



August 30, 2024

VIA ELECTRONIC SUBMISSION

Ms. Emily Schnick
Industrial Division
Minnesota Pollution Control Agency
200 Lafayette Road N
St. Paul, Minnesota 55155

Re: Comments of the Metropolitan Council on Public Notice of Intent to Reissue Wastewater Permit for 3M Chemical Operations, Cottage Grove, MN Wastewater Permit No. MN0001449

Dear Ms. Schnick:

The Metropolitan Council (Met Council) appreciates the opportunity to submit the following comments on the Public Notice of Intent to Reissue Wastewater Permit for the 3M Chemical Operation facility in Cottage Grove, Minnesota (“the Notice” concerning “the Draft Permit”) issued by the Minnesota Pollution Control Agency (MPCA) on July 1, 2024. The comment period on the Notice was originally scheduled to end on August 15, 2024, and has been extended to August 30, 2024.

I. The Met Council’s Interest

The Met Council operates and maintains the regional interceptor system and all nine regional treatment plants that serve the seven-county Twin Cities metro area. The nine wastewater treatment plants in the seven-county Twin Cities metro area include: Blue Lake; Eagles Point; East Bethel Water Reclamation Facility; Empire; Hastings; Metropolitan (Metro); Rogers; Seneca; St. Croix Valley. Those wastewater treatment plants operate pursuant to NPDES/SDS permits. To the extent that the PFAS-related requirements included in the Draft Permit may be viewed as a precedent for how PFAS issues are addressed in permits for the Met Council facilities, the Met Council has a direct interest in the Notice and in the Draft Permit.

II. The Met Council’s Comments

The Met Council takes its role as an environmental steward seriously and is committed to working with the MPCA and other stakeholders to address challenges related to per- and polyfluoroalkyl substances (PFAS). The Met Council appreciates MPCA’s efforts to address PFAS in Minnesota waters. However, the Met Council has substantial legal, policy, and scientific concerns regarding the PFAS-related requirements in the Draft Permit. These requirements may be viewed as precedent for how other facilities, including the Met Council,

will be regulated. The Met Council’s concerns are laid out in detail below. We respectfully request that MPCA consider these concerns before finalizing this permit.

1. Use of Site-Specific Criteria Should be Developed within a Rulemaking Process

The PFAS requirements in the Draft Permit are based on water quality criteria that have been derived by MPCA without following any rulemaking process. While those criteria are subject to review and comment as they apply to the Draft Permit, there has been no process followed up till this point. Subjecting those numbers to comment in a permit-specific context cannot substitute for following a standard rulemaking process, with all the procedural steps that are involved. We recognize that the State’s rules allow MPCA to take this action, but that does not mean that this process complies with basic due process protections – and it does not. Due process requires that regulated parties “know what is required of them so they may act accordingly.”¹ Forsaking such a process here—and instead developing numbers that will only be subject to review on an individual permit basis—creates a substantial risk of inconsistent, arbitrary decisions on issues that should be addressed within a single rulemaking, where all potential affected parties can comment at once, and all issues raised can be addressed in that context.

2. Water Quality-Based Effluent Limits (WQBEL) Must be Attainable

The water quality-based effluent limits for PFAS that are included in the Draft Permit are extremely stringent. The limits are lower than the levels that have been identified as present as background in locations with no major PFAS sources. Moreover, our understanding is that there are no available control technologies that will reduce PFAS to the proposed levels. Yet in the Draft Permit and the accompanying Fact Sheet, there is no analysis of whether the WQBELs can be met, even with the treatment systems that are being installed at this particular facility. If the limits cannot be attained, then the State must determine what levels are attainable. The Clean Water Act establishes a clear focus on meeting designed uses that are attainable.² Furthermore, Minnesota law requires MPCA actions to be “reasonable, feasible, and practical under the circumstances.”³ If the proposed limits are not attainable, which likely means that the uses that they are based on are also not attainable, then the State should not include these limits in the permit.⁴ Instead, MPCA should determine what is attainable, and derive limits from that determination.

¹ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

² 40 CFR 131.2 (“[W]ater quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water....”)

³ Minnesota Statutes, Section 116.07, subdivision 6.

⁴ *In the Matter of the Review on Own Motion of Waste Discharge Requirements Order No. 5-01-044 for Vacaville’s Easterly Wastewater Treatment Plant*, SWRCB/OCC File A-1375 (Oct. 3, 2002). (“In general, the Board agrees that, where [an agency] has evidence that a designated use does not exist and likely cannot be feasibly attained, it is unreasonable to require a discharger to incur control costs to protect that use.”)

3. Limits Should Not be Set Below What Can be Measured

Besides being unattainable, the proposed WQBELs are also well below the levels that can be accurately measured. This violates basic due process rights by subjecting a facility to possible enforcement actions for alleged violations even though there is no way to know what levels are actually being discharged.⁵ MPCA tries to address that issue by also including interim limits based on the limit of quantification (LOQ), but that approach doesn't solve the problem. Test methods can change, and new methods can be developed with lower limits of detection and quantification. A facility cannot make plans that disregard low final WQBELs included in its permit simply because compliance with those limits is not measurable with current methods.

4. Method-Based Limits Raise Detection/Quantification Concerns

MPCA's response to the problem of having to meet unattainable, unmeasurable WQBELs appears to be to set interim, higher numbers that are in the vicinity of the LOQ. But even with those interim limits, there has not been a determination that compliance with the limits is attainable. Method 1633⁶ itself indicates that EPA's estimates of the sensitivity that should be achievable in a well-prepared laboratory resulted in a range of LOQs between 1 ng/L and 4 ng/L for aqueous matrices.⁷ Therefore, it is not clear that every laboratory will be able to achieve an LOQ consistent with the proposed "compliance limits" of 2.1 ng/L and 2.2 ng/L. In addition, those numbers are not appropriate as binding limits.

Even at the LOQ, there is a substantial amount of analytical variability, so that the true result may be significantly above or below the reported result. Therefore, even if a test result is above the limit, it is entirely possible that the true value is below the limit. And, there can be substantial variation in the results reported by different labs and sample collection techniques, which leads to additional uncertainty. This is especially troubling in the PFAS situation. The EPA, in its new drinking water standards, set limits for PFOA and PFOS of 4 ng/L, which were developed in part on a determination that lower numbers were not feasible, based on detection/quantification concerns.⁸ MPCA's interim limits in the Draft Permit are below that EPA level, and are not appropriate as binding, enforceable limits.

5. MPCA Should Consider Providing Relief from Unattainable Limits

Given the attainability issues with the PFAS limits in the Draft Permit, MPCA needs to carefully look at all available means for relief. Those tools include compliance schedules, UAAs,

⁵ *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1328–29, 1333–34 (D.C. Cir. 1995) (permit writers must give permittees fair notice of their compliance obligations, so that permittees are "able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform[.]")

⁶ EPA's testing method "for use in the Clean Water Act (CWA) for the determination of the per- and polyfluoroalkyl substances (PFAS) in Table 1 in aqueous, solid (soil, biosolids, sediment) and tissue samples by liquid chromatography/mass spectrometry (LC-MS/MS)." [Method 1633 Analysis of Per- and Polyfluoroalkyl Substances \(PFAS\) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS \(epa.gov\)](#), (EPA, Jan. 2024) p. 1.

⁷ *Id.*, at Table 9, p 59.

⁸ [2024-07773.pdf \(govinfo.gov\)](#) at pp. 32573-32576.

and variances. Ultimately, the result of this process should be an attainable set of requirements. Other Midwest/Great Lake states have used this mechanism successfully with other pollutants that are difficult to treat.⁹ Similarly, but at a smaller scale, watershed variances have been developed, such as for winter chloride issues in Illinois.¹⁰ These can allow for addressing the situation differently for different source categories, while ensuring that each type of facility is addressed with pollutant minimization programs (PMPs) and management practices that implement progress toward meeting water quality goals, in a way that is appropriate for that facility type.

6. MPCA Should Consider Non-Numeric Limits as an Alternative Approach

To the extent that MPCA concludes that effluent limits are necessary and appropriate for PFAS dischargers, it should seriously consider using non-numeric limits as an alternative. Non-numeric limits do not raise the attainability, measurability, and process problems raised above as to the stringent numeric limits in the Draft Permit at issue here. In other, similar situations, requiring PMPs instead has proven to be a much more effective approach.¹¹ It focuses the attention of the regulated facility on assessing practical options, determining the steps that are most effective in reducing loadings, and then implementing those steps over time on a schedule that makes sense from an operational perspective. Moreover, because public reports are filed as to progress in implementing the PMP (generally on an annual basis), the process is transparent and allows for ongoing input by the agency and other stakeholders. This process promises to yield better results than a numeric-focused approach, which has all of the legal, technical, and policy problems laid out above, and which has a high potential for extended legal proceedings over the numeric limits that can significantly delay implementation of the measures that would actually improve water quality.

III. Conclusion

The Met Council appreciates the opportunity to submit these comments on the Draft Permit. The Met Council looks forward to working with MPCA in its efforts to address PFAS contamination in Minnesota waters. Please feel free to contact us if you have any questions concerning the issues addressed in these comments. Thank you.

Sincerely,



Leisa Thompson
General Manager
Environmental Services

⁹ See, e.g., https://www.in.gov/idem/cleanwater/files/permit_wastewater_smv_faqs.doc (Indiana) and [H:\RulePolicyGuid\Effective\Guidance\Guidance_Manual\permit10_new.wpd\(ohio.gov\)](H:\RulePolicyGuid\Effective\Guidance\Guidance_Manual\permit10_new.wpd(ohio.gov)) (Ohio).

¹⁰ [Board Adopts Illinois' First "Time-Limited Water Quality Standard".pdf](#).

¹¹ See, e.g., <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/35/guidance/permit7.pdf>.