included. All BMPs assessed must be included, including. retrofits to existing BMPs. Each BMP should be described in terms of their feasibility and include concept plans.
		Description of efforts made to comply with Local Water Plan if proposed project deviates.
Potential Contamination	Contaminated soils/groundwater	Soil/ground water analysis showing that soil contamination or other subsurface or geologic conditions create risks or hazards for disturbance, excavation, and/or movement of water into the ground even with use of underdrain or impermeable liner.
	Vehicle fueling and maintenance areas	Site map
Physical	Low permeability soils	Geotechnical report, Carver County Soil Data, Soil Borings, or infiltration testing
	Bedrock or high groundwater withing 3 vertical feet of infiltration area	Soil borings and potential piezometer data
	Steep slopes	Topographic map
	Water resources	Map showing delineated boundaries of any surface waters
Land Use	Utility locations	Detailed site map showing utility locations, elevations, and clearances
	Wellhead protection areas	Site map showing wellhead protection areas
	Limited space	Detailed site map showing required setbacks, sidewalk width, road width, green space, etc. Graphic should be accompanied by a narrative explaining other size requirements and variance potentials.
	Building footprint conflict	Description of efforts made to revise design such as removing parking spaces, changing building orientation, etc. (i.e. low impact development).
Cost		Estimated design, construction, and long-term maintenance costs to install a BMP that would meet required volume and/or water quality treatment
		Cost/benefit analysis comparing cost to treatment benefit (i.e. $/lb and $/cf retained)
		Documentation of any received grant funding to support stormwater treatment

Table 2

Documentation of Offsite Treatment Compliance to the MEP		
Limitation	*Specific Condition*	*Submittal*
All		Include all applicable submittals under Table 1
Land use	Limited space	Site map showing parcels assessed for treatment locations. Site map should follow the location sequencing under the Offsite Treatment section. This should be paired with a narrative that discusses in detail the BMPs considered for this location, why those BMPs do or do not work, and why each parcel can or cannot be used for treatment and efforts to mitigate that infeasibility.
		Site map showing owned right-of-way (ROW) areas and ROW areas that could be obtained to provide treatment. Description of process for ROW easement or purchase.

Table 3

Potential Site Constrains and BMP Options							
Site Constraint	**BMP Option**						
	Filtration (bioretention, iron enhanced sand)	**Infiltration**	**Green roof**	**Reuse**	**Permeable pavement**	**Amended soils**	**Vegetation restoration or preservation**
Clay soils	**X**		**X**	**X**	**X**	**X**	**X**
Soil contamination	**X**		**X**	**X**	**X**		
Shallow groundwater	**X**		**X**	**X**	**X**	**X**	**X**
Shallow bedrock	**X**		**X**	**X**	**X**	**X**	**X**
Insufficient area	**X** (underground)	**X** (underground)	**X**	**X**	**X**	**X**	**X**
Underground utilities	**X**	**X**	**X**	**X**	**X**	**X**	**X**