



Minnesota Turkey Growers Association

108 Marty Drive
Buffalo, MN 55313
Phone: 763-682-2171
Fax: 763-682-5546
Minnesotaturkey.com

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Mr. George Schwint
Minnesota Pollution Control Agency
12 Civic Center Plaza
Suite 2165
Mankato, MN 56001

Submitted electronically to:
<http://www.pca.state.mn.us/publiccomments>

Re: Notice of Intent to Issue National Pollution Discharge Elimination System (NPDES) General Permit MNG440000 Animal Feedlot Permit
Notice of Intent to Issue State Disposal System (SDS) General Permit MNG450000 Animal Feedlot Permit

Dear Mr. Schwint:

The Minnesota Turkey Growers Association (MTGA) submits these comments on the proposed changes to the five-year General NPDES/SDS permit as outlined in the June 24, 2024 edition of the *Minnesota State Register* (pp. 1154 and 1156). The MTGA is a trade association representing the interests of approximately 400 turkey producers in the State of Minnesota.

The Concept of Extending a General NPDES/SDS Permit to a Third Party is Fundamentally Flawed. One of the proposed changes to the current five-year General NPDES/SDS permit is to extend the permit recordkeeping, inspection, fall application, cover crop, perennial, and growing crop requirements to unpermitted third-party purchasers/transferees of manure from permitted facilities. Minnesota Rules Part 7020.0300, Subp. 19 defines a “Permit” as

“a written authorization **issued by the agency** or county animal feedlot pollution control officer, which may contain requirements, conditions, or schedules for:

- A. achieving compliance with discharge standards and requirements;
- B. **management of animal manure**; or
- C. construction or operation of animal holding areas or manure storage areas.

Permits issued under this chapter are NPDES, state disposal system, interim, and construction short-form permits.” (emphasis added).

Blacks's Law Dictionary further defines a "permit" as "In general, any document which grants a person the right to do something. A license or grant of authority to do a thing...A written license or warrant, issued by a person in authority, empowering *the grantee* to do some act not forbidden by law, but not allowable without such authority." Black's Law Dictionary, 5th ed. (1979), p. 1026 (emphasis added).

Taken as a whole, it is clear that the Agency's authority under the current 7020 rules is to *issue* a permit to a *grantee* which may contain requirements and conditions for *management of animal manure*. That's it. The Agency may issue a permit to a grantee and a grantee only, which in this context, is the owner or operator of an animal facility that is capable of holding 1,000 animal units or more. It cannot issue a permit to someone else, nor can it extend the provisions of a permit to someone who is not a party to that permit. In fact, the title of the permit itself - a National Pollution Discharge Elimination System (NDPES) General Permit MNG440000 **Animal Feedlot Permit** – is issued to an *animal feedlot*, not to a non-livestock raising crop farmer. The Agency simply cannot extend the provisions of a discharge permit to non-permitted third parties.

In meetings with agricultural groups, Agency representatives have indicated that they believe the Agency does have the authority to extend the proposed permit requirements to non-permitted third parties under the guise of Minnesota Rules Part 7020.2225, which regulates the land application of manure. But the provisions of Minnesota Rules Part 7020.2225 currently apply to everyone who land applies manure; as a result, that authority is separate and distinct from the issuance of a facility discharge permit to a limited class of producers who own and operate feedlots that are a certain size – namely, those that are 1,000 animal units or more. It is noteworthy that the provisions regarding inspection, fall application limits, cover crop, perennial, and growing crop requirements are not found anywhere in the current 7020 rules – those requirements were invented out of thin air by the Agency five years ago during the development of the current five-year General NDPES/SDS permit. We argued at that time that the Agency did not have the authority to impose additional permit requirements on a limited class of livestock producers as part of a permit scheme unless those provisions were clearly authorized by the federal Clean Water Act, Minnesota Statutes Chapter 115 or 116, or Minnesota Rules Chapter 7020. Under the current proposal, the Agency is attempting to extend those same non-authorized provisions to non-permitted manure purchasers. The MTGA reiterates its objections to these provisions here.

If the proposed changes become effective, the Agency will effectively be deputizing permit holders to act as surrogates on behalf of the Agency by requiring them to enforce the permit provisions upon manure purchasers. This concept is fundamentally flawed.

The Proposed Manure Transfer Requirements Could Have a Disproportionate Effect on the Turkey Industry in Minnesota. Minnesota is the top turkey-producing state in the nation. The nature of the industry in Minnesota is unique in that most of those turkeys are raised by farmers who do not raise others types of livestock or do not grow any crops. They just raise turkeys. As a result, the majority of the manure produced by our members is transferred to third parties for land application because they do not have their own cropland upon which to apply the manure. In addition, turkey litter is dry matter that also contains bedding material which makes the litter easily transportable and storable. To that extent, it is similar to commercial fertilizer.

If the proposed changes are adopted, our members are very concerned that the crop farmers who currently buy turkey litter will switch to commercial fertilizer simply to avoid the hassles associated with the new permit recordkeeping, inspection, fall application, cover crop, perennial, and growing crop requirements. Unlike commercial fertilizer, animal manure is widely considered critical soil-building organic matter¹ that has been used by farmers for centuries. The Agency will essentially, by government fiat, be eliminating major outlets for the manure produced by our members without any corresponding environmental benefit.

Conclusion

The agency does not have the authority to extend the application of permit requirements to non-permitted third parties. And even if it did, the proposed changes under consideration would have a negative and disproportionate effect on Minnesota's turkey industry. The Agency is knowingly, and somewhat willingly, inviting litigation from Minnesota's livestock and non-livestock agricultural groups regarding the proposed changes to the next five-year General NPDES/SDS permit. We urge the Agency to abandon its proposed changes to the General NPDES/SDS permit and simply extend the current permit, as is, for another five years.

Very truly yours,



Jake Vlamincik
President

¹ At one time, in the late 1990s, some Agency representatives and certain environmental groups considered animal manure as toxic waste that must be disposed of in a manner that did not involve land application. To that end, during the 2000 Minnesota legislative session, poultry litter was classified as a qualifying biomass product that could be burned for electricity in order to help Xcel Energy satisfy its mandate of producing 125 megawatts of electricity from biomass sources in exchange for the ability to store spent nuclear fuel at Prairie Island (to be clear, this was not an effort initiated by the Agency or any environmental group). A plant was built in Benson, Minnesota, to burn poultry litter to produce electricity, but just a few short months after opening the sentiment changed and poultry litter was once again considered to be an important soil-building nutrient. Crop farmer demand for poultry litter increased substantially, and the Benson plant was eventually forced to switch to wood as the primary fuel source. By 2018, proceedings were underway in front of the Public Utilities Commission to close the plant. The Benson plant has since been razed and no longer exists. In short, it was a failed experiment in treating animal manure as something other than a soil-building nutrient due in part to the belief that animal manure should not be used as crop fertilizer. As an industry, we do not want to go down a road like that again should crop farmer demand for poultry litter dry up due to the actions of the MPCA.