



February 26, 2025

Mr. Matthew Moon
Industrial Division
Minnesota Pollution Control Agency
504 Fairgrounds Road, Suite 200
Marshall, MN 56264

Re: Comments on MPCA General Permit Authorization to Discharge Stormwater Associated with Industrial Stormwater Activity Under the National Pollutant Discharge Elimination System / State Disposal System Program

Dear Mr. Moon:

The Minnesota Chamber of Commerce (Chamber) welcomes the opportunity to comment on proposed revisions to the MPCA Industrial Stormwater General Permit (ISWGP). The Chamber is a statewide business organization representing more than 6,300 businesses and more than half a million employees across Minnesota. The proposed changes to the ISWGP will directly impact many Chamber members.

While the Chamber understands the overall environmental objectives of the proposed changes, our members have significant concerns. Notably, the Chamber believes the extensive actions regarding sampling and control of PFAS incorporated into this draft permit are unnecessary and should be removed. Details are outlined below on an item-by-item basis.

Please note that these comments are presented in the order that they appeared in the permit and not in order of importance. Throughout this letter, quotations of specific permit language are shown. In some cases, the Chamber is commenting on existing language that has proven challenging for members. Quotations of the current ISWGP that MPCA is not proposing to revise are shown in black italics. Language that MPCA has proposed to modify is presented in *red italics*. The Chamber's proposed language is in *green italics*.

Proposed Permit, Item 2.2 and 2.8.

Proposed permit Items 2.2 and 2.8 are closely interrelated and are thus discussed together in this section.

Item 2.2 of the proposed ISWGP contains very significant changes that are relevant to many of the Chamber's members. Item 2.2.A of the 2020 ISWGP prohibits non-stormwater except those with authorization of non-stormwater discharges. This important qualifier was removed in the draft 2025 ISWGP. This creates an inconsistency with Item 2.8 of the draft ISWGP and all sector-specific non-

stormwater authorizations. As such, the Chamber requests that the authorized stormwater qualification be re-added to Item 2.2.A.

While authorized non-stormwater discharges are referenced and explicitly allowed in Item 2.8 of the permit, authorized non-stormwater is never defined in the proposed permit. This creates substantial confusion for permittees, especially in regards to common practices like building and pavement washing. The Chamber has reviewed the Environmental Protection Agency (EPA)'s current 2021 and draft 2026 multi-sector general stormwater permit (currently on public notice). Item 1.2.2 of those permits provides helpful clarity around specific and common authorized non-stormwater discharges for all sectors. The inclusion of similar language is common in other states' general stormwater permits as well. The Chamber requests that the MPCA consider adding the language from Item 1.2.2 of the EPA multi-sector general permit to Item 2.8 of the proposed ISWGP.

The completion of these changes to Items 2.2 and 2.8 of the ISWGP would add substantial and needed clarity for industrial stormwater permittees.

Proposed Permit, Item 5.6.C.

“Permittees of existing facilities with coverage under the Industrial Stormwater General Permit shall submit an administrative modification to the permit if they need to update contact information (i.e., contact names, phone numbers, emails, etc.).”

It is not uncommon for there to be changes to contacts at facilities. The Chamber agrees that it is essential that the Agency knows who the owner is for the Stormwater Pollution Prevention Plan (SWPPP) but does not believe it is necessary to provide an administrative modification for every change in contact at the facility. The Chamber does not see value in submitting an administrative modification whenever a contact change occurs. The Chamber recommends striking the proposed language from Item 5.6.C or replacing it with the following language:

“Permittees of existing facilities with coverage under the Industrial Stormwater General Permit shall submit an administrative modification to the permit if there is a change of ownership of the SWPPP.”

The Chamber also recommends that if the language remains, the MPCA clarifies when the administrative modification must be submitted. The Chamber proposes administrative modifications for contact changes be submitted once per calendar year by December 31 for contact changes during the prior twelve months.

Current Permit, Item 11.2

“This exclusion is for facilities where all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff.”

The Agency proposes to remove this section; the Chamber recommends leaving the language in Section 11.2 in the permit, as it provides guidance to permittees who want to understand what is required under a No-Exposure Exclusion. Requiring a facility to obtain a No Exposure Exclusion for PFAS is not provided for in any regulation or guidance. It is not feasible to require blanket testing as there is no reasonable connection to the showing of no exposure. Because most facilities that Certify No Exposure are not typically resourced or equipped to sample stormwater, as they do not have stormwater that meets the current definition. A single testing event can run up to \$5,000.

Proposed Permit, Item 12.2

"The Permittee shall design and implement BMPs for each stormwater control measure below. The Permittee shall design and implement all stormwater control measures, including BMPs, to reduce or eliminate contact or exposure of pollutants to stormwater or remove pollutants from stormwater prior to discharge from the facility. The SWPPP must include the type and objective of the BMP, and a description of how the Permittee shall evaluate each BMP to determine proper function."

The Chamber agrees that the Permittee should implement BMPs to reduce or eliminate contact for exposure of pollutants to stormwater before discharge from the facility. While there is not a time requirement defined in the proposed permit, eighteen months is typically not enough time to make capital improvements to facilities. The Chamber recommends consultation on a case-by-case basis in lieu of a regular cadence. Capital funding usually happens once per year; the engineering design of the structural change must be made, a proposal request must be made, and a contractor must be hired. Logistics for ordering structural items will take time after the contractor is hired, and the structural BMP will then need to be built.

The Chamber recommends adding the additional language to this paragraph:

"If the Permittee is unable to complete the installation or repair within 12 months, the Permittee shall:

- i. Document why it is infeasible within the 12-month timeframe.*
- ii. Identify a schedule for completing the work and document it as soon as practicable after the 12-month timeframe to complete the structural BMP.*
- iii. Include all documentation within or as an attachment to the SWPPP."*

Proposed Permit, Item 13.2.C

"The Permittee shall remove and properly dispose of significant materials that have been tracked off-site upon discovery."

The Agency removed the language, providing the permittee 72 hours to take the necessary actions to remove and dispose of significant materials that have been tracked off-site. The Chamber recommends leaving the 72-hour requirement in the permit to provide the permittee with appropriate time to respond.

The Chamber proposes adding the following language:

“The Permittee shall remove and properly dispose of significant materials that have been tracked off-site within 72 hours of discovery.”

Proposed Permit, Item 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.”

The Chamber believes that requiring permittees to prevent potential pollutant mobilization through subsurface soils will be extremely difficult and can cause undue hardship for some. The standard of preventing all pollutant discharge is also unachievable and in conflict with further areas of the permit that allow acceptable BMLs of pollutant discharge.

The Chamber recommends replacing proposed Item 18.4. with the following language:

“Permittees shall make all reasonable attempts to prevent potential pollutant mobilization through subsurface soils.”

Proposed Permit, Item 21.3.

“Permanent erosion control, such as rip rap, splash pads, or gabions shall be installed at the outlet(s) to prevent downstream erosion.”

The Chamber believes the intent of the language is to provide guidance when erosion occurs and recommends replacing the proposed language with the following:

“If erosion occurs, permanent erosion control, such as rip rap, splash pads, or gabions shall be installed at the outlet(s) to prevent downstream erosion.”

Proposed Permit, Item 24.2.F.

“Any use or release of PFAS-containing foam must immediately be reported to the Minnesota Duty Officer.”

The Chamber recommends that the Agency provide more detailed information regarding how the Minnesota Duty Officer should be contacted.

Proposed Permit, Item 29.1.

“The SWPPP must document all stormwater BMPs that are implemented to comply with Part X of this permit when an impaired or special water 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.”

The Chamber supports the intention of this language but recommends clarifying that the discharge must be within one mile of a special or impaired water.

The Chamber recommends the following language:

“The SWPPP must document all stormwater BMPs that are implemented to comply with Part X of this permit when an impaired or special water is identified within one mile of an industrial facility's benchmark monitoring location discharge and where the identified impaired or special water receives discharge from the industrial facility's stormwater monitoring location.”

Proposed Permit, Item 41.2.

“Permittees shall collect one sample per quarter from each benchmark monitoring location and analyze each sample for the sector-specific benchmark parameters.”

The Chamber is recommending revising the above language to state “at least one sample per quarter” is required to be collected per quarter. This will align with the practice that the permittee is permitted to sample multiple samples per quarter and average the results for the quarter.

Proposed Permit, Item 42.2.

“Permittees shall collect samples from a measurable runoff event (rain or snowmelt) at the benchmark monitoring location(s), provided there is a gap of three days between measurable runoff events. To the extent feasible, during a measurable runoff event, Permittees shall collect samples in each of the first 4 calendar quarters after receiving coverage. The Permittee shall attempt to collect a stormwater discharge sample within the first 30 minutes after the discharge reaches the benchmark monitoring location. If unable to collect a sample within 30 minutes the Permittee shall document an explanation as to why they could not collect the sample within 30 minutes on the Stormwater Monitoring Report.”

The MPCA deleted the following language from the end of this section: *“It is not necessary to collect samples outside the facility's normal operating hours.”*

The Chamber suggests keeping this language in the permit, as it helps to provide clarity for stormwater events that occur outside of normal business hours.

Proposed Permit, Item 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.”

The Chamber requests that MPCA either provide data to defend the need to add this requirement or remove this language.

Proposed Permit, Item 61.3.

“Permittees shall design and operate the industrial stormwater pond to eliminate scour and re-suspending of sediment at high flows, so Permittees expect to meet that benchmark values up to the 10-year, 24-hour storm event based on NOAA Atlas 14, Volume 8. The Permittee shall design the industrial stormwater pond to have a permanent dead storage volume, which is the volume below the normal outlet, that is equal to or exceeds the entire runoff volume to the pond which would result from the five-year, 24-hour rainfall event based on NOAA Atlas 14, Volume 8.”

The Chamber believes that there is an opportunity to clarify that sites that already have ponds and newly obtained coverage do not have to re-design their ponds or provide documentation that they are designed to meet the 10-year 24-hr storm event if they do not have any benchmark exceedances.

The Chamber suggests replacing the proposed language with the following:

“For all new ponds and for any stormwater pond with benchmark exceedances, the Permittee shall design the industrial stormwater pond to have a permanent dead storage volume, which is the volume below the normal outlet, that is equal to or exceeds the entire runoff volume to the pond which would result from the five-year, 24-hour rainfall event based on NOAA Atlas 14, Volume 8.”

Proposed Permit, Item 65.3.

*“Permittees shall collect **two** samples annually, at least 30 days apart, from each effluent monitoring location and analyze the sample for each required effluent limit parameter. Permittees shall collect the sample(s) each calendar year the Permittee has permit coverage.”*

The Chamber requests that the Agency provides the documentation as to why doubling the sampling events per year is necessary or change the sampling event back down to one event per calendar year.

Proposed Permit, Item 386.1 through 394.2.

Part XI. Per-and Polyfluoroalkyl Substances (PFAS) Monitoring and Reporting Requirements

The proposed permit introduces a wholly new section titled Per-and Polyfluoroalkyl Substances (PFAS) Monitoring and Reporting Requirements. In this new section, the MPCA has defined specific SIC codes of

facilities that will be required to test for PFAS using USEPA Method 1633, regardless if the facility uses any PFAS chemicals on site or if they currently carry a no exposure exclusion. MPCA should explain the basis for how these industries were selected for being subject to the PFAS requirements. All testing must be completed by a laboratory certified by the Minnesota Department of Health (MDH) or the MPCA. The facilities would be required to sample a minimum of four times to determine if the average results are over the benchmark criteria, depending on the facility's location to waters of the State.

As noted above, the Chamber believes that the extensive actions regarding sampling and control of PFAS incorporated into this draft permit are inappropriate, unnecessary, and should be removed from the permit.

The "No Exposure" permit exemption requires facilities to sample for PFAS in discharges and disqualifies facilities from this exemption based on contamination not associated with the permitted facility's industrial activities. A number of open questions regarding this proposed requirement include:

- Will "No Exposure" facilities that do not need to have a SWPPP now have to develop a PFAS stormwater monitoring plan?
- If a facility is currently "No Exposure," how can they have an AOC? Where do they sample?
- What happens if a PFAS compound is detected above the regulatory level and that PFAS has never been used at the facility?
- Will the Agency identify recourse for "No Exposure" facilities that believe they have run-on issues with PFAS?

Further requests and unanswered questions from the Chamber are listed below:

- For facilities that do not qualify for the "no exposure" exemption, the draft permit includes extensive actions regarding sampling and control of PFAS. This would require nearly all regulated sites in the state to sample for PFAS and in many cases implement remedial actions in response to contamination not associated with the permitted facility's industrial activities. The Chamber believes that the sampling and control of PFAS proposed in this draft permit is completely arbitrary and impractical to implement at costs that are not reasonable.
- According to the published Fact sheet, the PFAS thresholds established in the draft ISWGP are linked to the USEPA drinking water maximum contaminant levels. It is not reasonable or rooted in regulation to hold stormwater discharges to drinking water standards. Other parameters

included in the general permit contain threshold and benchmarks significantly higher than the EPA drinking water standards. Lead and arsenic are notable examples. If these thresholds are retained, MPCA must provide additional justification as to why it is reasonable to compare stormwater to drinking water standards in this context and why these parameters are treated differently than others regulated under the permit.

- Requiring facilities with no stormwater exposure to sample runoff for PFAS is not a reasonable requirement, and MPCA must provide further justification as to why this is required.
- Of the 11 laboratories the MDH has approved for testing samples by EPA 1633, only one laboratory is in Minnesota. MPCA has not approved any laboratories for PFAS testing. The Chamber is concerned that the lack of local support will cause significant delays in receiving laboratory results.
- Pace Minneapolis, the only Minnesota laboratory certified for EPA 1633, currently charges more than \$500 per test. This change would require each permittee who needs to test for PFAS to spend at least \$2,000 per outfall in analytical costs alone. This cost does not include any training on PFAS sampling, QA/QC samples, shipping costs, or consulting services. This could cause undue hardship for some facilities that typically pay less than \$100 per year for testing required. Further, Method 1633 has not been approved by EPA for stormwater sampling and analysis purposes.
- Proposed Section 389.2 proposes a sampling gap of three days between measurable runoff events. The Chamber requests that MPCA provide the basis for the three day gap.
- Proposed Section 389.3 requires that stormwater samples must be collected within the first 30 minutes upon the discharge reaching the AOC monitoring locations. Given sampling technicians may not be able to reach the site within 30 minutes, creating such an unrealistic expectation would create significant burdens on facilities to meet this requirement.
- Proposed Section 393.6 requires SERP development and implementation if monitoring indicates “frequent detection... at concentration levels of concerns”. The Chamber requests that MPCA provide clarity on the definitions of “frequent detection” and “concentration levels of concern” because any controls mandated by MPCA under this section would be arbitrary without such definitions.
- The MPCA has previously said that they issue a few run-on waivers. With this broad net for PFAS sampling, we expect many facilities to qualify for a sampling waiver. Still, it is unknown if any will be promptly granted, thereby increasing sampling costs.
- There are numerous guidance documents identified in the draft permit fact sheet that were only made available for public viewing on MPCA’s website on February 21, 2025. Making these

documents available to the public only days before comments are due is not acceptable and completely unfair to the Chamber and others who desire to provide substantive comments only after a detailed review of all available information. With such a time constraint, the Chamber is not confident it can conduct such a detailed review, therefore, requests MPCA extend the comment period by 30 days so that supplemental comments can be submitted if needed.

The Chamber requests that the Agency provide detailed information supporting the need to include all new requirements in this section or remove the requirement to test for PFAS from the proposed permit.

Proposed Permit, Sector C - Item 88.2.

“Wet cake, modified wet cake, and dried distillers' grains (DDGs), or other significant materials shall be stored in enclosed storm-resistant shelters where significant materials will not have exposure to stormwater. Measures shall be in place to prevent these materials from being released by wind, spillage, or vehicle tracking from these structures to areas where they may come into contact with stormwater.”

The layout of ethanol production facilities requires one side of the DDGS pad to be open for loading trucks, preventing compliance with the permit as written. Also, because this is a loading area, there is likely going to be spillage and tracking. The following permit item (88.3) addresses good housekeeping measures; therefore, additional requirements are not needed here.

Furthermore, the inclusion of “other significant materials” in the proposed ISWGP requirement would apply this storage requirement to a wide range of materials that other sectors are allowed to store in different manners.

The Chamber recommends that the language be used for Item 88.2:

“Structures and measures shall be in place to minimize the release of wet cake, modified distillers' grains (MDGs), and dried distillers' grains (DDGs) by wind, spillage, or vehicle tracking to areas where they may come into contact with, and result in discharge of, stormwater.”

Proposed Permit, Sector C – Item 88.3

“Organic materials, product, by-product, spilled wastes, or other significant materials that are tracked or spilled on site that could potentially be subject to stormwater contact, shall be immediately cleaned up and disposed of according to all applicable regulations or permit requirements.”

The Chamber believes that requiring permittees to “immediately” clean up significant materials that are tracked or spilled on site can be impossible for some facilities and recommends changing it to “daily.” This change would also align with the new language in Item 89.2.

The Chamber recommends replacing the proposed Item 88.3. with the following language:

*“Organic materials, product, by-product, spilled wastes, or other significant materials that are tracked or spilled on site that could potentially be subject to stormwater contact, shall be **cleaned up and disposed of on a daily basis and** according to all applicable regulations or permit requirements.”*

Thank you for accepting these comments. The Chamber stands ready and willing to work with the agency and all stakeholders on the draft permit.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Morley', with a stylized flourish at the end.

Andrew Morley
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