



Metropolitan Airports Commission

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Minnesota Pollution Control Agency
c/o Matthew Moon
Industrial Division
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Marshall, MN 56264
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RE: Comments on Draft Multi-Sector General Permit for Industrial Stormwater

Dear Mr. Moon:

On behalf of the Metropolitan Airports Commission (MAC), I am pleased to submit comments on the draft multi-sector general permit for industrial stormwater (MSGP) that was placed on public notice January 27, 2025, by the Minnesota Pollution Control Agency (MPCA). The MAC owns and operates six reliever airports that are currently authorized to discharge stormwater under the current MSGP. The MAC intends to re-apply for discharge authorization under the draft MSGP for the six reliever airports and therefore has an interest in the contents of the draft MSGP.

The comments below identify the applicable section of the draft MSGP, suggested actions or language modifications the MAC feels MPCA should incorporate, and supporting information to support the MAC's positions.

1. 386.1 (Per-and polyfluoroalkyl substances (PFAS) monitoring and reporting requirements)

The scope of businesses covered by the primary SIC codes listed in Appendix D (who are required to conduct PFAS sampling) is overly broad. Not all permittees with a primary SIC code listed in Appendix D engage in industrial activities that make, use, store or process PFAS-containing materials and/or where vents or exhausts are located on buildings that make, use, store or process PFAS, or areas where PFAS would become exposed, if potentially present at the facility. Requiring permittees that have no historical or current PFAS exposure to sample for PFAS imposes an unnecessary financial burden.

For instance, the MAC does not perform these kind of industrial activities at any of its six reliever airports nor do those airports have onsite firefighting capabilities. Furthermore, the vast majority of Sector S permittees are general aviation airports that have no historical or current PFAS use and therefore do not warrant PFAS sampling.

For this reason, the MAC recommends creating a process whereby permittees who have SIC codes listed in Appendix D, but do not have industrial operations meeting the characterization above, can be excluded from the draft MSGP's PFAS requirements upon submitting to MPCA a certification that, based on a diligent inquiry, the permittee is not aware of historical or current use of PFAS compounds at their permitted facility.

2. Part 386.2 (Identifying and monitoring at a PFAS Area of Concern (AOC))

As mentioned above, not all permittees with a primary SIC code in Appendix D have historical or current PFAS use/exposure. For Appendix D permittees with no past or current use of PFAS, identifying an AOC is impossible and will create public confusion by attributing an AOC to a permittee's operations or activities.

Notwithstanding the comments above that sampling should not be required for many Appendix D permittees, in the event MPCA does require these permittees to sample for PFAS, the MAC recommends using a different term and/or allowing for sampling at a Benchmark Monitoring Location (BML) if no historical or current PFAS use/exposure exists at the facility.

3. Part 393.5 (PFAS thresholds within one mile of a Drinking Water Supply Management Area (DWSMA) or Class 1 water of the State)

The MAC recommends that MPCA edit the first sentence of this section of the draft MSGP as follows: "...is within one statute mile of a Class 1 surface water of the State..." This change will make clear that the permit is referring to (a) a statute mile, as opposed to a nautical mile, and (b) a Class 1 surface water, as opposed to groundwater, which is also Class 1.

4. Appendix D Sector S SIC code clarification of intent

Appendix D of the draft MSGP lists SIC codes subject to the PFAS sampling requirements. Sector S was limited to only SIC code 4581 (Airports, Flying Fields, and Services) within Appendix D. SIC code 4581 includes nearly all Sector S permittees besides air carriers. Many SIC Code 4581 entities, including fixed-based operators and airplane maintenance facilities, do not make, use, store or process PFAS-containing materials. The inclusion of all 4581 facilities could result in numerous entities being required to collect samples for PFAS analysis at the same airport.

The MAC is concerned that the MPCA's intention was to limit sampling solely to the airport subject to the permit and exclude the other Sector S SIC codes to accomplish this end. The MAC recommends the MPCA review the intended Sector S entities required to conduct sampling for PFAS and clarify the intent as to whether airports or all 4581 permittees are subject to the Appendix D sampling.

5. No exposure certification PFAS sampling requirements mentioned in Fact Sheet (Page 8)

The MAC is concerned about MPCA's unprecedented directive in the draft MSGP Fact Sheet that applicants for the no-exposure exclusion must conduct four rounds of PFAS sampling prior to submitting their application. Although the MAC has not certified no-exposure and does not plan to at its airports, many tenants at MAC's reliever airports have for years relied upon the no-exposure exclusion because while they technically fall within Sector S, they have very little "industrial" activity at their lease sites, e.g., a hangar for a small private recreational airplane. Moreover, there is no indication these tenants use or have in the past used PFAS-containing products that could affect stormwater. Requiring these tenants to incur the significant expense of PFAS sampling is inequitable, unnecessary and illegal. We recommend MPCA retract this proposed PFAS-monitoring requirement for the following reasons:

The proposed PFAS-monitoring requirement for no-exposure exclusions exceeds MPCA's legal authority. The federal Clean Water Act mandates that EPA and authorized state agencies like MPCA "shall not require" an NPDES permit for discharges comprised entirely of stormwater, subject to very limited exceptions. 33 U.S.C. § 1342(p)(2). One of those limited exceptions is for discharges of stormwater "associated with industrial activity." Pursuant to this exception, EPA promulgated rules defining and regulating "storm water discharges associated with industrial activity." EPA's definition of this key jurisdictional term—as well as MPCA's parallel definition—expressly excludes stormwater discharges from industrial sites that might otherwise be subject to regulation where two conditions are met: (1) there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff; and (2) the discharger submits a no-exposure certification in accordance with the regulations. 40 C.F.R. § 122.26(g); Minn. R. 7090.3060. By attempting to add a third condition—mandatory PFAS monitoring—MPCA is not only acting inconsistently with its own rule, it is also attempting to regulate stormwater discharges that are not "associated with industrial activity," which contravenes Congress's general prohibition on regulating stormwater under the NPDES permit program. MPCA's proposed PFAS-monitoring requirement for the no-exposure exclusion is thus beyond MPCA's legal authority and unenforceable. *See In re Petitions for Enlargement of the Valley Branch Watershed District and Enlargement*, 781 N.W.2d 417, 421–22 (Minn. Ct. App. 2010) (administrative agencies such as MPCA only have powers granted by the legislature, and if

there is any uncertainty as to whether an agency does have power, the uncertainty must be resolved against the exercise of authority).

Even if authorized, MPCA's no-exposure PFAS-monitoring requirement is vague and will create confusion. MPCA has articulated its PFAS-monitoring requirement for no-exposure applicants only in the draft MSGP Fact Sheet, not in the draft MSGP itself. This is problematic because a Fact Sheet is not an enforceable document. A mandatory requirement to monitor PFAS—as the “requirement” is worded in the Fact Sheet—must be established by duly adopted statutes or rules, or in the MSGP. By placing the PFAS-monitoring “requirement” in the unenforceable Fact Sheet, MPCA is acting beyond its legal authority and will cause significant confusion among dischargers seeking the exclusion. Moreover, even the limited directions MPCA provides in the Fact Sheet will create confusion among no-exposure applicants; for example, MPCA provides no information on where to sample for PFAS, which is especially problematic considering that most no-exposure applicants—including most of the MAC's tenants at its reliever airports—have no history of PFAS use and will not have an “area of concern” for PFAS at their facility. For these reasons, the MAC urges MPCA to remove the Fact Sheet's directive that no-exposure applicants must sample for PFAS.

6. Part 38.3.1 (Spills and leaks reporting requirement for the annual report)

The MAC recommends MPCA edit section 38.3.1 as follows: “A list of all spills and leaks (as pursuant to Minn. Stat. 115.061) occurring at the facility during the reporting year that result from the permittee's industrial activity...” Airport facilities have the potential for multiple MSGP permittees operating at the site. Each permittee should be responsible for reporting only spills and leaks that they are responsible, not for “all spills and leaks...occurring at the facility.” Alternately, MPCA could make this limitation applicable only to Sector S, so that this recommended language change is limited to spills and leaks at air transportation facilities.

7. Part 268.2 (Additional inspection requirement)

Sector S of the draft MSGP includes a requirement that one additional monthly inspection is conducted during the deicing season (the deicing season being defined in the permittee's SWPPP). The MAC recommends that this requirement be eliminated from the MSGP. The MAC has been conducting the additional monthly inspections at six airports for over a decade under the existing and past MSGPs. Our experience has found this to be a burdensome requirement that has not provided actionable information or value that led to BMP improvements, additions, or corrective actions that reduce impacts to stormwater discharges.

Wintertime conditions at airports—particularly at airports that are authorized under the general permit, such as the MAC’s reliever airports—present generally static conditions, with little to no stormwater flow and few if any changes to BMPs or potentially exposed significant materials from one week to the next. Conducting inspections once per month is more than adequate to monitor the effectiveness of the airports’ stormwater control measures, including those designed to address pavement and aircraft deicing. Adding a second inspection during deicing season adds additional cost and logistical burdens that are unnecessary to prevent stormwater pollution.

8. Appendix B Table S-1 (benchmark monitoring table)

Table S-1 in the draft MSGP includes three subsectors that identify which benchmark monitoring parameters are applicable to Sector S permittees. The subsector definitions are based on activities occurring at “airports.” The MAC recommends that each subsector be defined by activities conducted by the “permittee.”

For example, at one airport there may be a permittee that does not use glycol-based deicing/anti-icing chemicals or urea and there may be another permittee at that same airport that does use one of these compounds. The current language would require both permittees to sample under subsector S1 (the expanded list of parameters) due to the activity occurring at the airport. This does not seem appropriate given that the one permittee has no operations related to glycol-based deicers or urea application.

Furthermore, the draft language is impractical for permittees to maintain compliance in the future. If one airport has multiple permittees and no glycol-based deicing or urea application is occurring at the beginning of the permit, all permittees would begin sampling under subsector S2. However, if one of these permittees begins using glycol-based deicers or urea, then all permittees would need to redefine their subsector as S1 and change sampling requirements to the subsector S1 list of parameters. All permittees are therefore obligated to somehow track the use of any glycol-based deicers or urea by all other permittees at that airport. This is impractical, overburdensome and ultimately unfair to permittees. MAC recommends that only permittees using glycol-based deicers or urea should be subject to the expanded list of parameters.

The lack of subsector definitions also has significant implications for subsector S3, which defines whether a permittee is subject to Effluent Limitation Guidelines and therefore annual effluent limit sampling. The draft permit language would create a situation where all permittees at an

airport (that satisfy the subsector S3 criteria) would be required to conduct effluent sampling if any one permittee uses urea to deice pavement. Only the permittee utilizing urea should be subject to the effluent limit sampling requirements.

The MAC recommends the following language modifications in Table S-1 to address these concerns:

- For subsector S1 and S2, replace “Airports...” with “Permittees...”
- For subsector S3, include the following language to the start of the definition:
“Permittees that use urea as a pavement deicer at...”

Furthermore, the definition of an S1, S2 and S3 facility is not consistent within the Fact Sheet itself (Fact Sheet pages 40 & 73–74) as well as between the draft MSGP and the draft Fact Sheet associated with the draft MSGP. The MAC recommends the MPCA review which definition is intended and adjust accordingly.

Thank you for considering the MAC’s comments on the draft MSGP. The multi-sector general stormwater permit has evolved over the last decade to include more streamlined requirements and clarity; however, there remain aspects to the permit that should be modified as they are either over-burdensome or do not provide the value that was anticipated during permit development. If you have any questions regarding the MAC’s comments or need additional information, please contact me at bridget.rief@mspmac.org or (612) 725-8371.

Sincerely,



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