



SRAP
Socially Responsible
Agriculture Project

September 3, 2024

Via Online Portal <https://mpca.commentinput.com/?id=EdujCsA3t>

Minnesota Pollution Control Agency

c/o George Schwint

12 Civic Center Plz, Ste 2165

Mankato, MN 56001

**RE: Comments on General NPDES Feedlot Permit and
General State Disposal System Feedlot Permit**

Dear MPCA:

The Socially Responsible Agriculture Project (SRAP) is a nonprofit 501(c)(3) organization. For more than 20 years, SRAP has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations, and to advocate for a food system built on regenerative practices, justice, democracy and resilience. SRAP has worked with several communities in Minnesota over the last few years. SRAP offers free support, providing communities with the knowledge and skills to protect their rights to clean air, water, and soil and to a healthy, just, and vibrant future. Across the U.S., SRAP receives requests for help from communities on the frontlines of industries streaming from industrial livestock business, including methane production operations. Our goal here is to provide you with comments regarding concerns with transparency and identify significant information MPCA should require as part of the NPDES and SDS CAFO General Permits (collectively, the “Permit” unless otherwise specified). In addition, SRAP supports and endorses comments submitted to MPCA by the Minnesota Center for Environmental Advocacy and Food and Water Watch.

Visual inspections in land application areas.

The Permit (Section 14.3) and Nutrient Tracking Tool (Section II.) require visual inspection of all fields during, at the end, and as soon as possible or within 23 hours after specified rainfall events. The visual inspections are to occur at all downgradient field edges and any other potential discharge locations. The Permit and the Nutrient Tracking Tool only require that visually observed discharges be responded to and reported.

As pointed out in the MCEA comments, the majority of nitrate loading comes from runoff and leaching croplands. In areas of highly permeable soils or karst bedrock, simply conducting a visual inspection, downgradient of the actual application points, and at the edge of the field that is acres in size is like waiting at the wrong bus stop. SRAP agrees with MPCA that visual inspections are necessary, but to truly address the problem and ensure agronomic rates are being used and runoff and leaching is not occurring, additional monitoring further upgradient is necessary. If land applications get into permeable soils or karst bedrock further upgradient in a field, then a visual inspection downgradient at the edge of a field risk missing the problem. Further monitoring provisions in the permit would include, for example:

- More stringent equipment monitoring and calibration
- More extensive visual inspections throughout a field prior to, and during, and after applications
- Greater use of soil moisture sensors
- More regular groundwater monitoring, which is submitted to the agency and made publicly available
- Providing photographic documentation submitted to the agency and made publicly available.

As MCEA proposes, detailing site-specific actions that can be taken at each facility in a Visual Monitoring Plan helps tailor land applications to each field. Additionally, this Visual Monitoring Plan will dovetail with information MPCA will require through the Nutrient Management Tool to create a more holistic plan to manage land applications in permitted fields.

Nutrient Management Tool must be publicly noticed and opened for public comment.

Minnesota's Nutrient Management Tool will be used to satisfy the permit requirements, manure management planning, and record keeping rules. The Nutrient Management Tool and Manure Management Plan are integral and required parts of a feedlot's application packet for a permit. A facility's ability and plan to construct,

operate, and maintain a feedlot is directly related to its nutrient and manure management plan, and are part of what MPCA considers and relies on determining whether or not a feedlot should be granted coverage under the permit. As for this General Permit, designing the Nutrient Management Tool relates back to Permit requirements. In some ways, issuing the draft permit before finalizing the tool is like putting the cart before the horse.

The public cannot adequately comment on the permit without seeing and understanding this critical tool. For example, if the tool does not require accuracy or clarity, it risks lowering the evidentiary standard feedlots must meet to demonstrate their ability to meet and comply with permit requirements. Without seeing how the tool works, and what information it requires, we are concerned that feedlots may present misinformation.

The Nutrient Management Tool should be noticed to the public and to feedlots simultaneously, not to feedlots and *then* “to others” as MPCA currently proposes. By delaying in issuing the Tool until after this permit public notice and comment period, MPCA has eliminated the public’s opportunity to comment on it as part of this permit process. Public notice and comment allow the public to confirm that the agency’s proposal conforms with applicable public disclosure laws (e.g., Minnesota Government Data Practices Act (Minn. R. 7000.1300) and public disclosure laws).

We also encourage MPCA to hold public workshops on how to use and understand the online nutrient management tool. This ensures proper, and appropriate, record keeping. It also educates all users, including feedlot owners/operators and the public, on how to use and understand the information, including the strengths and weaknesses and gaps in the system.

Location, Location, Location: Practices of field sharing and self-transfers must be prohibited and greater transparency is the tool to fix these problems.

In SRAP’s work across the U.S., we have frequently seen situations where two critical problems exist in manure transfers that greater transparency can resolve.

First, we see situations where more than one CAFO uses the same field for land applications. This practice greatly compounds crop, soil, surface and groundwater, odor and volatilization problems. For regulatory and permitting purposes, each CAFO using that same field usually varies what information it reports to public agencies and the public about the field (e.g., name, size), so state agencies are unable to easily identify this practice. A simple fix to ensure this practice is not occurring is to build in greater

transparency. In particular, Minnesota’s draft Permit Section 9.4 and Manure Tracking Form could be greatly improved to address this practice.

One of MPCA’s responses to EPA’s (June 18, 2024) comments agreed to include the date of manure transfer in the updated Nutrient Management Tool. However, this is just the tip of the iceberg of information that MPCA must be requiring. Other states have already gone much further, and we encourage MPCA to do the same as it continues to develop the Nutrient Management Tool.¹

In Michigan, for example, the state has started to address this problem by requiring, as part of the CAFO NPDES General Permit,² manure generators and manure recipients to proactively take responsibility for ensuring that proper applications occur; improper applications are prohibited by the permit. And, manure generators and recipients must complete a publicly-available Manifest Form. *See* MIGO1000 at Part I (C) (8), (9), Part I (C)(11) and Michigan Form EQP9328 Rev. 3/2023.³ Michigan’s Manifest Form requires recipients to identify (1) the destination / disposal information, (2) daily manure application summary, (3) manure application information. The first category, destination / disposal information, requires clear disclosure of the following information:

- Describing the location (in narrative format);
- Proving the location’s latitude and longitude;
- Identifying the number of acres of the field;
- Date;
- Loads;
- Load size; and
- Quantity.

Minnesota’s Manure Tracking form available online (as of August 12, 2024) does not require disclosure of this same degree of detailed information, particularly as to the

¹ Again, we ask that MPCA release the Nutrient Management Tool for public notice and comment. Since MPCA has not yet completed the Tool’s development, but has released the draft CAFO permits for public notice and comment, SRAP is concerned that MPCA cannot list the Tool’s requirements in the draft permits because it has not been completed. And, it is a critical piece of permit implementation, so denying public notice and comment on the Tool is denying the public access to information it has a right to review as part of our permit comments.

² See MIGO1000 at Part I (C)(8)(d), (e) (available online at <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/CAFO/MIGO10000-General-Permit-2025.pdf?rev=a4d602d0165c41e096854abe036058f9>)

³ See Michigan Manifest Form at <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Forms/WRD/CAFO/EQP9328-Manifest-for-CAFO-Waste.pdf?rev=538e6709834a43b5850701e2651808b7&hash=EC5FEB669810F787B9AB5E7ED9C453D6>

location. For example, Minnesota's form only requires Field ID and Name, County, Township, and Range. If a manure generator and/or recipient were to simply use a different Field ID, the practice of field sharing occurs without MPCA or the public knowing. If Minnesota were to require the level of detailed information that Michigan requires, Minnesota would greatly increase transparency, enabling the state and the public to ensure that the improper practice of field sharing is not occurring in Minnesota, and thus offer an additional opportunity to protect Minnesota waters.

The second problem that SRAP sees is self-transfers of manure. Essentially, a CAFO has a manure management plan for its fields. But under Minnesota rules, a CAFO's ownership of manure ends when the manure is physically transferred or relinquished to a manure recipient. The manure recipient then land applies the manure to its fields, or fields the manure recipient has access to. Manure recipients must follow the protective measures identified in the CAFO permittee's approved manure management plan to minimize the risk of surface and groundwater contamination from manure applications. *See* Minnesota R. 7001.0150; Draft NPDES General Permit, Section 9.4. However, SRAP sees a practice occurring across the U.S. where CAFOs play a "shell game" of land ownership, trucking ownership, and/or manure recipient ownership. In those scenarios, manure is being treated as "exported" off site to another recipient, even though a CAFO may own or control the manure recipient, and the CAFO may own or control - through shell ownership or strawman relationships - the land where the manure is being applied. Similar to the first problem above, this practice can result in inaccurate nutrient balance tallies, and surface and groundwater discharge and contamination problems. Without accurate land ownership and manure recipient disclosures, fields will over-applied with amounts of waste that compromise water quality. SRAP encourages MPCA to develop a Nutrient Management Tool to account for this problem, so that a Nutrient Management Tool minimizes runoff and contamination risks of every field, and that does not consider waste "transferred" when in fact it is still within the permitted CAFO's ownership or control.

Transparency and Biogas/Biomethane

Feedlots proposing to include anaerobic digestion to produce biogas or biomethane should not be allowed to have the anaerobic digester included under the rubric of a NPDES or SDS General Permit because anaerobic digesters are wholly separate point sources. Additionally, anaerobic digester technology varies widely and substantially. With a general permit approach, MPCA is misusing its permitting authority and shoehorning a completely separate point source into a CAFO general permit category. The Clean Water Act, 33 U.S.C. 1365(14) defines "point source" to include CAFOs; at the time Congress passed the CWA, anaerobic digestion technology to generate energy was not a manure management tool contemplated by the legislature.

Nor was the construction and operation of anaerobic digestion “hubs” envisioning generating methane gas to truck or pump into gas pipelines, or methane gas ‘refineries’ flaring gas produced from waste. As a point source, anaerobic digestion activities are not included within the CWA CAFO point source definition, and should be subject to entirely separate point source regulation and permitting. By allowing anaerobic digestion to occur under a CAFO permit, MPCA is impermissibly mixing two entirely different industries, and allowing anaerobic digestion to occur without properly regulating that pollution.

Furthermore, shoehorning anaerobic digestion into a CAFO general permit is even more inappropriate. The NPDES general permit framework is only intended to be used for industries that have common activities. The activities of operating a CAFO, such as housing and raising livestock, storing livestock feed, storing livestock manure, transporting and conveying livestock manure to fertilize croplands are entirely different from anaerobic digestion and gas/energy production. Within the anaerobic digestion industry, SRAP has seen incredible variability in size, feedstock, storage of feedstock, technology, chemistry, processing of manure, production of methane, concentrations of digestate production, refining and “cleaning” of methane, flaring, and transport / conveyance of anaerobically digested manure. In fact, within the last several years, SRAP has seen an ever-increasing variability in the stages of the anaerobic digestion industry at CAFOs. There are rarely enough similar characteristics between digesters, or similarity in geographic regions, to justify a general permit framework. We urge MPCA here to reject anaerobic digestion under the general permit framework and require individual permits for all digesters.

Conclusion

We appreciate MPCA’s work to date on the draft NPDES and SDS CAFO General Permits, and urge the agency to make the straight-forward changes referenced in this comment letter, as well as those recommended by the comments submitted by the Minnesota Center for Environmental Advocacy and by Food and Water Watch.

Sincerely,

s/ Ashlen Busick

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