

The Land Stewardship Project

Please find attached the comments from the Land Stewardship Project regarding the proposed changes to Minnesota's NPDES and SDS general permits.



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STEWARDSHIP
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September 3, 2024

Minnesota Pollution Control Agency
c/o George Schwint
12 Civic Center Plz., Ste. 2165
Mankato, MN 56001

Dear Mr. Schwint,

The Land Stewardship Project's Animal Agriculture Policy Steering Committee, on behalf of all Land Stewardship Project members, is submitting these comments on the proposed Minnesota Pollution Control Agency changes to Minnesota's National Pollutant Discharge Elimination System (NPDES) and State Disposal System (SDS) general permits for feedlots.

The Land Stewardship Project is a grassroots, member-driven, nonprofit organization that works with farmers and rural communities across Minnesota and has organized with thousands of small and mid-sized farmers, rural residents, and others to build a more just and sustainable farm and food system. We work with our members every day to build an agricultural system in which small and mid-sized farms and farming families can thrive, our air and water is clean, our soil is healthy, rural communities can prosper, and our climate is resilient. Currently, our membership includes approximately 1,500 small and mid-sized farming households and an additional 3,000 households in rural, suburban, and urban areas.

For 42 years, our members have worked together to advance our shared vision for agriculture and rural communities in the Upper Midwest. We have done that by advancing policies that promote and support farmers, farming practices, and food systems that can sustain everyone involved, from the farmer that grows the food to the person that eats it. We also do this through direct programming that allows farmers to learn from each other about how to implement crop and livestock production practices that build soil health and reduce input costs, and by facilitating a nationally-recognized beginning farmer training program. This work has put over 1,000 new farmers on the land, won tens of millions of dollars in public funding for farmers who are building soil health, helped create regional food systems, created tax incentive programs that make it easier for beginning farmers to gain access to land, and put in place moratoriums on farm foreclosures during times of financial stress in agriculture.

We also move this vision forward by working with our members to push back against the agricultural practices and policies that undermine our shared vision. Small and mid-sized farms, and by extension, rural communities, cannot thrive, or even survive, in an environment where the agricultural sector becomes increasingly consolidated. This consolidation includes the proliferation of large-scale feedlots that threaten our air, water, soil, climate, wildlife, farm economy, local rural economies, human health, and more. This work is centered around preventing the expansion of the "get big or get out" model of

agriculture by stopping over 40 large-scale feedlots from being built or expanding, and protecting our shared air, water, land, climate, and communities from the harmful effects of factory farms.

The Land Stewardship Project has a deep familiarity with building an agricultural system that is good for our planet and our communities in a way that works for farmers and rural communities. That is why we and our members advocate for a more robust permitting process for the largest livestock operations in Minnesota and are committed to making the MPCA's proposed changes the best that they can be.

Section I: We are encouraged by what has been initially proposed.

We are encouraged to see the agency taking steps to modernize a permitting structure that has not been changed in 24 years. We believe that some of your initial proposed changes are good, common sense, first steps in getting this permitting system to a place where it works for everyone it impacts.

These initial proposed changes that we are encouraged by are:

- Requiring that by 2028, all lands that have manure applied to them in vulnerable groundwater areas must have either a growing crop, a perennial crop planted, or have a cover crop planted with 14 days of manure application if spreading in October and November.
- Prohibiting solid manure spreading in vulnerable groundwater areas during the winter conditions experienced in December, January, and February,
- Limiting manure application within a 100-year floodplain to only application that incorporates the manure into the soil.
- Monitoring spreading by requiring the permit holder do visual inspections of all land application areas.
- Helping with cleanup and accountability by requiring the permit holder do water sampling after a manure discharge event.
- Making our rules consistent by requiring people who buy manure from a permit holding operation or spread manure for one follow the permit requirements.

In addition to our encouragement and support of these proposed changes, we would like to specifically highlight the need for extending the requirements under these permits to also govern how manure from a permit holder is handled, and what best management practices are being used by custom applicators or other kinds of operations that are taking in manure produced by a permit holder. We understand that arguments have been made against this specific part of the proposed changes in an attempt to amend this requirement out of the new permits or weaken the requirement. Our understanding is that the main justification for these arguments is that extending the required best management practices like cover cropping to custom applicators and others who receive manure from a permit holder will make manure less desirable as a source of fertilizer and less of a commodity in general. The supposed result of such a situation is that manure covered by these permits will be harder for operators to sell or transfer and farmers will be further incentivized to use more synthetic nitrogen fertilizers.

We feel that these arguments are intentionally ignoring a few key facts that prove manure will not be

de-commodified by this change and that farmers will not be incentivized to use more synthetic fertilizers. When animal manure is stored and used properly, it is a highly effective fertilizer for growing a crop.¹ Depending on what kind of animal manure is being used, there are differing levels of nitrogen, phosphorus, and potassium present, and those nutrients are often held in an organic form, making them more readily available for plants to utilize. This is not something that can be said about synthetic fertilizers. Also, when accounting for all the nutrients held in manure, the cost to use manure as a fertilizer is often lower than purchasing synthetic fertilizers,² Especially when pricing issues and volatility in the fertilizer market due to the consolidation of that part of the agriculture industry are considered.³ Manure oftentimes has a more stable price and is more well-rounded as a source of fertilizer. We do not think that adding a relatively small requirement of implementing a best management practice for someone utilizing manure from one of these permit holders will drastically change the calculus of why manure is a better fertilizer.

In addition, our state is one of the leaders in incentivizing farmers to utilize practices like cover cropping, which is on the list of potential best management practices that people must use. Money is currently available from multiple sources to help farmers implement cover crops in their rotations. There is funding available through nearly every Soil and Water Conservation District in Minnesota via the state's Board of Water and Soil Resources.⁴ There is also funding available through the Minnesota Department of Agriculture to assist farmers with the cost of implementing these best management practices.⁵ In addition, there are private funding sources available through the Minnesota Soil Health Coalition, which pays farmers \$10 per acre to plant cover crops.⁶ There are even county-specific programs that provide equipment-sharing services for planting cover crops, or initiatives such as the Olmsted County Groundwater Protection and Soil Health Program, which pays farmers \$55/acre to grow cover crops to heights that significantly reduce nutrient pollution.⁷ On top of this, due to these programs' success and farmer demand for them, recent state legislative sessions have featured bills that would greatly increase the amount of money available for such initiatives. The Natural and Working Lands portion of Minnesota's Climate Action Framework calls for more investment in these types of programs and the technical assistance needed.⁸ With these robust support programs in place to help offset additional costs that farmers may incur due to implementing best management practices for the manure they use, the possible risk of de-commodifying manure seems misplaced. It makes even less sense to us that extending the requirements for how manure is used under these permits to individuals who receive the manure would in any way de-commodify or disincentivize people to use it as a fertilizer.

The purpose of these permits is to recognize that, when it comes to large feedlots and the amount of

¹ <https://wayne.osu.edu/news/fertilizer-costs-make-manure-look-better>

² <https://wayne.osu.edu/news/fertilizer-costs-make-manure-look-better>

³ <https://www.iatp.org/the-fertiliser-trap>

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<https://bwsr.state.mn.us/node/12056#:~:text=The%20soil%20health%20delivery%20grants,provide%20additional%20contacts%20for%20landowners.>

⁵ <https://www.mda.state.mn.us/environment-sustainability/financial-assistance>

⁶ <https://www.mnsoilhealth.org/cost-share/>

⁷ <https://civileats.com/2024/02/27/can-taller-cover-crops-help-clean-the-water-in-farm-country/>

⁸ <https://climate.state.mn.us/sites/climate-action/files/Climate%20Action%20Framework.pdf>

manure they produce, the potential for contaminating our shared land, water, and air is much greater. With that being the goal, it should not matter who is disposing of or utilizing that manure. What matters is that the manure produced is being disposed of or utilized in a way that is sustainable and healthy for the landscape and all the people that rely on it. Allowing permit holders to transfer their manure to others who may not follow the same spreading requirements and best management practices outlined in the permit is a complete negation of the purpose of this permit. This proposed change must remain intact and unabridged to keep these permits consistent and effective.

Section 2: More must be done to address the inadequacies of the current permitting structure and to protect communities.

While the proposed changes are a step in the right direction, we believe there is more that must be added to these permits to adequately ensure they are fulfilling their purpose of keeping people and our shared water and land safe from the harmful effects of manure disposal.

Unfortunately, over the past few decades public policy and corporate interests have driven the agriculture industry toward fewer, larger farms, mainly in the pursuit of maximization of profit, and the consolidation of profits into fewer and fewer hands. This has come at the expense of other farmers, rural economies, and public health, as well as our land, water, and climate. In animal agriculture, this has resulted in increasingly larger feedlots that concentrate millions of gallons of liquid manure in lagoons, or thousands of tons of solid manure collected into one spot. This causes the nutrients in the manure to become more potent and concentrated, while also increasing the risk of manure running off of a field and into a waterway.⁹

This shift has had significant consequences. Crop and livestock production accounts for roughly 70 percent of the state's nitrate pollution, putting the health of our families at risk.¹⁰ Currently, nearly 80,000 people¹¹ in southeastern Minnesota alone have unsafe drinking water due to nitrate contamination. But it's important to note that this issue is not limited to the karst region. Tens of thousands of Minnesotans live in communities or have personal wells with elevated nitrate levels, and these people live both inside and outside the new designation of Vulnerable Groundwater Areas¹², which to our understanding corresponds with the map created by the Minnesota Department of Agriculture to comply with the Groundwater Protection Rule.¹³ This designation would exclude parts of northwestern Minnesota and points in southern and western Minnesota that have had wells test high for nitrates but were excluded from the groundwater protection rule map.

This is an expensive issue to remedy and Minnesotans with contaminated water face undue financial

⁹ https://landstewardshipproject.org/repository/1/1171/myth_buster_40_cattle_creeks.pdf

¹⁰ <https://www.pca.state.mn.us/pollutants-and-contaminants/nitrogen>

¹¹ <https://www.mprnews.org/story/2023/10/31/does-nitrate-in-southeast-minnesotas-water-present-a-public-health-crisis>

¹² https://www.mda.state.mn.us/sites/default/files/docs/2022-05/ttpupdate2022_05.pdf

¹³ <https://www.mda.state.mn.us/chemicals/fertilizers/nutrient-mgmt/nitrogenplan/mitigation/wrpr/wrprpart1/vulnerableareamap>

burdens. The families and residents that are affected by this contamination face the hard financial choice of installing a reverse osmosis system or a point-of-use ion exchange filter. They may even have to pay tens of thousands of dollars to drill a new and deeper well. Some are forced to rely on bottled water or to even move out of the community entirely. If none of those options are financially viable for them, oftentimes folks end up with large medical bills from nitrate-caused health conditions.¹⁴ These are costs that are forced on them even though they are not the ones that cause the contamination in the first place.

And in addition to keeping groundwater free from contamination, we need to also focus on protecting our shared surface waters in Minnesota. Minnesota's lakes and rivers are something our state is incredibly proud of. Millions of people each year rely on Minnesota having clean surface waters that they can go swimming in, as well as fish, paddle, float, and irrigate their plants or crops with. Not only are clean surface waters something that people individually appreciate, but tourism around water recreation is also a large economic driver for many in Minnesota.¹⁵ These permits need to be designed to protect these surface waters from the kind of feedlot runoff or contamination that can contribute to fish kills and large algae blooms.¹⁶ This contamination can come from single events like manure spills or discharges due to extreme weather events, which are projected to continue to increase in frequency over the coming years. It can also happen by simply operating one of these facilities under the stipulations of a permit. Allowing "routine" manure runoff to happen under an active permit is not acceptable and must change.

The status quo simply isn't and hasn't been working. Even though these rules have been in place for decades, our communities are still seeing an increase in the harmful effects of mismanaged and over-applied manure. And, as we've said, while there are some good steps in your initial proposal, they are not adequate to address the issues our members and rural communities are facing. All Minnesotans, regardless of their zip code, deserve safe drinking water. Gaining access to clean water should not be a luxury good. These permits must protect our common resources so that every Minnesotan can have equal access to them.

We request that you amend the current proposal to address some of the longstanding environmental and economic injustices that have been taking place under the current NPDES and SDS permitting structures and that are having direct negative impacts on our members, and on the communities that we represent. We have detailed a few improvements below that we believe must be implemented if these permits are to have their intended effect of keeping our members and communities protected.

Improvement 1: Everyone deserves to have their surface and groundwaters protected, not just individuals in vulnerable groundwater areas.

While protecting water sources in Minnesota's vulnerable groundwater areas is particularly important, all Minnesotans, regardless of where they live, deserve to have access to clean water. These permits should be proactive in keeping Minnesotans protected from surface and groundwater contamination. The MPCA should not be creating rules that will only protect

¹⁴ <https://www.health.state.mn.us/communities/environment/water/contaminants/nitrate.html#Protect>

¹⁵ https://mn.gov/tourism-industry/assets/23AnnualReport_8.5x11_tcm1135-600893.pdf

¹⁶ <https://www.pca.state.mn.us/sites/default/files/tdr-g1-24.pdf>

people once they have proven that they are at risk and have a well that is unusable. The additional requirements to the October, November, and winter manure application restrictions and practices must be extended to all lands where manure from a site that holds either an NPDES or an SDS permit is applied, regardless of whether that land is in a vulnerable groundwater area, or if the manure is being spread by the permit holder themselves or a custom applicator.

Improvement 2: Record-keeping requirements must be strengthened.

While it is good that record-keeping of manure applications — including those related to water sampling results and applications that are done by manure buyers or custom applicators — will be required to help make sure that permits are being followed by everyone, the requirements around this recordkeeping need to be much more robust to meet the needs of Minnesotans. The requirement for permit holders to share this information with the agency on an annual basis must be increased to sharing the information after each application occurs. We believe that increasing communication between permit holders and feedlot officers will be beneficial to everyone involved. Nobody — farmers, agency staff, or community members, likes surprise inspections or surprise contamination events. If permit holders are sharing information with feedlot officers regularly, it helps the permit holder if they have more clarity around what is being asked of them. It also helps the agency ensure permits are being followed, and helps community members become more confident that they are being protected.

In addition, the information gathered from these records should be made available to the public. Communities dealing with the risks of feedlot contamination deserve to know that permits are being followed and deserve to have the ability to check that information for themselves. What lands are part of the manure management plans of permit holders, the results of water sample tests, and other information gathered in these records should be mapped, and this information should be made publicly available. This will allow community members to know what is going on around them and help them identify risks. In this way, they can help the agency ensure that permit requirements are being met.

Improvement 3: On their own, the proposed water sampling requirements are inadequate and more must be done to proactively protect our shared waters.

While water sampling/testing after a discharge event is a good start, this permit must require more proactive water sampling and testing be done to ensure long-term compliance with the permit, to help ensure accountability, and to ensure that feedlots are being permitted, constructed, maintained, and operated in a way that is not negatively effecting the surrounding area. Regular water sampling and testing near the permit holding site and where manure from the permitted site is being spread is vital so that the agency and the public can know that long-term damage and contamination is not occurring. This testing should take place at locations of potential surface water contamination like drain tile outlets, streams, drainage ditches, or field low points where stormwater typically runs off. Groundwater access sites like wells should

also be tested regularly. These locations should be listed on the permit as well, so that operators have the knowledge they need to do this testing effectively, and repeated tests can be accurately compared.

These permits should also require that new construction of manure basins and new lands used for spreading undergo water sampling and testing before construction begins or manure is spread to establish a baseline nutrient load that future testing can be measured against. Such a baseline is required if we are to determine that these permits are meeting our goals of reducing contamination.

Improvement 4: More direction for farmers on how they can fulfill water sampling requirements is needed.

As currently written, the proposed changes to the permit requiring farmers to collect and test water samples do not give enough direction to farmers for them to perform this requirement successfully. To be effective and to collect the required information from a water sample, that sample needs to be tested within 24 hours of collection. Water samples like this oftentimes need to be sent off to a specialized facility that can be hours away from the farm where the sample was collected. While this requirement is good and needed, there needs to be more direction given on how the agency expects farmers to comply with this testing requirement. This requirement is simply not going to work if farmers are required to drive a sample to a clinic in Minneapolis within 24 hours of taking it, or the agency is relying on farmers mailing in their samples.

This very necessary water testing requirement must include a detailed pathway in the permit for getting that testing done effectively. This could involve detailing the location of county Soil and Water Conservation District offices that can do the testing, or a detailed plan for how the agency will either come to the farmer to test the water on-site or collect and transport samples within 24 hours.

Improvement 5: Digestate must receive additional scrutiny.

We are in agreement with other commenters about the need to have further requirements in these permits specifically related to the use and spreading of digestate. We agree that if manure from a facility holding one of these permits is going to be used in a digester and converted to digestate before it is spread, the digestate must be tested for its nutrient content before every application. Digestate, even when the feedstock used to create it is manure alone, is a more concentrated, nutrient-dense product. The risks and potential impacts of contamination or an accidental discharge event are even higher when dealing with a more concentrated product. Therefore, utilizing it as a fertilizer should be held to a higher standard of scrutiny to account for the added risk.

In summary, we are encouraged by the steps the Minnesota Pollution Control Agency has taken to strengthen Minnesota's NPDES and SDS permits to help keep us, our communities, and our shared water and land safe, but we respectfully insist that more must be done. We believe that, just like your initial proposed changes, the improvements we have detailed here are also good, common-sense requirements that will help these permits have the effect that all Minnesotans need them to have, while still not being onerous on permit holders. We hope you incorporate these improvements into the new NPDES and SDS permits and are happy to discuss the best way these changes can be implemented as your process progresses.

Sincerely,

Matthew Sheets, *Policy Organizer with the Land Stewardship Project*

On behalf of the Land Stewardship Project's Animal Agriculture Policy Steering Committee