PFAS Regulatory Coalition

Attached, on behalf of the PFAS Regulatory Coalition, are comments on the draft Industrial Stormwater General Permit. If you have any questions, please contact me. Thank you.

PFAS REGULATORY COALITION

February 26, 2025

Mr. Matthew Moon
Industrial Division
Minnesota Pollution Control Agency
504 Fairgrounds Rd, Suite 200
Marshall, MN 56264
https://mpca.commentinput.com/comment/search

Re: Comments of PFAS Regulatory Coalition on Draft Minnesota Industrial Stormwater General Permit
Permit No. MNR0500000

Dear Mr. Moon:

The PFAS Regulatory Coalition (the "PFAS Coalition" or the "Coalition") submits the following comments on the Draft Industrial Stormwater General Permit ("the Draft Permit"). The Draft Permit was issued by the Minnesota Pollution Control Agency ("the Agency" or "MPCA") on January 27, 2025, with a comment deadline of February 26, 2025.

The Coalition is a group of industrial companies, municipal entities, agricultural parties, aviation representatives and trade associations, each of which has members or facilities that are directly affected by the development of policies and regulations related to per- and poly-fluoroalkyl substances (PFAS). Coalition membership includes entities in the airport, automobile, coke and coal chemicals, food and feed ingredient, iron and steel, municipal, paper, petroleum, and other sectors. None of the Coalition members manufacture PFAS compounds. Coalition members, for purposes of these comments, include: Airports Council International – North America; American Coke and Coal Chemicals Institute; American Fuel and Petrochemical Manufacturers; American Petroleum Institute; Brown & Caldwell; City of Pueblo, CO; Coalition of Recyclers of Residual Organics by Practitioners of Sustainability; ENFINITE, The Industrial Liquid Recyclers Association; GEI; Gary Sanitary District (IN); HDR; Haley & Aldrich; National Oilseed Processors Association; Portland Cement Association; Recycled Materials Association; Salt River Project; TRS Group; Trihydro; and Western States Petroleum Association.

PFAS Regulatory Coalition member entities or their members own and operate facilities located throughout the country, including in Minnesota. Many, including members located in Minnesota, conduct operations on sites that generate "stormwater associated with industrial activity" and which are therefore subject to industrial stormwater general permits issued by their State or EPA. The Draft Permit specifies monitoring and control requirements for PFAS. When the Draft Permit is finalized by MPCA, those PFAS requirements (if they

remain in the final permit) will apply to sites of Coalition members in Minnesota and may also set a precedent that other states may rely upon (although the Coalition would recommend to the contrary) in adopting similar provisions in their own industrial stormwater general permits. The Coalition, therefore, has a direct interest in the Draft Permit.

The PFAS requirements in the Draft Permit are unauthorized, inappropriate and unnecessary, and they should be removed from the permit before it is finalized. The specific flaws in the proposed requirements are laid out in detail below.

As an initial matter, separate from the provisions in the Draft Permit that are focused on PFAS monitoring and control, MPCA has added an unwarranted PFAS-related condition to the "no exposure" permit exemption. This exemption is based on a showing that the facility owner/operator has provided a storm-resistant shelter to protect all industrial material and activities from exposure to rain, snow, snowmelt and runoff. This showing ensures that the facility activities are not adding any pollutants to the stormwater that falls on their property before the stormwater is discharged. But the Agency has now added a new requirement in order to qualify for the exemption: even though a facility is adding no pollutants to the stormwater, the Draft Permit nevertheless mandates that in order to obtain the exemption, the facility must sample for PFAS at least four times and submit the results to MPCA. Unless the results are below the PFAS threshold levels specified in the Draft Permit, the facility does not qualify for the exemption.

This new PFAS condition on the "no exposure" exemption is completely unwarranted and illegal. MPCA is limited in its authority as to stormwater discharges at industrial facilities; it is only allowed to regulate stormwater that is associated with industrial activity (as recognized in Section 1.2 of the Draft Permit). For most sectors, the industrial activities do not include any involvement of PFAS. For any facility that shows that all industrial activities are protected from exposure to precipitation, any PFAS levels in the stormwater are obviously not being contributed by the facility's industrial activities. Whether the concern is PFAS, background sources of metals or other pollutants, or pollutants associated with runon from neighboring properties, the Agency's authority only extends to pollutants in the stormwater discharge that result from the permitted facility's industrial activities – not from pollutants that likely are already present in the rain that falls on the site or from other non-industrial sources. MPCA has no legal authority to require any facility to take actions to control pollutants in the rain, and the PFAS-related condition on the "no exposure" exemption should be removed.

For those facilities that do not qualify for the "no exposure" exemption, the Draft Permit includes a detailed set of PFAS requirements, which mandate extensive actions to sample for and then control PFAS levels in their discharges. Again, MPCA is limited in its authority, and is only allowed to regulate stormwater discharges at industrial facilities that are actually associated with industrial activity. Even where that may be the case, the Agency has not provided any justification for adding these new requirements. The new mandates are arbitrary, impractical to implement, and not appropriately tied to the nature of stormwater

discharges. Essentially, MPCA is mandating that virtually all of the regulated sites in the State must sample for PFAS, which is almost always detected using the method prescribed by MPCA. Then, these possibly hundreds of sites would be required to implement remedial actions, even though the PFAS sources are mostly non-industrial and beyond the facility's ability to control. In many instances, facilities would be required to implement highly expensive and unreasonable methods to reduce trace levels of PFAS, and even MPCA staff will not be able to assist these regulated entities regarding how to identify and remove the sources of PFAS – which may not be possible at all.

Additional, specific concerns with the proposed conditions, which further justify MPCA removing these PFAS provisions from the Draft Permit, include the following:

- The PFAS requirements would apply to facilities if they are included in a list of facility categories that is provided in Appendix D. MPCA has not provided any explanation or demonstration to justify how those industries were selected for imposition of PFAS requirements.

- The requirements would apply to "Areas of Concern" ("AOC"s) within the listed industrial facilities, rather than to the actual industrial stormwater discharges. There are two major problems with this AOC requirement, the first of which relates to the definition of an AOC itself. In section 390.3, the Draft Permit defines AOC to include certain areas of an industrial facility that makes, uses, stores, or processes PFAS-containing materials, but then goes on to broaden the scope substantially, by also including "areas of the facility where PFAS would become exposed, if potentially present at the facility." That expansion is beyond the scope of the Agency's authority, since it does not require a connection to the industrial activity at the facility.

- The other problem with the AOC provisions relates to the requirements that apply to those areas. The permittee would have to list "significant materials" located in the AOC, even if those materials would not contribute any PFAS to the discharge. And stormwater samples would have to be collected from each AOC, where the stormwater leaves the AOC. These requirements are completely disconnected from any focus on the actual discharge from the facility, and they therefore are outside of the Agency's legal authority. MPCA may regulate point source discharges from the facility, but it cannot mandate internal monitoring requirements to ensure that adequate controls are implemented upstream of the point source discharge. *See AISI v. EPA*, 115 F.3d 979 (D.C. Cir. 1997) and *Iowa League of Cities v. EPA,* 711 F.3d 844 (8th Cir. 2013). The proposed AOC mandates are unauthorized, subjective, and impossible to enforce, and they should be removed.

- The stormwater samples would have to be collected (again, not at the discharge, but at each AOC) from a "measurable runoff event" or an "acceptable snowfall event." These terms are far too ambiguous to be useful in developing a plan for compliance at a

facility. The term "acceptable snowfall event" is not defined at all in the Draft Permit. As to the term "measurable runoff event," the Draft Permit (in section 395.21) defines it as follows: "'Measurable Runoff Event' means precipitation, snow melt, or other event that causes stormwater to flow at a monitoring location or area of concern." Beyond the fact that this definition includes snow melt (and creates confusion with the term "acceptable snowfall event"), the language seems to indicate that any event that causes stormwater to flow, no matter how small the amount of flow or how short the duration of the flow, has to be sampled, which is both impractical and unnecessary.

- The Draft Permit requires that "Snow samples collected for PFAS analysis must be collected by an individual from an MDH certified laboratory using the protocols provided in the current edition of the MPCAs Industrial Stormwater Per- and polyfluoroalkyl substance (PFAS) Snow Sampling Guidance document." Draft Permit at section 390.5. This will be a highly expensive and challenging mandate. Essentially, MPCA seems to be requiring that regulated facilities (many of which are small businesses) must have MDH certified laboratory technicians on hand to collect samples within the first 30 minutes of discharge from the AOC. Not only is this an unrealistic expectation from a practical perspective – laboratory technicians might not be within a 30-minute drive of the site, let alone be able to collect multiple samples at the site within that time period – but it would also impose a significant financial burden on facility operators. Stormwater sampling services are in high demand even absent the proposed mandates in this Draft Permit, and the costs per sample are becoming increasingly expensive.

- The Draft Permit requires that there must be at least 3 days in between the "measurable storm events" that are sampled, with no explanation of the basis for that 3-day period.

- The sampling must occur within 30 minutes of the discharge leaving the AOC monitoring site. This is completely impractical, especially given that PFAS sampling requires specialized procedures and qualified personnel that often must come from outside of the facility. The Draft Permit also requires snow sampling, as indicated above. It appears that MPCA intends for that activity to be conducted during a snow melting event, which is impractical within the 30-minute prescribed timeframe, as well as confusing as to how it applies to the PFAS monitoring requirements.

- If PFAS sampling results are over specified thresholds for any of the listed PFAS substances, then the facility is required to complete and implement a PFAS Source and Exposure Reduction Plan (SERP). The Agency has provided no justification for the specified thresholds (4 ng/L or 10 ng/L depending on the facility location and the substance at issue). To the extent that MPCA is relying upon EPA's Safe Drinking Water Act Maximum Contaminant Levels (MCLs) (Fact Sheet at p. 10 of 79), use of those MCLs here is inappropriate. They are not water quality criteria or water quality standards; they were set under an entirely different regulatory regime, under a different

statute. Moreover, those standards have been challenged in federal court, and that court has stayed that case at EPA's request, so that EPA can reevaluate that rulemaking for possible revision. In any event, the proposed levels are very low, and MPCA has not shown that they are justified based on water quality concerns or that they are practically achievable through stormwater control measures.

- MPCA requires the use of EPA Method 1633 for analyzing stormwater samples for PFAS. That method has not yet been approved by EPA for use in stormwater sampling and analysis, despite EPA's encouragement to states to require stormwater discharge monitoring with that method. Moreover, to the extent that PFAS in stormwater is resulting from PFAS contamination in soil or other substrate, it is critical to keep in mind that EPA has not endorsed or identified any technologies for remediating such materials. See EPA's Interim Disposal and Destruction Guidance at https://www.epa.gov/pfas/interim-guidance-destruction-and-disposal-pfas-and-materials-containing-pfas .

- The Draft Permit also states that for PFAS substances that are not listed in the Draft Permit, MPCA can require development of an SERP if monitoring shows "frequent" detection at "concentration levels of concern." This provision gives the Agency the ability to force the permittee to implement extensive controls based on arbitrary decisions as to how "frequent" the detections were, and how high the levels were relative to undefined "levels of concern." This unbounded discretion for the Agency is inappropriate, and it creates substantial regulatory uncertainty for permittees.

- The Draft Permit refers to several MPCA documents that should be used in meeting the new PFAS requirements, including rainfall and snowmelt sampling guidance and an SERP template. However, no links are provided. We were informed on February 20, 2025 that those documents (and other relevant materials as well) were placed on the MPCA web site that day. That was just 6 days before the end of the comment period on the Draft Permit. Six days is not an adequate time for stakeholders to review those materials and prepare comments on their text and on the implications of those draft documents for the Draft Permit. MPCA should, therefore, reopen the comment period on the Draft Permit, to allow for submittal of comments on those materials and on the aspects of the Draft Permit that relate to those new MPCA draft documents.

For all of the reasons set forth above, MPCA should remove the PFAS requirements from the Draft Permit. To the extent that the Agency decides to retain these new requirements, it should first reopen the comment period on the Draft Permit, so stakeholders can provide comments on the new draft documents related to the Draft Permit that were only issued for public review within the last week.

The PFAS Regulatory Coalition looks forward to engaging further with the Agency to determine PFAS-related provisions for stormwater and other permits that are legally authorized and that will effectively address any PFAS concerns as to the regulated discharges. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in this letter.

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