Suzanne M. Hattenberger, PG
Assistant Director Environmental Operations

BNSF Railway Company
2304 North 28th Street
Superior, WI 54880
Phone 715-394-1224
Fax 715-394-1234
suzanne.hattenberger@bnsf.com

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Minnesota Pollution Control Agency
c/o Matthew Moon
Industrial Division
Minnesota Pollution Control Agency
504 Fairgrounds Rd, Suite 200
Marshall, MN 56264

Re: Comments on the Minnesota National Pollutant Discharge Elimination System (NPDES) Proposed Multi-sector Industrial Stormwater General Permit MNR050000 (ISGP)

To Whom It May Concern:

The purpose of this letter is to provide comments on the Minnesota National Pollutant Discharge Elimination System (NPDES) Proposed Multi-sector Industrial Stormwater General Permit MNR050000 (ISGP) released January 27, 2025. BNSF Railway Company (BNSF) is committed to protection of the environment related to stormwater discharges associated with industrial activities through implementation of a comprehensive program of Best Management Practices (BMPs). BNSF appreciates the opportunity to provide comments on the draft ISGP.

BNSF recommends to administratively extend the current ISGP to December 31, 2025 with the next iteration of the Minnesota ISGP becoming effective on January 1, 2026. This will allow MPCA enough time to consider and incorporate comments received on the draft ISGP and will allow the permit cycle to align with the calendar year.

Additionally, BNSF has several specific comments regarding the draft ISGP. For ease of MPCA's review, BNSF provides a Permit Reference, Comment and Suggested Revision for each comment below. For the Suggested Revision, the red ~~strikethrough text~~ indicates suggested deletions, and the blue underlined text indicates suggested additions.

Comment 1 – New Requirement for Existing Facilities to Submit an Administrative Modification

Permit Reference:
Part 5.6

Comment:
The proposed list of requirements for existing permittees to submit an administrative modification is overly exhaustive and not necessary. The only item in Part 5.6 that should be retained is if the there is a change in ownership of the facility.

Suggested Revision:
Part 5.6
Permittees of existing facilities with coverage under the Industrial Stormwater General Permit shall submit an administrative modification to the permit if they need to:
~~A. Update the facility name;~~
~~B. Change description of business activity;~~
~~C. Update contact information (i.e. contact names, phone numbers, emails, etc.);~~
~~D. Change acreage of industrial activity;~~
~~E. Discharge to a newly impaired water; or~~
A~~F~~. Have a change in ownership of the facility. [Minn. R. 7090]

Comment 2 – Response Timeframe for Trackout of Significant Materials

Permit Reference:
Part 13.2

Comment:
The proposed ISGP removes the 72-hour timeframe for removing and properly disposing of significant materials that have been tracked off-site, and modified the requirement to "upon discovery." Permittees need to be allowed time to adequately respond to the discovery of trackout at a facility. Under certain circumstances, a contractor may need to be hired and the response time will be dependent upon contractor availability. The language for this should be maintained at a 72-hour timeframe as in the 2020 ISGP. 72 hours is a reasonable amount of time for permittees to respond to trackout. In general, permittees will attempt to resolve these issues immediately, but this may not always be possible due to the specific situation or extenuating circumstances.

Suggested Revision:
Part 13.2
The Permittee shall keep exposed areas that may contribute pollutants to stormwater sufficiently clean to reduce or eliminate contaminated stormwater runoff. Typical problem areas include but are not limited to: A. Trash containers, storage areas, loading docks, vehicle fueling, maintenance areas;
B. Locations where dust is generated. Identify and properly manage through BMPs all on-site sources of dust to minimize stormwater contamination from the deposition of dust on the areas exposed to precipitation; and
C. Locations where vehicle tracking of significant materials occur. The Permittee shall remove and properly dispose of significant materials that have been tracked off-site within 72 hours. ~~upon discovery.~~ [Minn. R. 7090]

Comment 3 – Management of Runoff

Permit Reference:
Part 18.2
Part 18.3
Part 18.4

Comment:
The proposed addition of language in Part 18.3 requires outlet protection measures to prevent erosion at all areas where stormwater is discharging from the Permittee's operational control. This should be clarified to indicate that outlet protection measures only need to be installed where necessary to prevent erosion. The use of the word "all" in Part 18.3 is not necessary and should be removed.

The proposed addition of language in Part 18.4 is overly broad and does not provide specifics to evaluate compliance with the ISGP. The definitions for "pollutant" and "contaminant" are inclusive of any and this proposed new requirement under Part 18.4 could be interpreted in many ways. Other parts of the ISGP already address the discharge of pollutants and the new addition of Part 18.4 is not necessary.

Suggested Revision:
Part 18.2
The SWPPP must describe all permanent stormwater BMPs the Permittee implements at the facility to manage runoff, including, but not limited to, the permanent structural BMPs used to divert stormwater runoff away from fueling, manufacturing, treatment, storage, and disposal areas, and BMPs that treat, infiltrate, reuse, contain, or otherwise reduce pollutants in stormwater discharges. [Minn. R. 7090]

Part 18.3
Where necessary, the Permittee shall install and maintain stormwater outlet protection measures to prevent erosion at ~~all~~ areas where stormwater is discharging from the Permittee's operational control. [Minn. R. 7090]

~~Part 18.4~~
~~Permittees shall prevent the discharge of stormwater to or from areas that have been impacted by the release of a pollutant or contaminant. This includes preventing potential pollutant mobilization through subsurface soils. [Minn. R. 7060.0200, Minn. Stat. 115.02]~~

Comment 4 – Maintenance Requirements for Sedimentation and Infiltration Basins

Permit Reference:
Part 21.3

Comment:
The proposed requirements in Part 21.3 should be revised to allow permittees to conduct maintenance based on inspection observations and the condition of the sedimentation basin/infiltration basin.

Suggested Revision:
Part 21.3
Stormwater sedimentation basins and infiltration basins must have maintenance plans that are included within the SWPPP. The plans must include but aren't limited to information detailing how the basin will be maintained and monitored to ensure effectiveness. The plans must include a description of the minimal maintenance frequency that will be implemented based upon the condition of the sedimentation basin/infiltration basin that would require maintenance. There shall be no outflow from the stormwater sedimentation basin while sediment is being removed from the basin. Permanent erosion control, such as rip rap, splash pads, or gabions shall be installed at the outlet(s) to prevent downstream erosion. [Minn. R. 7090]

Comment 5 – Additional Time to Complete SWPPP Updates Upon ISGP Reissuance

Permit Reference:
Part 28.2
Part 36.2

Comment:
There is no timeframe specified to complete the SWPPP update after the reissued ISGP goes into effect. However, based on the proposed requirement to modify the SWPPP within 30 days under Part 36.2, it is implied that the SWPPP must be updated within 30 days of the final reissued ISGP going into effect.
MPCA typically releases the final version of the ISGP within 30 days of the ISGP effective date, leaving little time for permittees to evaluate any revised/new requirements and update the SWPPP, let alone implement new requirements. Changes to the ISGP may be significant and this limited timeframe for permittees to identify and implement new requirements is not reasonable. Therefore, clarification should be added regarding the timeframe to complete the SWPPP update after the reissued ISGP goes into effect. Additional time should be allowed for completing the SWPPP update, and no timeframe should be specified for implementation of the SWPPP. Permittees are already bound by the ISGP to implement the BMPs identified in the facility's SWPPP, and while some BMPs can be implemented quickly, others may take require significantly more time depending on what is required (ie design, funding, etc).

Further the proposed requirement to update the SWPPP within 30 days if any of the items/conditions listed in Part 36.2 are met is not reasonable. More time needs to be allowed for permittees to evaluate the changes and update the SWPPP. Other environmental regulatory requirements provide for 6 months to update a plan based on changes in personnel or site conditions, and this is a reasonable amount of time to complete a thoughtful and thorough update of the SWPPP.

Requiring the permittee to continually evaluate if new impaired waters are identified and then to update their SWPPP with associated requirements is not reasonable. The ISGP is reissued every 5 years and the impaired waters evaluation and any required/associated updates to the SWPPP would occur as part of the permit reissuance and permittee application for permit renewal. Permittees should only be bound by the impaired waters that are identified at the time the ISGP goes into effect.

See comments 2 and 3 for additional comments on applicability of impaired waters requirements to a facility.

Suggested Revision:
Part 28.2
A. The Permittee shall develop, implement, and maintain a SWPPP for each facility authorized by this permit.
B. The Permittee shall complete a SWPPP prior to submitting the permit application.
C. A Permittee with authorization under the previous version of this permit shall modify the SWPPP to comply with the requirements of ~~this permit prior to submitting the application~~ the reissued ISGP within 180 days of the effective date of the reissued ISGP, as necessary.

Part 36.2
The Permittee shall review the SWPPP at least annually. The Permittee shall modify the SWPPP within ~~30~~ 180 days if:
A. There is construction or a change in design, operation, or maintenance at the facility that affects stormwater management or compliance with this permit;
~~B. The Permittee identifies a monitoring location that is within one mile of an impaired water, including newly listed impaired waters;~~
B~~C~~. A routine inspection, compliance evaluation, or visual inspection identifies deficiencies in the SWPPP and/or BMPs;

Comment 6 – Electronic Recordkeeping

Permit Reference:
Part 37.2

Comment:
Permit language in Part 37.2 implies that hardcopy records of the SWPPP and other required documentation need to be maintained onsite. This is not feasible because most of these records (e.g., laboratory reports) are obtained and stored electronically. There are multiple instances of language in the ISGP that require permittees to submit documents to MPCA electronically (via the MPCA eServices online portal), but no language in the permit that explicitly allows permittees to maintain the SWPPP and associated documents/records in an electronic format. This needs to be clarified in Part 37.2 and can be accomplished with the proposed language in this comment.

Part 37.2 identifies that permittees shall make the SWPPP available to the MPCA within 72 hours of a request for review. More time needs to be allowed for permittees to produce the SWPPP and associated documents/records. Other state-level industrial stormwater permits allow 14 days for these requests and require the request to be made in writing. This is of particular importance for unstaffed facilities, where permittees should be allowed time to coordinate a site visit with MPCA and provide the SWPPP and associated documents/records. A 14-day response timeframe to provide these documents is recommended.

Producing the SWPPP and associated documents/records upon request from MPCA meets the intent of the ISGP, and permittees should be afforded this flexibility. The requirement to maintain hardcopies onsite is not feasible and would require printing of electronic records, which is not a sustainable practice and is contrary to MPCA's mission.

Suggested Revision:
Part 37.2
Permittees shall maintain the SWPPP and associated documents/records required by this permit electronically or keep a hardcopy of the SWPPP at the industrial facility and make the SWPPP and associated documents/records ~~it~~ available to the MPCA within 14 calendar days ~~72 hours~~ of a written request for review by MPCA. [Minn. R. 7090.3040, subp. 2]

Comment 7 – Remove Impaired Waters Evaluation from Annual Report

Permit Reference:
Part 38.3 Annual Report

Comment:
As described in comment 1, evaluations of impaired waters should be conducted once during each permit cycle when permittees are reapplying for permit coverage. Part 38.3.E should be deleted.

Suggested Revision:
Part 38.3.
The Annual Report must cover those portions of the previous calendar year the Permittee had authorization to discharge industrial stormwater. The Annual Report must include, at a minimum, the following information:
D. A confirmation that newly exposed significant materials (if any) are identified and that the Permittee modifies the SWPPP to address them;
~~E. A confirmation that the Permittee conducts a review of impaired waters and special waters;~~
E~~F~~. A confirmation the Permittee modified the SWPPP to address applicable permit requirements of the Stormwater Pollution Prevention Plan and Benchmark Monitoring Requirements sections of this permit, if necessary;

Comment 8 – Benchmark Value Exceedances

Permit Reference:
Part 49.2
Part 49.4

Comment:
The language in Part 49.2 should be reworded to consider that there may not be a discharge event in a given quarter that would allow a permittee to sample.

The language in Part 49.4 should be removed with the corrective action requirement triggered by averaging the four most recent quarters under Part 49.2. Removing the proposed text in Part 49.4 would be in line with the intent of "adaptive management" of the ISGP. At a minimum, the language should be revised to reflect that multiple samples can be averaged in a given quarter to bring the stormwater sample results below the benchmark value.

Suggested Revision:
Part 49.2
If the benchmark value is exceeded, the Permittee shall collect at least one sample in the ~~following~~ next quarter with a discharge event during normal business hours. After collecting another sample, the Permittee shall calculate the average of the four most recent quarters and compare this new average with the applicable benchmark value(s). The Permittee shall continue quarterly monitoring at the benchmark monitoring location until the average of the four most recent samples is below the applicable benchmark monitoring value. [Minn. R. 7090]

~~Part 49.4~~
~~If any single sampling event results in a parameter meeting or exceeding the applicable benchmark value by four times or greater, it is considered an exceedance of the benchmark value and the steps required after a benchmark value exceedance are required. [Minn. R. 7090]~~

OR

Part 49.4
If the average of quarterly monitoring results for ~~any single sampling event results in~~ a parameter meets~~ing~~ or exceeds~~ing~~ the applicable benchmark value by four times or greater, it is considered an exceedance of the benchmark value and the steps required after a benchmark value exceedance are required. [Minn. R. 7090]

Comment 9 – Traction Sand Storage and Loading Areas

Permit Reference:
Part 230.2

Comment:
It is not feasible to fully contain traction sand storage and loading areas to ensure they are not subject to any run-on and subsequent runoff of stormwater. While traction sand storage areas are typically enclosed, loading areas must be located along the tracks and would be exposed to stormwater. Further, due to the location of typical traction sand loading areas, there is minimal potential for offsite transport. A requirement to ensure traction sand storage and loading areas are not subject to any run-on and subsequent runoff of stormwater would require significant facility modifications that interfere with rail operations and interstate commerce. Language from the existing 2020 ISGP should be retained, including language to "minimize" offsite transport of sanding material

Suggested Revision:

Part 230.2

~~The Permittee shall ensure traction sand storage and loading areas are not subject to any run-on and subsequent runoff of stormwater. The Permittee shall implement BMPs to prevent the offsite transport of sanding material and to ensure that traction sand is not discharged to surface waters. [Minn. R. 7090]~~

The Permittee shall minimize or prevent stormwater from contacting traction sand storage and loading areas. The Permittee shall implement BMPs to minimize the offsite transport of sanding material. [Minn. R. 7090]

Comment 10 – Applicability of Impaired Waters Requirements

Permit Reference:

Part 29.1
Part 29.2
Part 29.3
Part 31.2.J
Part 46.1
Part 46.2
Part 47.1
Part 47.2
Part 47.3
Part 378.1
Part 378.2
Part 378.3
Part 378.4

Comment:

Permittees should only be bound by the impaired waters that are identified at the time the ISGP goes into effect. Requiring the permittee to continually evaluate if new impaired waters are identified and then to update their SWPPP with associated requirements is not reasonable. The ISGP is reissued every 5 years and the impaired waters evaluation and any required/associated updates to the SWPPP would occur as part of the permit reissuance and permittee application for permit renewal.

Also, impaired waters requirements should be applicable only where the discharge point from the facility or the outfall is directly into the impaired waters. Including reference to being within one mile of an impaired water is ambiguous and does not provide adequate clarity. Is this one mile "as the crow flies" or one mile upstream of an impaired water? In some instances, a facility discharging stormwater into a receiving water within one mile of an impaired water has no influence the impaired water. Examples could include, but are not limited to, if the facility's discharge point/outfall is downstream of the impaired water segment, or if the facility is discharging into a tributary with no impairment that flows into an impaired water. Should MPCA determine that a specific facility should conduct impaired waters monitoring based on a specific evaluation of a facility and associated receiving water(s), then MPCA can require that specific facility to conduct the specified impaired waters monitoring. Simply including a blanket requirement for impaired waters monitoring is too broad.

Under Part 29, requiring a description of BMPs and narrative discussion of how the BMPs will be monitored and maintained is reasonable. However, under Part 29.3.B, the proposed calculations to demonstrate the effectiveness of the chosen BMPs to reduce volume and/or pollutant concentrations goes beyond what should be a standard requirement in the SWPPP. This information may not be known for many BMPs and would require potentially surveying certain areas of a facility, conducting infiltration tests, completing engineering calculations and potentially other tasks to complete the proposed calculations. This type of requirement is not typically seen as standard requirement in a SWPPP. Part 29.3.B should be removed from the ISGP.

Certain requirements for impaired waters should apply to "new dischargers" only and not to "existing dischargers." For example, the proposed language in Part 378.3 is vague and indicated that permittees should "ensure the facility's stormwater is not causing pollution to negatively affect the water quality of the impaired water." This could be interpreted to mean that the facility must have zero discharge of any pollutant(s) for which the water is impaired. Separate requirements need to be identified for "new dischargers" compared to "existing dischargers." Definitions for "new discharger" and "existing discharger" need to be added to the ISGP consistent with the federal definitions under the EPA's Federal Multi-sector General Permit for Stormwater Discharges Associated with Industrial Activity.

Suggested Revision:

29.2

The SWPPP must document all stormwater BMPs that are implemented to comply with Part X of this permit when a facility discharges directly into an impaired or special water from ~~is identified within one mile of~~ an industrial facility's benchmark monitoring location and where the identified impaired or special water receives discharge from the industrial facility's stormwater monitoring location. [Minn. R. 7090]

29.3

The SWPPP must contain the following components:

A. Industrial stormwater volume reduction and/or pollutant concentration reduction BMPs, designed to restrict industrial stormwater discharges to the designated water for the impairment pollutants;

~~B. The SWPPP must include calculations to demonstrate the effectiveness of the chosen BMPs in reducing volume and/or pollutant concentrations; and~~

B~~C~~. A narrative discussion describing how the Permittee will monitor and maintain the BMPs the Permittee uses to ensure the industrial facility will sustain restricted industrial stormwater discharges for the impairment pollutants. [Minn. R. 7050, Minn. R. 7090]

31.2.J

J. Location of each benchmark monitoring location. Assign each benchmark monitoring location a unique identifying number (e.g. BML01, BML02, BML03, etc.) that the Permittee uses when submitting monitoring data to the MPCA. Clearly label each benchmark monitoring location ~~from which a discharge flows to, and is within one mile of,~~ which directly discharges to an impaired water and/or special water;

46.2
The Permittee does not need to collect additional samples for any parameter where the averaged results of the four most recent quarterly samples are below the permit benchmark value~~, unless a new impairment to a receiving water is listed by the state and meets the conditions in the Benchmark Monitoring for New Impairment Listing To A Receiving Water section~~. [Minn. R. 7090]

~~Part 47.1 Benchmark Monitoring for New Impairment Listing to a Receiving Water~~

~~Part 47.2~~
~~If the US EPA approves a new impairment, as authorized in 303(d) of the Clean Water Act, to a receiving waterbody that:~~
~~A. Receives discharge from the monitoring location; and~~
~~B. Is within one mile of the monitoring location.:~~
~~Then, the Permittee shall continue or restart benchmark monitoring for the pollutant(s) of the impairment or its appropriate surrogate(s). The Permittee shall monitor for the benchmark parameter(s) for which the recently listed water is impaired. This only applies if the pollutant(s) of impairment or its appropriate surrogate(s) is among the list of benchmark parameters listed for the Permittee's industrial sector(s). [CWA Sect. 303.(d), Minn. R. 7090]~~

~~Part 47.3~~
~~Prior to the first full calendar quarter following the US EPA approved listing of the impaired water, the Permittee shall submit an administrative modification application to restart benchmark monitoring. Then the Permittee shall begin the additional monitoring for the pollutant(s) causing the impairment or its appropriate surrogate(s) listed in the Surrogates: Pollutant of Impairment section. [Minn. R. 7090]~~

378.2
This permit authorizes stormwater discharges associated with industrial activity regulated under this permit provided the Permittee complies with all terms and conditions of this permit, and all terms and conditions of the additional requirements for discharges to impaired waters listed in this section as applicable for new dischargers and existing dischargers. [Minn. R. 7050]

378.3
For existing dischargers, the Permittee shall develop and implement stormwater control measures, including BMPs, that restrict the facility's industrial stormwater discharges to minimize pollution that would negatively affect the water quality of the impaired water, to the extent possible. For new dischargers, the Permittee shall develop and implement stormwater control measures, including BMPs, that restrict the facility's industrial stormwater discharges to the extent necessary to ensure the facility's stormwater is not causing pollution to negatively affect the water quality of the impaired water. [Minn. R. 7050]

378.4
If a facility ~~is within one mile of and~~ discharges directly to a water impaired for TSS or an impairment listed in the Surrogates: Pollutant of Impairment section of this permit as a surrogate for TSS, and TSS is listed as a required benchmark monitoring parameter for the Permittee's industrial sector(s) in Appendix B then:

A. A benchmark monitoring value of 65 mg/L for Total Suspended (TSS) applies to the discharge at a benchmark monitoring location, instead of 100 mg/L as specified in the sector requirements of Appendix B. [Minn. R. 7050, Minn. R. 7090]

Add definitions for "Existing Discharger" and "New Discharger" to Part 395.
Existing Discharger – an operator applying for coverage under this permit for discharges authorized previously under an NPDES general or individual permit.

New Discharger – a facility from which there is or may be a discharge, that did not commence the discharge of pollutants at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

BNSF appreciates this opportunity to provide comments on the ISGP. Please feel free to contact me at suzanne.hattenberger@bnsf.com with any additional questions or comments you may have.

Sincerely,

Suzanne Hattenberger, PG
Assistant Director Environmental Operations

BNSF Railway Company