



October 23, 2025

Honorable Katrina Kessler
Commissioner, Minnesota Pollution Control Agency
520 Lafayette Rd
St. Paul, MN 55155

Re: Comments on MCEA Petition for Rulemaking to the Minnesota Pollution Control Agency

Dear Commissioner Kessler,

The Minnesota Corn Growers Association (MCGA) submits these comments in response to Minnesota Center for Environmental Advocacy, *et al.*'s August 28, 2025 Petition for Rulemaking to the Minnesota Pollution Control Agency (the "Petition"), seeking the creation of a new permitting system for agricultural drainage projects within the State. MCGA utilized the expertise of our outside general counsel, Gislason & Hunter, in preparing these comments given the legal questions contained in the petition.

The Petition advocates a dramatic departure from more than 50 years of application of the Minnesota Water Pollution Control Act ("WPCA") and would present a significant obstacle to farmers and other landowners seeking to improve their land and increase productivity at a time when farmers face one of the most challenging farm economies in years. Further, the Minnesota Clean Water Act does not support the notion that agricultural drainage systems are "point sources" which even could be lawfully subject to permitting requirements under the Act. MCGA therefore strongly requests the MPCA deny the Petition.

I. Corn Growers Throughout Minnesota Rely on Agricultural Drainage.

MCGA is a grassroots organization with nearly 7,000 members that advocates on behalf of and works in conjunction with the Minnesota Corn Research & Promotion Council to conduct and fund research and provide educational programs for the benefit of Minnesota's 24,000 corn farmers. Among other things, MCGA supports its members by encouraging sustainable practices that work with their farming operations, promoting research into new uses for corn in the production of polymers, ethanol, and other bio-based chemicals, and supporting best practices in nutrient management on farms. MCGA also communicates with regulatory agencies and policy makers on the unique challenges and many benefits of crop production, and encourages that laws, rules, and policies are developed and applied fairly for Minnesota's family farmers.

Agricultural drainage, including drainage tiles and public and private ditch systems, is an essential part of the infrastructure that makes modern agriculture possible in Minnesota. Because of improvements to drainage and other advancements in farming, Minnesota continues to be among the top producers of corn and soybeans in the country. However, much of

Minnesota's drainage infrastructure was constructed in the first half of the 20th century, and may be due for repairs, replacements, and upgrades to continue to provide important benefits for farmers as agricultural practices continue to change and evolve. Agricultural drainage not only supports crops currently grown in Minnesota but will also support emerging new crops, like those under development by the University of Minnesota's Forever Green Initiative, that also need well drained soils to enable productivity and strong crop development. This infrastructure will remain vital for the continued success of Minnesota's economy.

Minnesota's corn farmers already face a web of overlapping regulations and limitations on drainage improvements. The Minnesota Wetland Conservation Act ("WCA") along with the "Swampbuster" laws applied by the Natural Resource Conservation Service ("NRCS") of the U.S. Department of Agriculture provide extensive wetland rules that corn farmers must comply with which, generally prohibiting actions that negatively impact wetlands. The Minnesota DNR already implements a public-waters-work permit program, which generally requires a permit for any drainage work that might "change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means" including by agricultural drainage projects which will "substantially affect public water." Minn. Stat. § 103G245. Drainage projects may, in some circumstances, also be subject to regulation by the Army Corps of Engineers and require preparation of an environmental impact statement or environmental assessment worksheet. *See e.g., Minnesota Ctr. for Env't Advoc. v. Big Stone Cnty. Bd. of Comm'rs*, 638 N.W.2d 198 (Minn. Ct. App. 2002) (EIS required for drainage repair project); *Matter of MCEA for Commencement of an Env't Assessment Worksheet*, 980 N.W.2d 175 (Minn. 2022) (EAW required for drainage improvement project).

MCEA's Petition seeks to add yet another layer of regulatory burden to needed drainage improvements throughout the State.

II. The Minnesota Pollution Control Agency Does Not Have Statutory Authority to Require SDS Permits for Agricultural Drainage Systems.

a. The Water Pollution Control Act has not Been Interpreted to Apply to Flows from Agricultural Drainage for Over 50 Years.

While Minnesota has had a system for permitting the discharge of waste in waters of the state since at least the early half of the 20th Century, the current framework under Minn. Stat. Ch. 115 was modeled after and created to implement the 1972 Federal Clean Water Act (the "CWA"), Public Law 92-500 (1972). The CWA created the National Pollution Discharge Elimination System ("NPDES") permit system, and enable the U.S. Environmental Protection Agency to authorize individual states to administer the permitting system.

In 1973, the State of Minnesota overhauled its own permitting system to align with the CWA. See 1973 Laws Ch. 374. For the first time, Minnesota adopted the concept of “point source” pollution; that is, “any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” Minn. Stat. § 115.03 Subd. 11. Point sources of pollution are recognized as distinct from nonpoint or diffuse sources of pollution. See Minn. Stat. § 115.58 subd. 1(e) (recognizing concept of nonpoint sources of pollution); Minn. R. 7050.0130 subp. 5 (defining “nonpoint source”).

While the CWA definition of point source (unlike the WPCA) was subsequently revised in 1987 to clarify that point source *did not* “include agricultural stormwater discharges and return flows from irrigated agriculture,” this was meant to maintain the longstanding treatment of discharges from agricultural land as nonpoint discharges at the same time as specific regulation of industrial and municipal stormwater systems. See Public Law 100-4, Sec. 503. While WPCA was not updated with the same change, the MPCA did not change its analysis of agricultural drainage. For over half a century of regulation under the CWA and Minnesota’s WPCA, runoff from agricultural lands including through tiles and ditches has been regulated as a nonpoint source. This long history of consistent application of the WPCA as to agricultural drainage weighs heavily against a dramatic re-reading now.

b. Water Velocity and Volume Are Not Pollutants.

The statutory argument advanced by MCEA is unsupported by the text of the WPCA. First, much of the supposed harm complained of in the Petition has nothing to do with the *contents* of the water discharging from agricultural drainage systems and instead focuses entirely on the *volume* of water, which MCEA alleges contributes to “channel erosion and increased sediment loads in the Minnesota River and its tributaries.” See *Petition*, page 6. However, a temporary increase in volume or velocity of water is *not* a pollutant under any reasonable reading of the statute.

That water *volume* or *velocity* is not a pollutant should be obvious. It is not “sewage” or “industrial waste.” See Minn. Stat. § 115.01 subd. 12 (definition of pollutant). Nor is water volume or velocity any one of the myriad examples of “other waste” provided in statute. See Minn. Stat. § 115.01 subd. 9. Finally, it cannot be an “other waste” because it is not an “other substance.” Minn. Stat. § 115.01 subd. 9. Volume and velocity is merely a description of the waterflow itself, not any pollution within the water. This is true even if volume and velocity contribute to downstream erosion and sedimentation, because those “pollutants” are added to the water *after* it is discharged from the drainage system.

c. Agricultural Drainage Tiles and Ditches Are not Point Sources, Disposal Systems, or Treatment Works Subject to Permitting.

What is left is MCEA's assertion that the presence of nitrogen and phosphorous in stormwater runoff through drainage tiles means that tiles must be point sources that cannot be operated without a permit. But this contention is incorrect. Agricultural drainage is not a "disposal system" or a "treatment works" because it is not installed "for the purpose of disposing of" "other wastes." Instead, agricultural drainage is installed for the purpose of conveying excess surface waters, which themselves may contain "other wastes" from diffuse sources. The presence of "other wastes" in outflows from drainage systems has no bearing on the function of the drainage system or the purpose for its installation. MCGA further adopts the thorough analysis submitted by *Minnesota Watersheds* in response to the Petition on this point.

d. Extensive Regulation of Drainage Systems and Cross-References Within Other Statutes Confirm the Legislature Did not Intend for Agricultural Drainage Systems to be Subject to SDS Permitting.

Not subjecting agricultural drainage to SDS permitting is also consistent with legislative intent evinced outside of Chapter 115. Minnesota Statutes Chapter 103E, the Drainage Code, is replete with examples showing that the legislature considered the environmental impact public drainage systems could have and considered permitting and other requirements, yet they did not believe that the WPCA governed agricultural drainage nor that any SDS permit might be required.

For example, Minn. Stat. § 103E.011 lays out a drainage authority's power to construct and maintain drainage systems, but provides that a "drainage authority may not drain a water body or begin work or activity regulated by the public-waters-work permit requirement under section 103G.245 in a watercourse until the commissioner determines that the water body or watercourse is not public waters." Minn. Stat. § 103E.011 subd. 2. The legislature again recognized the potential need for a public-waters-work permit in a petition to reroute, impound, and divert drainage system waters under 103E.227 subd. 1(e). The legislature was not however blind to the MPCA's role in regulating point sources of pollution: in proceedings to authorize the use of a drainage systems as an outlet for municipal storm sewer "[t]he plan for connecting the municipal drainage system to the drainage system must be approved by the Pollution Control Agency." Minn. Stat. § 103E.411. While the MPCA is mentioned just this one time, the Commissioner of the Department of Natural Resources is mentioned over 40 times within the Drainage Code, confirming that the DNR, not MPCA, was intended to have primary oversight of public drainage systems.

Moreover, the legislature addressed nearly all of the concerns raised in the Petition as factors that must be considered in determining whether to establish a new public drainage system or improve an existing system. An order establishing or improving a drainage system cannot be issued unless the drainage authority determines the “proposed drainage project is not practicable after considering the environmental, land use, and multipurpose water management criteria in section 103E.015, subdivision 1.” Minn. Stat. § 103E.341 subd. 1. In turn, those criteria under Section 103E.015 include considering alternative measures to “(ii) reduce downstream peak flows and flooding... (iv) reduce erosion and sedimentation; and (v) protect or improve water quality” and consider the “adequacy of the outlet for the drainage project.” Minn. Stat. 103E.015 subd. 1. Further, the statute admonishes that “[i]n any proceeding to establish a drainage project, or in the construction or repair of or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction over the proceeding must give proper consideration to conservation of soil, water, wetlands, forests, wild animals, and related natural resources.”

Elsewhere within the water law, the legislature has seen fit to call out agricultural drainage systems. See *e.g.*, Minn. Stat. §§ 103G.2241 subd. 2 (wetland regulations applicable to drainage systems), 103G.245 (work in public waters applicable to drainage systems). Yet, the WPCA does not mention agricultural drainage systems (though it does mention municipal stormwater systems) anywhere. These statutory references throughout water and environmental statutes should not be regarded as an accident but instead as an intentional choice: the legislature plainly did not envision that agricultural drainage systems would be regulated under the WPCA, precisely because they are not “treatment works,” “disposal systems,” or “point sources” in any sense of the words or reasonable interpretations under the statute.

III. The Impact to Water Quality from Agricultural Drainage is Complex.

If the MPCA is not inclined to deny the Petition outright due to the lack of a legal basis alone, MCGA also urges the MPCA to closely scrutinize the factual assumptions that underlie the Petition and consider all information on the issue. Drainage tile systems in particular allow farmers to maximize crop production on existing land, limit expansion into marginal acreage, better manage soil nutrients, and divert sediment-and-nutrient-rich overland flows into filtered pipe flows.

Drainage systems have been used for more than a century to convert marginal or land that is prone to flooding into productive farmland in Minnesota by draining excess surface water. The more modern advent of “pattern tile” systems—where many small, perforated tile lines are installed in a repeating pattern throughout a field—serve to drain excess subsurface moisture from the top 2–4 feet of the soil profile. This pattern tile removes excess water from the “root

zone,” allowing for optimal production. Some studies show yield increases of up to 30% can be achieved with pattern tile installations¹.

The removal of excess water from the soil profile can allow reduction in overland flows. In particular, when a field is adequately drained, rather than saturated from prior precipitation events, subsequent rainfalls have an opportunity to percolate into the soil profile. In contrast, saturated farmland without adequate drainage may tend to flood and drain through surface flows which erode the topsoil, bringing sediment into receiving waterways. “Drainage has both positive and negative effects on water quality. In general, land that has good subsurface drainage has less surface runoff, erosion, and phosphorus transport than equivalent land without drainage improvements or with only surface drainage².” It is incorrect to conclude that uniformly drainage tile contributes to pollution due to the presence of nitrates, when alternatives may themselves contribute to the degradation of water quality.

IV. Conclusion

Thank you for taking the time to consider these comments. MCGA respectfully urges the MPCA to deny the Petition. If you or your staff have further questions, please contact MCGA’s Senior Public Policy Director Amanda Bilek at 952-460-3604 or abilek@mncorn.org.

Sincerely,



Wesley Beck
President
Minnesota Corn Growers Association

¹ <https://www.agriculture.com/crops/soil-health/tile-drainage-101>.

² <https://engineering.purdue.edu/SafeWater/Drainage/drainintro.htm>.