



February 24, 2023

Mr. Todd Smith
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Comments on MPCA General Permit Authorization to Discharge Stormwater Associated with Construction Activity Under the National Pollutant Discharge Elimination System / State Disposal System Program

Dear Mr. Smith:

The Minnesota Chamber of Commerce (Chamber) welcomes the opportunity to comment on proposed revisions to the MPCA Construction Stormwater General Permit (CGP). The Chamber is a statewide business organization representing approximately 2,300 member businesses of all types and sizes across the state. Eighty percent of Chamber members have fewer than 10 employees, and 40% are located in greater Minnesota. Many members will be directly impacted by the proposed changes to the CGP.

While the Chamber supports the overall environmental objectives of the proposed changes, our members have several concerns, which we've outlined below on an item-by-item basis.

Item 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]"

The proposed new language in this item (in red) does not add protections to wetlands, but does make it more difficult to begin projects. Obtaining wetland permits from all local, state, and federal permitting agencies can be a lengthy process. Logically, owners of a project should be able to begin construction in upland areas without discharging to wetlands while awaiting wetland permit coverage for the portions of construction that do involve discharges. Preventing projects from receiving CGP coverage before securing wetland permits would also delay deliveries and staging of material in upland laydown areas, adding significant logistical burdens to projects while imparting no environmental benefit. It is not

necessary for the MPCA to enforce wetland permitting on behalf of other agencies that possess the same ability.

The proposed change also doesn't take into account projects that can have sequential regulatory approvals. Examples are route permits issued by the Minnesota Public Utilities Commission, which sometimes releases approvals for sections of projects at a time. It's not uncommon for large linear projects to involve route adjustments as work progresses, which then impact wetland permitting in small areas along a corridor. Projects also need ongoing adjustments to access to those areas, which can have corresponding impacts on wetland permitting.

The Chamber recommends either striking the proposed additional language from Item 2.10 or replacing it with the following language:

"Construction activities with discharges to wetlands cannot begin 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]"

Item 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. ~~temporary or permanent sediment basin on the project site unless infeasible.~~ 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 ~~may dewater to surface waters if they visually~~ 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. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.~~ [Minn. R. 7050.0210]"

The proposed language prohibits dewatering if discharge from the sediment control device has visible turbidity. Filter bags, sediment traps, and sediment basins often don't remove all visible turbidity. This proposed change would likely mean an extensive treatment train would often be required for dewatering activities. Additionally, naturally occurring water with high-humic content appears brownish, which is unrelated to construction activities. Humic conditions can occur in lakes, wetlands, and streams.

The Chamber proposes replacing proposed Item 10.2 with the following language:

“If discharging to a surface water, permittees must discharge sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench or ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visible turbidity related to sediment. To the extent feasible, use well-vegetated (e.g., grassy or wooded) upland areas of the site to infiltrate dewatering water. 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 to a surface water (see Minn. R. 7050.0210, subp. 2) will not result from the discharge.”

Item 10.3

“If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer. [Minn. R. 7050.0210]”

The nuisance conditions listed in that item are overly broad, and the term “aquatic habitat degradation” requires a definition. As written, the item would allow any observer to claim that there was aquatic habitat degradation, —absent any qualification to make that determination—thus bringing dewatering to a halt and negatively impacting construction work. Additionally, “has a visible contrast” is an unclear description because pumping clear water into a turbid stream would create a visible contrast, as would pumping naturally humic water into a less humic stream.

The Chamber of Commerce supports adding language to define nuisance conditions, and believes that the changes currently under consideration give the MPCA an opportunity to align with other state agencies on enforcing conditions to minimize aquatic habitat degradation.

The Chamber proposes replacing proposed Item 10.3 with the following language:

“If nuisance conditions, as defined in Minn. R. 7050.0210 Subp. 2, result from the discharge to a surface water, Permittees must cease dewatering immediately and corrective actions must be implemented before dewatering is resumed. [Minn. R. 7050.0210 Subp. 2]”

Item 11.15

“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]”

This new requirement to remove all sediment deposited to all adjacent areas is overly broad. As with all construction projects, large storms can cause downgradient BMPs to fail through no fault of the project. De minimis levels of sediment should be excluded, especially considering that trying to remove a thin veneer of sediment with equipment would cause additional ground disturbance to neighboring properties while offering no real benefit.

The Chamber proposes adding the following language:

“De minimis amounts of sediment may be left in adjacent land if allowed by the landowner and if it will not harm existing vegetation growth in the impact area.”

Item 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]”

The Chamber supports using pollinator or native habitat for vegetative cover for projects beyond just ground-mounted solar developments. We propose that when a native- or pollinator-habitat seed mix is used for vegetative cover and a density of 70% uniform cover has been established, inspections should not be required once all construction activities have been completed. The temporary cover provides good erosion protection, and there is no benefit to continuing to inspect fully grown cover.

The Chamber recommends replacing proposed Item 11.11 d. with the following language:

“For projects where a pollinator habitat or native-prairie-type vegetated cover is being established, inspections may be suspended if the site has temporary vegetation with a density of 70% uniform cover and all construction activities have been completed. [Minn. R. 7090]”

The Chamber appreciates the opportunity to comment on the proposed revisions to the CGP. If additional information or clarification would be helpful, please contact Sharon Dahl at sdahl@barr.com.

Respectfully submitted,



Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce

bc: ENRPC WQ Subcommittee

DRAFT