



Submitted Electronically

August 30, 2024

Minnesota Pollution Control Agency
c/o Emily Schnick
520 Lafayette Rd N
Saint Paul, MN 55155

Re: ACC Comments on Draft Wastewater Permit for 3M Chemical Operations in Cottage Grove (July 1, 2024).

Dear Ms. Schnick:

The American Chemistry Council (ACC)¹ appreciates the opportunity to submit comments in response to The Minnesota Pollution Control Agency's (MPCA) request for comment on its "Notice of Draft Wastewater Permit for 3M Chemical Operations in Cottage Grove" (Draft Permit).²

ACC member companies own and operate chemical manufacturing facilities in Minnesota and across the country in compliance with existing local, state, and federal statutory requirements. The environmental impact of our member facilities' operations is evaluated according to permit conditions approved by state regulators and administered under the Clean Water Act and other regulatory programs. As such, ACC members have a significant interest in MPCA's proposed regulatory requirements in this draft permit, particularly those that may address treatment standards for PFAS given their potential to inform other local, state, and federal regulatory permitting and discharge requirements.

In this context, ACC has both procedural and substantive concerns with MPCA's proposed permit, including inadequate opportunity to review and comment on the proposed requirements, lack of appropriate supporting data, and technical concerns associated with the feasibility of the treatment standards, among others. We strongly encourage MPCA to thoughtfully consider the concerns and recommendations provided in these comments.

¹ ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®; common sense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a \$639 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for fourteen percent of all U.S. goods exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

² Minnesota Pollution Control Agency Proposed Draft Permit for 3M Chemical Operations (Cottage Grove) – Wastewater Permit (July 1, 2024). https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid333/did200071/pid_209149/project-documents/Draft%20Permit%20-%20Public%20Notice%20-%20MN0001449%20-%202022.pdf.

I. Summary

ACC members have significant concerns with some of the requirements of MPCA's proposed permit as drafted. As detailed further below, MPCA's draft permit effluent limits do not meet state law standards of reasonableness, feasibility, and practicality. The process of development of this draft permit also raises serious procedural issues that result in unjustified and unachievable regulatory criteria. For example, MPCA's proposed effluent limits for PFOA, PFOS, and PFHxS cannot be reliably and consistently measured with available technology and were selected arbitrarily. For these reasons, ACC strongly recommends that MPCA withdraw this draft permit, address the procedural and technical flaws, and reissue a proposed permit based on technology-based limitations that regulated entities in the state can reliably measure with adequate time for review and comment.

II. The Draft Permit Presents Significant Procedural Concerns

ACC is concerned that MPCA's process to develop and propose the Draft Permit did not provide key stakeholders adequate time to review important technical resources used to develop the permit and its requirements. Most notably, stakeholders did not have adequate time to review the data and requirements before the comment deadline.

Additionally, the Draft Permit proposes water-quality based effluent limits (WQBELs) for several substances, including six PFAS compounds. We note that a typical WQBEL for a substance would first be based on established water quality standards (WQSs) or total maximum daily load (TMDLs) that would properly allocate loadings to dischargers and result in measurable improvements to water quality. ACC notes that in this instance, rather than follow the usual process, MPCA has not established any preceding WQSs and TMDLs for the targeted PFAS substances and associated thresholds. Instead, MPCA relied on its authority to develop a "site-specific" water quality criteria (WQC) to unilaterally develop and propose WQBELs for those six PFAS. In doing so, MPCA failed to follow its own rules in deriving effluent limitations from the "site-specific" WQC, including using non-site-specific data. For example, MPCA relies on data collected from the north shore of Lake Superior to set the fish consumption rate (FCR), which does not reflect "site-specific" fish consumption rates near the permitted site. Additionally, MPCA declined to use reference dose (RfD) values developed by the Minnesota Department of Health (MDH), as MPCA has done in the past, in favor of adopting a draft United States Environmental Protection Agency (EPA) value that EPA declined to use in subsequent final agency actions.

Further, ACC is concerned that MPCA will rely on a similar process to develop requirements for other discharges on the Mississippi River and beyond that will result in similarly unachievable WQBELs, creating significant unjustified costs to regulated entities and yielding limited environmental benefit. For example, at MPCA's public meetings in July and August of 2024, statements from staff indicated that MPCA may consider applying the same requirements contained in this Draft Permit to future state permits.³ ACC is concerned that a similar process,



one that uses a selectively site-specific approach and results in infeasible requirements, applied to other entities in the state will compound the significant technical issues associated with the Draft Permit as proposed and lead to varying and unpredictable outcomes for different state dischargers. As such, we urge MPCA to first avoid any replication of the flawed permit requirements in this Draft and also reconsider the development of the WQC from which 3M's WQBELs were derived.

III. The Proposed Limits are Technologically Infeasible

ACC is concerned that the effluent limits for PFOA, PFOS and PFHxS proposed in 3M's permit are unachievable with current technology and cannot be reliably and consistently measured. The proposed levels are lower than background quantities identified in locations with no major PFAS sources. The proposed levels MPCA is requiring for effluent discharge are also lower than drinking water limits set by the U.S. Environmental Protection Agency (EPA) for these same chemistries - PFOS, PFOA and PFHxS. In that separate action, EPA set limits at 4 ppt for PFOS and PFOA and 10 ppt for PFHxS, in part because the Agency recognized that lower levels could not be reliability detected. *See* Final PFAS NPDWR, 89 Fed. Reg. 32532 (April 26, 2024).

Furthermore, the proposed intervention limits are not appropriate for this context. Since they are immeasurable, they do not provide meaningful information regarding the performance of the treatment system. Further, intervention limits do not assist an operator's ability to meet effluent limits. Rather, ACC is concerned that the proposed intervention limits in this permit will only serve as an impractical standard that keeps dischargers in a constant cycle of corrective action, diverting resources from properly operating and maintaining the treatment system.

IV. Some of MPCA's Reference Data is Unjustified

MPCA's proposed treatment requirements for PFAS are based on water quality criteria that have been derived by MPCA without following any rulemaking process. As a preliminary issue, the list of 110 PFAS appears to have been selected arbitrarily and without a clear rationale made available to the public. Additionally, ACC understands that the Draft Permit Fact Sheet references an updated version of the supporting toxics memorandum, which the public has not had the opportunity to review.

Finally, ACC is concerned that the modeling assumptions used to calculate the proposed limits in the draft permit are based on several unjustified and arbitrary data points. For example, MPCA uses a draft reference dose for PFHxS to develop the proposed thresholds. However, the draft reference dose is actually lower than the EPA reference dose for the MCL. We have significant concerns associated with MPCA's use of a significantly stringent draft value in a regulatory context when other final values are available.

V. Recommendations

For the above reasons, ACC recommends that MPCA withdraw several key provisions in its Draft Permit, particularly the PFAS-related requirements, and revise and reissue the Draft

³ MPCA public meetings took place on July 29, 2024; July 31, 2024, and August 20, 2024.



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Permit with ample opportunity for all stakeholders to review and comment on it and the most recent versions of its supporting documents. We appreciate the opportunity to submit comments in response to The MPCA's request. If you have any questions or need further clarification, please feel free to contact me at (202) 249-6409 or carly_zaccaria@americanchemistry.com.

Sincerely,

Carly Zaccaria

Carly Zaccaria
Manager, Environment
American Chemistry Council

