

Enclosure A

U.S. Environmental Protection Agency
Draft NPDES General Permit Submitted 1/26/2023
Stormwater Discharges Associated with Construction Activity
MNR100001

1. While the permit contains BMPs and enforceable controls, we were unable to find a statement that explicitly prohibits a discharge that violates water quality standards. We understand that corrective actions may be required if the site is found to be causing a water quality standards violation, but it is not clear that causing or contributing to a violation of water quality standards would be a permit violation. Please add a statement in the permit similar to what EPA has in its construction general permit in Section 3.1: “Discharges must be controlled as necessary to meet applicable water quality standards.” See also the rest of Section 3.1 of EPA’s construction general permit for more language that may be useful. <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf>
2. Similarly, we found no overall statement implementing MPCA’s water quality criteria generally into the permit as is found in other MPCA permit standard conditions. We noted that similar language was used for specific types of discharges or to trigger corrective actions, but there was no overall statement serving as narrative water quality based effluent limits. See below for an example from an MPCA permit recently reviewed by EPA which included the following statements. Please add these limitations, or something similar to the construction general permit:

“Toxic Discharges Prohibited. Whether or not this permit includes effluent limitations for toxic pollutants, the Permittee shall not discharge a toxic pollutant except according to 40 CFR pts. 400 to 460 and Minn. R. chs. 7050, 7052, 7053 and any other applicable MPCA rules. [Minn. R. 7001.1090, subp. 1(A)]”

“Nuisance Conditions Prohibited. The Permittee's discharge shall not cause any nuisance conditions including, but not limited to: floating solids, scum and visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, acutely toxic conditions to aquatic life, or other adverse impact on the receiving water. [Minn. R. 7050.0210, subp. 2]”

3. Please revise the language surrounding permit eligibility and applicability to Indian country to clarify that operations located in Indian country are not eligible for coverage under this permit and include the following reference to the United States Code:

18 USC §1151 - Indian country means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within

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the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

4. The permit appears to indicate that projects are automatically covered without an opportunity for MPCA to review applications. MPCA should ensure that the process allows for the ability for MPCA to review to at least ensure the proposed discharges are eligible for coverage before issuing notices of intent. Edits related to this comment would be needed in several places, including:
 - a. Page 1. Instead of “authorizes permittees seeking coverage”, change to “permittees covered”
 - b. Section 1.3. strike “covered by this permit” so the sentence reads “construction activity cannot commence until coverage under this permit is effective...”
 - c. Section 2.2. Add “may require application require you to obtain coverage under an individual permit” before or after “... permit revocation.”
 - d. Section 3.3. This section seems to:
 - i. absolve an operator from needing to develop a SWPPP if the project is smaller than 50 acres and is further than 1 mile from a special or impaired water.
 - ii. Remove MPCA’s ability to review and require you to obtain coverage under an individual permit.

Please revise this section. MPCA needs to retain the ability to determine whether an application is complete and that the applicant is eligible for coverage, at a minimum.
5. Section 1.7 allows for a grace period for coverage under this general permit to extend beyond the expiration of the permit without additional action. EPA recommends specifying an end date or duration of the grace period. For example, EPA’s Construction Stormwater General Permit provides a date after which the grace period ends: “Provided you submit your NOI no later than May 18, 2022, your authorization under the 2017 CGP is automatically continued until you have been granted coverage under this permit or an alternative NPDES permit, or coverage is otherwise terminated.”
6. Other recommended edits
 - a. Section 15.2 – add “and implement” and “or contribute to” so that the statement reads: “Permittees must design and implement the project so all stormwater discharged from the project during and after construction activities does not cause or contribute to a violation of state water quality standards...”

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- b. Section 24.2 – Please revise so that if the MPCA determines that an individual permit is required, MPCA may deny or terminate coverage under the general permit and require an individual permit application. See [40 CFR 122.28\(b\)\(3\)](#).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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REPLY TO THE ATTENTION OF: WP-16J

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Stormwater Research, Engineering, and Outreach Unit
Minnesota Pollution Control Agency (MPCA)
Municipal Division
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Re: Review of NPDES General Permit for Stormwater Associated with Construction Activity (MNR100001)

Dear Mr. Smith:

The U.S. Environmental Protection Agency has reviewed the public notice draft National Pollutant Discharge Elimination System general permit, fact sheet, and supporting documents for the General Permit for Stormwater Associated with Construction Activity, that were submitted to EPA on January 26, 2023. Based on our review to date, EPA would not object to issuance of that permit. However, our position could change if any of the following occurs:

- a. Prior to the actual date of issuance of a proposed permit, an effluent guideline or standard is promulgated which is applicable to the permit and which would require revision or modification of a limitation or condition set forth in the draft permit;
- b. A variance is granted and the permit is modified to incorporate the results of that variance;
- c. There are additional revisions to be incorporated into the permit which have not been agreed to by EPA; or
- d. EPA learns of new information, including as the result of public comments, that causes EPA to reconsider its position.

Subject to the above conditions, the permit may be issued in accordance with the Memorandum of Agreement and pursuant to the Clean Water Act. Although we currently do not intend to object, EPA recommends you consider and address the comments identified in Enclosure A in order to improve the overall permit decision.

When the proposed permit is prepared, please forward one copy and any significant comments received during any public notice period to this office at r5NPDES@epa.gov. Please include the

permittee name and permit number in the subject line and cc Krista McKim
mckim.krista@epa.gov. If you have any technical questions related to EPA's review, please
contact Ms. McKim at mckim.krista@epa.gov.

Thank you for your cooperation during the review process and your thoughtful consideration of
our comments.

Sincerely,

Stephen M. Jann
Manager, Permits Branch
Water Division

Enclosure

cc: Todd Smith <todd.smith@state.mn.us>