City of Apple Valley

Please see attached comments from the City of Apple Valley. We appreciate the opportunity to provide comments.

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March 2, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road
Saint Paul, MN 55155
Submitted via web: https://mpca.commentinput.com/?id=us53G

RE: Planned Amendments to Construction Stormwater General Permit

Dear Mr. Smith:

Thank you for the opportunity to comment on the planned revisions to the Construction Stormwater General Permit (CSW). As a municipality and MS4 community, the City of Apple Valley often completes construction activities, such as street reconstruction projects, that require a construction permit. Based on this and our review, the City of Apple Valley propose the following comments:

1. Section 10.2: Requiring documentation of construction dewatering every 4 hours is burdensome and unrealistic. Systems for dewatering utilities, such as wellpoints, deepwells or moving systems, often occur 24 hours at a time. Further, the permit does not clarify the difference between basin dewatering or groundwater dewatering and as written would require the contractor to photograph dewatering activities every four hours, in the night, when dewatering is used for lowering groundwater levels during the installation of underground utilities. Separation within the permit between dewatering activities related to underground utility construction and stormwater basin dewatering needs further clarification.
2. Section 16.17: “At least 3 feet of soil above the seasonally saturated soils or bedrock must consist of native undisturbed soils” is unrealistic in urban sites or areas of redevelopment. If a site has disturbed soils above the seasonal water table, then is infiltration prohibited? Recommend omitting this or reworking the language.
3. Section 25.15: "Distinctly set apart from a roadway" is too generic for interpretation. Consider placing a minimum distance from roadway/impervious surface and a minimum width for trails to allow for easier enforcement. For example, impervious surface would not apply to sidewalks and trails 10 feet wide or less that are bordered down-gradient by vegetated open space or vegetated filter strip with a minimum width of 5 feet.

1-1
1-2
1-3
1-4

The City of Apple Valley appreciates the chance to comment on the proposed Construction Stormwater General Permit. We commend the state for constantly trying to improve water resources and for providing increased pressure to remove non-wildlife friendly erosion control products (Section 7.3). The City looks forward to working with the MPCA on improving water quality together.

Sincerely,

Samantha Berger
Water Resource Specialist

Bassett Creek Watershed Management Commission

See attached letter

Bassett Creek Watershed Management Commission

February 24, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road
Saint Paul, MN 55155

Re: Comments on the Draft Construction Stormwater General Permit

Dear Mr. Smith:

The Bassett Creek Watershed Management Commission (BCWMC) directed the Commission Engineer to provide the following comments to the Minnesota Pollution Control Agency at its February 16, 2023 meeting:

For the following comments: "black" text represents the existing general permit verbiage, "red" text represents the MPCA's proposed general permit verbiage and "green" text represents the BCWMC's recommended general permit verbiage.

1. Paragraph 10.2: Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. ~~temporary or permanent sediment basin on the project site unless infeasible.~~ To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees ~~may dewater to surface waters if they visually~~ must visually check and ~~photograph~~ document the discharge at the beginning and, as necessary, during ~~every 4 hours of~~ operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.~~ [Minn. R. 7050.0210]

2-1

   - *Comment rationale: eliminate excessive burden on contractors*

2. Paragraph 11.5: During each inspection, permittees must inspect the project area, areas adjacent to the project, surface waters, ~~including~~ drainage ditches and conveyance systems, including downstream systems, but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in the project area, areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil.

2-2

   - *Comment rationale: clarification to inspect downstream conveyance systems*

3. Paragraph 11.9: "Permittees must inspect and ~~photograph~~ document dewatering discharges at the beginning and, as necessary, ~~once every 4 hours~~ during operation. [Minn. R. 7090]"

2-3

   - *Comment rationale: eliminate excessive burden on contractors*

4. Paragraph 25.15: "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, ~~sidewalks,~~ driveways, parking lots, and concrete, asphalt, or gravel roads. Bridges over surface waters are considered impervious surfaces. Recreational trails and disconnected sidewalks that are distinctly set apart from a roadway and intended for pedestrians or bicycles are exempt from stormwater treatment requirements ~~not considered impervious surfaces~~. Directly connected sidewalks within residential areas and alongside roadways must still be included as impervious surfaces. [Minn. R. 7090]

2-4

   - *Comment rationale: increase clarity consistency with watershed requirements*

If you have questions, please contact me at 952-832-2784 (jherbert@barr.com) or Laura Jester at 952-270-1990 (laura.jester@keystonewaters.com),

Jim Herbert, P.E.
Barr Engineering Co.
Engineers for the Bassett Creek Watershed Management Commission (BCWMC)

c: Catherine Cesnik, Chair
Laura Jester, Administrator

Nate Beckman

Can Minnesota change SWPPP inspection requirements to the EPA or Colorado requirements? Which is 1 SWPPP inspection every 7 days OR 1 SWPPP inspection every 14 days with rain event inspections after storms?

3-1

The MN model of 1 inspection every 7 days, rain event inspections after 0.5" weekend rain event inspections AND holiday inspections seems like over kill. MN is the only state that is doing this.

4

Jade Berube

The updates to Section 10.1 Dewatering and Basin Draining needs further clarification. The new permit will create undue burden for underground utility contractors if implemented as currently drafted. The permit does not clarify the difference between basin dewatering or groundwater dewatering and as written would require the contractor to photograph dewatering activities every four hours, in the night, when dewatering is used for lowering groundwater levels during the installation of underground utilities. Separation within the permit between dewatering activities related to underground utility construction and stormwater basin dewatering needs further clarification.

4-1

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Braun Intertec Corporation
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February 22, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Mr. Smith,

Braun Intertec Corporation thanks the Minnesota Pollution Control Agency (Hereinafter "MPCA") for the opportunity to make public comment on the proposed changes to and permit reissuance of the Minnesota Authorization to Discharge Stormwater Associated with Construction Activity under the National Pollutant Discharge Elimination System (NPDES)/ State Disposal System (SDS) Program (hereinafter "NPDES-CSW permit" or "draft permit"). Our interest in the draft permit is strictly for compliance and communal understanding of the intentions within it. Through our discussions in the Natural Resources Group, we have reviewed the draft permit, and would like to place public comment in the effect of our concerns within it.

The following identified sections below are our concerns for the draft permit as submitted by Braun Intertec Corporation.

2.10 This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. 7050.0186]

5-1 It is common for issuance of environmental permits to be a condition of funding and/or project letting for a project. With tying NPDES-CSW permit issuance to other permits (with variable timelines) is not a reasonable solution for permittees or those looking for permit coverage. Adding the proposed draft language will jeopardize the viability of projects and result in significant project delays, cost increases to projects and companies, and those who depend on the construction and infrastructure.

Staging and phasing of construction activities in other portions of a project site can be adjusted so site work can proceed without risk of impacting a surface water. Examples include mobilization, installation of sediment control BMPs, dewatering, clearing/grubbing and earthwork within isolated drainage areas and other regulatory windows (i.e. Northern Long-eared bat, rusty patch bumble bee).

Braun Intertec Corporation insists the MPCA to revisit this revision within the draft permit and eliminate it or revise it so that it would not jeopardize projects' timelines and ability to comply with this permit. If this cannot be done, we request the MPCA respond as to why this cannot be done.

7.2 Permittees must select, install, and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices to minimize the discharge of pollutants in

stormwater from construction activities. Examples of stormwater controls for this section include but are not limited to wet sedimentation basins, temporary depressions to hold stormwater, stormwater routing, dikes, berms, pumping, and stormwater treatment BMPs. Permittees must phase and incorporate stormwater management principles as the construction progresses. Unless infeasible, temporary or permanent wet sedimentation basins (when required) should be constructed as a first step in the process and stormwater routed to these. [Minn. R. 7090]

5-2 For clarity within the permit, Braun Intertec Corporation implores the MPCA to eliminate the list of examples within this section. It is not needed and may confuse people not familiar with the permit.

5-3 Within this section, the word *"should"* suggests that this is a recommendation and is not appropriate to be used in a permit that has regulatory enforcement. Braun Intertec Corporation requests of the MPCA to rephrase the sentence to eliminate the word "should".

7.3 If permittees will be using some type of erosion control netting on the site as part of the soil stabilization techniques, permittees are encouraged to consider using products that have been shown to minimize impacts on wildlife. The U.S. Fish & Wildlife Service recommends using types of netting practices that are considered "wildlife friendly," including those that use natural fiber or 100 percent biodegradable materials and that use a loose weave with a non-welded, movable jointed netting. Products that are not wildlife friendly include square plastic netting that are degradable (e.g., photodegradable, UV-degradable, oxo-degradable), netting made from polypropylene, nylon, polyethylene, or polyester. Other recommendations include removing the netting product when it is no longer needed. More information may be found at: https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products. There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products. See Minnesota Department of Transportation requirements at: https://www.mndot.org/environment/erosion/rolled-erosion-prevention-products.html [Minn. R. 7050]

Braun Intertec Corporation believes this item should be removed for the following reasons:

5-4
- This is a recommendation and not a requirement, therefore does not belong in the permit. We believe this would be better suited within MPCA issued guidance.

5-5
- It isn't certain that this will be able to be achieved by manufactures of these products within the 5-year permit period.

5-6
- The website reference is not guaranteed to be in place for the next five years. This could easily be moved on the website and not be able to be found, especially since the website link is not hosted by the agency (MPCA) issuing the permit.

8.5 For projects, including a common plan of development or sale, disturbing less than 25 acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. [Minn. R. 7090]

8.6 For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7

calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased. [Minn. R. 7090]

5-7 Braun Intertec Corporation is questioning the basis of the 25-acre threshold. As the site size may be larger, it doesn't equate to larger risk on the environment. If this is to be included in the draft and subsequently the issued permit, it should be based on the risk(s) specific to each project site. Risks could include but not limited to if the site is not self-contained or multiple self-contained drainage areas, proximity to surface waters, or increased soil erosion risk (sand versus clay). The remainder of section 8 is special circumstances that increase risk to the site whereas this seems as though it is just an arbitrary number.

5-8 The phrase *"initiate immediately"* should also include notes about feasibility. Many times, the site conditions, seasonality, and weather conditions make the action infeasible at the time. Requirements on documenting changes to timing should be included in inspection reports.

8.8 Permittees must stabilize the normal wetted perimeter of the last 200 linear feet of temporary or permanent drainage ditches or swales that drain water from the site within 24 hours after connecting to a surface water or property edge. Permittees must complete stabilization of remaining portions of temporary or permanent ditches or swales within 14 calendar days after connecting to a surface water or property edge and construction in that portion of the ditch temporarily or permanently ceases. [Minn. R. 7090]

5-9 Braun Intertec requests of the MPCA to eliminate 14 days and reference the proposed timeframes in section 8.5 and 8.6.

9.2 Permittees must establish sediment control BMPs on all downgradient perimeters of the site and downgradient areas of the site that drain to any surface water, including curb and gutter systems. Permittees must locate sediment control practices upgradient of any buffer zones. Permittees must install sediment control practices before any upgradient land-disturbing activities begin and must keep the sediment control practices in place until they establish permanent cover. [Minn. R. 7090]

5-10 Braun Intertec Corporation appeals of the MPCA on this section for a definition of adequate vegetation buffer widths per slope percentage that can be used for perimeter control.

9.5 A floating silt curtain placed in the water is not a sediment control BMP to satisfy item 9.2 except when working on a shoreline or below the waterline. Immediately after the short-term construction activity (e.g., installation of rip rap along the shoreline) in that area is complete, permittees must install an upland perimeter control practice if exposed soils still drain to a surface water. [Minn. R. 7090]

5-11 Braun Intertec Corporate is looking for a definition of the phrase *"short term"* from the MPCA. This phrase does not add any value to the permit but if kept in without defining could lead to confusion or disagreements between permittees and the MPCA.

9.9 Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6. [Minn. R. 7090]

Braun Intertec Corporation sees this new addition *"prior to the initiation of stockpiling"* is not practical for the following reasons:

- It is not practical for the common construction activity and would limit the operating space for the heavy machinery to access the pile. 5-12
- The risk of erosion and sediment runoff when a new stockpile is established is generally low due to it being actively worked. If the purpose of this is to minimize risk, the addition of *"completed within 24 hours or before predicted rain whichever comes first"* to this section would be practical as it would be similar to the moving of perimeter controls and BMPs. This revision would make this more practical and mitigate risk just as efficiently.

9.18 Any sediment control made of soil/muck must be temporarily or permanently stabilized within 24 hours. [Minn. R. 7090]

When reviewing this addition, Braun Intertec Corporation finds the following as potential issues or concerns:

- Braun Intertec Corporation requests of the MPCA to eliminate "muck" since muck is a type of soil. 5-13
- We have not seen muck used as a sediment control best management practice. This addition may also encourage the use of muck that could leach out nutrients or other deleterious materials into runoff that lead to surface waters and/or off-site. 5-14
- Define how much soil needs to be included (ex. more than 50% by volume is soil) to be considered soil for the purpose of this section. Braun Intertec requests of the MPCA this as sometimes soil amendments are incorporated into other materials (mulch) and are already stabilized to some extent. 5-15

10.2 Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. [Minn. R. 7050.0210]

Braun Intertec Corporation makes comment of:

- That when dewatering at night, photographs that have any value, will be difficult to capture with a normal camera. Dewatering may occur over night during non-work hours where no personnel are on site as well. 5-16
- When dewatering occurs in sand, usually the turbidity of the water is constant after the first flush/initial start up. Frequency of monitoring should be site specific. For this, Braun Intertec requests of the MPCA a guidance document. 5-17
- Braun Intertec Corporation believes it would be more appropriate to be able to establish dewatering monitoring protocols within the SWPPP to accommodate for site specificity as 4 hours is an arbitrary number of hours. 5-18
- The new language in the permit requests that if possible the dewatering is onto an upland vegetated area. Braun Intertec Corporation asks of the MPCA to include protection of this area from scouring. 5-19

11.2 Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours. [Minn. R. 7090]

Braun Intertec Corporation requests of the MPCA for clarifying language of "*next business day".* For this, we provide the following example from the North Dakota Authorization to Discharge Construction Stormwater under the North Dakota Pollutant Discharge Elimination System Section III (A)(1)(a):

5-20

- "Within 24 hours after any storm event greater than .25 inches rain per 24-hour period" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.
- Note Braun Intertec Corporation is not requesting to lower the rainfall amount trigger, we are requesting of the MPCA language similar to the provided example.

11.5 During each inspection, permittees must inspect areas adjacent to the project, surface waters, including drainage ditches and conveyance systems but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil. Permittees must complete removal and stabilization within seven (7) calendar days of discovery unless precluded by legal, regulatory, or physical access constraints. Permittees must use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) days of obtaining access. Permittees are responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work in surface waters. [Minn. R. 7090]

5-21

Due to trespassing concerns, the *"areas adjacent to the project"* language of the permit would be better suited to state *"visually inspect areas adjacent to the project and as permissible by adjacent landowners".*

11.8 Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery. [Minn. R. 7090]

5-22

Braun Intertec Corporation understands the intentions as set forth in this section by the MPCA, however, language may be better suited to say "*when basin is visually ½ the storage volume of the interim or final volume".* Often times basins are not fully graded until very end of construction. There is also safety and accessibility concerns entering the basins to manually check sediment levels. Braun Intertec Corporation also suggests to the MPCA of adding the language "*within 72 hours of discovery as field conditions allow*". Contractors need adequate time to safely dewater and discharge. This also varies based on pond size, discharge location, dewatering methods/equipment, and safe accessibility.

11.9 Permittee's must inspect and photograph dewatering discharges at the beginning and once every 4 hours during operation. [Minn. R. 7090]

5-23 Braun Intertec Corporation requests of the MPCA to eliminate this section as it is redundant with the application of 9.2.

11.11 (d) For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met. [Minn. R. 7090]

5-24 Braun Intertec Corporation has seen an uptick in projects incorporating pollinator habitat. We ask of the MPCA to apply this for all project types that will have a portion of their project in native or pollinator habitat.

11.12 (h) All photographs of dewatering activities and documentation of nuisance conditions resulting from dewatering activities as described in section 10. [Minn. R. 7090]

5-25 As stated in Braun Intertec Corporation's comment for 10.2, photography is difficult at night. Documentation and monitoring results should be acceptable.

12.2 Permittees must place building products and landscape materials under cover (e.g., plastic sheeting or temporary roofs) or protect them by similarly effective means designed to minimize contact with stormwater. Permittees are not required to cover or protect products which are either not a source of contamination to stormwater or are designed to be exposed to stormwater. [Minn. R. 7090]

5-26 Braun Intertec Corporation sees adding "at the end of the business day" as a more realistic expectation than "under cover". Without this, the MPCA would be restrict access and usage of the products for the projects.

12.7 Permittees must take reasonable steps to prevent the discharge of spilled or leaked chemicals, including fuel, from any area where chemicals or fuel will be loaded or unloaded including the use of drip pans or absorbents unless infeasible. Permittees must ensure adequate supplies are available at all times to clean up discharged materials and that an appropriate disposal method is available for recovered spilled materials. Permittees must report and clean up spills immediately as required by Minn. Stat. 115.061, using dry clean up measures where possible. [Minn. Stat. 115.061]

5-27 Braun Intertec Corporation would like a definition of "adequate supplies" by the MPCA. From the Code of Federal Regulations Chapter 40 Part 112: Oil Pollution Prevention, requires the owner to provide spill clean up supplies, however as numerous projects do not meet the threshold to require the application of this rule, we request of the MPCA to explain the reasoning and an attainable number for the permittee of spill supplies on site.

5-28 We also request of the MPCA to define reportable spills and to refer it to the current Minnesota statute 115.061: Duty to Notify; Avoiding Water Pollution.

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16.2 Infiltration options include, but are not limited to: infiltration basins, infiltration trenches, rainwater gardens, bioretention areas without underdrains, swales with impermeable check dams, and natural depressions. If permittees utilize an infiltration system to meet the requirements of this permit, they must incorporate the design parameters in item 16.3 through item 16.21. Permittees must follow the infiltration prohibition in item 16.14 anytime an infiltration system is designed, including those not required by this permit. [Minn. R. 7090]

16.7 Permittees must design infiltration systems to provide a water quality volume (calculated as an instantaneous volume) of one (1) inch of runoff, or one (1) inch minus the volume of stormwater treated by another system on the site, from the net increase of impervious surfaces created by the project. [Minn. R. 7090]

5-29 Braun Intertec Corporation has reviewed this section, and requests from the MPCA to change the wording from *"native undisturbed soils"* to *"pre-project soils"* since undisturbed native soils in urban areas are rarely found. Braun Intertec Corporation also acknowledges the problems the use of only native/pre-project soils as they could be contaminated or have poor infiltration rates whereas approved engineered fill will not as well as projects with a significant amount of fill brought into the site or when there isn't three feet of soils, adding soils could allow for infiltration.

19.2 When the entire water quality volume cannot be treated by volume reduction practices on site, permittees can use or create regional wet sedimentation basins provided they are constructed basins, not a natural wetland or water body, (wetlands used as regional basins must be mitigated for, see Section 22). The owner must ensure the regional basin conforms to all requirements for a wet sedimentation basin as described in items 18.3 through 18.10 and must be large enough to account for the entire area that drains to the regional basin. Permittees must verify that the regional basin will discharge at no more than 5.66 cfs per acre of surface area of the basin and must provide a live storage volume of one-inch times all the impervious area draining to the basin. Permittees cannot significantly degrade waterways between the project and the regional basin. The owner must obtain written authorization from the applicable LGU or private entity that owns and maintains the regional basin. [Minn. R. 7090]

5-30 Braun Intertec Corporation notes in the current NPDES-CSW permit the use of "onsite" versus in the NPDES-CSW draft permit it is "on site".

24.5 In addition to the requirement found in section 20, permittees must make the SWPPP, including all inspection reports, maintenance records, training records and other information required by this permit, available to federal, state, and local officials within three (3) days upon request for the duration of the permit and for three (3) years following the NOT. [Minn. R. 7090]

5-31 Braun Intertec Corporation understands the importance of this section. We request of the MPCA to add this to Section 20 as it will fit better there.

25.15 "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, driveways, parking lots, and concrete, asphalt, or gravel roads. Bridges over surface waters are considered impervious surfaces. Recreational trails that are distinctly set apart from a roadway and intended for pedestrians or bicycles are not considered impervious surfaces. Sidewalks within

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residential areas and alongside roadways must still be included as impervious surfaces. [Minn. R. 7090]

5-32 Braun Intertec Corporation requests of the MPCA to consider changing to *"distinctly set apart from a roadway intended for non-motorized and motorized recreational uses are not considered impervious"* for this section.

From our review of the NPDES-CSW current permit throughout the past 5 years, Braun Intertec Corporation would also like to request of the MPCA the following changes to the NPDES-CSW draft permit:

5-33
- The maintenance section (11.1) should be separated from the inspection section for better readability.

5-34
- Move pollution prevention section (12.1) to after dewatering (section 10.1) since it is randomly placed within the current permit.
- Winter runoff inspections need more of a formal definition. What is considered a runoff event?

5-35
  - Two consecutive days with temperatures over 32 degrees Fahrenheit?
  - Certain number of consecutive hours over 32 degrees Fahrenheit?
  - Clarification is requested on if there is rain on top of snow, regardless of the amount of rain, does that classify as a runoff event since the rain could cause runoff (project specific)?

Braun Intertec Corporation looks forward to the MPCA's response to our questions. Should any clarification be needed, please contact Travis Fristed at tfristed@braunintertec.com. We appreciate the opportunity to place public comment on the NPDES-CSW draft permit.

Respectfully,

Braun Intertec Corporation

Travis Fristed, PWS, CMWP
Group Manager, Principal Scientist

6

Capitol Region Watershed District
595 Aldine Street • Saint Paul, MN 55104
T: 651-644-8888 • F: 651-644-8894 • capitolregionwd.org

March 3, 2023

Todd Smith
MN Pollution Control Agency
Saint Paul, MN 55155-4194

Re: Draft Construction Stormwater General Permit

Dear Mr. Smith:

Capitol Region Watershed District (CRWD) appreciates the opportunity to comment on the 2023 draft Construction Stormwater (CSW) General Permit. As a local government unit responsible for protecting and improving water resources, CRWD has considerable, vested interest in the reissuance of the statewide permit that regulates construction site runoff to reduce water quality impacts from erosion, sediment, and pollutants. CRWD references and enforces the requirements of the NPDES CSW permit on projects requiring CRWD permits.

CRWD appreciates the support from MPCA inspection staff it has received in the past and has noted a shift away from inspection and enforcement efforts in recent years. As MPCA intends to continue collecting fees and issuing CSW permits for projects within active MS4s, CRWD requests resources be allocated to ensuring compliance with the permit through increased inspection and partnership with local governments.

6-1 CRWD recommends that the permit be amended in Part 15.3 such that the permanent stormwater treatment requirement applies to all newly constructed and fully reconstructed impervious surfaces on permitted projects. In most cases in urbanized areas, very little to no water quality treatment or volume reduction would be required based on the language in Parts 15.3 and 15.4 that requires water quality treatment for "a net increase of one (1) or more acres of cumulative impervious surface." In seventeen years of implementing a volume reduction and water quality improvement standard that is the same for both new development and redevelopment, it has been CRWD's experience that this is a reasonable, effective, and cost-efficient method to controlling stormwater runoff and improving water quality.

In addition to these general comments, CRWD provides detailed comments on specific permit language revisions in the pages below. For sections that were revised in the 2023 draft CSW but that CRWD does not provide comment on below, it can be assumed that we support these additions and revisions to the CSW Permit language.

Capitol Region Watershed District
595 Aldine Street • Saint Paul, MN 55104
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6-2 3.4 CRWD recommends language adjustment for clarity. "This **also** applies to **projects or common plans of development of sale disturbing less than 50 acres** if there is a discharge point on the project within one mile…"

7.2 *BMP Selection and Stormwater Management: Examples of **stormwater controls** for this section include but are not limited to wet sedimentation basins, temporary depressions to hold stormwater, stormwater routing, dikes, berms, pumping, and stormwater treatment BMPs. Permittees must phase and incorporate **stormwater management principles** as the construction progresses.*

6-3 CRWD recommends language adjustment for clarity. The term "stormwater controls" is unclear. Consider replacing it with term "stormwater management practices." For example, "Permittees must phase and incorporate stormwater management principles that supplement the use of BMPs (erosion prevention practices and sediment control practices). Examples of the use **of stormwater management practices** include but are not limited to …"

7.2 *Unless infeasible, temporary or permanent wet sediment basins (when required) should be constructed as a first step in the process and stormwater routed to these.*

6-4 CRWD recommends placement in Section 14.1 Temporary Sediment Basins.

7.3 *…permittees are encouraged to consider using use products that have been shown to minimize impacts on wildlife…*

6-5 CRWD recommends language adjustment "…permittees **are encouraged to use products** that have been shown to minimize impacts on wildlife…"

6-6 8.4 CRWD recommends language addition for clarity. "Stabilization is required for stockpiles of base material for roads, parking lots, and similar surfaces until they are constructed as a part of a road, parking lot, or similar surface.

8.5 and 8.6

6-7 CRWD supports this addition. Consider referencing "stockpiles" within this language to avoid confusion regarding timelines. Consider leaving the text "… to limit soil erosion…" in these sections as this provides context on the importance of stabilization.

6-8 8.8 CRWD recommends language adjustment for clarity "…within 14 calendar days (**or 7 days depending on the applicability of items 8.5 or 8.6**) after connecting…"

8.9 *Temporary or permanent ditches or swales being used as a sediment containment system during construction (with properly designed rock-ditch checks, bio rolls, silt dikes, etc.) do not need to be*

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595 Aldine Street • Saint Paul, MN 55104
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stabilized. Permittees must stabilize these areas within 24 hours after their use as a sediment containment system ceases.

6-9 CRWD recommends removal of this item given conflict of this item with Section 8.8 and observed concerns with implementation of this. Areas within the last 200 linear feet of a drainage ditch or swale that drain water from the site should generally not be used as a sediment containment system unless the means for drainage, such as a catch basin, is fully blocked.

6-10 9.8 CRWD recommends language adjustment. "…if a specific safety concern (e.g. street flooding/freezing) **is observed (or has been observed)** by the permittees…"

6-11 9.12 CRWD recommends language adjustment in "…use street sweeping **in addition to a vehicle tracking BMP** if vehicle tracking BMPs **alone** are not adequate…"

10.2 *Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent **discharges** with visual turbidity. To the extent feasible, use well-vegetated (e.g., grassy or wooded) upland areas of the site to infiltrate dewatering water before **discharge**. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees must visually check and photograph the **discharge** at the beginning and every 4 hours of operations to ensure adequate treatment has been obtained and nuisance conditions will not result from the **discharge.***

6-12 CRWD strongly recommends clarification of where a discharge is going in all areas where term "discharge" is bolded above i.e., discharge to a surface water or discharge to a sediment control. This will also provide clarification that visually checking and photographing the discharge is required for permittees to discharge TO A SURFACE WATER.

CRWD recommends retaining language that discharge cannot "adversely … affect downstream properties" (or add to 10.3). Flooding of downstream properties during dewatering operations is a concern.

10.2 & 11.9

6-13 CRWD strongly supports the requirement to inspect and photograph dewatering at the beginning and once every 4 hours during operation. Recommend addition of language "… *at least* once every 4 hours during operation."

11.11 *For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no*

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significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met.

6-14 CWD strongly recommends that this expands to projects beyond ground mounted solar panels to all projects where a pollinator habitat or native prairie type vegetated cover is being established. All projects using these vegetations will require additional time for establishment and pollinator and native type vegetation is beneficial to encourage.

6-1 15.3 CRWD strongly recommends requiring treatment of water quality volume for new and **reconstructed** impervious surface of one (1) or more acres.

16.12 *Permittees must employ appropriate on-site testing to ensure a minimum of three (3) feet of separation from the seasonally saturated soils (or from bedrock) and the bottom of the proposed infiltration system.*

6-15 CRWD strongly recommends that clarification is provided that seasonally saturated soils are indicated by redoximorphic features NOT one time groundwater measurements.

16.12 & 16.17

At least 3 feet of soil above the seasonally saturated soils or bedrock must consist of native undisturbed soils.

6-16 CRWD strongly recommends removal of this addition. We have several permitted sites where soil corrections were completed for the 3 feet of soils between the bottom of the infiltration system and seasonally saturated soils due to contaminated or poorly infiltrating soils and this material replaced with engineered media or sand. We feel that this decision should be left to the engineer. We prioritize the use of infiltration and feel that this would unnecessarily limit many sites to filtration.

6-17 17.5 CRWD recommends language adjustment. "…forebay**,** or hydrodynamic separator **or equivalent** to remove settleable solids…" Pretreatment options are variable and evolving and may include other practices that those listed directly. Comma should be after forebay.

6-18 20.2 CRWD recommends language adjustment for clarity. "Permittees must keep the SWPPP on site during normal working hours with personnel who have operational control over the applicable portion of the site, including all changes to the SWPPP, inspections, and maintenance records."

25.15 *Recreational trails that are distinctly set apart from a roadway and intended for pedestrians or bicycles are not considered impervious surfaces. Sidewalks within residential areas and alongside roadways must still be included as impervious surfaces.*

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CRWD strongly recommends language adjustment for clarity. “Recreational trails … are considered **disconnected impervious surfaces**. Disconnected impervious surfaces are impervious surfaces that direct runoff to adjacent pervious areas where it can be infiltrated.” CRWD would support MPCA efforts to create a fact sheet providing guidance for calculating disconnected impervious.

6-19

25.22 CRWD requests clarification if “70 percent of the native background vegetative cover” would permit an area to be approved with less than 70% density if the area existed as non-vegetated prior to ground disturbance. From CRWD experience, this is a common misconception and a frequent point of contention during closure inspections. Recommend language adjustment “… of 70% of **planned** vegetative cover on all areas …”

6-20

CRWD appreciates the opportunity to provide comments on the CSW General Permit and requests revisions addressing these comments be incorporated into the permit. We look forward to continued partnerships between CRWD and MPCA in protecting Minnesota’s water resources. Please feel free to contact me with any questions.

Sincerely,

Acadia Stephan

Capitol Region Watershed District, BMP Inspector

Mark Doneux, Administrator

Forrest Kelley, Regulatory Division Manager

Elizabeth Hosch, Permit Program Manager

Luke Martinkosky, Water Resources Regulatory Specialist

Alessio Caselli

I believe that weekend rain inspections should be removed from the CGP, for a couple of reasons: first, having to be on-call on weekends is a burden, leads to inspector burnout and makes the inspections less accurate on the long run. Second, there are no BMP companies that are available to address any deficiencies found on a weekend inspection because they do not work on weekends.

7-1

Central Minnesota Builders Association

Please see the attached letter of comment from the Central Minnesota Builders Association (CMBA). Thank you.

CENTRAL MINNESOTA BUILDERS ASSOCIATION

March 3, 2023

Minnesota Pollution Control
Agency 520 Lafayette Rd
St. Paul, MN 55155

VIA ELECTRONIC DELIVERY

RE: 2023 Minnesota Construction Stormwater General Permit (General Permit)

Dear Minnesota Pollution Control Agency,

This letter contains comments from the Central Minnesota Builders Association (CMBA) regarding the **2023 Minnesota Construction Stormwater General Permit (General Permit)** issued by the Minnesota Pollution Control Agency (MPCA) to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) program administered by the Environmental Protection Agency (EPA).

CMBA is a non-profit association representing more than 300 developers, builders, contractors and affiliated businesses in the Greater St. Cloud area of Central Minnesota.

It is important to note Minnesota faces a huge crisis in housing supply and affordability. On average, Minnesota housing is 22% more expensive than the same units in our neighboring states. Central Minnesota developers and builders understand the need to protect our environment, and take responsibility for developing in an environmentally sound manner. At the same time, we know every new regulation and mandate adds to the unaffordability picture for Minnesotans, pricing more and more of them out of the housing they need.

CMBA sees opportunities to improve the 2023 General Permit language, and appreciates the opportunity to comment:

Section 8.6: The 7-day window cuts in half the current time frame, adding unnecessary costs because it will require stabilization before work is completed.

8-1

Recommendation: Change 8.6 to read ". . . disturbing 25 or more acres **at any one time** . . ." which accomplishes the intent of the requirement without unintended negative consequences.

CENTRAL MINNESOTA BUILDERS ASSOCIATION

8-2 **Section 9.9:** Installation of perimeter controls at the base of stockpiles prior. Stockpiles can vary in size and volume, and it is hard to estimate the final proportions for precise perimeter controls before the stockpile is placed. This language runs the risk the perimeter controls could be too little or too much for the actual stockpile, defeating the purpose. It makes much better sense to install perimeter controls that match the actual stockpile.

Recommendation: Change 9.9 to read "**within 24 hours of stockpiling**" instead of "prior to".

Section 10.2: The requirement of photos every four hours raises serious concerns about misunderstanding context and situational factors (example: sudden heavy rains) that would lead to unfair enforcement actions.

8-3

Recommendation: Change the language to ". . . at the beginning and a **minimum of once every 24 hours** of operation . . ." We would also recommend keeping the 2018 language in this section by removing the words "and photograph".

Section 10.3: It would be important to have someone properly trained and qualified doing the observation.

8-4

Recommendation: Change 10.3 to read "**a qualified or trained observer**" instead of "an observer".

Section 11.4: The 24-hour standard is unrealistic and would constitute the tightest standard in the region if not the country. Weather events like heavy rains happen suddenly, including weekends or holidays, and imposing a 24-hour maintenance and repair standard sets-up our members for failure and enforcement actions.

8-5

Recommendation: Change the language to ". . . functional BMPs **within 72 hours** after discovery . . ."

Section 20.2: This language does not reflect the current state of record-keeping, specifically electronic records. We know the federal EPA and other states allow the use of electronic storage of SWPPPs, Inspection Reports, etc.

8-6

Recommendation: Change the language to ". . . inspections and maintenance records at the site **or electronically available** at the site during normal working hours by permittees . . ."

Cost Impact Concerns:

CMBA and Housing First Minnesota estimate the 2023 General Permit as proposed would **add more than $2,000 to the cost of each developable lot**. The 2018 General Permit was estimated to have a dramatically smaller cost impact on development. This is an extraordinarily negative impact in light of Minnesota's massive housing supply and affordability crisis, and the MPCA needs to take such impacts into careful consideration as you consider new regulations and requirements.

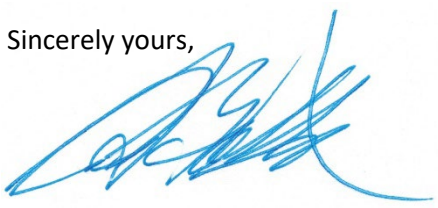
2848 2nd Street South Suite 145, St. Cloud MN 56301
Office: 320.251.4382 / info@cmbaonline.org

CENTRAL MINNESOTA BUILDERS ASSOCIATION

CMBA developers and builders share the MPCA's goal of taking care of and protecting our environmental resources. However, the proposed 2023 General Permit imposes some unrealistic standards and extraordinarily burdensome development cost increases that will significantly exacerbate Minnesota's growing housing crisis.

We appreciate the MPCA's careful consideration of our comments, and hope you will amend the 2023 General Permit accordingly. Please contact me with any questions or concerns. Thank you.

Sincerely yours,



Steve Gottwalt
Government Affairs Consultant
Central Minnesota Builders Association
M: 952.923.5265
steve@cmbaonline.org

cc: Wanda Schroeder – CEO, Central Minnesota Builders Association
Nick Erickson – Housing First Minnesota

Coon Creek Watershed District

9-1 Section 2.10 – WCA LGUs do not issue permits, they issue decisions or determinations, which are very different from each other within the technicalities of WCA administration. It would be good to include the word "decisions" here along with "other determinations" to be consistent with language and avoid a potential loophole. An additional concern with this section is how the MPCA will keep track of whether a project needs wetland approval and if all required approvals have been obtained. Does this apply to Army Corps of Engineers permits as well? If so, there could be major consequences for project timelines due to the long review times at the federal level.

9-2 Section 9.9 – With sediment controls needing to be an effective distance away from the base of a stockpile, it makes more sense for sediment controls to be installed immediately after a stockpile is created.

9-3 Section 9.17 – County and judicial ditches being exempt from the 50ft natural buffer requirement should be re-evaluated. Some public ditches are impaired waters and/or drain directly to major waterways or public waters.

9-4 Section 9.18 – The use of earthen berms for perimeter control should be emphasized or recommended to help eliminate single use plastic silt fence.

9-5 Section 11.5 – Curb and gutter systems adjacent to the project should not be exempt from being inspected for sediment deposition. Large amounts of sediment can be transported through curb and gutter systems. It should also be clarified what "adjacent" means within the section or in definitions.

9-6 Section 16.12 – The justification for the requirement that the 3 ft of separation between groundwater or bedrock and the bottom of an infiltration system must be native undisturbed soils is unclear. This would make volume control even more difficult to achieve for sites in high groundwater areas.

9-7 Section 25.15 – How "distinctly set apart from a roadway" and "alongside roadways" are determined is unclear. "Residential areas" is also undefined.

General - The announcement of the comment period and availability of information on the new permit, draft permit language, and informational meeting has been minimal, difficult to find, and unlikely to have reached the majority of the impacted parties.

The proposed changes, while some may consider minor changes, are baby steps towards potentially larger rule changes and implications in the future that require discussion and consideration.

MPCA should host workshops to gain insight from applicants and LGUs, explain the required permit components, and work to draft a permit that complies with the law, protects the environment, and minimizes cost and challenges to the applicants.

Draft permit language with redlines illustrating proposed language changes should be readily available and obvious on the MPCA CSW Webpage, and elsewhere that is created to interact with

applicants, to ensure applicants are aware of the proposed changes. Not buried as the last item in a dropdown menu of other documents at the very end of the public comment form.

March 3, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road
Saint Paul, MN 55155

Re: Comments on Draft Construction Stormwater General Permit

Dear Todd:

Please see the following comments from the City of Eden Prairie related to the MPCA's Draft Construction Stormwater General Permit.

	Permit Section	Comment
10-1	7.2	What makes it infeasible? Is cost a reason for something being infeasible? This is broad and subject to interpretation.
10-2	10.2	There are some sites that must dewater 24/7. This would be a huge cost without a lot of benefit. What about revising to "every 4 hours of operation for the first X hours of operation and for the first Y hours after a Z inch rainfall?"
10-3	10.3	In addition to examples of nuisance conditions, suggestions for corrective actions would be helpful here.
10-4	11.5	Permittee may not have right to legally access property for inspection or be able to obtain access through reasonable efforts. What should the permittee do then?
10-5	11.8	Is it possible that the sediment would require testing? If so, 72 hours will not be adequate.
10-6	11.9	See comment for 10.2.
10-7	16.12	As sites are redeveloped (especially sites with little separation to seasonally saturated soils), this is going to become increasingly difficult. Is this absolutely essential?
10-8	25.15	This is unclear. Does this mean that ONLY sidewalks alongside roadways in residential areas are impervious? (e.g., sidewalks along roadways in industrial or commercial developments are not)

Thank you for the opportunity to provide official comments. Please let me know if you have questions.

Thank you,

Lori Haak
Water Resources Coordinator
lhaak@edenprairie.org

Enclosure A

U.S. Environmental Protection Agency
Draft NPDES General Permit Submitted 1/26/2023
Stormwater Discharges Associated with Construction Activity
MNR100001

1. While the permit contains BMPs and enforceable controls, we were unable to find a statement that explicitly prohibits a discharge that violates water quality standards. We understand that corrective actions may be required if the site is found to be causing a water quality standards violation, but it is not clear that causing or contributing to a violation of water quality standards would be a permit violation. Please add a statement in the permit similar to what EPA has in its construction general permit in Section 3.1: "Discharges must be controlled as necessary to meet applicable water quality standards." See also the rest of Section 3.1 of EPA's construction general permit for more language that may be useful. https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf

11-1

2. Similarly, we found no overall statement implementing MPCA's water quality criteria generally into the permit as is found in other MPCA permit standard conditions. We noted that similar language was used for specific types of discharges or to trigger corrective actions, but there was no overall statement serving as narrative water quality based effluent limits. See below for an example from an MPCA permit recently reviewed by EPA which included the following statements. Please add these limitations, or something similar to the construction general permit:

11-2

"Toxic Discharges Prohibited. Whether or not this permit includes effluent limitations for toxic pollutants, the Permittee shall not discharge a toxic pollutant except according to 40 CFR pts. 400 to 460 and Minn. R. chs. 7050, 7052, 7053 and any other applicable MPCA rules. [Minn. R. 7001.1090, subp. 1(A)]"

"Nuisance Conditions Prohibited. The Permittee's discharge shall not cause any nuisance conditions including, but not limited to: floating solids, scum and visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, acutely toxic conditions to aquatic life, or other adverse impact on the receiving water. [Minn. R. 7050.0210, subp. 2]"

3. Please revise the language surrounding permit eligibility and applicability to Indian country to clarify that operations located in Indian country are not eligible for coverage under this permit and include the following reference to the United States Code:

11-3

18 USC §1151 - Indian country means "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within

the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

4. The permit appears to indicate that projects are automatically covered without an opportunity for MPCA to review applications. MPCA should ensure that the process allows for the ability for MPCA to review to at least ensure the proposed discharges are eligible for coverage before issuing notices of intent. Edits related to this comment would be needed in several places, including: 11-4
    a. Page 1. Instead of "authorizes permittees seeking coverage", change to "permittees covered"
    b. Section 1.3. strike "covered by this permit" so the sentence reads "construction activity cannot commence until coverage under this permit is effective…"
    c. Section 2.2. Add "may require application require you to obtain coverage under an individual permit" before or after "… permit revocation."
    d. Section 3.3. This section seems to:
        i. absolve an operator from needing to develop a SWPPP if the project is smaller than 50 acres and is further than 1 mile from a special or impaired water.
        ii. Remove MPCA's ability to review and require you to obtain coverage under an individual permit.

    Please revise this section. MPCA needs to retain the ability to determine whether an application is complete and that the applicant is eligible for coverage, at a minimum.

5. Section 1.7 allows for a grace period for coverage under this general permit to extend beyond the expiration of the permit without additional action. EPA recommends specifying an end date or duration of the grace period. For example, EPA's Construction Stormwater General Permit provides a date after which the grace period ends: "Provided you submit your NOI no later than May 18, 2022, your authorization under the 2017 CGP is automatically continued until you have been granted coverage under this permit or an alternative NPDES permit, or coverage is otherwise terminated." 11-5

6. Other recommended edits
    a. Section 15.2 – add "and implement" and "or contribute to" so that the statement reads: "Permittees must design and implement the project so all stormwater discharged from the project during and after construction activities does not cause or contribute to a violation of state water quality standards…" 11-6

11-7 b. Section 24.2 – Please revise so that if the MPCA determines that an individual permit is required, MPCA may deny or terminate coverage under the general permit and require an individual permit application. See 40 CFR 122.28(b)(3).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF: WP-16J

Brandon E. Smith, P.E., Supervisor
Stormwater Research, Engineering, and Outreach Unit
Minnesota Pollution Control Agency (MPCA)
Municipal Division
520 Lafayette Road N
St. Paul, MN 55155
brandon.e.smith@state.mn.us

Re: Review of NPDES General Permit for Stormwater Associated with Construction Activity (MNR100001)

Dear Mr. Smith:

The U.S. Environmental Protection Agency has reviewed the public notice draft National Pollutant Discharge Elimination System general permit, fact sheet, and supporting documents for the General Permit for Stormwater Associated with Construction Activity, that were submitted to EPA on January 26, 2023. Based on our review to date, EPA would not object to issuance of that permit. However, our position could change if any of the following occurs:

a. Prior to the actual date of issuance of a proposed permit, an effluent guideline or standard is promulgated which is applicable to the permit and which would require revision or modification of a limitation or condition set forth in the draft permit;

b. A variance is granted and the permit is modified to incorporate the results of that variance;

c. There are additional revisions to be incorporated into the permit which have not been agreed to by EPA; or

d. EPA learns of new information, including as the result of public comments, that causes EPA to reconsider its position.

Subject to the above conditions, the permit may be issued in accordance with the Memorandum of Agreement and pursuant to the Clean Water Act. Although we currently do not intend to object, EPA recommends you consider and address the comments identified in Enclosure A in order to improve the overall permit decision.

When the proposed permit is prepared, please forward one copy and any significant comments received during any public notice period to this office at r5NPDES@epa.gov. Please include the

permittee name and permit number in the subject line and cc Krista McKim mckim.krista@epa.gov. If you have any technical questions related to EPA's review, please contact Ms. McKim at mckim.krista@epa.gov.

Thank you for your cooperation during the review process and your thoughtful consideration of our comments.

Sincerely,

Digitally signed by ANDREW GREENHAGEN
Date: 2023.03.01 17:49:03 -06'00'

Stephen M. Jann
Manager, Permits Branch
Water Division

Enclosure

cc: Todd Smith <todd.smith@state.mn.us>

12

Mary Fitzgerald

14.1 Temporary Sediment Basins

We are hoping for some additional clarification added to this section. We often have non-compliance issues of turbid water passively skimming off a temporary sediment basin and leaving the site, or installed storm sewer outlet structures taking on turbid water. Could language be added such as "Permittees must not allow turbid water to discharge offsite from their temporary sediment basin. If turbid water persists, additional filtering methods required." or something similar?

12-1

13

Forestar Group, Inc.

This comment is regarding rain event inspection timeframes, as stated in draft item 11.2:

13-1 Land development construction activities do not have onsite crews 7 days a week for the length of the project. It is impracticable to have staffing coverage on weekends and holidays exclusively for the purpose of 24-hour post-rain event inspections. We respectfully request an amendment to the 24-hour post-rain event inspection requirement to allow for an inspection the next business day following a qualifying rain event when no staff is onsite and/or no activities are occurring on weekends and holidays.

Thank you for your assistance!

Jack Friedges

Having to be on-call on weekends is a burden, leads to inspector burnout
Statewide rain events are nearly impossible to cover with fewer employees/resources available on weekend 14-1
No BMP companies are available to address any deficiencies found because they do not work on weekends
States overwhelmingly do not require rain events while on a 7-day inspection frequency and do not require weekends/holidays

Sam Gerdts

15-1 Remove the requirement for weekend rain events. Reasons being:
- Having to be on-call on weekends is a burden, leads to inspector burnout
- Statewide rain events are nearly impossible to cover with fewer employees/resources available on weekend
- No BMP companies are available to address any deficiencies found because they do not work on weekends
- States overwhelmingly do not require rain events while on a 7-day inspection frequency and do not require weekends/holidays
- Gas expenses for having to drive more during the weekends

Instead, let rain event inspections be on the next business day.

16

Great River Energy

Attached are Great River Energy's comments on the draft construction stormwater permit.

GREAT RIVER ENERGY

12300 Elm Creek Boulevard
Maple Grove, Minnesota 55369-4718
763-445-5000
greatriverenergy.com

March 3, 2023

Minnesota Pollution Control Agency
Online Public Comment Forum

Re: Draft Construction Stormwater General Permit (MNR100001)

Dear Permit Writer,

This letter provides Great River Energy's comments on the draft construction storm water general permit no. MNR1000001.

Great River Energy is a not-for-profit wholesale electric power cooperative serving 27 member-owner distribution cooperatives. To continue to serve our member-owners, we regularly implement projects that are covered by the general stormwater permit. This occurs most often when construction projects occur associated with the expansion of our transmission line system.

The following are our comments on the proposed draft permit.

16-1 **Permit Section 10.2:** The requirements of this section can be difficult to implement on linear transmission line projects. During transmission construction projects numerous small borings are drilled to install transmission poles and footings. The water in these small excavations is pumped out one time to allow the concrete foundation to be placed. The volume of water removed from these is very low relative to ongoing dewatering operations (in some cases it is less than 100 gallons) and any impacts are de minimis. Therefore, we request that dewatering operations that involve less than 4 hours of pumping be considered de minimis and be excluded from the requirements in this section.

If this change is not made to this section, we request that the proposed requirement to take pictures of the dewatering discharge not apply to these de minimis efforts. The administrative burden of taking pictures, filing, and record keeping associated with each of these minor pumping events will be significant. This effort is unwarranted given the de minimis nature of these actions. Therefore, we request that this provision be limited to dewatering activities that involve continually pumping for 4 hours or more.

Finally, the proposed revisions to the dewatering requirements of the permit require visually checking and photographing the discharge from the dewatering discharge every four hours when dewatering occurs. Great River Energy believes that this requirement is excessive and will be very difficult to safely implement particularly on linear transmission projects.

Transmission line projects commonly occur in very remote, difficult to access locations. Visiting these locations during the night is challenging to do safely due to limited visibility and in some cases access takes enough time that visually checking the operation every four hours would require someone to stay onsite around the clock. Furthermore, the lighting required to access and inspect these locations at night would be potentially disruptive to neighboring residents and wildlife. Therefore, we recommend limiting the 4-hour inspection frequency to daylight hours. This would significantly reduce the risk, effort, and disruption associated with these inspections while still retaining much of the benefit, particularly during summer conditions when the majority of significant dewatering operations occur.

Permit Section 11.11d: This section allows reduced inspection frequency for solar sites that are planted with pollinator or native prairie vegetated cover is being established. Great River Energy actively seeks opportunities to establish native prairie and pollinator habitat during construction projects. However, the current permit's ongoing inspection requirements create a disincentive to using native plant species that can sometimes take years to become fully established. Therefore, we strongly support the concept of reducing the inspection requirements for projects that utilize this type of vegetation. However, this provision should be expanded to apply to all projects and not limited arbitrarily to only solar sites. Expanding this provision to apply to all projects would reduce the disincentive associated with establishing native and pollinator habitat and therefore likely lead to additional valuable habitat in Minnesota.

16-2

Permit Section 8.6: The shortened soil stabilization timeframes for projects disturbing greater than 25 acres contained in this section will be very challenging to implement, particularly on the linear transmission line projects Great River Energy typically works on. On a linear transmission line project, 25 acres of disturbance can be distributed across many miles of construction. The disturbance on these projects is typically small, disconnected areas associated with the installation of the transmission towers. As a result, the impact on the local water bodies is limited and not equivalent to a project where 25 acres is disturbed within a single location. Furthermore, it is much more challenging to implement stabilization measures on a large number of discrete locations spread across a linear project. Therefore, we request that this shortened timeline only apply to projects where the 25 acres being disturbed are contiguous.

16-3

Permit Section 11.5: This section requires permittees to "… remove all deltas and sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems…" This provision will be very challenging to implement. Removing ALL sediment deposited in surface waters is not feasible – sediment can remain suspended in the water and disbursed over very large areas. In addition, in many cases, any sediment associated with the construction project will be indistinguishable from the sediment in place prior to the project. Finally, in some cases the sediment deposits and deltas will not be visible from the surface and their detection and removal would be very challenging and potentially create a safety risk. Therefore, we request that this provision be removed. If it is retained, it should be qualified so that it only applies to significant sediment deposits that are visible from the surface and obviously related to the construction activity.

16-4

Great River Energy appreciates the opportunity to comment on this draft permit.

Sincerely,

GREAT RIVER ENERGY

Erik Heinen
Environmental Administrator

17

Brendan Haugh

17-1 Hello. I would like to submit two comments on behalf of Earthworks Environmental, from the perspective of a stormwater consulting and inspection company. We want to request an amendment to Section 11.2, regarding inspections and maintenance. Section 11.2, as presently written, states:
Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours.
We would like this amended, something to the effect of:
Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and on the next business day following a rainfall event greater than 1/2 inch in 24 hours.
The intention is to relieve permittees and inspectors of the requirement to respond to rain events on weekends and holidays. We believe that this requirement is counter-productive and overly burdensome, as the logic that more inspections are inherently better can be deceptive in this case. We are forced to have stormwater inspectors on call for all weekends and holidays, restricting their ability to travel or otherwise enjoy time off. We cannot keep a full staff on call on weekends/holidays, so statewide rain events are incredibly taxing when you are partially staffed. BMP installers and maintenance companies do not work on weekends or holidays, so any findings cannot be addressed or even conveyed until the next work day. Since a maintenance team would not schedule the repair until the next work day, the act of discovering a necessary repair becomes arbitrary. We provide stormwater inspection services in 20 states, so our Minnesota team is acutely aware that they are in a unique position to be giving up their weekends and holidays. All these reasons manifest in discontent and burnout amongst inspectors, which leads to much higher rates of attrition. We strongly believe that all parties involved (regulated & regulatory community, environment, citizens, etc.) will benefit by removing weekends & holidays from the inspection frequency. It is rare to find individuals with stormwater experience when you are hiring in this field, so we are almost always training from the ground up. The benefits of keeping experienced inspectors in the field will certainly outweigh the prospective benefits of an inspection on a day when the site is inactive. The effectiveness of proper BMPs and a robust weekly inspection program have been enough to prevent any major failures from occurring on non-workdays in our experience across the country. The "next business day" language is already used in Section 11.4, so there is precedent and acknowledgment of the strains that weekends/holidays create.
Alternatively, if weekends and holidays cannot be removed, then we'd request to have this section restructured to still lessen the burden. The majority of agencies do not require rain event inspections while the site is on a 7-day inspection frequency (examples may be found in the CGPs for EPA, Arizona, Nebraska, etc.). Since the 7-day frequency is mandated, the requested relief could come from increasing the rainfall amount required for response to 1 inch.

17-2 The second request is to amend Section 20.2, regarding SWPPP availability. Section 20.2, as presently written, states:
Permittees must keep the SWPPP, including all changes to it, and inspections and maintenance records at the site during normal working hours by permittees who have operational control of that portion of the site.
We would like this amended, something to the effect of:
Permittees must keep the SWPPP, including all changes to it, and inspections and maintenance

records at the site during normal working hours by permittees who have operational control of that portion of the site. The SWPPP, or portions of the SWPPP, may be maintained electronically if they can be made readily available upon request.
This request is being made in an effort to embrace the continuous advancement of technology and electronic records. Our internal software program houses all inspection reports, site plans and documents, construction progress & stabilization logs, rain logs, and more. Site maps are updated electronically, directly via the software. There is an environmental toll to printing all these materials, and then potentially replacing it all if the SWPPP is damaged or stolen. We can place a QR code in the SWPPP that will give a regulator direct access to maps, map updates, reports, etc. We could also provide records electronically upon request or display them electronically during a site inspection. Any section of the SWPPP being maintained electronically will have an insert stating exactly what items are electronic and how to procure them. This request provides environmental benefits while not posing any inconvenience to those seeking records.

Your consideration is greatly appreciated, thank you.

18

Submitted by Leo Holm

Comments on New Construction Storm Water Permit

18-1 Section 5.2 Add owner and operator must implement the SWPPP

18-2 Section 7.2 Good start to this section. Keep examples. They define how storm water management applies to this permit

18-3 Section 8.3 Add for purposes of this permit steep slopes are 1:3 and steeper.

18-4 Section 8.12 Add For small sites 1 acre and less with limited space and interim stabilization is infeasible during active construction, rigorous perimeter control BMPs must be maintained. Nonfunctional BMPS must be resorted and made functional in 24 hrs.

18-5 Section 9.5 Add Silt curtain must be placed as close to the active constriction work as feasible. Silt curtain must not be placed across culvert ends or across flowing water.

18-6 Section 10.2 Add Permitees must create and maintain a separate dewatering inspection log. The log must include at a minimum date and time of inspection as well as an accurate description of the observations. If nuisance conditions are observed, the log must include remedial actions taken.

18-7 Section 11.9 Change Permitees must inspect dewatering operations and dischirages as described in Section 10.2

HOUSING FIRST MINNESOTA℠

Wednesday, March 1, 2023

Minnesota Pollution Control Agency
520 Lafayette Rd
St. Paul, MN 55155

VIA ELECTRONIC DELIVERY

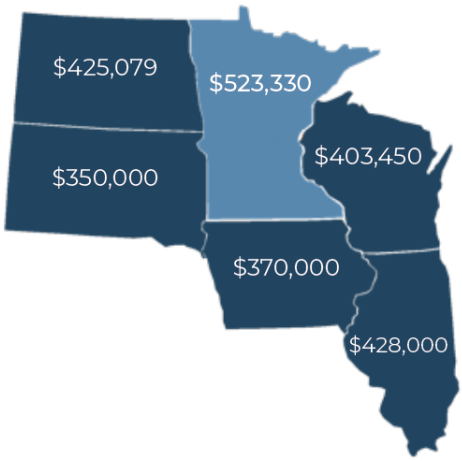
To the Minnesota Pollution Control Agency,

This letter contains comments from Housing First Minnesota regarding the 2023 Minnesota Construction Stormwater General Permit (General Permit) issued by the Minnesota Pollution Control Agency (MPCA) to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) program administered by the Environmental Protection Agency (EPA).

By way of background, Housing First Minnesota is a statewide trade association of firms across the housing industry. Our members build the communities and places we all call home. Housing First Minnesota's comments are rooted in our mission – homeownership opportunities for all – and are weighed against the backdrop of Minnesota's growing housing challenges.

MINNESOTA'S HOUSING CHALLENGES

Minnesota is seeing one of the more intense housing crises in the nation. Our new housing costs are the highest in the Midwest, currently more then 22% higher than neighboring states[1].

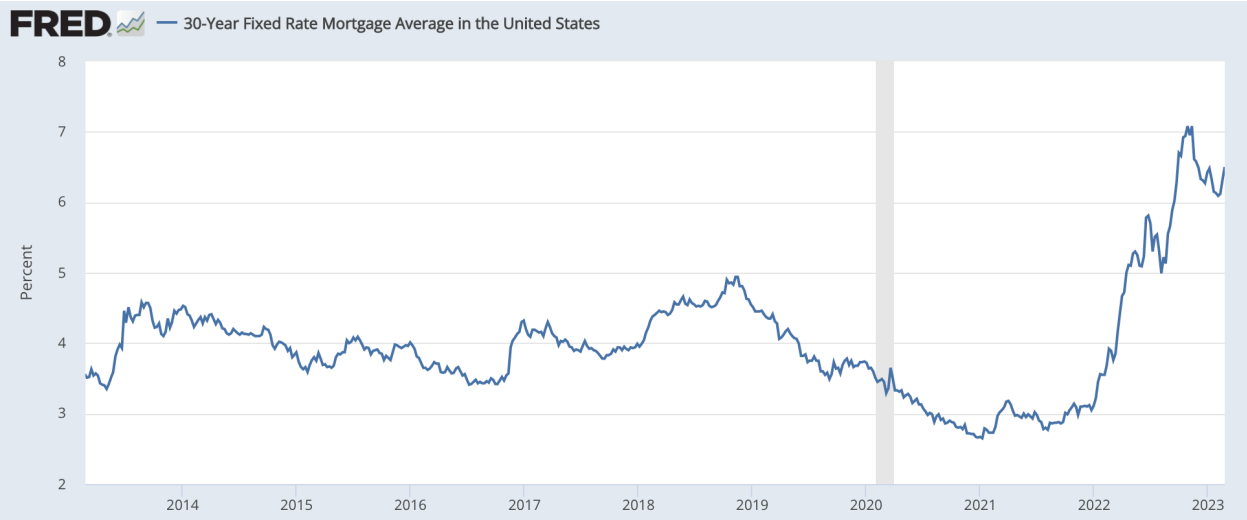


The Twin Cities has one of the lowest shares of new homes priced under $300,000 in nation. Less than 1.7% of new homes in the Twin Cities are built for less than $300,000, compared to 14.1% in Chicago, 21.1 % in Milwaukee, 8.47% in Nashville and 18.5% in Indianapolis[2].

[1] Zonda, Accesses Feb. 27, 2023.

[2] *Metrostudy review of single-family attached and single-family detached closings from Jan. 1, 2022 – Feb. 24, 2023.*

Stormwater management programs, including the General Permit, have been cited as a contributing factor in this wide disparity in housing costs[3].



Data and Chart Source: Freddie Mac via Federal Reserve Bank of St. Louis (Feb 2013-Feb. 2023)

Additionally, mortgage rates are in the highest range seen in the past decade-plus. The current 30-year mortgage rate according to the Federal Reserve Bank of St. Louis is 6.50%, compared to 4.60% when the 2018 General Permit took effect. Rates have already risen nearly 50 basis points this month and are expected to increase in the short term. Costs associated with General Permit compliance are included in a home's sale price and therefore subject to mortgage financing.

Housing policy changes, like the General Permit, have an impact on affordability and access and any changes must consider how they impact individual homebuyers.

States grappling with housing challenges is not unique. What is different, is that Minnesota has chosen to step in the opposite direction. While Governors across the nation (including Gov. Polis in Colorado[4] and Gov. Hochul in New York[5]) have chosen to focus on lifting barriers to housing affordability and access, Minnesota has chosen to increase barriers[6].

Homeownership and housing affordability in Minnesota have never been more at risk than they are today.

COMMENTS ON THE 2023 GENERAL PERMIT

Housing First Minnesota acknowledges and appreciates MPCA staff's proactive engagement on the development of the 2023 General Permit. Crafting better housing policies requires active engagement

[3] *Priced Out: The True Cost of Minnesota's Broken Housing Market*, Housing Affordability Institute. Feb. 2019.
[4] "Gov. Jared Polis makes housing a top priority in the first State of the State address of his second term." Colorado Public Radio. Jan. 17, 2023.
[5] Governor Hochul Announces Statewide Strategy to Address New York's Housing Crisis and Build 800,000 New Homes**.** Office of Gov. Hochul. Jan. 10, 2023.
[6] Minnesota EAW/EIS Expansion, EQB (Dec. 2022); HF 772 (2023); HF 685 (2023); Opening Rulemaking on Residential Energy Code, DLI, (2023)

by stakeholders and regulators. We are pleased that the MPCA was able to present a General Permit that did not increase the number of regulatory entities.

Specific to the 2023 General Permit, Housing First Minnesota, after consulting with its members, offers the following comments. The intent of our comments is to clarify the requirement of the General Permit while ensuring affordability and environmental protections are preserved.

Section 8.6: The 7-day window will have needless cost impacts as the reduced timeframe will see stabilization needed before work is completed. The shortened timeframe will result in the need to re-stabilize after certain activities occurred (e.g. grading, landscaping, etc).

- *Example: At the current 14-day window, stabilization is generally done a single time at a cost of $800-1000 per lot for hydromulch. A seven-day stabilization window will require two or three stabilizations, potentially adding up to $2,000 to the price of each home.*

19-1

- Recommendation: Modify 8.6 to read " … *disturbing 25 or more acres* ***at any one time****…" as this more accurately represents the intent of the modification while recognizing the practical impacts of the requirement.*

Section 9.9: Installation of perimeter controls at the base of stockpiles prior. There can be variation in the volume being stockpiled and estimates may not always be accurate. This could mean perimeter controls installed prior to stockpiling could have far too much silt fence or not enough, requiring rework to ensure the right amount is used.

19-2

- Recommendation: Modify the requirement to be "within 24 hours of stockpiling" and not "prior to."

Section 10.2: Housing First Minnesota has concerns over the requirement for taking photos every four hours. Our specific concerns with this requirement are related to the lack of contextualization and how this requirement could lead to errant enforcement actions. Photos under this requirement are a literal and figurative snapshot of the situation in four-hour internals. This requirement may lead to enforcement actions when not warranted.

- *Example: If an area receives a substantial volume of rain over a two-day period, this can easily result in runoff exclusive of a construction site turning the water a different color. Under this requirement, it may lead to assumptions that a permittee is to blame.*

19-3

- Recommendation: Housing First Minnesota recommends the following: "…Permittees must visually check and photograph the discharge at the beginning and a ***minimum of once every 24 hours*** of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. Housing First Minnesota would also be supportive of retaining the requirement of 10.2 in the 2018 General Permit by deleting "and photograph" altogether.

19-4 Section 10.3: Housing First Minnesota proposes "an observer" be modified to a "qualified or trained observer.

Section 11.4: As written, 11.4 includes several logistical challenges. It is not realistic to expect that permittees will be able to complete all maintenance and repairs within 24 hours of a rain event, which happen unpredictably and randomly, including over weekends and Holidays. There are personnel, contractor, engineering, equipment and supply limitations that make this unreasonable and infeasible, especially with the workforce shortage facing the industry.

The language proposed by 11.4 is the most stringent maintenance and repair timeline seen by our multi-state members who build homes across the United States.

- Recommendation: Modify 11.4 to read: "Permittees must inspect all erosion prevention and
19-5 sediment control BMPs and Pollution Prevention Management Measures to ensure integrity and effectiveness. Permittees must repair, replace or supplement all nonfunctional BMPs with functional BMPs ***within 72 hours*** after discovery unless another time frame is specified in item 11.5 or 11.6. Permittees may take additional time if field conditions prevent access to the area."

Section 20.2: The language in 20.2 does not explicitly allow for electronic records. Today, most inspections are documented and stored using software. Using electronic storage is much more efficient, would reduce physically handling paper, reduce the needless use of paper, and be beneficial to the environment. Using electronic storage keeps documents neat, orderly, and easy to locate and reproduce. The EPA and several other states allow the use of electronic storage of SWPPPs and Inspection Reports. The USEPA's 2022 CGP allows the use of electronic storage for SWPPPs, Inspection Reports, and related documents.

- Recommendation: Modify 20.2 to read: "Permittees must keep the SWPPP, including all changes
19-6 to it, and inspections and maintenance records at the site ***or electronically available at the site*** during normal working hours by permittees who have operational control of that portion of the site."

COST ANALYSIS

Housing First Minnesota estimates that the 2023 General Permit will increase housing costs by as much $2,000 per lot or more. By comparison, the 2018 General Permit increased costs by several hundred dollars, all of which was due to a required change initiated by the EPA.

Given Minnesota's housing affordability and access crises and the other potential policy changes which could adversely impact the housing market, it is imperative the Agency does not increase housing costs.

CONCLUSION

Regrettably, Minnesota stands apart as the one state adding to its housing challenges. Housing First Minnesota shares the same resource protection goals as the MPCA. The MPCA must be aware that any

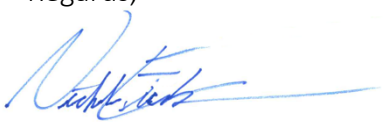
additional cost added to homebuyers is being done so at a time when additional roadblocks are being put in place.

The 2018 General Permit saw minimal cost increase, with the only significant change stemming from requirements put forth by the EPA.

Thank you for consideration of our comments. MPCA and its expert technical staff have productively engaged industry expertise. Given the enormity of Minnesota's housing challenges, we respectfully request MPCA amend its proposal to better balance housing affordability and access while complying with the EPA's NPDES requirements.

Please contact me directly with any questions or comments you may have. I can be reached at nick@housingfirstmn.org.

Regards,



Nick Erickson
Sr. Director of Housing Policy
Housing First Minnesota

Richard Howe

Hello

I would like to suggest updating the inspection frequency that permit holders need to inspect the their site. It is difficult to respond 7 days a week to rain fall. Consider removing the requirement to respond to weekend and holiday rain events and change to responding on the next business day. You may potentially match the Federal EPA CGP that gives builders different inspection frequency options as many states have done.

20-1

Brent Johnson

Thanks for the opportunity to provide comments on the Draft NPDES Construction Stormwater General Permit.

Section 2.10 includes proposed language delaying the issuance of the NPDES Construction Stormwater Permit until all wetland permitting is finalized. This requirement is unnecessary and should be removed. The issuance of the NPDES Construction Stormwater Permit does not need to be conditional upon finalization of wetland permitting. For example, a small wetland impact being permitted somewhere on a construction site should not hold up the issuance of the Construction Stormwater Permit and delay construction anywhere on the site. 21-1

Draft Rule Section 25.15 defines trails set apart from roads as not considered impervious surfaces, but requires sidewalks to be included as impervious surfaces. The trail exemption is a good idea, but it should also apply to sidewalks that are sloped to vegetated areas. 21-2
The Rice Creek Watershed District (RCWD) exempts trails from their stormwater rules. RCWD Rule C.12 Exceptions: Rule C requirements do not apply to sidewalks and trails 10 feet wide or less that area bordered down-gradient by vegetated open space or vegetated filter strip with a minimum width of 5 feet.

I recommend that you modify the permit to authorize an exemption in the Construction Stormwater permit for linear trails and sidewalks with impervious surfaces 10 feet wide or less that are bordered down-gradient by vegetated open space or vegetated filter strip with a minimum width equal to the trail and sidewalk width.

The MIDS model and the impervious disconnection BMP was used to simulate a trail sloping to an equal sized vegetated area. The simulated reductions in annual runoff and pollutant loads are impressive. Please see the accompanying uploaded file for a table of runoff volume and pollutant removals for associated hydrologic soils groups.

Thanks again for the opportunity to comment on the NPDES Construction Stormwater Permit.

MIDS Results for Scenario with Effective Pervious Area Receiving Redirected Impervious Runoff Equal to Trail Area			
Hydrologic Soils Group	Percent Annual Runoff Volume Removed (%)	Percent Annual Total Phosphorus Removed (%)	Percent Annual TSS Removed (%)
A	88%	88%	96%
B	77%	77%	93%
C	66%	66%	89%
D	15%	15%	73%
Average	62%	62%	88%

22

Josh Malz

22-1 Has there been any consideration in changing the rain event inspection requirements? It would be nice to only have SWPPP inspections every 7 days, or some sort of combination of every 14 days with rain events required after 0.5" of rain. I have worked in other states where the SWPPP inspection frequency is ONLY every 7 days, and it seems to work very good that way. I appreciate your time and consideration!

MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

February 24, 2023

Mr. Todd Smith
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

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

Dear Mr. Smith:

The Minnesota Chamber of Commerce (Chamber) welcomes the opportunity to comment on proposed revisions to the MPCA Construction Stormwater General Permit (CGP). The Chamber is a statewide business organization representing approximately 2,300 member businesses of all types and sizes across the state. Eighty percent of Chamber members have fewer than 10 employees, and 40% are located in greater Minnesota. Many members will be directly impacted by the proposed changes to the CGP.

While the Chamber supports the overall environmental objectives of the proposed changes, our members have several concerns, which we've outlined below on an item-by-item basis.

Item 2.10
"This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. 7050.0186]"

23-1 The proposed new language in this item (in red) does not add protections to wetlands, but does make it more difficult to begin projects. Obtaining wetland permits from all local, state, and federal permitting agencies can be a lengthy process. Logically, owners of a project should be able to begin construction in upland areas without discharging to wetlands while awaiting wetland permit coverage for the portions of construction that do involve discharges. Preventing projects from receiving CGP coverage before securing wetland permits would also delay deliveries and staging of material in upland laydown areas, adding significant logistical burdens to projects while imparting no environmental benefit. It is not

necessary for the MPCA to enforce wetland permitting on behalf of other agencies that possess the same ability.

The proposed change also doesn't take into account projects that can have sequential regulatory approvals. Examples are route permits issued by the Minnesota Public Utilities Commission, which sometimes releases approvals for sections of projects at a time. It's not uncommon for large linear projects to involve route adjustments as work progresses, which then impact wetland permitting in small areas along a corridor. Projects also need ongoing adjustments to access to those areas, which can have corresponding impacts on wetland permitting.

The Chamber recommends either striking the proposed additional language from Item 2.10 or replacing it with the following language:

"Construction activities with discharges to wetlands cannot begin until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. 7050.0186]"

Item 10.2

"Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. ~~temporary or permanent sediment basin on the project site unless infeasible.~~ To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees ~~may dewater to surface waters if they visually~~ must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.~~ [Minn. R. 7050.0210]"

23-2 The proposed language prohibits dewatering if discharge from the sediment control device has visible turbidity. Filter bags, sediment traps, and sediment basins often don't remove all visible turbidity. This proposed change would likely mean an extensive treatment train would often be required for dewatering activities. Additionally, naturally occurring water with high-humic content appears brownish, which is unrelated to construction activities. Humic conditions can occur in lakes, wetlands, and streams.

MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

The Chamber proposes replacing proposed Item 10.2 with the following language:

"If discharging to a surface water, permittees must discharge sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench or ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visible turbidity related to sediment. To the extent feasible, use well-vegetated (e.g., grassy or wooded) upland areas of the site to infiltrate dewatering water. Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions to a surface water (see Minn. R. 7050.0210, subp. 2) will not result from the discharge."

Item 10.3

"If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer. [Minn. R. 7050.0210]"

23-3 The nuisance conditions listed in that item are overly broad, and the term "aquatic habitat degradation" requires a definition. As written, the item would allow any observer to claim that there was aquatic habitat degradation, —absent any qualification to make that determination—thus bringing dewatering to a halt and negatively impacting construction work. Additionally, "has a visible contrast" is an unclear description because pumping clear water into a turbid stream would create a visible contrast, as would pumping naturally humic water into a less humic stream.

The Chamber of Commerce supports adding language to define nuisance conditions, and believes that the changes currently under consideration give the MPCA an opportunity to align with other state agencies on enforcing conditions to minimize aquatic habitat degradation.

The Chamber proposes replacing proposed Item 10.3 with the following language:

"If nuisance conditions, as defined in Minn. R. 7050.0210 Subp. 2, result from the discharge to a surface water, Permittees must cease dewatering immediately and corrective actions must be implemented before dewatering is resumed. [Minn. R. 7050.0210 Subp. 2]"

Item 11.15

"During each inspection, permittees must inspect areas adjacent to the project, surface waters, including drainage ditches and conveyance systems but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil. Permittees must complete removal and stabilization within seven (7) calendar days of discovery unless precluded by legal, regulatory, or physical access constraints. Permittees must use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) days of obtaining access. Permittees are responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work in surface waters. [Minn. R. 7090]"

23-4 This new requirement to remove all sediment deposited to all adjacent areas is overly broad. As with all construction projects, large storms can cause downgradient BMPs to fail through no fault of the project. De minimis levels of sediment should be excluded, especially considering that trying to remove a thin veneer of sediment with equipment would cause additional ground disturbance to neighboring properties while offering no real benefit.

The Chamber proposes adding the following language:

"De minimis amounts of sediment may be left in adjacent land if allowed by the landowner and if it will not harm existing vegetation growth in the impact area."

Item 11.11 d.

"For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met. [Minn. R. 7090]"

23-5 The Chamber supports using pollinator or native habitat for vegetative cover for projects beyond just ground-mounted solar developments. We propose that when a native- or pollinator-habitat seed mix is used for vegetative cover and a density of 70% uniform cover has been established, inspections should not be required once all construction activities have been completed. The temporary cover provides good erosion protection, and there is no benefit to continuing to inspect fully grown cover.

The Chamber recommends replacing proposed Item 11.11 d. with the following language:

"For projects where a pollinator habitat or native-prairie-type vegetated cover is being established, inspections may be suspended if the site has temporary vegetation with a density of 70% uniform cover and all construction activities have been completed. [Minn. R. 7090]"

The Chamber appreciates the opportunity to comment on the proposed revisions to the CGP. If additional information or clarification would be helpful, please contact Sharon Dahl at sdahl@barr.com.

Respectfully submitted,

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce

bc: ENRPC WQ Subcommittee

24

Minnesota County Engineers Association

The Minnesota County Engineers Association (MCEA) respectfully submits the following comments regarding the draft 2023 NPDES Construction Stormwater General Permit (CSWGP). MCEA's membership includes county engineers from each of the 87 counties in Minnesota. As local road authorities, our member counties permit and construct many projects every year using the CSWGP.

24-1 Permit item 10.2 and 11.9 Permittees must ...photograph the discharge at the beginning and every 4 hours of operation: This requirement is impractical. Road construction projects often require dewatering overnight to allow construction crews to get in a full day of work the following day. Projects would not only become much more expensive but also would take much longer to complete and/or lead to construction occurring in inadequately dewatered conditions. Longer construction time could lead to negative environmental impacts including taking longer to get to point where site is stabilized as well as fish and wildlife impacts. Ability to dewater overnight is often necessary to meet DNR permit deadlines. It would be impossible to use existing construction inspection staff to meet this requirement. Hiring additional staff would add substantial cost. We recommend addressing concerns that led to this requirement through permittee outreach and education.

24-2 Permit item 11.11 should be reworded to apply to all projects using 100% native seed mixes, e.g., "for projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established using 100% native (other than cover crop) seed, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met." There is no difference between solar array sites and other construction sites when it comes to the extra effort associated with planting all-native seed mixes. Counties are being encouraged by a number of permits and other programs to increase use of 100% native seed mixes. Allowing for some relief of inspection requirements in the CSWGP would decrease associated costs with little or no decrease in environmental protection.

24-3 Permit item 25.15 Recreational trails that are distinctly set apart from a roadway and intended for pedestrians or bicycles are not considered impervious surface. MCEA strongly supports this change. It is environmentally justifiable and helps focus investment associated with construction of BMPs to locations where they are of greatest environmental benefit.
Thank you.

Minnesota Energy Resources Corporation
2685 145th Street West
Rosemount, MN 55068
www.minnesotaenergyresources.com

February 24, 2023

Submitted Electronically

Todd Smith
Municipal Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 551055

RE: Proposed reissuance of the NPDES Construction Stormwater General Permit MNR100001 within the State of Minnesota.

Dear Mr. Smith:

Minnesota Energy Resources (MERC), a subsidiary of WEC Energy Group, Inc., submits these comments in response to the Minnesota Pollution Control Agency (MPCA) public comment period for the proposed reissuance of the Construction Stormwater General Permit MNR100001 in the State of Minnesota.

MERC delivers natural gas to approximately 248,000 customers in 179 communities across Minnesota. Our construction and maintenance activities related to this natural gas infrastructure may be affected by the changes being proposed during the reissuance of this general permit.

Today's comments request a few minor modifications to the newly proposed language to eliminate a scenario where an undue burden is created for applicants without any additional protection to the environment. We provide specific comments and supporting rationale in the following paragraphs.

25-1

The proposed language in Section 2.10 will prevent applicants from being able to apply for multiple permits simultaneously and will lead to unnecessary project delays.

Section 2.10 currently reads in part, "Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented." As currently written, the MPCA is preventing applicants from obtaining wetland permits and the NPDES Construction Stormwater General Permit simultaneously and instead is requiring those permits to be obtained sequentially. This approach will likely lead to project delays. MERC requests a small modification to the proposed permit language that will still ensure that applicants receive all necessary wetland permits while allowing applicants to pursue multiple permits at the same time.

The new suggested language for the sentence referenced above is:

> *Construction activities authorized under this permit cannot commence until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented.*

This small change in wording will have no significant negative environmental impact, will ensure the requirements of Section 22 are still met, yet does not create a permitting delay.

25-2 ***Under Sections 10.2 and 11.9 MERC recommends that consideration be given to minor dewatering events that are common for utility projects that do not have a significant water quality impact due to the small volume and short duration of the event.***

Linear utility projects often have small dewatering events such as removing rain water from an open excavation. These minor discharges may only last for minutes, as opposed to hours and often they infiltrate into the ground and do not reach a receiving surface water. Introducing the requirement to photo document the start of any dewatering event is excessive, especially when coupled with the requirement in Section 11.12 to have these photos sent, saved and filed with the electronic SWPPP within 24 hours.

MERC supports the proposed Stormwater General Permit requirement to visually check the dewatering event when it begins to ensure that the sediment control device is properly working. MERC also supports the requirement to photo document discharges that directly enter surface waters or significant dewatering events that last longer than 4 hours. On the other hand, MERC does not believe that documentation of small volume, short duration, dewatering events is justified because of the lack of significant water quality impacts associated with such discharges.

The administrative burden of this General Permit can be justifiably reduced if clarification is added to Sections 10.2 and 11.9 that photo documentation is only required for dewatering events that directly discharge to surface waters or for significant dewatering events that last over 4 hours.

Thank you for the opportunity to provide these comments. Please contact me, at (920) 433-2290 or rick.moser@wecenergygroup.com if you have any questions regarding our comments.

Sincerely,

Rick Moser
Manager – Environmental Programs & Licensing
WEC Energy Group Business Services

DEPARTMENT OF TRANSPORTATION

Office of Environmental Stewardship
395 John Ireland Blvd, Mail Stop 620
St Paul, MN 55155

March 3, 2023

Todd Smith
Municipal Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155

Hello Todd Smith,

The Minnesota Department of Transportation (MnDOT) appreciates the opportunity to provide comments on the draft 2023 Construction Stormwater General Permit. MnDOT is charged with building and maintaining a safe and efficient transportation infrastructure for the citizens of Minnesota. In doing so, we are also subject to the requirements of the Construction Stormwater General Permit, which can have a substantial effect on how we plan, build, operate, and maintain the transportation system.

MnDOT recognizes the need to conduct its work to protect water quality in compliance with the Construction Stormwater General Permit. MnDOT believes, however, that there are opportunities to clarify portions of the Permit. Enclosed please find MnDOT's comments requesting clarification to ensure the Permit requirements are practical, cost-effective, and reasonable. Some of our comments seek clarity for the purpose of updating our specifications and other contract requirements. Other comments ask for clarification to ensure that permit requirements are easily explained during the many trainings in which MnDOT participates. We hope that our comments will assist you in issuing a Permit that works toward our shared goal of protecting water quality while also allowing us to provide the safe and high-quality transportation infrastructure for which we are responsible. If you have any questions or need clarification regarding these comments, please feel free to contact Ken Graeve at 612-386-6101.

Sincerely,

Nicole Bartelt
Acting Chief Environmental Officer &
Office of Environmental Stewardship Director

Enc: Attachment 1, MnDOT comments on the draft 2023 Construction Stormwater General Permit

MnDOT comments on the draft 2023 Construction Stormwater General Permit

Design factors (item 5.26)

26-1 This existing requirement requires multiple factors (such as precipitation, soil types, etc.) to be accounted for in SWPPP design, but it has always been unclear as to what this means. For example, when accounting for "the expected amount, frequency, intensity, and duration of precipitation (5.26b)," should the permittee rely on Atlas 14 data or estimates based on more current climate data? And should designers be calculating RUSLE style equations on the various exposed surfaces of a project or is it acceptable to use well established design standards for choosing erosion and sediment control practices? Will the MPCA publish guidance on how these factors are to be accounted for and incorporated into the SWPPP design; and what must be designed, documented, and implemented to meet this permit requirement?

Stormwater Management (item 7.2)

We appreciate the emphasis on managing stormwater. The updated wording in item 7.2 will hopefully reinforce the need to focus on stormwater in addition to BMPs.

We also propose defining stormwater management in Permit Section 25 to further emphasize the stormwater management process:

26-2 *Stormwater management principles are design items and construction methods that control, manage, prevent, and isolate sediments and turbid flows from the movement of stormwater around and through the project. These principles are not only structural and estimated BMPs but also represent a process for construction activities to minimize the generation of sediments and other pollutants.*

Wildlife friendly products (item 7.3)

MnDOT began phasing out plastic netting over ten years ago and has not allowed plastic netting on construction projects since 2020. We appreciate the addition of item 7.3 to encourage permittees to use wildlife friendly products instead of plastic netting. However, we strongly encourage MPCA to prohibit plastic netting outright.

26-3 In our experience utilizing on average one to two million yards of blanket per year the natural fiber netting is widely available and comparable in cost to plastic netting (when calculated as installed costs). Prohibiting plastic netting through the permit would enable vendors to reduce the number of duplicative products they have to inventory and would simplify compliance with other permits that require natural netting.

We also encourage MPCA to address the problem of microplastic pollution in this permit item. Degradable plastic netting and also some types of hydraulic erosion control products leave plastic fibers and fragments in the environment. These microplastics eventually contaminate the environment they were presumably intended to protect. MPCA leadership on this would facilitate a broader industry transition to more sustainable materials.

Steep slopes (item 8.3)

26-4 Requirements regarding steep slopes are discussed in item 8.3 but the reader has to turn to the definitions to see that steep slopes are defined as 1:3 or steeper (item 25.32). Including the definition in item 8.3 would improve readability.

14 day stabilization time frame in item 8.8 (formerly item 8.6)

26-5 New item 8.8 (formerly item 8.6) allows a 14 day stabilization time frame for ditches and swales farther than 200 feet away from discharge points. This seems to conflict with the 7 day stabilization time frame required by updated item 8.6 and current item 23.9. Please clarify.

Phasing to minimize concurrent area of disturbance (item 8.12)

26-6 The requirement to disturb no more land than can be effectively inspected and maintained is not new. But in light of the re-framing of Permit Section 7, we suggest that this requirement be moved to Section 7. Phasing to minimize concurrent area of disturbance currently appears in Section 8, which is largely concerned with structural or product-based practices, whereas it is really more of a stormwater management practice.

Stockpile perimeter control (item 9.9)

26-7 There is an overall convention in the permit to avoid references to specific types of best management practices. But item 9.9 specifically mentions silt fence. This is contrary to the requirements that the permittees design and implement an effective SWPPP. We suggest removing this reference to silt fence by deleting the words "silt fence or other" so that the line reads "…provide effective sediment controls at the base of stockpiles…"

Soil compaction (item 9.14)

Item 9.14 requires permittees to minimize soil compaction. This is often difficult or impossible on linear projects because of the narrow working conditions and the need for large amounts of construction vehicle traffic. We suggest adding language to allow permittees to mitigate compaction if it could not be avoided:

26-8

> *When compaction is not preventable, permittees must estimate the area for decompaction BMPs and implement practices to mitigate compaction.*

Monitoring dewatering (items 10.2, 11.9, & 11.12)

26-9 We agree that dewatering can be a source of sediment discharge if not monitored carefully. In our experience the highest risk for sediment discharge is at the beginning of dewatering when the system is being adjusted. Once the dewatering system reaches equilibrium there often is very little change over the remainder of the operation. Some situations require dewatering to continue for many days but monitoring every four hours

throughout these extended operations will yield diminishing returns on the effort once the system is running smoothly. Instead of monitoring every 4 hours, we propose the following monitoring frequency that focuses the effort more efficiently on the highest risk initial set-up period followed by a reduced frequency that fits realistically into construction site activity and takes advantage of daylight for photography purposes:

> *Visually check and photograph the discharge at the beginning of a dewatering operation and every hour thereafter until discharge has remained consistently clean for at least ½ day of operation. The permittee may then reduce monitoring frequency to once every 8 hours for the next 3 days. If discharge has continued to remain clean the permittee may reduce monitoring frequency to twice a day, every morning and evening, as part of a long-term dewatering continuous quality control program.*

We are also concerned with the difficulty of photographing water. It is often difficult to take a photograph of water that shows the clarity because the glare from the sun or sky masks the color of the water. It is even more difficult to take photos at night without the reflection from a camera flash or supplemental lighting interfering with the color of the water. We request that MPCA provides guidance explaining acceptable visual indicators of water quality and acceptable quality of photo documentation for water quality.

Sediment removal from areas adjacent to project (item 11.5)

We understand that the proposed change is to clarify that sediment discharges must be removed from adjacent land surfaces in addition to surface waters. We always strive to correct problems that our projects have caused, 26-10 but there are situations in which a neighboring landowner does not want us to remove sediment deposited on their land. This is sometimes the case when the adjacent land is a row crop field. It is our understanding that this would be an example of "…unless precluded by legal, regulatory, or physical access constraints." Please clarify what is expected of a permittee in this situation and what type of documentation is needed to demonstrate that access has been denied or sediment removal is not wanted.

Exit controls (item 11.6)

Sediment on paved surfaces is often caused by construction traffic exiting the project and presents a high risk of discharge to storm sewers and eventually to surface waters. Inlet protection devices are not perfect, and their safety overflow feature adds to the risk of sediment discharge. This permit item already requires removing 26-11 sediment from paved surfaces sooner than within one calendar day of discovery if the sediment creates a safety hazard. Because of the high risk of discharge from paved surfaces, consider also requiring more frequent sediment removal if needed to avoid sediment discharge. Our proposed edits would simply add the underlined words to the following sentence from item 11.6:

> *"…remove sediment from all paved surfaces within one calendar day of discovery or, if applicable, within a shorter time to avoid <u>sediment discharge or</u> a safety hazard…"*

Reduced inspection frequency for native vegetation establishment (item 11.11)

We were encouraged to see the reduced inspection frequency for the establishment phase of native plantings, but disappointed to read that it only applied to solar energy projects. MnDOT commonly plants native vegetation on our construction projects. Native seed mixes are standard on our backslopes, ditch bottoms, and stormwater treatment basins. We currently plant about 2/3 of our disturbed soil acres with native seed mixes and are working toward a goal to use native seed mixes on 75% of our permanent seeding. We use native vegetation in part because of the increased functionality it can provide for soil stabilization, stormwater management, and resilience to extreme weather. We do this despite the slower establishment rate of many native species. MPCA appears to recognize that the slower establishment is a worthwhile tradeoff for the enhanced long term benefits and that it merits some flexibility in permit compliance. We simply request that the reduced inspection frequency for native plantings be applied to all projects where native vegetation is used rather than being specific to solar energy projects.

26-12

Also, we assume that the terms "temporary vegetation" and "temporary uniform cover" refer to cover crops consisting of annual species. But this is merely an assumption. Please clarify what is meant by temporary vegetation and cover.

Protecting construction materials (item 12.2)

26-13

This item requires supplies to be covered to prevent contact with stormwater. It includes the term "building products," which implies materials used for vertical construction. Consider replacing the term "building products" with "construction materials" to be more inclusive of the types of construction that is covered under the permit.

Permit coverage termination on individual lots (item 13.6)

While this item applies to housing construction, it is of interest to MnDOT because of our role in providing training around the state. The phrase "temporary erosion prevention and downgradient perimeter control is complete" can have multiple meanings. This can be difficult to teach and interpret. Consider rephrasing this as follows:

26-14

> *"…structures are finished and ~~temporary erosion prevention and downgradient perimeter control is complete~~ <u>at the time of sale the erosion prevention and sediment controls are functional and in 100% compliance with the permit or have been removed because permanent cover has been established</u> and the permittee distributes the MPCA's "Homeowner Fact Sheet…"*

Photos of permanent cover for Notice of Termination (item 13.8)

Many of our projects are large and the soil types and vegetation conditions can vary considerably along the length of a large project. Photographs can be a good tool for accountability but the proposed wording of 13.8,

26-15 particularly the term "substantially similar," leaves a lot of room for interpretation. Will you publish guidance explaining acceptable levels of photo documentation for sites of various sizes and acceptable documentation that the predominant plant species depicted are perennial rather than annual species?

Stormwater treatment on linear projects (item 15.9)

The permit allows some exceptions for treating the full water quality volume on linear projects. There are situations where finding the space for permanent stormwater treatment is difficult. However, sometimes there are also opportunities to provide more beneficial treatment on nearby projects where treatment is not required. A recent example occurred where a rural road project triggered significant treatment requirements but an urban
26-16 road project adjacent to the first did not require treatment. Some of the treatment required on the rural project was built on the urban project because it would capture urban runoff that was potentially more polluted than the rural road runoff.

Please consider adding to item 15.9 to explicitly allow treatment on a nearby project under the same common plan of development if it will provide more environmental benefit than if it were built on the project that triggered the requirement for permanent treatment. Possible wording for the permit could read:

> *Permittees can build permanent stormwater treatment on other projects within the same common plan of development if the treatment on the other project will provide a greater environmental benefit. Stormwater treatment on the other project must be constructed prior to or up to two years after the project that triggers the requirement for permanent stormwater treatment.*

Stand-alone recreational trails not counted toward impervious surface totals (item 15.15)

26-17 The phrases "trails that are distinctly set apart from a roadway" and "alongside roadways" can be interpreted in many different ways. MnDOT and other road authorities are often reconfiguring road corridors in ways that reduce road pavement width, increase vegetated boulevard width, and align pedestrian/bicycle paths farther away from the road. This is intended to improve safety and encourage active modes of transportation (which are also less polluting). The resulting corridor looks quite different and the trail is distinctly set apart from the road surface. Please clarify what makes a trail sufficiently distinct from the roadway to not be counted toward the net impervious surface area.

Also, some permitting agencies such as Rice Creek Watershed District consider a reduction in treatment requirements for sidewalks and trails that are set apart from the roadway with a pervious buffer over five feet in width. This recognizes the stormwater treatment benefit of the grass filter strip and the tendency for these sidewalks and trails to behave more like an isolated or disconnected impervious surface. We request that MPCA exempt sidewalks and trails from the calculation of net new impervious surface area if they are separated from the road by a vegetated buffer of a significant width.

Undisturbed native soil below infiltration basins (item 16.12 & 16.17)

How does the MPCA define undisturbed native soil? Certain construction activities and heavy equipment traffic may be unavoidable prior to excavating an infiltration area to within 3' of final grade. Heavy equipment may also be needed to conduct the final excavation of an infiltration area. These activities can cause compaction of the in-place soil below the final grade. Soil corrections such as ripping are sometimes required to alleviate that compaction. Are either the incidental compaction or the soil corrections considered disturbances to that native soil? We request that MPCA define undisturbed native soils and explain what would qualify as a disturbance. If incidental compaction is considered a disturbance, we would also request that the permit allow ripping or other soil corrections to alleviate that compaction and restore function to the native soils.

26-18

Infiltration rates above 8.3 inches per hour (item 16.16)

It is common practice to construct infiltration basins in areas where the in-situ soils drain faster than 8.3 inches per hour. This is corrected by installing custom filter media on top of the in-situ soils that has been adjusted to reduce the infiltration rate to below 8.3 inches per hour. However, it is also common to have confusion about whether infiltration is even allowed in soils that drain faster than 8.3 inches per hour. Consider publishing guidance to explain (with diagrams) that infiltration is acceptable in fast draining soils as long as the filtration media installed on top achieves the target infiltration rate.

26-19

NewRange Copper Nickel LLC

Please find attached the NewRange Copper Nickel LLC comments to the MPCA Construction Stormwater General Permit Draft

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March 3, 2023

Minnesota Pollution Control Agency
c/o Todd M. Smith
Stormwater Research Engineering Outreach
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Dear Mr. Todd Smith,

Reference: Construction Stormwater General Permit Draft Comments

Thank you for the opportunity to comment on the Construction Stormwater General Permit (Permit) draft. This letter outlines NewRange Copper Nickel LLC's comments on the Permit. Poly Mining, Inc. (PolyMet) changed its name to NewRange Copper Nickel LLC (NewRange) and recently completed a joint venture between PolyMet Mining Corp. and Teck American (Teck). NewRange will continue development of the NorthMet Project and continue to explore the Mesaba deposit, which were previously managed by PolyMet and Teck, respectively. For our comments below, we have listed the Permit language in italics with the MPCA proposed language changes in red italics with NewRange's comment following it.

Section 2

27-1 *This permit does not authorize discharges to wetlands unless the permittee complies with the requirements in Section 22. Coverage under this permit cannot be issued until the requirements for wetland permits, other determinations, or the mitigative sequence required in section 22 have been finalized and documented. [Minn. R. ~~7090~~7050.0186]*

The requirement for wetland permits, other determinations or mitigative sequence to be finalized prior to authorizing coverage under this section of the Permit is overly restrictive. In the cases where projects are in a combination of uplands and wetlands, and portions of the upland work could proceed, this delay is unnecessarily burdensome as it may cause unwarranted delays, especially in cases where the majority of the work is in uplands. Other state and/or federal agencies have the jurisdiction to enforce wetland regulations, and it is unnecessary for the MPCA to add further layers of wetland regulation within the confines of this Permit. The MPCA should re-consider including this proposed language in this section.

Section 8.5

For projects, including a common plan of development or sale, disturbing less than 25 acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. [Minn. R. 7090]

Section 8.6

For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7 calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased. [Minn. R. 7090]

27-2

Soil stabilization timeframes have been shortened on sites disturbing 25 or more acres with the premise that the MPCA believes larger sites with more potential for harm should be stabilized quicker. Project proposers are already required to provide stabilization within seven (7) days for sites near sensitive waters. This proposed requirement states that all sites over 25 acres must stabilize the soils within seven (7) days, regardless of receiving water type. NewRange feels the 14 days allowed for flexibility on larger projects with complex construction and schedule concerns. The requirement for 7 days may place an unnecessary burden on available resources. This will increase construction and monitoring costs associated with large projects while not lessening environmental risks or potential stormwater discharges versus sites less than 25 acres. The MPCA should reconsider changing the current language in Section 8.4.

Section 9.9

Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6. [Minn. R. 7090]

27-3

The proposed change to require downgradient perimeter controls prior to initiation of stockpiling is not always practicable. Establishing perimeter controls prior to stockpile placement, especially against sloped hillsides or similar will limit the project proposer's ability to properly establish the stockpile. There is also an increased risk to damage of the perimeter control, therefore reducing control effectiveness. The MPCA should reconsider the proposed language change to this section.

Section 9.18

Any sediment control made of soil/muck must be temporarily or permanently stabilized within 24 hours [Minn. R. 7090]

27-4

NewRange agrees stabilizing any sediment control made of soil/muck is especially important if it is within proximity to a wetland or waterbody. We feel the requirement to stabilize within 24 hours is not enough time and may be overly restrictive depending on its location (i.e., not near a wetland or waterbody). A requirement of 7 days for stabilization would be more appropriate if it is not within 100 feet from a wetland or waterbody, as the control would be inspected daily during the time prior to permanent stabilization.

Section 10.2

Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. ~~temporary or permanent sediment basin on the project site unless infeasible.~~ To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees ~~may dewater to surface waters if they visually~~ must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge. ~~If permittees cannot discharge the water to a sedimentation basin prior to entering a surface water, permittees must treat it with appropriate BMPs such that the discharge does not adversely affect the surface water or downstream properties.~~ [Minn. R. 7050.0210]

27-5 NewRange does not support a requirement for visually checking and photographing all dewatering activities every 4 hours. A 24-hour period between inspections seems more reasonable and economically feasible for projects. This is a significant burden on resources for large sites to be visually inspecting and photographing locations every 4 hours, especially before sunrise or after sunset when photographs may be of little use. The MPCA should reconsider the proposed language requiring the visual check and photograph every 4 hours.

The proposed language also prohibits dewatering if discharge from the sediment control device has visible turbidity. Filter bags, sediment traps, and sediment basins often don't remove all visible turbidity. The proposed change may mean more extensive treatment could be required for dewatering activities. Additionally, naturally occurring water with high-humic content appears brownish, which is unrelated to construction activities. Humic conditions can occur in lakes, wetlands, and streams. The MPCA should modify the proposed language to the following:

> *"If discharging to a surface water, permittees must discharge sediment-laden waters related to dewatering or basin draining (e.g., pumped discharges, trench or ditch cuts for drainage) to a sediment control (e.g., sediment trap or basin, filter bag) designed to prevent discharges with visible turbidity related to sediment. To the extent feasible, use well-vegetated (e.g., grassy or wooded) upland areas of the site to infiltrate dewatering water. Permittees must visually check and photograph the discharge at the beginning and every 24 hours of operation to ensure adequate treatment has been obtained and nuisance conditions to a surface water (see Minn. R. 7050.0210, subp. 2) will not result from the discharge."*

Item 10.3

"If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer. [Minn. R. 7050.0210]"

27-6

"Nuisance conditions" and "aquatic habitat degradation" require definition. As written, these terms are overly broad and easily misinterpreted. Additionally, waterbodies in nature often have "a visible contrast" without impact from construction. This statement would be problematic when pumping clear water into a turbid or humic stream or when pumping naturally humic water into a less humic stream.

NewRange supports adding language to define nuisance conditions, such as reference to Minn. R. 7050.0210 Subp. 2, and aquatic habitat degradation and removing the reference to visual contrast.

Section 11.8

Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery. [Minn. R. 7090]

27-7

Site and weather conditions may not allow the removal of sediment within 72 hours, especially during weekends and holidays, during an extended period of inclement weather, or in remote locations where equipment may not be readily available. MPCA should consider revising this section to allow flexibility due to site specific conditions.

Section 11.9

Permittee's must inspect and photograph dewatering discharges at the beginning and once every 4 hours during operation. [Minn. R. 7090]

27-8

This section repeats the requirements contained in Section 10.2. The NewRange comments noted with respect to section 10.2 also apply here. MPCA should remove this section from the Permit.

Thank you for allowing NewRange the opportunity to provide comments on the proposed changes to the Construction Stormwater General permit. Please contact us at any time with any questions regarding our comments.

Sincerely,

Kevin Pylka
Permitting and Environment Manager
NewRange Copper Nickel LLC
kevin.pylka@newrangecoppernickel.com
218-471-2162

Jon Olson

28-1 1. Consideration to eliminating permit coverage with MS4 boundaries would eliminate overlapping requirements and redundant permitting.

28-2 2. It would be helpful if item 9.2 had distance and slope requirements where downgradient perimeter control is not required when runoff is retained on same property as land disturbance activity is occurring prior to discharge to surface water. As a designer, we are forced to provide regardless of distance and slope to waters. Some degree of natural vegetated buffer should be practical.

28-3 3. Photographs/monitoring every 4 hours of dewater discharge is not practical. Dewatering operations could be in place for several weeks/months.

28-4 6. Proposed changes to items 16.12 and 16.17 will result in less infiltration and more wet sedimentation basins. Bringing in fill to raise grade of low sites has been a great approach to utilize infiltration. How is non-native fill any different than utilizing sand filters with underdrains?

29

Timothy Olson

29-1 In the definition of "Impervious Surface", you have added an exclusion for recreational trails that are distinctly set apart from a roadway... However, sidewalks in residential areas are still included as impervious surface. Please consider amending this definition to allow for down gradient buffers of equal width to a trail that include a minimum of xx" of modified infiltration soils and a minimum of xx" of decompaction of existing, native soils. The MIDS modeling for this scenario are favorable to proving that the water quality volume can be captured in the buffer, even in urban corridors.

Ramsey-Washington Metro Watershed District

30-1 Section 7.2 "Unless infeasible, temporary or permanent wet sedimentation basins (when required)"—at this point reference Section 14 of the permit so people know where to find the sedimentation basin requirement.

30-2 Section 8.5/8.6- No issues, but wondering if 25 acres threshold could be decreased to 15 or 20 to encompass more urbanized projects. Our District is mostly smaller redevelopment, and we would consider 15-20 acres to be our "big" projects that cause the most nuisance conditions.

30-3 Section 8- Add reference to stabilization timeframe requirements for Special and Impaired Waters (Section 23) here so all the different timeframes can be found in one place - 'erosion prevention,' even if redundant.

30-4 Section 25.15- "Distinctly set apart from a roadway" is too generic for interpretation. Consider not limiting recreational uses of trails to pedestrian or bicycling—For example, this could also apply to skiing, snowmobiling trails, etc.

Helpful language additions/clarifications in Sections 9.9, 10.2, 10.3 for purposes of enforcement. Thank you for making these additions/clarifications.

Rice Creek Watershed District

At this time the Rice Creek Watershed District has no concerns regarding updates to the permit.

Public Works Department

March 3, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road
Saint Paul, MN 55155

RE: Revisions to Construction Stormwater General Permit

Dear Mr. Smith,

Please see the following comments from the City of Richfield regarding the Draft Construction Stormwater General Permit.

	Permit Section	Comment
32-1	7.3	Appreciate that the MPCA is recommending wildlife-friendly erosion control products. Richfield supports this change.
32-2	9.9	This provision could be difficult to enforce in practice. I could easily see perimeter control BMPs getting buried or damaged if they are put in prior to stockpiling. Would prefer a requirement to install perimeter control immediately after the stockpile is in place.
32-3	10.2-10.3	The changes to section 10.2 mostly clarify the recommendations and requirements, which is good, but I strongly object to requiring monitoring every 4 hours – see comment for section 11.9. There also could be a stronger distinction drawn between different types of dewatering operations, for example groundwater pumping for underground utility work versus dewatering of surface waters.
32-4	11.5	Clarify and define “adjacent”. Is this only the immediate adjacent properties, or any area close enough to be affected by sediment deposition from runoff from the site? Otherwise approve of this change.
32-5	11.9	Strongly object to a requirement for monitoring every 4 hours with no exceptions. Some dewatering operations run continuously, and maintaining a staff member with 24/7 availability to take pictures of dewatering discharges is highly impractical. My suggestion would be to either reduce the required frequency, or have exemptions/reductions contingent on use

Public Works Department

	of certain BMPs for the dewatering discharge.
11.11	Good change, but why not expand this to all sites using pollinator habitat or native prairie as vegetative cover? Incentivizing native plantings is good for long term soil stability.
16.17	Please clarify whether "native undisturbed soils" refers to soils present before excavation, or only to fully undisturbed natural soils. If it is the latter, this provision would prevent infiltration in most urban areas and redevelopment projects, which have heavily modified soils. Either way, I suggest removing or reworking this requirement.

32-6

32-7

Thank you for the opportunity to provide feedback on the proposed revisions. The City of Richfield looks forward to continued collaboration with the MPCA to protect our water resources. Please let me know if you have questions about any of these comments or would like to discuss further.

Sincerely,

Mattias Oddsson

Mattias Oddsson
Water Resources Engineer
MOddsson@richfieldmn.gov
612-861-9797

City of Savage

Section 8.6
Permit Language: For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7 calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased.

33-1 Comment 1: If the site was phased to where they only disturbed 10 acres at a time could the timeframe be lengthened to 14 days? This might encourage site phasing, etc. Use the same acreage as required for temporary sediment basins. 10 acres and 5 acres depending on receiving water.

Section 10.1
Permit Language: Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions will not result from the discharge.

33-2 Comment 1: A distinction should be made for clean water dewatering (groundwater, clean surface waters, etc.). Well-point dewatering operations are typically clear water and should not need to be documented ever 4 hours. Perhaps document the conditions at the start of the operation and if the water remains visibly clear eliminate the need to document the dewatering operation every 4 hours thereafter. The same could hold true if needing to dewater a surface water (constructed pond) and if the water remains clear then no need to continue monitoring. These dewatering operations are typically of a longer duration and maintaining photos every 4 hours when the pumps are running continuously for weeks is not feasible.

CITY OF SAVAGE MINNESOTA

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33

Todd Smith, P.E.
Minnesota Pollution Control Agency
520 Lafayette Road North
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todd.smith@state.mn.us

Re: MPCA Authorization to Discharge Stormwater Associated with Construction Activity General Permit Revisions

Dear Mr. Smith:

The following are our review comments of the proposed permit changes to the MPCA Authorization to Discharge Stormwater Associated with Construction Activity.

Section 8.6
Permit Language: For projects, including a common plan of development or sale, disturbing 25 or more acres, stabilization must be initiated immediately when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 7 calendar days. Stabilization must be completed no later than 7 calendar days after the construction activity has ceased.

33-1 Comment 1: If the site was phased to where they only disturbed 10 acres at a time could the timeframe be lengthened to 14 days? This might encourage site phasing, etc. Use the same acreage as required for temporary sediment basins. 10 acres and 5 acres depending on receiving water.

Section 10.1
Permit Language: Permittees must visually check and photograph the discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions will not result from the discharge.

33-2 Comment 1: A distinction should be made for clean water dewatering (groundwater, clean surface waters, etc.). Well point dewatering operations are typically clear water and should not need to be documented ever 4 hours. Perhaps document the conditions at the start of the operation and if the water remains visibly clear eliminate the need to document the dewatering operation every 4 hours thereafter. The same could hold true if needing to dewater a surface water (constructed pond) and if the water remains clear then no need to continue monitoring. These dewatering operations are typically of a longer duration and maintaining photos every 4 hours when the pumps are running continuously for weeks is not feasible.

We thank you for the opportunity to review the draft permit changes. We look forward to discussing these comments with you further. If you have any questions regarding these comments, please feel free to contact me at jcarlson@cityofsavage.com or 952-882-2686.

Sincerely,
City of Savage

Jesse Carlson
Water Resource Manager

SHAKOPEE

March 3, 2023

Todd Smith
Minnesota Pollution Control Agency
520 Lafayette Road North,
St. Paul, MN 55155

Re: Draft Construction Stormwater General Permit Comments

Dear Mr. Smith:

On behalf of the City of Shakopee, please accept the following comments regarding the proposed Draft Construction Stormwater General Permit.

1. Comment: [Section 8.5 and 8.6] These sections were added to distinguish separate stabilization requirements between sites that disturb less than 25 acres and sites that disturb more than 25 acres. We recommend removing these separate requirements based on disturbance size and keep the previous stabilization requirement that would apply to all sites. 34-1
    a. Reason: The permit requires sites that have 10 acres or more of disturbed area that drain to a common location to provide a temporary sediment basin to provide treatment of the runoff before it leaves the construction site or enters surface waters (or (5) or more acres for special or impaired waters). Sites that disturb 25-acres or more will be required to have treatment in the form of a temporary sediment basin. Also, these sites may be active for months and reducing a stabilization window by 7 days doesn't result in a significant risk reduction. For these reasons, sites greater than 25-acres do not seem to be more risk than sites that are less than 25-acres. The presentation provided by MPCA staff on February 7, 2023 indicates this change is because they like the idea of larger sites being a higher risk site. The proposed changes do not seem to be based on fact or address an issue.
2. Comment: [Section 10.2 and 11.9] This section was updated to include language that requires a photograph of the discharge at the beginning and every 4 hours of operation for dewatering or basin draining. We recommend including an exception for groundwater dewatering with point wells. Other methods that are best practices should also be included in an exception. The exception would be to not have a requirement to take a photo every 4 hours when dewatering groundwater with point wells. 34-2
    a. Reason: There are many projects where there is dewatering of groundwater for 24-hours a day for extended periods of time during the construction of utilities. The requirement of a photo every 4 hours is onerous and will result in significant costs incurred by the city. There are different methods of dewatering and reasons for dewatering (groundwater versus surface water) that each have their own risks for turbid discharge/pollution. The discharge from dewatering groundwater with point wells is very different than the discharge from dewatering surface water collected in disturbed areas. These different methods of dewatering should be looked at differently in this permit and not lumped together in this requirement. The presentation provided by MPCA staff on February 7, 2023 suggests the need for this requirement was based on

some violations where the issue could have been easily avoided if there were some adjustments made in the dewatering methods that were being used. There should be exceptions in the permit for methods that would not require a photo every 4 hours when dewatering.

3. Comment: [Section 25.15] This section was updated to differentiate trails and sidewalks in the impervious surface definition, and provide an exception to trails that are distinctly set apart from a roadway. This is appreciated. We recommend that sidewalks set apart from a roadway are also included in the exception. In addition, include an exception for trail and sidewalk retrofit projects even if they are located adjacent to existing roadways.

34-3

   a. Reason: There are sidewalk connections that are set apart from a roadway that connect to trails. These sidewalk connections do not drain to a collection system similarly to trails that are set apart from a roadway. Stormwater runoff from retrofit projects may runoff to a collection system, however, expanding or implementing BMPs are often not feasible for these retrofit projects. Stormwater requirements and the associated costs incurred to evaluate and design stormwater BMPs (assessed to adjacent property owners) are often the reason missing sidewalk and trail connections are not constructed.

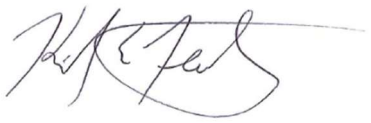
4. Comment: [Section 25.15] This section was updated to differentiate trails set apart from a roadway from sidewalks within residential areas. We recommend rewording this requirement so that there are no questions on interpretation of trails versus sidewalks and the location at which these are constructed.

34-4

   a. Reason: This results in a lot of questions on interpretation. Are trails in residential areas not impervious because only sidewalks are? Are trails and sidewalks not impervious in other zoning areas that are not a residential area? It is appreciated that exceptions are included in the definition, however they create a lot of interpretation questions the way they are currently presented.

Thank you for your consideration.

Regards,



Kirby Templin, PE
Water Resource – Environmental Engineer
City of Shakopee

Scott Shonka

• Having to be on-call on weekends is a burden, leads to inspector burnout

35-1

• Statewide rain events are nearly impossible to cover with fewer employees/resources available on weekend
• No BMP companies are available to address any deficiencies found because they do not work on weekends
• States overwhelmingly do not require rain events while on a 7-day inspection frequency and do not require weekends/holidays

Courtney Smith

36-1

To Whom it May Concern,
This public comment is a request to change the Mn CGP rain event SWPPPP inspection requirements. Minnesota is one of the only states in the country that require rain event inspections on the weekends. It would make sense to switch to the Nebraska model for SWPPP inspection requirements, which is every 7 days OR every 14 days with rain event inspections after 0.25". Here are the reasonings behind this request:
- BMP contractors do not work weekends, so the corrective actions are not being fixed until the next week day regardless.
-Use less gas! Driving from project to project doing rain event inspections adds a lot more usage of gas, which is bad for the environment and air quality. (we are essentially robbing Peter to pay Paul)
- States overwhelmingly do not require rain events while on a 7-day inspection frequency and do not require weekends/holidays
- Having to be on-call on weekends is a burden, leads to inspector burnout
- If rain event inspections are still required, have them be "the next business day"
Thanks for your time and consideration!

City of St. Cloud

The City of St. Cloud is a permittee under the MS4 permit and is required to have a local regulatory mechanism at least as stringent as the requirements for erosion, sediment and waste controls described in the Construction Stormwater (CSW) Permit. The City is also a CSW permittee for several projects each year.

Thank you for the opportunity to comment on the Draft 2023 CSW Permit. Below are detailed comments from the City of St. Cloud.

37-1 City Comment #1 – Section 10.2

Action
The draft permit language states: Permittees must visually check and photograph dewatering discharge at the beginning and every 4 hours of operation to ensure adequate treatment has been obtained and nuisance conditions (see Minn. R. 7050.0210, subp. 2) will not result from the discharge.

The City requests that the draft permit requirement be changed to reduce the frequency to visually check and photograph to every 48 hours of operation (or less frequent) for dewatering that is lowering the groundwater elevation by points or wells where no excavation is occurring in the dewatering zone.

Reasoning
Dewatering used to lower groundwater through use of points and wells where no excavation is occurring in the dewatering zone is not a concern for a nuisance condition. Requiring a visual check and photograph every 4 hours of operation for this type of dewatering is overburdensome, not necessary and will add a significant cost to projects without a water quality benefit. The City suggests working with dewatering contractors to define types of dewatering and apply different levels of visual inspection frequency based on nuisance condition potential.

37-2 City Comment #2 – Section 16.11

Action
The draft permit language states: For design purposes, permittees must divide field measured infiltration rates by 2 as a safety factor or permittees can use soil-boring results with the infiltration rate chart in the Minnesota Stormwater Manual to determine design infiltration rates. When soil borings indicate type A soils, permittees should perform field measurements to verify the rate is not above 8.3 inches per hour. This permit prohibits infiltration if the field measured infiltration rate is above 8.3 inches per hour.

The City requests to either modify the last sentence to also be divided by 2 or add a new permit section for just the last sentence.

Reasoning
The City requests the reason/research for a safety factor of 2 for design purposes, but not for the

prohibition of infiltration. If current research supports prohibiting infiltration if the field measured infiltration rate is above 8.3 inches per hour, please add a new permit section just for this sentence to eliminate potential confusion related to the safety factor of 2.

The City appreciates the opportunity to comment on the Draft CSW Permit.

resourceful. naturally.
engineering and environmental consultants

BARR

3/3/2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road

Saint Paul, MN 55155

Re: Comments on the draft Minnesota Construction Stormwater General Permit

Dear Mr. Smith:

Thank you for reviewing comments on the draft Minnesota Construction Stormwater General Permit. As a consultant who supports industry, trains fellow Barr staff for the construction stormwater permit requirements, and promotes native and pollinator habitat plantings where it will work for both industry and the project, I try to make the regulations work for everyone. Not only does general permit language need to meet a broad range of projects, but it also needs to not be restrictive. There is an opportunity to both reduce regulatory burden without sacrificing environmental concerns and provide incentives for native and pollinator habitat plantings beneficial to game birds, songbirds, and pollinators. By reviewing existing general permit conditions and providing reasonable assurances in the Minnesota general permit text, I believe there is room to make some minor changes to the draft permit.

1 Comments on Reduced Inspections in the Minnesota Draft Construction Stormwater General Permit

38-1

Minnesota's Draft Construction Stormwater General Permit has the following language in Section 11.11d:

> *For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met.*

This language does help reduce the burden to projects wishing to use native prairie or native habitat seed mixes, but still leaves an extra burden for projects as compared to planting simple turf grass, which has limited ecological benefit. The goal of final stabilization in the construction stormwater general permit is to ensure that construction areas no longer have erosion and there is no off-site sedimentation occurring. I propose changing the paragraph with the following additional language:

> *For projects consisting of ground mounted solar panels where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met. If the project is meeting the BWSR Minnesota Habitat Friendly Solar Program requirements, inspections may be suspended once the site has temporary vegetation with a density of 70% temporary uniform cover, no erosion is present in vegetated areas and*

emerging seeded native vegetation is observed. Minnesota Habitat Friendly Solar Program compliance shall be documented in the SWPPP.

This will tie in some of the goals the Minnesota Legislature is trying to accomplish by promoting native habitat establishment beneficial to game birds, songbirds, and pollinators. Minnesota Board of Water and Soil Resources (BWSR) is the delegated authority of the Minnesota Habitat Friendly Solar Program[1] as listed in MN Statute 216B.1642[2]. Minnesota DNR is also currently listed in in MN Statute 216B.1642, by requiring projects in the Minnesota Habitat Friendly Solar Program to use native plant species and seed mixes under Department of Natural Resources "Prairie Establishment & Maintenance Technical Guidance for Solar Projects." Current legislation is ongoing to further reinforce habitat friendly solar program (Section 5) and provide additional funding for BWSR[3]. While this legislation is not final, the current make-up of the state legislature indicates it is likely to pass in a similar form as currently written.

While there are no guarantees a project will behave properly, this permit language change has additional protections built in. By complying with the voluntary Minnesota Habitat Friendly Solar Program:

- the project will have evaluated the seed mix needed based on project soil needs
- complied with the MN DNR and BWSR biodiversity requirements, and
- provided a checklist to BWSR for review signed by an ecologist.

As this program is voluntary, if the project chooses to leave the program, they can go back to the normal Minnesota construction stormwater general permit requirements, including weekly and/or monthly inspections as applicable. It should also be noted that a reduced inspection frequency is not exiting from the final NOT requirements. The MPCA can still inspect sites that have suspended inspections and confirm compliance with the general permit. The project will just submit a NOT in 2-3 years when permanent native vegetation has fully grown. Example photos are attached demonstrating the point where projects can declare stabilized conditions are present and emerging vegetation is observed.

2 Other States have Native Vegetation Requirements in Their Construction Stormwater General Permits

Other states are starting to develop new permit requirements for native vegetation establishment due to the time it takes to fully grow native vegetation. A current example is Indiana, which just reissued their construction stormwater general permit in December 2021[4]. This permit revised their final stabilization conditions to the following:

(Section 3.4.b) Final stabilization of a project site is achieved when:

(1) All land-disturbing activities have been completed and a uniform (evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) has been established on all unpaved disturbed areas, and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed. This requirement does not apply to:

[1] Minnesota Habitat Friendly Solar Program | MN Board of Water, Soil Resources (state.mn.us)
[2] https://www.revisor.mn.gov/statutes/cite/216B.1642
[3] HF 1828 as introduced - 93rd Legislature (2023 - 2024) (mn.gov)
[4] https://www.in.gov/idem/stormwater/files/final_gen_permit_inra00000_construction.pdf

(A) Landscaping that is part of the final project plan. This is considered stable when the plan has been fully implemented and areas not being vegetated are stable with a non-erosive material and/or product.

(B) Projects or specific stormwater measures that utilize native vegetation and/or special vegetative plantings that are either required by a water quality permit/authorization or part of the design and functionality of a stormwater measure provided the activity does not pose a threat that will result in off-site sedimentation.

(C)…

The language in Section 3.4.b(1)(B) of the Indiana general permit focuses on the exception for using native vegetation and the condition that there will not be off-site sedimentation. The Minnesota Habitat Friendly Solar Program is a voluntary program but would also line up for the requirement in the Indiana general permit for a water quality permit/authorization.

3 Exceptions in the EPA Construction Stormwater General Permit

EPA's General Permit has similar exceptions for arid, semi-arid, and drought-stricken areas[5]:

(Section 2.2.14.c.iii) ***Arid, semi-arid, and drought-stricken areas*** *(as defined in Appendix A). Final stabilization is met if the area has been seeded or planted to establish vegetation that provides 70 percent or more of the vegetative cover native to local undisturbed areas within three (3) years and, to the extent necessary to prevent erosion on the seeded or planted area, non-vegetative erosion controls have been applied to provide cover for at least three years without active maintenance.*

This exception lines up with an expected native vegetation establishment timeframe and the condition of maintenance-free erosion controls are being met with annual weed cover. The method of temporary erosion control is not important to the final outcome. The use of a long-life erosion control blanket would not increase the revegetation success of Minnesota native habitat and may block needed sunlight to the ground surface. While annual weeds might be a problem for turf grass establishment, they are a normal process for native prairie and native habitat establishment.

I encourage the MPCA to further reduce the cost burden of establishing native habitat beneficial to game birds, songbirds, and pollinators by reducing construction stormwater inspections further when sites have reached temporary stabilized conditions and evidence of seeded native plants are emerging.

Sincerely,

Jacob Thompson, PE

Senior Environmental Engineer

[5] https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf

Photos showing solar site in Minnesota with annual weed cover (fully stabilized) and a close-up view of emerging native prairie vegetation in a localized bare area. Native grasses are currently emerging from drill seed lines.

Photos showing a second solar site. Emerging vegetation on the right are some Black-eyed Susan, which is an early growing flower common in native seed mixes.

Mike Trojan

See attached file

For more than two decades Minnesota has been a leader in addressing water quality of receiving waters. An important part of this is the stormwater program, which implements the NPDES permitting program. MPCA's stormwater permits have been exemplary in addressing water quality issues related to managing stormwater runoff. This includes excellent and dedicated staff.

The draft construction stormwater (CSW) permit could be more aggressive in promoting green stormwater infrastructure (GSI) and environmental sustainability. This includes addressing climate resiliency, an important goal for the Agency. The permit can be modified in multiple ways to promote GSI through incentives rather than through restrictions. These are presented below.

Please note that I have not listed references in these comments. These can be provided upon request.

39-1 1. Section 16.7 specifies the water quality volume be calculated as an instantaneous volume. This restricts many practices that retain water and that potentially provide additional benefits, such as climate resiliency and habitat improvement. Examples include vegetated filter strips, disconnection systems, and urban tree canopy. These practices, when properly implemented and maintained, provide retention of stormwater runoff but do not meet the instantaneous volume requirement. Conversely, permittees may use swales without check dams (see for example the Minimal Impact Design Standards Calculator) to take credit toward meeting their permit, even though these practices also do not meet the instantaneous volume requirement. For this permit I am not recommending changes in the draft language. However, I strongly recommend the Agency consider modifying the next permit to account for these practices. I understand there are concerns about how these practices are built and maintained. However,

there are methods for addressing this that could either be written into the permit or specified in guidance. Examples include the following.

a. Conservative infiltration values can be used for filter strips, or more preferred, specific vegetation can be promoted through permit language, such as establishing native perennial vegetation.

b. Most medium- and large-size cities have urban forestry programs, and many have tree preservation ordinances. The United States Forest Service is modifying its iTree model to account for the effect of trees on stormwater retention. Efforts such as these can be used to develop permit language that incentivizes urban tree canopy cover as a stormwater practice. In addition to stormwater benefits, trees provide other benefits consistent with Agency priorities, such as climate resiliency and social justice.

c. Some states in the east and northeast utilize impervious cover methods to meet water quality targets. Research supporting these impervious cover methods demonstrate that the quality of receiving waters is correlated with the amount of connected impervious surface in a contributing watershed. Similar approaches should be utilized in Minnesota, but under the current permit, disconnection of impervious surface may not meet the instantaneous volume requirement.

2. Section 16.11 introduces a safety factor into field-measured infiltration rates. Again, I'm not suggesting changes to the draft permit language but strongly suggest the Agency re-examine this restriction. Field-measured values should be encouraged more aggressively. In addition, research conducted at Villanova University indicates most infiltration practices overperform.

39-2

This is because use of one-dimensional infiltration rates, as specified in the Minnesota Stormwater Manual for different soil types, does not represent actual flow conditions, which are three-dimensional. In addition, the long-term effects of vegetation, specifically native perennial vegetation, have been shown to restore and maintain infiltration rates in non-stormwater applications. There is insufficient research on this topic for stormwater practices, but it is likely to be an area of active research in the coming years.

3. Section 16.16 prohibits infiltration on soils with infiltration rates exceeding 8.3 inches per hour and disincentivizes field measurement of infiltration, which is contrary to the language in Section 16.11. There is no rationale established in MPCA guidance that supports this value. Restricting infiltration at higher rates presents an obstacle to maximizing retention, which is at odds with the concepts of GSI. In addition, multiple entities, such as the City of Minneapolis and Capitol Region Watershed District, have stormwater banking programs which allow a permittee to take credit for volume retention above the required water quality volume. This restriction in the CSW permit is not consistent with these efforts. The concern appears to be around the potential movement of pollutants to groundwater. This can easily be addressed by placing this restriction only on stormwater hotspots, as defined in the Minnesota Stormwater Manual. Or restrictions could be incorporated directly into the permit. Research, though limited, indicates that stormwater from non-hotspot locations typically does not exceed water quality standards.

39-3

4. Section 16.18 restricts infiltration on D soils. All soils can infiltrate to some extent. Why not encourage infiltration to the extent possible on any soil? What is a soil with an infiltration rate of 0.15 inches per hour, a C or D soil? Does capturing stormwater runoff in a cistern and then

39-4

irrigating an athletic field on a D soil violate this permit condition? Can practices with upturned elbows, which store water temporarily and slowly release it, be used to promote infiltration on D soils? Developers and practitioners fully understand the consequences of building a practice on D soils. Why not allow them the opportunity to infiltrate what they can? This can easily be supported with guidance in the Minnesota Stormwater Manual.

5. Section 17.6 does not clarify whether a permittee can take credit for volume reduction in practices with an underdrain. The Minimal Impact Design Standards Calculator can be used to calculate volume retention in these practices. Like the above comment on D soils, why not incentivize infiltration by specifying that retention credits can be taken for filtration practices?

39-5

6. Sections 16.17, 17.9 and 17.10 specify a 3-foot separation distance from the seasonal high-water table. As far as I can tell, the 3-foot separation is based on septic system requirements. Considering just water quality, pollutant loading from septic drainfields is considerably higher than in most stormwater situations. The Minnesota Stormwater Manual indicates in systems with engineered media most of the pollutant attenuation occurs in the upper 6 inches. North Carolina, utilizing research conducted by Dr. William Hunt, one of the leading stormwater researchers in the country, employs a separation distance of two (2) feet. Again, I'm not recommending a change in the draft permit language, but strongly recommend the Agency look at this restriction and consider modifying it if appropriate.

39-6

7. Section 11.11d specifies a relaxation of inspection for solar sites with perennial vegetation. This should apply to all sites under the permit, not just solar sites.

39-7

In addition to the above comments, which focus on maximizing GSI, the permit should specify a recommended level of pretreatment, or at a minimum, provide guidance in the Minnesota Stormwater Manual and refer permittees to that guidance.

University of Minnesota Erosion and Stormwater Management Certification Program

Please see attached letter.

40

UNIVERSITY OF MINNESOTA

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March 2, 2023

Todd Smith, PE
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

RE: Comments regarding the 2023 Draft General Construction Stormwater Permit

Dear Mr. Smith,

As instructors for the University of Minnesota Erosion and Stormwater Management Certification Program we are providing the following comments regarding the Draft MN NPDES Construction Stormwater permit available for public review:

- Section 5.23. We recommend adding language to this section to inform the owner of a permanent stormwater treatment system how to maintain system functionality. We propose the following language (bolded words added): *The SWPPP must identify the person(s), organizations, or entities responsible for long-term operation and maintenance of permanent stormwater treatment systems.* ***A maintenance plan must be prepared and provided to this party.*** 40-1
- Section 7.2. We appreciate the inclusion of a Stormwater Management section; however, we believe that the current wording weakens the requirement to select, install, and maintain erosion prevention and sediment control BMPs. We recommend the following language (bold words added): *Permittees must select, install, and maintain the BMPs* ***and stormwater controls*** *identified in the SWPPP and in this permit…..* 40-2
- Section 9.9. We propose removing the words "silt fence or other" since nowhere else in the permit is a specific BMP or material type referenced. We propose the section read, *Permittees must provide effective sediment controls at the base of stockpiles ….* If clarification is necessary, add a definition to section 25 of example stockpile perimeter controls (e.g. silt fence, stabilized soil berms, fabric lined J-barriers, etc.). 40-3
- Section 9.14. On some projects (e.g. linear projects) it is not feasible to prevent compaction or restrict vehicles that prevent project completion where existing or final vegetative stabilization will occur. We suggest rewording the section to read ***When compaction prevention is not feasible through the use of drivable mats or time of year, permittees must estimate the area for decompaction BMPs and apply methods or techniques to mitigate soil compaction.*** 40-4
- Section 10.2. We support the additional requirements for dewatering. We recommend preparing a guidance document to communicate what types of dewatering photographs 40-5

the agency would like to see (e.g. side by side bottles of receiving water and discharge water, discharge water only, etc.).

- Section 10.3. We recommend substituting the words "be implemented" for the word "occur" in the first sentence. The section would then read *If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must* ***be implemented*** *before dewatering is resumed.* 40-6
- Section 12.2. The word "building" can be confusing when the intent is construction products. We recommend substituting the word "construction" for "building" so the section would read *Permittees must place* ***construction*** *products and .....* 40-7
- Section 13.6. The word "complete" can mean different things to different people. We recommend defining "complete" in Section 25 as follows: ***"Complete" means that at the time of residential sale, the project has either 1) functional temporary erosion prevention over all exposed soil surfaces and sediment control practices have been installed along the entire downgradient perimeter or 2) non-hardscaped areas on the site meets the definition of established perennial vegetative cover appropriate for the individual lot.*** 40-8
- General. We feel the remaining proposed changes/clarifications strengthen the permit and will aid in protecting the waters of Minnesota.

We appreciate your consideration of our comments and look forward to the issuance of the final permit.

Sincerely,

John A. Chapman, PhD, PE
Associate Research Professor
and Program Director

M. Rebecca Forman, PhD, CSE
Assistant Teaching Professor

2023 Construction Stormwater Draft Permit Comments

Submitted by: University of Minnesota Facilities Management (Twin Cities & Duluth)

Submission date: 02/02/23

	Permit Item	Comment
41-1	3.3	Can this be clarified?
41-2	4.4	Suggest eliminating b. What happens if a project gets canceled before disturbing 90% of the proposed construction area?
41-3	5.11	What is the definition of “adjacent”?
41-4	7.3	Everything after the first sentence is not a permit element, but an educational element. Suggest including the additional information in the stormwater manual, a fact sheet, or similar.
41-5	11.5	What is the definition of “adjacent”?
41-6	11.11.d	Why does this only apply to ground mounted solar panels instead of all pollinator/native prairie installations? Does the 24 month requirement disincentivize pollinator/native habitat?
41-7	23.12	Is the 24 hour drawdown required for underground systems or systems that are not subject to solar gain?
41-8	25.15	Strongly disagree with exemptions for any type of impervious transportation facility, independent of mode and purpose. Trails receive winter snow and ice maintenance, and some trails are very susceptible to erosion.

42

Dianne Whipps

42-1 Is there any update on the SWPPP inspection frequency to be reduced to once every 7 days?

City of White Bear Lake

43-1 7.3: Please consider replacing the phrase 'encouraged to consider using' with 'shall use' wildlife friendly erosion control netting.

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March 3, 2023

Minnesota Pollution Control Agency
c/o Todd Smith
520 Lafayette Road
Saint Paul, MN 55155

Dear Mr. Smith:

Thank you for offering the opportunity to provide feedback and considering the City of Woodbury's comments. Since the issuance of the last Construction Stormwater General Permit, there has been 56 Construction Stormwater General Permits issued within the City's boundaries. The City of Woodbury understands and supports the need to prevent stormwater pollution during and after construction and protect Minnesota's water resources.

The City of Woodbury staff has conducted a thorough review of the Minnesota Pollution Control Agency's (MPCA) draft of the proposed changes to the Construction Stormwater General Permit. The City submits the following comments regarding the proposed changes.

Item 7.3: BMP Selection and Stormwater Management

44-1 The City of Woodbury supports the proposed section to encourage permittees to use wildlife-friendly erosion control products when practical. Promoting erosion control products made of natural fibers will not only reduce threats to wildlife, it will also reduce entanglement of mowing equipment and microplastic pollution. The City supports the approach of this section to potentially phase out products not made of natural fibers in some instances. Furthermore, the City encourages the MPCA to evaluate the supply of erosion control products made of natural fibers and provide incentives to increase market availability, if necessary, if future permit update would restrict existing products.

Item 8.5/8.6-Erosion Prevention Practices Soil Management Plan

The City requests additional clarification for the proposed section revisions:

44-2
1. What scientific basis did the MPCA utilize to establish the disturbance threshold of 25 acres?
2. What are the estimated impacts of this change?
3. How many sites typically land above that threshold and are not already held to the 7-day stabilization requirement due to proximity to impaired waters?
4. What are the estimated cost implications of this change?

Item 10.2-Dewatering and Basin Draining

44-3 Please provide additional clarification for the proposed section revision:

1. Will there be an exemption of the requirement to take a photograph and visually check the discharge of dewatering operations every 4 hours for dewatering operations that occur overnight? For example, does the proposed change require a permittee to photograph and visually check a dewatering operation every 4 hours 24/7?
2. Will the MPCA provide guidance on what is documented? For example, how many photos to take, what needs be included in the photos, where the photos need to be stored.
3. Will the 4-hour requirement to photograph and visually check dewatering operations apply to groundwater dewatering that is being discharged to a sanitary sewer system?

Item 11.11(d)-Inspections and Maintenance

44-4 Consider removing the text "consisting of ground mounted solar panels" from the proposed section, or provide justification as to why solar sites are unique to the MPCA in this consideration. Like many municipalities, the City of Woodbury includes pollinator habitat or native prairie vegetation around permanent stormwater facilities and open spaces associated with development. These conditions are similar to solar sites and should be considered eligible for reduced inspections once appropriate temporary vegetation density is achieved. Revising the proposed section as suggested would reduce the cost of native vegetation establishment by reducing the inspection frequency on areas that are adequately vegetated.

Furthermore, the City encourages the MPCA to promote that individuals performing these monthly inspections have proper qualifications to identify pollinator and native plant species. This will ensure that areas seeded as such do not become overwhelmed with weeds or invasive species. Communities that oversee native vegetation establishment are investing resources to do this, support from the MPCA would result in more efficient implementation state-wide.

Item 13.8-Permit Termination Conditions

44-5 The City suggests the MPCA provide an exemption for projects that occur within an MS4 community and receive proper local permits. The Municipal Separate Storm Sewer System (MS4) Permit already requires MS4 Permittees enforce regulatory mechanisms that are at least as stringent as the Construction Stormwater General Permit. The permit currently requires that all areas consist of uniform perennial vegetation before permit termination can occur. The proposed section creates an unnecessary redundancy for permit termination. Unless there is evidence that this will improve final site conditions, this provision would require additional resources from MS4 and Construction Stormwater Permittees while providing minimum benefit. The City supports projects outside of MS4 communities having to abide by this permit termination condition if deemed appropriate by subjected parties.

Thank you for structuring this process to allow to provide feedback throughout and for considering our comments.

Respectfully submitted,

Ben Guell

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City of Woodbury

Memorandum

To: Minnesota Pollution Control Agency

From: WSB & Associates

Re: Construction Stormwater General Permit Draft Comments

We appreciate the opportunity to provide comments and questions regarding the draft of the new construction stormwater general permit. Below is our response to the chance to provide public comment.

45-1 1. Permit Section 9.9 – The permit states that perimeter controls are required on the downgradient perimeter. If the stockpile is placed on a flat surface area where there is not a change in grade is perimeter control install not required? Can you provide more clarification on these requirements?

45-2 2. Permit Section 9.9 – If stockpiling work is temporary, same day for example, are perimeter controls prior to work required?

45-3 3. Permit Section 9.9 – Is there a threshold for how large or type of material requires this pre-protection?

45-4 4. Permit Section 13.8 – As described during the webinar, please include detailed information in the permit or a fact sheet of what the photo requirements are, such as how many, what needs to be included, etc.

45-5 5. Permit Section 13.8 – Are there requirements of how permittees are expected to include the prove of date requirement?

45-6 6. Permit Section 10.2 – Is there a threshold of a dewatering amount when photos will be required?

45-7 7. Permit Section 10.2 – Depending on the final permit requirements of dewatering monitoring can the MPCA release a fact sheet of what you are looking for when dewatering activities occur to help with compliance as this is adapted?

45-8 8. Permit Section 11.11 – Several projects and owner permittees are requiring pollinator habitat or native prairie type vegetated cover that are not solar projects. Can this inspection schedule exception be expanded to include these types of projects that qualify?

45-9 9. Permit Section 25.15 – Can the MPCA provide additional clarification of what is considered “distinctly set apart”?

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45-10 10. Permit Section 11.2 – Would the MPCA consider altering the requirement of rain event inspections of 24 hours over the weekend and/ or holidays given staffing during inactive construction days.