Background.

This policy provides direction to cities, townships, watershed districts, soil and water conservation districts (SWCD), counties and landowners regarding the implementation of Minnesota Statutes 103F.48, subdivision 5(4). This provision provides an exemption from the requirements of the Buffer Law if the following conditions are met:

1. The land is subject to a NPDES/SDS Program
   a. municipal separate storm sewer system (MS4) permit; and
2. Water resources riparian protection is provided; and
3. The site is not inconsistent with the requirements of the state shoreland rules.

The MS4 permit does not have implicit riparian protections associated with the required components of the permit. As such, each MS4 permit holder may or may not have riparian protections comparable to the Buffer Law as either a part of the permit program itself or through some other form of local official controls.

The Minnesota Pollution Control Agency (MPCA) oversees the NPDES/SDS Programs and can provide information on entities regulated under this program including specific requirements.

Key reason why policy is needed:

1. A MS4 permit does not have riparian protections as a required component of the permit holder’s programs.
2. Landowners need to know if/how the MS4 Permittee (City/WD/Township) can provide a basis for validating compliance within the MS4 Permittee’s jurisdiction.
3. The MS4 needs assurances that their mechanisms for providing riparian protections are sufficient to accomplish this optional objective.
4. SWCDs need to know, for progress tracking and compliance validation, if/how riparian protections are being provided for land subject the MS4 exemption.

Statutory Basis.

- Section 103F.48 Subd. 5(4)(i) Exemptions
- Section 103F.48 Subd. 7 Corrective Actions
- Section 103B.101 Subd. 12(a). Administrative Penalty Orders
- Section 103F.48 Subd. 9 Appeals and Validations of Penalty Orders
Policy.

It is the policy of the Board of Water and Soil Resources that:

1. NPDES/SDS permittees are not required to take any action regarding the MS4 part of this exemption unless they wish to make it available to lands subject to their permit.
2. NPDES/SDS permittees that choose to take action regarding this exemption must:
   a) have adopted and implemented a local official control that provides water resources riparian protection consistent with the Buffer Law and the state shoreland rule; or
   b) have implemented an MS4 sponsored project(s) which provide comparable water quality benefit; and
   c) provide a copy of a) or b) to the respective SWCD.