

June 18, 2024

VIA EMAIL

Stephen M. Jann, Manager
Permits Branch, Water Division
U.S. EPA Region 5
77 W Jackson BLVD
Chicago, IL 60604

RE: U.S. Environmental Protection Agency Review of Pre-Public Notice Draft Feedlot NPDES General Permit (MNG440000)

Dear Stephen M. Jann:

The Minnesota Pollution Control Agency (MPCA) reviewed the U.S. Environmental Protection Agency's (EPA) comments and recommendations of Minnesota's Pre-Public Notice Draft Feedlot National Pollutant Discharge Elimination System (NPDES) General Permit (Permit), fact sheet, and supporting documents submitted to the MPCA on May 9, 2024. After thoughtful consideration, the MPCA offers the following response.

Comment 1

EPA has direct implementation for the NPDES program in Indian Country. The Permit should contain language excluding concentrated animal feeding operations (CAFOs) located within Indian Country from coverage under the Permit.

Response 1

The *Permit Eligibility* section of the Permit will be modified to exclude facilities in Indian Country from coverage under the Permit.

Comment 2

The Permit needs to specify the required contents of the notice of intent for coverage under the Permit. 40 C.F.R. § 122.28(b)(2)(ii).

Response 2

The MPCA's permit application for coverage under the Permit is Minnesota's equivalent to the notice of intent for coverage (NOC). The permit application includes all the required contents of the specified federal regulation and applicants for NPDES permit coverage must use this application. The definition of *permit application* will be modified in the Permit to clarify the permit application includes all the information required by the specified federal regulation.

Comment 3

The Permit needs to specify the deadlines for submitting notices of intent for coverage under the Permit. 40 C.F.R. § 122.28(b)(2)(iii).

Response 3

Minnesota's equivalent to the specified federal regulation is found in Minn. R. 7020.0505. This rule part specifies a deadline of at least 180 days for submitting a permit application for new or expanding facilities. A requirement will be added to the Permit that is consistent with Minn. R. 7020.0505 and the specified federal regulation. Additionally, the *Permit Coverage* section of the Permit specifies a deadline of at least 180 days for submitting a permit application to maintain continuous permit coverage and for modifications.

Comment 4

Permit Part 1.4 allows for suspension of the Permit in accordance with Minn. R. 7001.0170 through 7001.0190; however, the referenced state rules do not include suspension of permits. Federal regulations do not recognize suspension of permits; federal regulations recognize modification, revocation and reissuance, or termination of permits. The word "suspended" needs to be removed. 40 C.F.R. §§ 122.62 and 124.5.

Response 4

The word suspended will be removed from the specified part of the Permit.

Comment 5

Permit Part 2.5 contains requirements regarding the change of ownership or control of the facility. Minn. R. 7020.0405 only allows a change of ownership or control of an animal feeding operation or manure storage area through a permit modification. Therefore, Part 2.5 needs to be revised to conform with 40 C.F.R. § 122.63, by requiring that a permit modification request include a written agreement with a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees.

Response 5

As noted in the comment, the transfer of permit responsibility, coverage, and liability is managed through the MPCA's permit modification process. Through this process, the specific date for transfer of permit responsibility, coverage, and liability are transferred from the current and new permittee at the time coverage under the Permit is issued to the new owner/operator of the facility. Additionally, the Permit stipulates in the *General Conditions* section, "The permit is not transferable to any person without the express written approval of the agency ...," and in the *Facility Modifications* section, "if ownership or control changes without an assignment of coverage under this Permit, the original Permittee may still be held liable for violations and the new owner/operator may be held liable for operating without a permit." To ensure the specified federal regulation is satisfied, the MPCA's application for a permit modification will be revised to clarify the specific date for transfer of permit responsibility, coverage, and liability occurs at the time coverage under the Permit is issued to the new owner/operator of the facility.

Comment 6

When manure is transferred, Permit Part 9.4 requires that the permittee provide to the manure recipient, at the time of transfer of ownership, a "Manure Transfer Tracking" form that is generated by the Nutrient Management Tool. This form does not include the date of manure transfer but should. 40 C.F.R. § 122.42(e)(3).

Response 6

The Nutrient Management Tool will be modified to include the date of manure transfer.

Comment 7

Permit Part 10.2 requires the CAFO to use Minnesota's Nutrient Management Tool to develop and maintain the Manure Management Plan (MMP). The Minnesota Nutrient Management Tool does not conform with the following requirements of 40 C.F.R. § 122.42(e)(1) nor does the Permit include specific conditions that conform with these federal requirements. Conditions addressing these federal requirements need to be included in the Permit or the Minnesota Nutrient Management Tool could be updated to include these federal requirements.

Response 7

The Permit will be modified to address the specified federal regulation in the following ways.

Comment 7a

The Permit does not specifically prohibit the disposal of mortalities in storm water storage systems. 40 C.F.R. § 122.42(e)(1)(ii).

Response 7a

The *Requirements for Operation and Maintenance of the Facility* section of the Permit will be modified to prohibit disposal of mortalities in stormwater storage systems.

Comment 7b

The Permit does not specifically require that clean water be diverted, as appropriate, from the production area., 40 C.F.R. § 122.42(e)(1)(iii).

Response 7b

The *Requirements for Operation and Maintenance of the Facility* section of the Permit will be modified to ensure clean water is diverted, as appropriate, from the production area.

Comment 7c

The Permit does not specifically prohibit the disposal of chemicals and other contaminants handled on-site into storm water storage systems. 40 C.F.R. § 122.42(e)(1)(iv).

Response 7c

A requirement will be added to the *Requirements for Operation and Maintenance of the Facility* section of the Permit to prohibit the disposal of chemicals and other contaminants handled on-site into storm water storage systems.

Comment 8

Permit Part 15.1 contains land application setback requirements. Federal regulations require that manure, litter, and process wastewater not be applied closer than 100-foot to any down-gradient surface waters, open tile intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless a compliance alternative is exercised. Part 15.1 includes setbacks for several land features; however, Part 15.1 does not include a setback for the broader term "other conduits to surface waters" which would ensure setback requirements apply to all conduits to surface waters rather than just those identified in the Permit. 40 C.F.R. § 412.4(c)(5).

Response 8

A requirement will be added to the *Land Application of Manure - Setbacks* section of the Permit to include a 100 ft setback for other conduits to surface waters.

Comment 9

Permit Parts 16.2 and 16.3 require “that the production area is designed, constructed, operated, and maintained to contain all manure, manure-contaminated runoff, or process wastewater, and all direct precipitation” (Emphasis added). To conform with federal regulations, the word “or” needs to be removed from Parts 16.2 and 16.3. Federal regulations require that production areas are designed, constructed, operated and maintained to contain all manure, litter, and process wastewater (Emphasis added). 40 C.F.R. Part 412.

Response 9

The word *or* will be removed from the specified part in the *Requirements for Operation and Maintenance of the Facility* section of the Permit.

Comment 10

Permit Part 26.5 does not conform to the federal requirements because it does not identify an overflow as a discharge. In order to conform with federal regulations, Part 26.5 needs to be revised to read “... unless the discharge is an overflow of manure or process wastewater that is caused by a precipitation event ...” (Emphasis added). 40 C.F.R. Part 412.

Response 10

The specified part in the *Effluent Limitation* section of the Permit will be modified to read “... unless the discharge is an overflow of manure or process wastewater that is caused by a precipitation event ...”.

Comment 11

Federal regulations require that each NPDES permit (1) include monitoring requirements to ensure compliance with permit limitations and (2) specify required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity. 40 C.F.R. §§ 122.44(i) and 122.48. Permit Part 27.5 requires the permittee to ensure that all discharges, spills, or overflows associated with the facility do not cause or contribute to non-attainment of water quality standards. The Permit needs to require monitoring of discharges, spills, or overflows to ensure compliance with Part 27.5. In order to assess compliance with the reference to water quality standards in Part 27.5, monitoring of discharges to surface waters from a production area for volume, duration, pH, phosphorus, NH₃-N, BOD, TSS, dissolved oxygen, and E.coli should be required.

Response 11

A part will be added to the *Discharge, Spills, and Overflows* section of the Permit to require monitoring of discharges to surface waters. The requirement will include actions to obtain grab samples of the discharge within a specified time of discovery, and one sample per day thereafter until the discharge is stopped. The requirement will also include actions to obtain analysis for pH, total nitrogen, ammonia nitrogen, total phosphorus, E. coli, five-day biochemical oxygen demand (BOD₅), and total suspended solids. This section of the Permit already includes a requirement to monitor discharge volumes.

Though the MPCA values monitoring and its importance for assessing water quality and determining compliance, the MPCA understands the challenges this requirement presents due to the acute and overland nature of discharges from permitted CAFO in Minnesota. To assist Minnesota and other delegated states, the MPCA requests USEPA to provide guidance documents and training videos on monitoring and sample collection for discharges from CAFOs.

Comment 12

The federal definition of "production area" includes bedding material in the raw materials description, while the definition of "Production Area" in Permit Part 30.47 does not include "bedding materials" in the raw materials description. Part 30.47 definition of "Production Area" needs to be revised to conform with the federal definition. 40 C.F.R. § 122.23(b)(8) and 40 C.F.R. § 412.2(h).

Response 12

The definition of production area will be modified to include "bedding materials" in the raw materials description.

Comment 13

The Standard Conditions of 40 C.F.R. § 122.41 are not incorporated by reference into the Permit. The Permit does not contain the following standard conditions or words used to describe particular conditions do not adequately conform with the following federal standard conditions:

- a. Duty to Comply § 122.41(a);*
- b. Permit Actions § 122.41(f);*
- c. Duty to Provide Information § 122.41(h);*
- d. Monitoring and Records § 122.41(j);*
- e. Signatory Requirement § 122.41(k);*
- f. Reporting Requirement - Permit Transfers § 122.41(l)(3);*
- g. Reporting Requirement - Compliance Schedules § 122.41(l)(5);*
- h. Reporting Requirement - Twenty-Four Hour Reporting § 122.41(l)(6);*
- i. Reporting Requirement - Other Information § 122.41(l)(8);*
- j. Reporting Requirement - Identification of the initial recipient for NPDES electronic reporting data § 122.41(l)(9);*
- k. Bypass § 122.41(m); and*
- l. Upset § 122.41(n).*

Response 13

The Permit will incorporate by reference the specified federal regulations in the *General Conditions* section of the Permit. Additionally, Minnesota's equivalent to the specified federal regulations is found in Minn Rule 7001.0150, subp. 3. These conditions are included in the *General Conditions* section of the Permit.

In addition to the comments included above, EPA included comments identified in Enclosure A of the letter in order to improve the overall Permit .

Enclosure A, Comment 1

It is recommended that the Permit include a requirement to identify, in the MMP, subsurface drain tiles on all fields where manure or process wastewater is land applied, and to require observation of subsurface drain tile outlets prior to, during and following land application of manure or process wastewater for volume/rate of flow and color, turbidity, foam, and odor to identify any discharges that may violate effluent limitations.

Response Enclosure A, Comment 1

The MPCA's Nutrient Management Tool, that will be used by permittees to develop manure management plans, requires the permittee to identify the presence of subsurface drain tile inlets on fields where manure and process wastewater will be applied. This indication will automatically generate, and alert the permittee to, the applicable drain tile inlet requirements from the *Land Application of Manure – Setback* section of the Permit. Additionally, a requirement to monitor field tile inlets at or near land application sites during and after land application events was added to the *Land Application of Manure – Inspections* section of the Permit. Though the MPCA values monitoring and its importance for assessing water quality and determining compliance, requiring observations of subsurface drain tile outlets to identify any discharges that may violate effluent limitations presents challenges in Minnesota. Many tile systems in Minnesota are complex networks that connect to other systems before daylighting, miles downstream of the original system. Due to this complexity, discerning the source of effluent volume/rate of flow and color, turbidity, foam, and odor is very difficult. Minnesota will continue to focus on preventing manure and manure contaminated runoff from entering drain tile intakes through measures such as planning, setbacks, buffers, incorporation of manure, and inspections.

Enclosure A, Comment 2

Permit Part 1.2 authorizes the Permittee to operate the facility in compliance with the requirements of Minn. R. 7020, and Minn R. 7020.2015 prohibits animals from entering waters of the State. The Permit could be improved by including a requirement that specifically prohibits the direct contact of confined animals with waters of the United States. 40 C.F.R. § 122.42(e)(1)(iii).

Response Enclosure A, Comment 2

Minnesota's equivalent to the specified federal regulation is found in Minn. R. 7020.2015. This rule part prohibits animals of a CAFO from entering waters of the state. A requirement will be added to the *Requirements for Operation and Maintenance of the Facility* section of the permit that is consistent with Minn. R. 7020.2015 and the specified federal regulation.

Enclosure A, Comment 3

Federal regulations require that manure, litter, and process wastewater not be applied closer than 100-foot to any down-gradient surface waters, open tile intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless a compliance alternative is exercised. 40 C.F.R. § 412.4(c)(5)(ii) provides that a CAFO may demonstrate that an alternative conservation practice or field-specific conditions will provide pollutant reductions equivalent or better than the reductions achieved by a 100-foot setback. Permit Parts 15.4 through 15.7 include alternative conservation practices. Permit Part 10.2 requires that the manure management plan developed by a Permittee contain requirements of land application of manure sections of the Permit, this would include Parts 15.4 through 15.7. EPA recommends that the State require Permittees selecting to use one of the alternative conservation practices included in Parts 15.4 through 15.7 include a demonstration in the MMP that the alternative conservation practice implemented on a specific land application area will provide pollutant reductions equivalent or better than the reductions achieved by a 100-foot setback.

Response Enclosure A, Comment 3

During the development of the MPCA's 2006 NPDES general permit, the MPCA conducted a literature review to demonstrate the alternative setbacks listed in the *Land Application of Manure – Setbacks* section of the Permit are equivalent to the reductions achieved by the 100 ft setback of the specified federal regulation for all land application areas in Minnesota. The literature review is recorded in the MPCA's summary document, *Runoff Reductions with Incorporated Manure*. The alternative setbacks have been included in subsequent MPCA NPDES CAFO general permits with the implication the specified federal regulation is satisfied for permittees. To clarify this, the *Land Application of Manure – Setbacks* section of the Permit will be modified to explain the listed setbacks are equivalent to the 100 ft setback of the specified federal regulation.

Enclosure A, Comment 4

If a production area is designed, constructed, operated and maintained consistent with federal regulations, the need for emergency manure application should be rare, if at all. It seems a need should only arise, if at all, at the end of the design storage period of the collection of storage devices (i.e., just before crop harvest in the fall and just before the lifting of winter land application restrictions). Permit Part 30.20 defines Emergency Manure Application, and Permit Parts 13.2 and 13.6 authorize emergency land application. Weather is inherently variable. EPA recommends that the definition of emergency manure application provide further clarification on what constitutes "unusual weather conditions" and expand the definition to include opportunities to manage manure other than storage, i.e., treatment, before emergency manure application is allowed.

Response Enclosure A, Comment 4

Instances of emergency manure application under the specified parts of the Permit are rare. The *Additional Requirements for Operation and Maintenance of Liquid Manure Storage Areas (LMSA)* section of the Permit requires permittees to notify the MPCA within 24 hours of encroachment into the freeboard of liquid manure storage areas. This requirement provides the opportunity for MPCA staff and the permittee to explore alternatives to emergency land application of manure such as transporting manure to a different storage area. The MPCA will continue to rely on communication with permittees to manage instances of emergency manure application in the most protective way possible.

Stephen M. Jann

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Thank you for the thorough review of Minnesota's Pre-Public Notice Draft Feedlot NPDES General Permit (Permit), fact sheet, and supporting documents. The numerous meetings and frequent communication with your staff were appreciated. The MPCA will provide a copy of the final permit and Minnesota's response to any significant comments received during any public notice period as specified in your May 9, 2024 letter.

Sincerely,



This document has been electronically signed.

Glenn Skuta
Division Director
Watershed Division

GS/LS:rjp

cc: Michael Kuss, EPA R5-WD-Permits (electronic)
Lisa Scheirer, MPCA
George Schwint, MPCA
Randy Hukriede, MPCA
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