Braun Intertec Corporation
11001 Hampshire Avenue S
Minneapolis, MN 55438

Phone: 952.995.2000
Fax: 952.995.2020
Web: braunintertec.com

February 22, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Mr. Smith,

Braun Intertec Corporation thanks the Minnesota Pollution Control Agency (Hereinafter "MPCA") for the opportunity to make public comment on the proposed changes to and permit reissuance of the Minnesota Authorization to Discharge Stormwater Associated with Construction Activity under the National Pollutant Discharge Elimination System (NPDES)/ State Disposal System (SDS) Program (hereinafter "NPDES-CSW permit" or "draft permit"). Our interest in the draft permit is strictly for compliance and communal understanding of the intentions within it. Through our discussions in the Natural Resources Group, we have reviewed the draft permit, and would like to place public comment in the effect of our concerns within it.

The following identified sections below are our concerns for the draft permit as submitted by Braun Intertec Corporation.

2.10 This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. 7050.0186]

It is common for issuance of environmental permits to be a condition of funding and/or project letting for a project. With tying NPDES-CSW permit issuance to other permits (with variable timelines) is not a reasonable solution for permittees or those looking for permit coverage. Adding the proposed draft language will jeopardize the viability of projects and result in significant project delays, cost increases to projects and companies, and those who depend on the construction and infrastructure.

Staging and phasing of construction activities in other portions of a project site can be adjusted so site work can proceed without risk of impacting a surface water. Examples include mobilization, installation of sediment control BMPs, dewatering, clearing/grubbing and earthwork within isolated drainage areas and other regulatory windows (i.e. Northern Long-eared bat, rusty patch bumble bee).

Braun Intertec Corporation insists the MPCA to revisit this revision within the draft permit and eliminate it or revise it so that it would not jeopardize projects' timelines and ability to comply with this permit. If this cannot be done, we request the MPCA respond as to why this cannot be done.

7.2 Permittees must select, install, and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices to minimize the discharge of pollutants in

stormwater from construction activities. Examples of stormwater controls for this section include but are not limited to wet sedimentation basins, temporary depressions to hold stormwater, stormwater routing, dikes, berms, pumping, and stormwater treatment BMPs. Permittees must phase and incorporate stormwater management principles as the construction progresses. Unless infeasible, temporary or permanent wet sedimentation basins (when required) should be constructed as a first step in the process and stormwater routed to these. [Minn. R. 7090]

For clarity within the permit, Braun Intertec Corporation implores the MPCA to eliminate the list of examples within this section. It is not needed and may confuse people not familiar with the permit.

Within this section, the word *"should"* suggests that this is a recommendation and is not appropriate to be used in a permit that has regulatory enforcement. Braun Intertec Corporation requests of the MPCA to rephrase the sentence to eliminate the word "should".

7.3 If permittees will be using some type of erosion control netting on the site as part of the soil stabilization techniques, permittees are encouraged to consider using products that have been shown to minimize impacts on wildlife. The U.S. Fish & Wildlife Service recommends using types of netting practices that are considered "wildlife friendly," including those that use natural fiber or 100 percent biodegradable materials and that use a loose weave with a non-welded, movable jointed netting. Products that are not wildlife friendly include square plastic netting that are degradable (e.g., photodegradable, UV-degradable, oxo-degradable), netting made from polypropylene, nylon, polyethylene, or polyester. Other recommendations include removing the netting product when it is no longer needed. More information may be found at: https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products. There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products. See Minnesota Department of Transportation requirements at: https://www.mndot.org/environment/erosion/rolled-erosion-prevention-products.html [Minn. R. 7050]

Braun Intertec Corporation believes this item should be removed for the following reasons:

- This is a recommendation and not a requirement, therefore does not belong in the permit. We believe this would be better suited within MPCA issued guidance.
- It isn't certain that this will be able to be achieved by manufactures of these products within the 5-year permit period.
- The website reference is not guaranteed to be in place for the next five years. This could easily be moved on the website and not be able to be found, especially since the website link is not hosted by the agency (MPCA) issuing the permit.

8.5 For projects, including a common plan of development or sale, disturbing less than 25 acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. [Minn. R. 7090]

8.6 For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7

calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased. [Minn. R. 7090]

Braun Intertec Corporation is questioning the basis of the 25-acre threshold. As the site size may be larger, it doesn't equate to larger risk on the environment. If this is to be included in the draft and subsequently the issued permit, it should be based on the risk(s) specific to each project site. Risks could include but not limited to if the site is not self-contained or multiple self-contained drainage areas, proximity to surface waters, or increased soil erosion risk (sand versus clay). The remainder of section 8 is special circumstances that increase risk to the site whereas this seems as though it is just an arbitrary number.

The phrase *"initiate immediately"* should also include notes about feasibility. Many times, the site conditions, seasonality, and weather conditions make the action infeasible at the time. Requirements on documenting changes to timing should be included in inspection reports.

8.8 Permittees must stabilize the normal wetted perimeter of the last 200 linear feet of temporary or permanent drainage ditches or swales that drain water from the site within 24 hours after connecting to a surface water or property edge. Permittees must complete stabilization of remaining portions of temporary or permanent ditches or swales within 14 calendar days after connecting to a surface water or property edge and construction in that portion of the ditch temporarily or permanently ceases. [Minn. R. 7090]

Braun Intertec requests of the MPCA to eliminate 14 days and reference the proposed timeframes in section 8.5 and 8.6.

9.2 Permittees must establish sediment control BMPs on all downgradient perimeters of the site and downgradient areas of the site that drain to any surface water, including curb and gutter systems. Permittees must locate sediment control practices upgradient of any buffer zones. Permittees must install sediment control practices before any upgradient land-disturbing activities begin and must keep the sediment control practices in place until they establish permanent cover. [Minn. R. 7090]

Braun Intertec Corporation appeals of the MPCA on this section for a definition of adequate vegetation buffer widths per slope percentage that can be used for perimeter control.

9.5 A floating silt curtain placed in the water is not a sediment control BMP to satisfy item 9.2 except when working on a shoreline or below the waterline. Immediately after the short-term construction activity (e.g., installation of rip rap along the shoreline) in that area is complete, permittees must install an upland perimeter control practice if exposed soils still drain to a surface water. [Minn. R. 7090]

Braun Intertec Corporate is looking for a definition of the phrase *"short term"* from the MPCA. This phrase does not add any value to the permit but if kept in without defining could lead to confusion or disagreements between permittees and the MPCA.

9.9 Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6. [Minn. R. 7090]

Braun Intertec Corporation sees this new addition *"prior to the initiation of stockpiling"* is not practical for the following reasons:

- It is not practical for the common construction activity and would limit the operating space for the heavy machinery to access the pile.
- The risk of erosion and sediment runoff when a new stockpile is established is generally low due to it being actively worked. If the purpose of this is to minimize risk, the addition of *"completed within 24 hours or before predicted rain whichever comes first"* to this section would be practical as it would be similar to the moving of perimeter controls and BMPs. This revision would make this more practical and mitigate risk just as efficiently.

9.18 Any sediment control made of soil/muck must be temporarily or permanently stabilized within 24 hours. [Minn. R. 7090]

When reviewing this addition, Braun Intertec Corporation finds the following as potential issues or concerns:

- Braun Intertec Corporation requests of the MPCA to eliminate "muck" since muck is a type of soil.
- We have not seen muck used as a sediment control best management practice. This addition may also encourage the use of muck that could leach out nutrients or other deleterious materials into runoff that lead to surface waters and/or off-site.
- Define how much soil needs to be included (ex. more than 50% by volume is soil) to be considered soil for the purpose of this section. Braun Intertec requests of the MPCA this as sometimes soil amendments are incorporated into other materials (mulch) and are already stabilized to some extent.

10.2 Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. [Minn. R. 7050.0210]

Braun Intertec Corporation makes comment of:

- That when dewatering at night, photographs that have any value, will be difficult to capture with a normal camera. Dewatering may occur over night during non-work hours where no personnel are on site as well.
- When dewatering occurs in sand, usually the turbidity of the water is constant after the first flush/initial start up. Frequency of monitoring should be site specific. For this, Braun Intertec requests of the MPCA a guidance document.
- Braun Intertec Corporation believes it would be more appropriate to be able to establish dewatering monitoring protocols within the SWPPP to accommodate for site specificity as 4 hours is an arbitrary number of hours.
- The new language in the permit requests that if possible the dewatering is onto an upland vegetated area. Braun Intertec Corporation asks of the MPCA to include protection of this area from scouring.

11.2 Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours. [Minn. R. 7090]

Braun Intertec Corporation requests of the MPCA for clarifying language of "*next business day".* For this, we provide the following example from the North Dakota Authorization to Discharge Construction Stormwater under the North Dakota Pollutant Discharge Elimination System Section III (A)(1)(a):

- "Within 24 hours after any storm event greater than .25 inches rain per 24-hour period" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.
- Note Braun Intertec Corporation is not requesting to lower the rainfall amount trigger, we are requesting of the MPCA language similar to the provided example.

11.5 During each inspection, permittees must inspect areas adjacent to the project, surface waters, including drainage ditches and conveyance systems but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil. Permittees must complete removal and stabilization within seven (7) calendar days of discovery unless precluded by legal, regulatory, or physical access constraints. Permittees must use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) days of obtaining access. Permittees are responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work in surface waters. [Minn. R. 7090]

Due to trespassing concerns, the *"areas adjacent to the project"* language of the permit would be better suited to state *"visually inspect areas adjacent to the project and as permissible by adjacent landowners".*

11.8 Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery. [Minn. R. 7090]

Braun Intertec Corporation understands the intentions as set forth in this section by the MPCA, however, language may be better suited to say "*when basin is visually ½ the storage volume of the interim or final volume".* Often times basins are not fully graded until very end of construction. There is also safety and accessibility concerns entering the basins to manually check sediment levels.
Braun Intertec Corporation also suggests to the MPCA of adding the language "*within 72 hours of discovery as field conditions allow*". Contractors need adequate time to safely dewater and discharge. This also varies based on pond size, discharge location, dewatering methods/equipment, and safe accessibility.

11.9 Permittee's must inspect and photograph dewatering discharges at the beginning and once every 4 hours during operation. [Minn. R. 7090]

Braun Intertec Corporation requests of the MPCA to eliminate this section as it is redundant with the application of 9.2.

11.11 (d) For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met. [Minn. R. 7090]

Braun Intertec Corporation has seen an uptick in projects incorporating pollinator habitat. We ask of the MPCA to apply this for all project types that will have a portion of their project in native or pollinator habitat.

11.12 (h) All photographs of dewatering activities and documentation of nuisance conditions resulting from dewatering activities as described in section 10. [Minn. R. 7090]

As stated in Braun Intertec Corporation's comment for 10.2, photography is difficult at night. Documentation and monitoring results should be acceptable.

12.2 Permittees must place building products and landscape materials under cover (e.g., plastic sheeting or temporary roofs) or protect them by similarly effective means designed to minimize contact with stormwater. Permittees are not required to cover or protect products which are either not a source of contamination to stormwater or are designed to be exposed to stormwater. [Minn. R. 7090]

Braun Intertec Corporation sees adding "at the end of the business day" as a more realistic expectation than "under cover". Without this, the MPCA would be restrict access and usage of the products for the projects.

12.7 Permittees must take reasonable steps to prevent the discharge of spilled or leaked chemicals, including fuel, from any area where chemicals or fuel will be loaded or unloaded including the use of drip pans or absorbents unless infeasible. Permittees must ensure adequate supplies are available at all times to clean up discharged materials and that an appropriate disposal method is available for recovered spilled materials. Permittees must report and clean up spills immediately as required by Minn. Stat. 115.061, using dry clean up measures where possible. [Minn. Stat. 115.061]

Braun Intertec Corporation would like a definition of "adequate supplies" by the MPCA. From the Code of Federal Regulations Chapter 40 Part 112: Oil Pollution Prevention, requires the owner to provide spill clean up supplies, however as numerous projects do not meet the threshold to require the application of this rule, we request of the MPCA to explain the reasoning and an attainable number for the permittee of spill supplies on site.

We also request of the MPCA to define reportable spills and to refer it to the current Minnesota statute 115.061: Duty to Notify; Avoiding Water Pollution.

16.2 Infiltration options include, but are not limited to: infiltration basins, infiltration trenches, rainwater gardens, bioretention areas without underdrains, swales with impermeable check dams, and natural depressions. If permittees utilize an infiltration system to meet the requirements of this permit, they must incorporate the design parameters in item 16.3 through item 16.21. Permittees must follow the infiltration prohibition in item 16.14 anytime an infiltration system is designed, including those not required by this permit. [Minn. R. 7090]

16.7 Permittees must design infiltration systems to provide a water quality volume (calculated as an instantaneous volume) of one (1) inch of runoff, or one (1) inch minus the volume of stormwater treated by another system on the site, from the net increase of impervious surfaces created by the project. [Minn. R. 7090]

Braun Intertec Corporation has reviewed this section, and requests from the MPCA to change the wording from *"native undisturbed soils"* to *"pre-project soils"* since undisturbed native soils in urban areas are rarely found. Braun Intertec Corporation also acknowledges the problems the use of only native/pre-project soils as they could be contaminated or have poor infiltration rates whereas approved engineered fill will not as well as projects with a significant amount of fill brought into the site or when there isn't three feet of soils, adding soils could allow for infiltration.

19.2 When the entire water quality volume cannot be treated by volume reduction practices on site, permittees can use or create regional wet sedimentation basins provided they are constructed basins, not a natural wetland or water body, (wetlands used as regional basins must be mitigated for, see Section 22). The owner must ensure the regional basin conforms to all requirements for a wet sedimentation basin as described in items 18.3 through 18.10 and must be large enough to account for the entire area that drains to the regional basin. Permittees must verify that the regional basin will discharge at no more than 5.66 cfs per acre of surface area of the basin and must provide a live storage volume of one-inch times all the impervious area draining to the basin. Permittees cannot significantly degrade waterways between the project and the regional basin. The owner must obtain written authorization from the applicable LGU or private entity that owns and maintains the regional basin. [Minn. R. 7090]

Braun Intertec Corporation notes in the current NPDES-CSW permit the use of "onsite" versus in the NPDES-CSW draft permit it is "on site".

24.5 In addition to the requirement found in section 20, permittees must make the SWPPP, including all inspection reports, maintenance records, training records and other information required by this permit, available to federal, state, and local officials within three (3) days upon request for the duration of the permit and for three (3) years following the NOT. [Minn. R. 7090]

Braun Intertec Corporation understands the importance of this section. We request of the MPCA to add this to Section 20 as it will fit better there.

25.15 "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, driveways, parking lots, and concrete, asphalt, or gravel roads. Bridges over surface waters are considered impervious surfaces. Recreational trails that are distinctly set apart from a roadway and intended for pedestrians or bicycles are not considered impervious surfaces. Sidewalks within

residential areas and alongside roadways must still be included as impervious surfaces. [Minn. R. 7090]

Braun Intertec Corporation requests of the MPCA to consider changing to *"distinctly set apart from a roadway intended for non-motorized and motorized recreational uses are not considered impervious"* for this section.

From our review of the NPDES-CSW current permit throughout the past 5 years, Braun Intertec Corporation would also like to request of the MPCA the following changes to the NPDES-CSW draft permit:

- The maintenance section (11.1) should be separated from the inspection section for better readability.
- Move pollution prevention section (12.1) to after dewatering (section 10.1) since it is randomly placed within the current permit.
- Winter runoff inspections need more of a formal definition. What is considered a runoff event?
    - Two consecutive days with temperatures over 32 degrees Fahrenheit?
    - Certain number of consecutive hours over 32 degrees Fahrenheit?
    - Clarification is requested on if there is rain on top of snow, regardless of the amount of rain, does that classify as a runoff event since the rain could cause runoff (project specific)?

Braun Intertec Corporation looks forward to the MPCA's response to our questions. Should any clarification be needed, please contact Travis Fristed at tfristed@braunintertec.com. We appreciate the opportunity to place public comment on the NPDES-CSW draft permit.

Respectfully,

Braun Intertec Corporation

Travis Fristed, PWS, CMWP
Group Manager, Principal Scientist