

**Comments in Response to
MPCA's Request for Comments on Possible Amendments to Rules Governing Water Quality Fees,
Minnesota Rules, Chapters 7002 and 7083**

Public comments received by email to MPCA and forwarded to Office of Administrative Hearings:

Troy J. Johnson, Wright County
Brian Holmer, City of Thief River Falls
Jill Thomas, Minnesota Asphalt Pavement Association
Tony Kwilas, Minnesota Chamber of Commerce
Neile Reider, MNDOT

Public comments received using Office of Administrative Hearings e-Comments system:

Keith Carlson, Minnesota Inter-county Association
Nicholas Erickson, Housing First Minnesota
Tina Rennemo, Jill Sletten, Minnesota Association of Small Cities
Lucas Sjostrom, David Buck, Minnesota Milk Producers Association
Krist Wollum, Minnesota State Cattlemens Association
Harold Wolle, Jr., Minnesota Corn Growers Association
Kevin Paap, Minnesota Farm Bureau Federation
Jay Moore, David Preisler, Minnesota Pork Producers Association
Perry Aasness, Minnesota AgriGrowth Council
Andy Bradshaw, Minnesota Environmental Science and Economic Review Board
David Smiglewski, Coalition of Greater Minnesota Cities
Craig Johnson, League of Minnesota Cities
Tony Kwilas, Minnesota Chamber of Commerce
Mark Thoma, Otter Tail Power Company
Steve Olson, Minnesota Turkey Growers Association and Minnesota Chicken and Egg
Virginia Westlie, Minnesota Association of County Feedlot Officers
Sharon Doucette, Randy Neprash, Minnesota Cities Stormwater Coalition
Leisa Thompson, Metropolitan Council
Betsy Lawton, Tim Culver, Minnesota Center for Environmental Advocacy
Joe Borgerding, County of Stearns Dairy Advisory Committee
Deja Anton, Todd County Feedlot Program

From: [Ziegler, Jim \(MPCA\)](#)
To: [Troy J. Johnson](#)
Cc: [Lynn, Mary \(MPCA\)](#); [Schmitt, Mark \(MPCA\)](#); [Stine, John \(MPCA\)](#)
Subject: RE: MPCA request for comments - rules governing water quality fees
Date: Wednesday, June 28, 2017 9:51:50 AM

Hi Troy,

I have reviewed your comments, as has Mary. Mary had the following response;

I understand the points he made about some of the links being confusing. We have since added to the Water Quality Fee rule webpage a direct link to the Office of Administrative Hearings website to submit comments on the Request for Comments (RFC), see below:

<https://www.pca.state.mn.us/water/amendments-water-quality-fee-rules>

Public input

The public notice for the Request for Comments on amending the rules is available on the [MPCA Public Notice web page](#). The public comment period for the Request for Comments is June 24 through August 14, 2017. The MPCA is specifically requesting comment on the subject of the rules in the Request for Comments, and on the fact sheet for public input available below. As explained in the public notice, written comments or information should be submitted to the [Office of Administrative Hearings Rulemaking e-Comments web page](#).

We (rule coordinators, supervisors, attorneys) continually acknowledge how difficult it can be to generate public comment during the RFC public comment period, short of providing draft rule language or specific rule concepts to comment on. Since we are very early in the rulemaking process, we have not begun drafting rule language nor determined what fees will be raised or how much.

I will note that because the RFC is the initial step in the rulemaking process and not the formal comment period (which occurs when rules are proposed), we do not prepare a Response to Comment document as we do during the formal comment period. Often though, we will reach out to a commenter if we are not clear on their comments or would like additional information.

Because we are using the OAH E-Comments for the RFC, I have forwarded Mr. Johnson's comment to OAH and it is posted there. Here's the link –

<https://minnesotaoah.granicusideas.com/>

Scroll down to MPCA Request for Comment and view discussion.

(end of Mary's comments)

I would like to emphasize, as the information indicates, this request for comments regards a proposal to amend the water fee rules and **asks for comments on the intent to revise** the rules. It is not about specific revisions, nor is it about specific dollar amounts for any permit, fee, etc. This is

the first step in the process, not the final step. If you want to comment on this notice, you are certainly welcome to do so. If your interest is more about what specific proposals for fee increases might be, that will be later in the process, if and when the process progresses.

I thought I'd let you know that after reading your message I thought I would see if I had the same trouble you did with the site. I reviewed all of the documentation in the notice, I followed every link and read the information in each link. I found it complete, easy to understand and follow and I didn't get into any dead ends. I know that I may have a better understanding of the issue than the general public, but the process of following the links and getting where I wanted to go was easy, and should be no more difficult even if you don't understand water fees. I did not make a comment to the rules, but I did go to that page. It was easy to find, but since I didn't make a comment I cannot say whether it would have locked up or not.

Thank you for your interest and comment Troy. If you have additional concerns or issues, please let Mary and I know. Jim

From: Troy J. Johnson [mailto:Troy.Johnson@co.wright.mn.us]
Sent: Monday, June 26, 2017 12:32 PM
To: Lynn, Mary (MPCA) <mary.lynn@state.mn.us>
Cc: Stine, John (MPCA) <john.stine@state.mn.us>; Ziegler, Jim (MPCA) <jim.ziegler@state.mn.us>
Subject: MPCA request for comments - rules governing water quality fees

My first comment is that it is nearly impossible to give comment.

The initial email sent by the MPCA requesting comments has multiple links leading to nothing, or basically the same thing, it goes in circles pointing to the same pages which just contains a lot of blah blah blah. Instead of simply saying what needs to be said, the email and its links go on and on about nothing.

Nowhere does it say what changes they are considering that I could make a comment about.

Then when I want to comment it took 10 minutes of hunting around going down multiple dead end paths before I finally found out how and where to comment.

The public isn't going to bother figuring out this quagmire to participate.

Is this complexity done on purpose to avoid public participation?

So the MPCA basically says "we are considering changing some things, and are open to comments".

Why don't they say what they are proposing?

How can we make comments on changes of which we are not given any information about? What do you expect people to say? This is absurd.

Let me give an example of how this could have and should have been written:

"To help keep up with costs of running the SSTS program, the MPCA is considering raising tank fees from \$25 to \$50 per tank, please give us your comments at the following link."

In one sentence I said more than you did with a 3 paragraph email with 3 links containing over a dozen pages of repetitive useless information.

I would recommend following executive order 14-07 before working on anymore projects.

My final comment is that if the agency didn't waste time and money having highly paid professionals create all this useless verbiage, it would not need to raise fees to collect more money to fund its

operation.

p.s. when I tried to submit my comment the link locked up ☹️, a frustrating experience from start to finish.

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City of Thief River Falls

Office of Mayor Brian Holmer

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Via e-mail only: mary.lynn@state.mn.us

July 10, 2017

Ms. Mary H. Lynn
Minnesota Pollution Control Agency
520 Lafayette Road N.
St. Paul, MN 55155

Re: City of Thief River Falls Comments on Possible Amendments to Rules Governing Water Quality Fees

Dear Ms. Lynn:

The City of Thief River Falls provides these comments in response to MPCA notice regarding possible amendments to water quality fee rules that would increase permit application fees including fees for municipal wastewater permits.

The City of Thief River Falls is concerned about proposed increases in permitting fees for three reasons:

First, municipal wastewater treatment permit fees should not be increased. Obviously, fee increases raise the cost of delivering wastewater treatment service which is already very expensive. If there is evidence that shows the permitting process costs more than existing fees for such permits now recover then the MPCA should first look at its permitting process to see whether the process creates unnecessary costs for both the MPCA and permitted municipalities. The City of Thief River Falls believes that the MPCA is unnecessarily adversarial in its permit process and that a more collaborative approach would save money for both the MPCA and municipal permittees.

Second, if fee increases are warranted, and we believe that they are not, then additional appropriations from the state legislature should be sought. Legislative oversight of MPCA permitting provides legitimacy to the work of the MPCA including its permitting process which has become lengthy and burdensome to municipal permittees. Like many cities, the City of Thief River Falls is operating under an expired permit. The city continues to abide by the terms of the expired permit. Our wastewater continues to be treated responsibly and effectively. Our city is committed to providing state of the art wastewater treatment and would like to do this in collaboration with the MPCA but the MPCA permitting process is becoming less and less relevant to this objective.

Third, the MPCA notices possible fee increases for a broad range of permitting processes. While it may seem logical that soliciting input on fee increases should be bundled together in a single notice, the city is concerned that the actual and almost certainly very different costs of the different permitting processes may result in municipal permitting fees effectively subsidizing other MPCA permitting activities. The city makes no comment on these other permit processes except to note that each has different costs associated with the process because of the different nature of the activity involved. Municipal sewage treatment permittees and their ratepayers should not pay the cost of permits associated with totally different activities.

Sincerely,

Brian Holmer
Mayor

From: [Jill Thomas](#)
To: [Lynn Mary \(MPCA\)](#)
Subject: water quality fees
Date: Friday, August 11, 2017 2:25:10 PM

Dear MPCA,

I am commenting in regards to the possible increase in water quality fees. Representing the asphalt pavement industry, we are most concerned that our fees will increase. We do not believe that the Industrial and Construction Stormwater permit fees should increase for the following primary reasons.

1. In the information I received July 24, 2017 at the public meeting, it shows that fee revenue is roughly half of expenses for the industrial and construction stormwater permits. This ratio is significantly higher than the other permit fees as shown in the handout so it appears that we are already paying our share.
2. Increasing our fees puts pressure on industry to increase the cost of construction and makes it more difficult get improve our existing infrastructure, especially with reduced budgets.

Thank you.

Best regards,
Jill Thomas, P.E.
Executive Director
Minnesota Asphalt Pavement Association
[P]651-636-4666
jthomas@mnapa.org
www.AsphaltIsBest.com

August 11, 2017

Mary H Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155

RE: Comments on the Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules Chapters 7002 and 7083; Revisor's ID Number R-04476

Dear Ms. Lynn:

The Minnesota Chamber of Commerce (Chamber) is a statewide business organization representing approximately 2,300 businesses of all types and sizes across Minnesota. The proposed amendments to the rules governing water quality fees have the potential to impact all of our membership in various capacities.

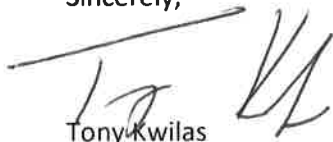
Minnesota is blessed with an abundance of natural resources, including more than 10,000 lakes, and it is crucial that we protect and preserve our natural resources for the citizens of the state, as well as for the business community. Tourism, forestry, mining and agriculture, for example, are just four of the essential industries of our economic engine that depend on clean water to prosper.

The Chamber has concerns with the possible amendments to the rules governing water quality fees. Governor Dayton has set forth an ambitious goal of achieving a 25% improvement in Minnesota's water quality by the year 2025. Prioritizing water quality is a goal that all stakeholders can agree with. Approaches and techniques on how to achieve the goal will vary, but the goal is one the state should strive for. The Minnesota Pollution Control Agency should follow the lead of the Governor and prioritize water quality programs within the state agency. As noted in the Governor's water quality proposal, a change in the overall approach is needed if we are to achieve the 25% improvement goal. The MPCA needs to perform a comprehensive and detailed review of its programs, including potential elimination of some programs, and designate funds from these lower priority programs for reallocation within the water division, prior to requesting any fee increases. The Chamber does not believe that a fee increase is warranted without a reprioritization by the PCA of existing programs.

Further, we believe that before the MPCA commences formal rulemaking, the MPCA must present the recommended analysis and conclusions to the Legislature for its review and approval.

Thank you for allowing us the ability to comment on the possible amendments to the rules governing water quality fees. We look forward to participating in the process as this proposal proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Kwilas', with a long horizontal line extending from the top left of the signature.

Tony Kwilas

Director, Environmental Policy

From: [Scheffer, Elizabeth M.R. \(DOT\)](#)
To: [Lynn, Mary \(MPCA\)](#)
Subject: Comments in Response to Request for Comments - Water Quality Fees
Date: Monday, August 14, 2017 4:56:36 PM
Attachments: [image002.png](#)
Importance: High

Mary, due to unusual circumstances here at the office today, I did not submit MnDOT's comments in response to the Request for Comments by today's 4:30 p.m. deadline, and I now see that the page has been closed at OAH. My hope is that MPCA will accept the comments below despite missing the deadline by a small amount. Please advise. Thank you.

Comments related to SSTS fees:

- Fee structure 1: MnDOT recommends that SSTS fees not come directly from the homeowner. Shifting the burden of paying an SSTS fee from the SSTS professional to the homeowner would not improve the MPCA's ability to fund itself. It may in fact make it harder because the MPCA would need to track, monitor, and try to collect payment from thousands of homeowner instead of hundreds of SSTS professionals. The SSTS professionals are licensed and trained professionals and are in the best position to be held accountable for paying fees to the MPCA. When a homeowner hires an SSTS Professional, it is not unreasonable for the homeowner to expect the SSTS professional to handle all of the fees associated with their system. Placing the burden of paying the SSTS fee on the homeowner is good for the professional because it makes their job easier, but bad for the homeowner and public.
- Fee Structure 2: In MnDOT's view, the current fee structure is too complicated, and the end result is that the structure is hard to understand (and seemingly difficult for MPCA to enforce). MnDOT recommends that the fee structure be simplified so that each tank purchased is taxed; no other metric or loophole would apply {not sure about this edit; modify if needed}. The market would respond accordingly.

Comments from Neile Reider, MnDOT Building Services Section.

Beth Scheffer

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Beth Scheffer | Associate Legal Counsel

Office of Chief Counsel

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minnesota inter-county association

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benton-blue earth-carver-crow wing-dakota-olmsted-otter tail-rice-st. louis-scott-sherburne-stearns-washington-winona

Comments on Proposed Rules on Water-Related Fees

- 1. Permit fees should bear a relationship to PCA's workload for processing them.** For example, the process for most stormwater general permits essentially consists of the permittee filing a report with the agency. Generally, no follow-up is required by agency staff. Thus, the fee for general permits should remain low relative to that paid by individual permittees.
- 2. Regardless of the outcome of the rules promulgation process, pass-through funding should not be affected.** The agency needs to assure permittees as well as its partners, e.g. the delegated counties for the feedlot program, that any fees increases will not become an excuse to reduce funding for the affected programs that currently come from other sources. Furthermore, services to permittees should not be reduced if the agency's proposed fee increases fail to be adopted.
- 3. Once fee increases are authorized by the adopted rules, the agency must communicate the fee increase to existing permit holders, not wait until permits need to be renewed.**
- 4. Construction stormwater permits are already funding a higher proportion of program costs than other water-related permit fees.** Fairness suggests that permittees for this program are already paying enough when you compare the portion of program costs paid by construction stormwater permittees to that paid by permittees for other programs.
- 5. Shifting sand and gravel mining wastewater permit fees to a per location basis would be burdensome for counties.** Most counties operate multiple sand and gravel pits on an as-needed basis. That is they are not operated on a frequent, regular basis like private, for-profit sand and gravel mining operations. Gravel pits owned by county highway departments are mined only as needed for nearby county highway construction projects. County pits located on tax-forfeit property managed by a county only sell limited extraction permits occasionally to private contractors. Dewatering discharges, if needed, only occur when aggregate is being extracted. Fees for facilities covered under the non-metallic mining general permit, would continue to be billed on a per-county basis. At a minimum gravel pit permit fees should be commensurate with the frequency and size of operation (provided this can be done without requiring additional reporting).
- 6. Registration of a feedlot should not engender imposition of a fee.** Those feedlots not requiring SDS or NPDES permits that currently register with the PCA or a delegated

county should not be assessed a fee. Registration is meant to enable contacting the feedlot owner so they can be educated about the law or rule's requirements and to assist in preventing or mitigating any pollution from the registered facility. Imposing a fee will possibly deter some small feedlots operators from registering defeating the purpose of registration

Please contact Keith Carlson at 612-759-9442 or at keithc@mica.org if there are questions about these comments.



August 9, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, MN 55155

Re: Water Quality Fee Rules

Dear Ms. Lynn,

I am submitting this letter on behalf of **Housing First Minnesota**, the advocacy program of the Builders Association of the Twin Cities, regarding proposed Water Quality Fee Rules increases. By way of background, Housing First Minnesota represents more than 1,200 member firms engaged in all phases of the home building, land development and remodeling industries in Minnesota, including contractors, sub-contractors, developers and suppliers. Housing First Minnesota and its members are experts in building community and are dedicated to providing safe durable homes for families across our state at a price they can afford.

As the leading voice for Minnesota's homebuilders and remodelers, Housing First Minnesota seeks to find an appropriate balance between the need to protect the environment and the increasing pressures regulations place on home affordability in Minnesota. Our interest in the proposed Water Quality Fee Rule increases are connected to the construction stormwater permitting for residential development.

NEEDED FOCUS ON HOME AFFORDABILITY

Minnesota is currently experiencing a home affordability crisis. The price for a newly built home in the Twin Cities, and the rest of Minnesota, far exceeds that of neighboring states. In fact, new homes in Minnesota are the most expensive outside of coastal regions.

Earlier this year, the *St. Paul Pioneer Press* outlined Minnesota's growing home affordability crisis (emphasis added):

"And just how high? Outside coastal states like New York and California, the Twin Cities was **No. 1 in housing costs among the nation's 20 largest metro areas**, according to 2014 U.S. Census data. And they have remained at or near the top of other cost-comparison surveys since then. Statewide, Twin Citians pay an average of 26 percent more than neighboring states. That price gap explodes when compared with southern states like Texas." (Bob Shaw & Tad Vezner, "Why do Twin Cities homes cost so much? We went to find out." *St. Paul Pioneer Press*, April 16, 2017)

A decade ago, 70 percent of new homes built in Minnesota were priced less than \$350,000, while today that number is less than 30 percent. Increases in the cost of labor, materials and land account for some of the price hikes, but Minnesota's regulatory environment is the largest source of this increase.

“Talk to a builder about why Minnesota’s housing costs are so high, and they’ll mention regulations. And it’s true: Minnesota’s regulatory process is far more complex than many of its surrounding states.” (Bob Shaw & Tad Vezner, “Why do Twin Cities homes cost so much? We went to find out.” *St. Paul Pioneer Press*, April 16, 2017)

In the past five years, regulatory costs associated with new homes have increased more than 30 percent. Housing-related regulations, including construction stormwater BMPs and permanent stormwater management, now account for between 25 and 30 percent of a new home’s price. While MPCA is only one of several agencies whose regulations affect housing prices, we ask the agency take into consideration the additional cost pressures the Construction Stormwater Permit, permanent stormwater management and related fees place on prospective Minnesota homebuyers.

Research provided to Housing First Minnesota from the National Association of Homebuilders says that for every \$1,000 increase in the price of a new home, 4,000 Minnesota families are priced out of the new home market. With available existing home inventories in short supply, and added cost pressures on new homes, increased regulatory fees compound Minnesota’s housing crisis.

OUTSTANDING QUESTIONS

Streamlined Construction Stormwater Permitting: Since the 2018 Construction Stormwater Permit and enforcement will be managed via a new software platform, it seems this is an area where increased efficiencies can still be leveraged. Housing First Minnesota would like to know if MPCA is projecting any future cost savings from the new construction stormwater management software platform.

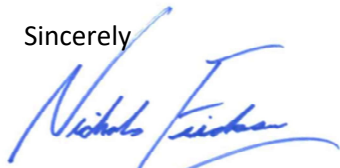
Use of Increased Fees: Housing First Minnesota asks the MPCA to disclose whether it seeks to hire additional enforcement staff for the Water Quality programs with any added fee revenue. If such staff are to be added due to increased fees, questions arise as to whether the fee increases provide revenue that is in excess of what is needed to “adequately fund” its programs.

FINAL COMMENTS

While a single fee increase may not appear to have a major impact on home affordability, the cumulative effect of fee increases and housing regulations are compounding the home affordability crisis in Minnesota. Increases in fees, no matter how small, make homes less affordable. Housing First Minnesota asks the MPCA to acknowledge and address the challenges burdensome regulations place on Minnesotans seeking to purchase their newly built home. We all appreciate and share the goal of homeownership, which creates strong communities and is the single largest provider of wealth-building opportunities for the majority of Minnesotans.

Thank you for your consideration of our comments.

Sincerely



Nicholas Erickson
Regulatory Affairs Manager, Housing First Minnesota



Minnesota Association of Small Cities

www.MAOSC.org

145 University Ave. West, Saint Paul, MN 55103

August 10, 2017

Administrative Law Judge Ann O'Reilly

OAH Docket # 65-9003-34479

RE: Possible Amendments to Rules Governing Water Quality Fees

We respectfully submit to Judge O'Reilly and the Minnesota Pollution Control Agency Municipal Division the following preliminary response to the Request of Comments on Possible Amendments to Rules Governing Water Quality Fees:

A large share of Minnesota's 700-plus small cities with population under-5,000 residents are represented by the Minnesota Association of Small Cities (MAOSC). Our comments apply generally to any proposed water fee increases for industrial wastewater, septic tanks, stormwater facilities and feedlots, but are especially directed at potential regulatory and fee changes in the areas of municipal wastewater and stormwater infrastructure.

Historically, small cities received substantial federal and state grant money to build, operate and monitor wastewater and stormwater infrastructure, but these sources have gradually phased down, shifting undue burdens onto our small communities that lack the fiscal capacity to absorb the rapidly rising costs through property taxes and fees. Clean water is a shared responsibility at the local, state and national levels, and this reality must be respected.

Many, if not most, residents of Minnesota's small cities live on limited or fixed incomes, and few of our businesses have deep pockets. Our fiscal reality does not allow for shifting considerable additional fee burdens onto the local level. We recognize that the current 57% backlog on our municipal wastewater permitting system creates a major gap in the obligation to protect our state's clean water. We encourage the MPCA to seek out more creative solutions than have been offered thus far in developing the Amendments to the Water Quality Fees and regulatory system by exploring more cost-effective strategies. These could include the potential for partnering with certified private contractors and seeking out funds for utilizing new technologies to streamline monitoring systems for efficiency, and lowering costs. Simply shifting fee burdens to the local residents and businesses is neither an imaginative nor workable solution.

Respectfully submitted,

Tina Rennemo
President, Board of Directors
Minnesota Association of Small Cities

Jill Sletten
Executive Director
Minnesota Association of Small Cities

For further information, please contact James Robins, jamesnrobins@yahoo.com, (612) 597-0214.



MINNESOTA MILK PRODUCERS ASSOCIATION

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E-Mail: mmpa@mnmilk.org • Web: www.mnmilk.org

August 11, 2017

The Minnesota Milk Producers Association thanks you for the opportunity to provide input on water program fees. Our members are very troubled by the proposals referenced in examples used by the Minnesota Pollution Control Agency (MPCA) on this topic.

As Minnesota's 3,100 dairy farmers try to compete with other states in terms of cost of production and future processing capacity because our pricing is regional, we point to the Minnesota Department of Agriculture's [Livestock Industry Study](#) for the legislature; it was presented on February 1, 2016. As the study points out, Minnesota fees for feedlots are the highest compared to neighboring states. But the study did not even reference the Environmental Assessment Worksheet (EAW) because no other state has a fee associated. Minnesota's fee is \$4,600, while other states must see the value in additional livestock operations joining the ranks.

Not only does this increase the cost of production for Minnesota farmers, making it harder to start or continue an operation for the state, but it also lowers the profit potential for milk processors – an industry of which Minnesota is in great need at this time. An increase in water fees across the board would be a true double-whammy to the dairy industry.

Further, feedlot fees were increased in 2009, not 25 years ago. Since this increase, many regional offices lost staff, as MPCA has shifted funding to other areas. In the meantime, through MPCA's water data and anecdotal evidence, it does not appear feedlots have had a detrimental effect on the environment. In fact, we might say in this time of lax "underfunded" regulation as a result of less funding, farmers with feedlots are continuing their long track of improving environmental stewardship by working within current national and MPCA guidelines, industry initiatives, and with their county officials.

We would support sensible reforms to aid in "pollution control" as is stated in the name of the agency, but not for water permit increases. We believe we should work together to ensure all permits and fees are for the bettering of the environment before increasing fees to meet the "needs" of permitting for MPCA.

Sincerely,

A handwritten signature in black ink that reads "Lucas Sjoström".

Lucas Sjoström
Minnesota Milk Executive Director

A handwritten signature in black ink that reads "David A. Buck".

David Buck
Minnesota Milk President
Dairy Farmer, Goodhue, Minn.



The *Minnesota State*
Cattlemen's Association
P.O. Box 12 - Maple Plain, MN 55359

www.mnsca.org ▪ mnsca@mnsca.org ▪ 612-618-6619

August 11th, 2017

The Honorable Ann O'Reilly
Office of Administrative Hearings
600 North Roberts Street
PO BOX 64620
St. Paul, MN 55164

RE: Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-04476. OAH Docket No. 65-9003-34479

Dear Judge O'Reilly,

Minnesota is home to over 16,000 beef farmers and ranchers. In a 2016 economic contribution study, it was found that Minnesota's beef industry contributes \$4.9 billion and 47,300 jobs to the state. Each one of Minnesota's beef feedlots, regardless of size, creates jobs and economic stimulus for rural communities.

The Minnesota State Cattlemen's Association (MSCA) has concerns about the proposed amendments to the rules governing air and water permit fees (fees). In 2015, as a result of action taken by the Minnesota Legislature and signed into law by Governor Mark Dayton, a livestock industry study was conducted by the commissioner of agriculture. The study identified causes of the relative growth or decline in the number of head of poultry and livestock produced in Minnesota, Iowa, North Dakota, South Dakota, Wisconsin, and Nebraska over the last ten years, including but not limited to the impact of nuisance conditions and lawsuits filed against poultry or livestock farms.

As noted in this study, Minnesota has lost its competitive edge in regards to regulatory burden and fees associated with it. The study shows some of the requirements specific to permitting livestock facilities are on a level playing field at the federal level. In some instances, Minnesota adds an additional level of environmental review not seen in other states, with increased permitting costs as a result. Farmers interested in expanding or starting new livestock operations in Minnesota may likely choose to locate elsewhere due to the additional layers of regulatory burden in Minnesota. Reduced interest for internal expansion or relocation to Minnesota means less livestock, less need for permit review and environmental review by the state, loss of jobs, closure of rural businesses and schools, and loss of tax base.

MSCA members do not feel it would be appropriate for MPCA to base permit fees on the need of an environmental review or the number of animal units. As noted in the MDA Livestock Industry Study, in Minnesota, nuisance complaints by county are proportionately higher as the number of feedlots increases. This fear of complaints for normal and accepted farming practices already discourages many farmers' plans to expand or start new livestock facilities.



The *Minnesota State*
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P.O. Box 12 - Maple Plain, MN 55359

www.mnsca.org ▪ mnsca@mnsca.org ▪ 612-618-6619

Adding additional fees for an environmental review will only increase the number of farmers who refrain from expanding, or entering the livestock industry.

MSCA is especially concerned with the potential of an adjusted fee target, as proposed in 2009. This type of fee, based on how many permit applications MPCA has received in the previous five years, will automatically adjust for inflation. MPCA must consider what they feel to be an adequate control by either increasing or decreasing the target based on the last two years of applications. The point system for the permit fees is based on the amount of effort it takes to process an application while the need for the fees was based on the amount of applications. MPCA has previously assumed that permit application levels will be maintained at the levels that have been seen over the past five years, however based on the current economic situation, which is significantly different from anything that has been seen in the past, it is not reasonable to assume that application numbers will be maintained. The livestock industry is struggling with low pricing and high input costs. This continued erosion of livestock margins will undoubtedly lead to a reduction in the number of permit applications and environmental reviews MPCA will receive.

MSCA prides itself as an organization that represents cattle farms of every size and scope. Member farms that are small and require minimum permitting will likely remain small in order to negate the need for additional fees and regulation. Larger members have, and will continue to choose to exit the state of Minnesota for a state with rules and regulations that are friendlier to expanding livestock operations.

MSCA believes the correct way to ensure that proper fees are being collected is to base the target fee on the amount of fees that were collected during the previous biennium, adjusted for inflation and then adjust their staffing based on that budget. While MPCA may claim that this is not possible due to challenges of training, retraining, or recruiting additional staff, it is not acceptable to change permit fees to cover the cost of staff that is not involved in permitting for the purpose of retaining staff. Any profitable business understands that if your costs surpass your input, sustainable cuts need to be made in order to balance the budget.

Sincerely,

Krist Wollum

MSCA President



August 14, 2017

The Honorable Ann O'Reilly
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164

RE: Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-04476. OAH Docket 65-9003-34479.

Dear Judge O'Reilly,

The Minnesota Corn Growers Association (MCGA) appreciates the opportunity to provide comments on planned amendments to water quality fee rules. MCGA represents over 7,000 corn farmers and we are continuously working to improve and become better stewards of our state's natural resources while maintaining a thriving rural economy. Our sustainability commitment is focused on three equally important elements—people, planet, profit.

In order to deliver on our commitment to sustainability for Minnesota corn farmers, in-state markets for corn are critically important, in addition to export opportunities. Livestock and poultry operations and biofuel processing facilities provide essential in-state uses of corn.

Unfortunately, Minnesota has seen a decline in the livestock inventory for beef and dairy while other livestock or poultry segments have fluctuated or remained flat. Further, according to a *2015 Livestock Inventory Report* from the Minnesota Department of Agriculture, Minnesota already has significantly higher livestock permitting—both application and annual—fees compared with neighboring states.¹ MCGA is concerned that increasing water permitting fees for livestock operations would put us at an even greater competitive disadvantage for increasing our livestock and poultry inventory and the in-state market for corn utilization.

Biofuel processing facilities, which are subject to industrial wastewater permits, are another important in-state market for corn. MCGA is proud of our previous and ongoing commitments in processing corn to supply cleaner, domestic sources of transportation fuels. However, new facilities and existing facilities looking to expand or implement new innovative practices have experienced significant delays in securing the permits needed to commence operations. MCGA would encourage the Pollution Control Agency (PCA) to include detailed information on how an increase in permitting fee revenue would drastically improve the permitting timelines consistent with the speed of commerce when presenting draft fee schedule options. Additionally, the PCA should consider an option for industrial wastewater permit applications to voluntarily elect to pay a higher fee for an expedited permit process.

¹ Minnesota Department of Agriculture, [2015 Livestock Industry Study](#), page 29.



At this time, MCGA cannot support increased permit fees for livestock or processing facilities that utilize corn and require an industrial wastewater permit. However, we remain committed to work with the agency and various partners to examine how the permitting process could be improved in order to take advantage of economic development opportunities for our state's agricultural sector.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Wolle, Jr.", written in a cursive style.

Harold Wolle, Jr.
President
Minnesota Corn Growers Association



August 14, 2017

The Honorable Ann O'Reilly
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
Saint Paul, MN 55164

Dear Judge O'Reilly,

On behalf of the Minnesota Farm Bureau Federation (MFBF), thank you for the opportunity to provide comments and input on the proposed amendments to the water program fees. MFBF represents nearly 30,000 farm families and is organized in 78 counties across Minnesota.

The Minnesota Department of Agriculture conducted a Livestock Industry Study for the legislature and presented its findings on February 1, 2016. Included in this study was a cost comparison of Minnesota fees for feedlots compared to neighboring states. In every category where a permitting fee is required, except for one area, Minnesota's fees are higher in comparison to neighboring states. Environmental Assessment Worksheets (EAW) was not referenced in this study however, as this fee of \$4,600 is only associated with Minnesota and no neighboring states, enticing livestock operations to look beyond Minnesota's state lines. By having significantly higher livestock permitting fees, Minnesota is put at a competitive disadvantage compared to neighboring states.

It is also important to note that feedlot fees were last increased in 2009, not 25 years ago, as stated in the written materials provided by the Minnesota Pollution Control Agency. At that time, the application fee was doubled. Increased fees associated with permits increases the cost of production for Minnesota farmers, making it harder to start or continue a farming operation in the state.

In summary, Minnesota Farm Bureau Federation cannot support the increased fees for water permits. However, we will remain committed to work with the agency and various stakeholders to examine how the permitting process could be improved and addressing the need for funding from legislature.

Sincerely,

Kevin Paap
President

Physical Address: 3080 Eagandale Place, Eagan, MN 55121-2118 Mailing Address: P.O. Box 64370, St. Paul, MN 55164-0370

Phone: 651.768.2100 Fax: 651.768.2159 Email: info@fbmn.org www.fbmn.org



Minnesota Pork Producers Association
151 Saint Andrews Court, Suite 810, Mankato, MN 56001
Phone: (507) 345-8814 | Fax: (507) 345-8681 | E-mail: mnppork@mnppork.com

August 14, 2017

On behalf of the Minnesota Pork Producers Association (MPPA), thank you for the opportunity to provide input on water program fees.

The MPPA has great concern about the options used in many of the examples used by the Minnesota Pollution Control Agency (MPCA).

Feedlot fees were last increased in 2009. Not, 25 years ago as stated in the Minnesota Pollution Control Agency's written materials. At that time, the application fee was doubled and a new fee for Environmental Assessment Worksheets (EAW) was put into place. The EAW fee is \$4,600; a fee that is not charged in any neighboring state.

Minnesota fees for feedlots are the highest compared to neighboring states. The Minnesota Department of Agriculture conducted a [Livestock Industry Study](#) for the legislature that was presented on February 1, 2016. A particular strength of the study was the comparison on permitting process and fees. The fee comparison is on page 29 of the study.

The one omission in the study of fees is EAW's. No other state has a required EAW and thus, no fees are charged. Minnesota's EAW fee was omitted from the study.

Raising livestock is a commodity business which means the markets are not local for more than 99 percent of production. Having a competitive regulatory, tax, and fee schedule matters. Real estate taxes for agriculture are higher in Minnesota than neighboring states for comparable valued land adding to costs. Minnesota also has a higher state income tax rate compared to our neighbors'.

We do not support the state charging for a permit they do not issue. Any locally issued permit that comes from the delegated counties should not have a state fee.

We are willing to work with the MPCA to reevaluate the process of permitting. We believe the standards are right but the process is both time consuming and comes at a much great cost than neighboring states.

In summary, we do not support fee increases for water permits but will work with the MPCA to examine the process and would be willing to talk about funding from the state legislature.

Sincerely,

A handwritten signature in black ink that reads "Jay Moore".

Jay Moore
President
Minnesota Pork Producers Association

A handwritten signature in black ink that reads "David Preisler".

David Preisler
Chief Executive Officer
Minnesota Pork Producers Association



August 14th, 2017

Mary H Lynn
Minnesota Pollution Control Agency
St. Paul, MN 55155

RE: Comments on the Possible Amendments to Rules Governing Water Quality Fee's, Minnesota Rules Chapter 7002 and 7083: Reviser's ID Number R-04476

Dear Ms. Lynn,

On behalf of the Minnesota AgriGrowth Council (AgriGrowth), I am submitting the following comments regarding the Minnesota Pollution Control Agency's (MPCA) Possible Amendments to Rules Governing Water Quality Fees. AgriGrowth is a business association representing with membership from across Minnesota's agriculture and food sector, with a mission is to foster long-term sustainability, competitiveness, and business growth.

AgriGrowth and its members recognize the importance of protecting Minnesota's natural resources, including water quality. Minnesota's soils, climate, and water are a key reason why the agriculture sector developed in Minnesota and has become such an important component of Minnesota's economy. Minnesota farms and agribusinesses are some of the most progressive in the U.S. in terms of utilizing new research and technology to enhance productivity while managing and protecting our natural resources.

AgriGrowth has several concerns regarding MPCA's possible amendments to rules governing water quality fees. Specifically, AgriGrowth is concerned with any proposed additional fees on animal agriculture feedlots. Minnesota's livestock sector is a vital part of Minnesota's economy, but operates in a competitive business environment, and MPCA's livestock permit fees are already higher when compared to surrounding states. Minnesota livestock producers also must deal with additional permitting steps and costs not required in neighboring states. According to a Minnesota Department of Agriculture's 2016 Livestock Industry Study submitted to the state legislature, "The environmental review process may increase initial permitting costs significantly and can be a deterrent to livestock expansion."

AgriGrowth does not support new water quality fees at this time, and instead requests the MPCA undergo a comprehensive review of current programs and processes that could be eliminated, revised or reallocated toward its water division programs. As part of that review, AgriGrowth also requests the agency review current water quality permit requirements and processes that are duplicative or redundant and could improve efficiencies for permit applicants, as well as workload for the agency.

Finally, before MPCA moves forward with formal rulemaking, AgriGrowth also requests the agency present a report to the legislature with an analysis and recommendation of steps that could be taken to re-prioritize existing resources toward its water quality programs before requesting fee increases.

Thank you for the opportunity to provide input on these possible rules. AgriGrowth looks forward to working with MPCA as this process moves forward.

Sincerely,

Perry Aasness
Executive Director, Minnesota AgriGrowth Council



MESERB

Minnesota Environmental Science
and Economic Review Board

Using science and economics to improve environmental regulations

August 14, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-04476.

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the Minnesota Environmental Science and Economic Review Board (MESERB), a joint powers organization of 45 Minnesota cities, public utilities commissions and sanitary sewer districts. MESERB has worked since 1997 to ensure that regulations affecting wastewater treatment are reasonable and based on sound scientific research. All of our members will likely be affected by any changes to the rules governing water quality fees. We reached out to our members regarding your request for comments and the following reflects their input.

Efficiencies Before Fee Increases

The first four questions assume that a fee increase is necessary for the water quality program to operate effectively. MESERB urges the agency to first look at its practices to determine whether there are changes that can be made to operations that would allow current funding to be deployed in a more efficient and cost-effective manner. At this time, we do support a fee increase, particularly for the municipal-related programs (wastewater and storm water).

We understand that the fee increase, at least for the municipal wastewater program, will effectively bring back 15 full-time employee (FTE) positions that were eliminated over the last decade. During that time, certain processes became more automated through information technology, negating the need for some FTEs. Before increasing fees to replace the eliminated positions, a more thorough examination is needed to determine whether all of those positions are necessary.

If a program is too expensive to implement with current funding levels, innovative approaches should be explored to solve the problem that is being addressed. For example, with respect to wastewater, regulatory burdens and costs continue to increase, yet the impact on water quality is not increasing at the same rate. Rather than spend more money on the permitting regime, the agency should move toward more water quality trading or water reuse to address pollution problems.

Several MESERB members have stated that they appreciate the training the agency provides and would be interested in more. The MPCA has partnered with professional organizations on some of this training and

it appears to be successful. Fostering such partnerships could increase efficiencies and improve services without increasing fees.

Involve the Legislature in Funding Discussions

As noted above, we believe that the agency has not demonstrated that it requires nearly \$2 million more in funding for the municipal wastewater program. Nonetheless, if there is a smaller shortfall that must be addressed, we believe the Legislature should be involved in the discussion and with any solution. Environmental regulations — especially those imposed on other public entities such as local governments — benefit all citizens, not just those subject to a specific permit. The Governor has repeatedly stated that he and the entire state place a high value on water quality. The cost of preserving our state's water resources should be shared by everyone, not just select local governments. We believe that funding shortfalls should be addressed, in whole or in part, by general fund money.

The Legislature's voice is needed in this discussion to provide accountability. Without any oversight, the agency could grow its workload regardless of the impact on water quality and charge the amount back to permittees. Adding nearly \$2 million to the municipal wastewater program through increased permit fees will result in the municipalities charging this amount back to their citizens, in effect a tax increase. Elected officials should have more input on a decision to grow the agency staff in this manner.

Fee Decreases – Municipal Wastewater Permits (Q5)

Question 5 asks whether there are fees the MPCA should not increase and/or consider decreasing. A sub-question asks whether the agency should rely mainly on annual fees and eliminate annual/application fees. Our membership had mixed opinions on this issue, but the following themes emerged:

- A few smaller cities believe that the current annual and application fees are too high and contribute to increased customer rates. They urge that the agency decrease these fees.
- Opinions diverge on whether to impose a single annual fee or separate annual and application fees. A few smaller cities would find it easier to budget if they were paying a similar fee every year. Other cities believe the agency should stay with the current system of imposing a separate annual fee and application fees. They believe fees should reflect actual services provided and that is better accomplished by charging a separate application fee. Furthermore, charging a separate fee provides an incentive to process applications. To balance these competing concerns, the agency may want to consider continuing the process of charging two separate fees, but decrease the application fees so that they do not create budget challenges in the year they are due and seek general fund assistance to underwrite the costs.
- MESERB is also concerned that costs associated with the municipal wastewater permit process are increased due to third parties challenging the agency and/or permits (i.e., litigation and contested cases brought by environmental groups). The state has granted these third parties the right to bring such challenges. Therefore, the state — through the general fund or other sources — should underwrite the cost of these challenges, rather than municipalities.

Mary Lynn, MPCA
August 14, 2017
Page 3

Fee Decreases – Variance Applications (Q5)

The current cost of applying for variances is too high for most municipal systems. Requests for variances are more likely to occur with respect to pollutants such as chloride or mercury, where it is cost prohibitive to treat through wastewater or the process is not technologically feasible. Rather than charge multiple cities for variances on known problem pollutants, the agency should eliminate the fee and look for alternative solutions, such as a statewide variance that is in place until technology catches up.

Storm Water (Q1 & Q2)

Several MESERB members are also concerned about fees relating to construction storm water permits in MS4 cities. MS4 cities are required to implement rules and charge a construction storm water fee. If an MS4 city is doing so, allowing the agency to charge for the same construction storm water request is duplicative.

Conclusion

In summary, we appreciate that the agency is reaching out to groups like MESERB for our input on these important issues, but we do not support the current proposed fee increase.

Before moving forward with fee increases, the MPCA should engage in a more comprehensive discussion regarding water quality and the municipal program. To move the needle on water quality, Minnesota can't afford to continue down our current path. Rather than backfilling positions that have been eliminated, let's look at innovative solutions to our water quality issues.

Responses to any of the foregoing may be provided to my attention at 507-328-2656 or andy.bradshaw@ci.moorhead.mn.us. Please also copy any written responses to MESERB's counsel on this matter, Elizabeth Wefel, at 651-225-8840 or ewefel@flaherty-hood.com.

Thank you for the opportunity to provide these comments.

Yours truly,

MINNESOTA ENVIRONMENTAL SCIENCE AND ECONOMIC REVIEW BOARD



Andy Bradshaw, Operations Manager
City of Moorhead Wastewater Services Division
MESERB President

cc: Daniel Marx, Flaherty & Hood, P.A.
MESERB members

Lynn, Mary (MPCA)

From: Elizabeth Wefel <eawefel@flaherty-hood.com>
Sent: Thursday, August 31, 2017 10:40 AM
To: Lynn, Mary (MPCA)
Cc: Andy Bradshaw (andy.bradshaw@ci.moorhead.mn.us); Daniel M Marx
Subject: Amended Comment Letter on Water Quality Fee Rulemaking
Attachments: MESERB Comments on Proposed Fee Increase (as amended).pdf

Mary Lynn,

As we discussed, after submitting the comments of MESERB through the online OAH system, we discovered a typographical error that made the comment letter ambiguous. I am attaching a revised version of the letter which inserts the word "not" into the second paragraph. Please let me know if you need anything else.

Best regards,

Elizabeth Wefel, Senior Attorney/Lobbyist
Flaherty & Hood, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
Direct Dial: 651-259-1924
Mobile: 651-492-3998
Office: 651-225-8840
eawefel@flaherty-hood.com



MESERB

Minnesota Environmental Science
and Economic Review Board

Using science and economics to improve environmental regulations

August 14, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-04476.

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the Minnesota Environmental Science and Economic Review Board (MESERB), a joint powers organization of 45 Minnesota cities, public utilities commissions and sanitary sewer districts. MESERB has worked since 1997 to ensure that regulations affecting wastewater treatment are reasonable and based on sound scientific research. All of our members will likely be affected by any changes to the rules governing water quality fees. We reached out to our members regarding your request for comments and the following reflects their input.

Efficiencies Before Fee Increases

The first four questions assume that a fee increase is necessary for the water quality program to operate effectively. MESERB urges the agency to first look at its practices to determine whether there are changes that can be made to operations that would allow current funding to be deployed in a more efficient and cost-effective manner. At this time, we do not support a fee increase, particularly for the municipal-related programs (wastewater and storm water).

We understand that the fee increase, at least for the municipal wastewater program, will effectively bring back 15 full-time employee (FTE) positions that were eliminated over the last decade. During that time, certain processes became more automated through information technology, negating the need for some FTEs. Before increasing fees to replace the eliminated positions, a more thorough examination is needed to determine whether all of those positions are necessary.

If a program is too expensive to implement with current funding levels, innovative approaches should be explored to solve the problem that is being addressed. For example, with respect to wastewater, regulatory burdens and costs continue to increase, yet the impact on water quality is not increasing at the same rate. Rather than spend more money on the permitting regime, the agency should move toward more water quality trading or water reuse to address pollution problems.

Several MESERB members have stated that they appreciate the training the agency provides and would be interested in more. The MPCA has partnered with professional organizations on some of this training and

it appears to be successful. Fostering such partnerships could increase efficiencies and improve services without increasing fees.

Involve the Legislature in Funding Discussions

As noted above, we believe that the agency has not demonstrated that it requires nearly \$2 million more in funding for the municipal wastewater program. Nonetheless, if there is a smaller shortfall that must be addressed, we believe the Legislature should be involved in the discussion and with any solution. Environmental regulations — especially those imposed on other public entities such as local governments — benefit all citizens, not just those subject to a specific permit. The Governor has repeatedly stated that he and the entire state place a high value on water quality. The cost of preserving our state's water resources should be shared by everyone, not just select local governments. We believe that funding shortfalls should be addressed, in whole or in part, by general fund money.

The Legislature's voice is needed in this discussion to provide accountability. Without any oversight, the agency could grow its workload regardless of the impact on water quality and charge the amount back to permittees. Adding nearly \$2 million to the municipal wastewater program through increased permit fees will result in the municipalities charging this amount back to their citizens, in effect a tax increase. Elected officials should have more input on a decision to grow the agency staff in this manner.

Fee Decreases – Municipal Wastewater Permits (Q5)

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- Opinions diverge on whether to impose a single annual fee or separate annual and application fees. A few smaller cities would find it easier to budget if they were paying a similar fee every year. Other cities believe the agency should stay with the current system of imposing a separate annual fee and application fees. They believe fees should reflect actual services provided and that is better accomplished by charging a separate application fee. Furthermore, charging a separate fee provides an incentive to process applications. To balance these competing concerns, the agency may want to consider continuing the process of charging two separate fees, but decrease the application fees so that they do not create budget challenges in the year they are due and seek general fund assistance to underwrite the costs.
- MESERB is also concerned that costs associated with the municipal wastewater permit process are increased due to third parties challenging the agency and/or permits (i.e., litigation and contested cases brought by environmental groups). The state has granted these third parties the right to bring such challenges. Therefore, the state — through the general fund or other sources — should underwrite the cost of these challenges, rather than municipalities.

Mary Lynn, MPCA
August 14, 2017
Page 3

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Storm Water (Q1 & Q2)

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Conclusion

In summary, we appreciate that the agency is reaching out to groups like MESERB for our input on these important issues, but we do not support the current proposed fee increase.

Before moving forward with fee increases, the MPCA should engage in a more comprehensive discussion regarding water quality and the municipal program. To move the needle on water quality, Minnesota can't afford to continue down our current path. Rather than backfilling positions that have been eliminated, let's look at innovative solutions to our water quality issues.

Responses to any of the foregoing may be provided to my attention at 507-328-2656 or andy.bradshaw@ci.moorhead.mn.us. Please also copy any written responses to MESERB's counsel on this matter, Elizabeth Wefel, at 651-225-8840 or ewefel@flaherty-hood.com.

Thank you for the opportunity to provide these comments.

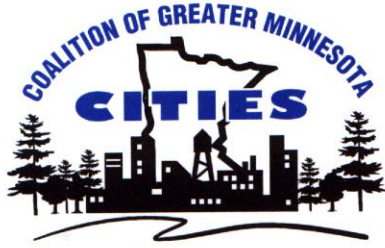
Yours truly,

MINNESOTA ENVIRONMENTAL SCIENCE AND ECONOMIC REVIEW BOARD



Andy Bradshaw, Operations Manager
City of Moorhead Wastewater Services Division
MESERB President

cc: Daniel Marx, Flaherty & Hood, P.A.
MESERB members



Dedicated to a Strong Greater Minnesota

August 14, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Dear Ms. Lynn,

I am writing on behalf of the Coalition of Greater Minnesota Cities (CGMC) in response to your request for comments on potential amendments to water program fees. The CGMC is a nonprofit, nonpartisan advocacy organization that represents 90 cities outside the Twin Cities metropolitan area and is dedicated to developing viable, progressive communities through strong economic growth and local government. Because all CGMC members will be affected by amendments to program fees, we appreciate the opportunity to provide comments at this early stage.

In its request for comment, the Minnesota Pollution Control Agency (MPCA) posed a series of questions to guide the comments. Before responding to those questions, there are several underlying policy issues that need to be addressed.

Need For Fee Increase Has Not Been Demonstrated

The CGMC does not support the large fee increase that has been requested. As elected officials and staff at local governments, CGMC members constantly face the challenge of providing necessary services with limited funding. We take our role as stewards of public resources seriously, and when we face a shortfall we look first at whether there are efficiencies or cuts that can be made. We urge the MPCA to do the same before requesting a significant increase.

The MPCA has indicated that it hopes to increase funding for the municipal wastewater program by nearly \$2 million to fund approximately 15 full-time positions that have been eliminated or left vacant over the last decade. Before making this significant ask, we believe the MPCA should examine how this program operates and whether it could be restructured to achieve better water quality at a lower cost. For example, rather than increasing the amount spent on permitting and enforcement, the MPCA should consider innovative ways to address the underlying water quality issues, such as through integrated planning and water quality trading. Increasing fees to keep doing things the same way will not improve water quality in the long run and is not justified.

General Fund Dollars Should Cover Increases In Program Costs

If the MPCA can demonstrate that additional funds are needed to perform its statutorily required duties, we believe that general fund money should be a primary source for part or all of the increase for several reasons:

- **Good Water Quality Benefits Everyone.** Minnesotans value clean water. When a municipal wastewater facility or storm water system enhances that quality, everyone benefits.
- **Cost Increases Due to Other Parties.** Individuals and entities not subject to water permits often engage in activities that increase the cost of the water program through extensive comment periods, litigation, contested cases and other means. Permittees should not be required to cover all this added cost that they cannot control. The state has given third parties the rights to challenge and should therefore be willing to pay the additional cost.
- **Funding Oversight Essential for Good Governance.** The most troubling aspect of the proposed increase is that a non-elected government body is seeking to expand the scope of its work by imposing fees on entities that have no choice but to use its services. Funding more of the water program through the general fund would allow the elected Legislature to provide oversight for the program.

STORMWATER FEE ADJUSTMENTS (Q1 and Q2)

Questions 1 and 2 ask for input regarding municipal storm water fees. As noted above, we do not support an increase and do not believe the need for increased fees has been demonstrated. If the MPCA recalibrates fees, a sliding fee may be appropriate but population should not be the only consideration. Income and property wealth should also be considered so that the fees do not become a regressive tax burden.

FEE DECREASES – VARIANCE APPLICATION FEES (Q5)

The MPCA should decrease or eliminate the application fee that local governments pay to apply for variances. The MPCA has touted variances as a tool for addressing restrictive water quality standards, yet the high fees (around \$10,000) make the application unaffordable for many cities. Limits derived from water quality standards are unfunded mandates; local governments should not be required to pay \$10,000 for the opportunity to request relief from that mandate.

In addition to lowering or eliminating this fee, the state should also provide financial support to local governments for other costs associated with a variance application, such as engineering and legal fees. We would prefer that permits and their underlying water quality standards be written so that local governments have the technical and financial capabilities to meet them, rather than having to ask for variances. In the absence of that, however, the state should underwrite the costs of these mandates.

ANNUAL FEES VS. ANNUAL FEES AND APPLICATION FEES (Q5)

The question is posed “whether the agency should rely mainly on annual fees to support the program and eliminate annual and application fees?” As noted above, we believe the MPCA is asking the wrong question. Regardless of how the fees are structured, they are tax dollars circulated among government entities. We believe that more of the program should be underwritten by the general fund.

The remaining fees charged to municipal wastewater should be a combination of annual and application fees. If the application fee is significantly higher than the annual fee, it can create budget problems during the application year. However, we still believe that there should be a separate fee to ensure that applications are being processed.

CONSTRAINTS REGARDING FEE INCREASES (Q6)

Regardless of whether charged to a municipality or a business, high application fees hamper economic development. Many of our member cities are located on the state border and compete with neighboring

states for new businesses and business expansion. High permit fees (or high wastewater fees set to recover the increase in municipal costs) may cause a company to look to Iowa or the Dakotas when locating their businesses.

SUMMARY

Thank you again for the opportunity to comment. As stated above, the CGMC does not support fee increases at this time as we believe the MPCA has failed to adequately demonstrate the need for additional funds.

Responses to any of the foregoing may be provided to my attention at smig@mvtvwireless.com. Please also copy such written responses to CGMC's attorney, Elizabeth Wefel, at eawefel@flaherty-hood.com.

Best regards,

A handwritten signature in cursive script that reads "David Smiglewski".

David Smiglewski, Mayor of Granite Falls
President, Coalition of Greater Minnesota Cities



CONNECTING & INNOVATING
SINCE 1913

August 14, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Dear Ms. Lynn:

I am submitting these comments on behalf of the League of Minnesota Cities (the League) in response to the Minnesota Pollution Control Agency (MPCA) Request for Comments on Possible Amendments to Rules Governing Water Quality Fees, OAH Docket # 65-9003-34479.

The League of Minnesota Cities is a membership organization dedicated to promoting excellence in local government. The League serves its more than 830 member cities through advocacy, education and training, policy development, risk management, and other services. A change in water permit fees has the potential to impact our membership statewide and is of concern to the League. We appreciate the opportunity to provide comments on behalf of those members at this early point in the process through this letter and the presentation and input opportunity provided by the MPCA on July 24, 2017.

General Comments

The citizens of Minnesota have rightfully placed a priority on the quality of Minnesota's lakes, rivers, streams, and other water. Public health, future economic development, quality of life, and the overall health of our environment are all linked to our collective success at protecting, restoring, and preserving water quality. Minnesota cities share a desire to protect the state's water resources. To that end, city impacts on water quality have been heavily regulated and permitted for many decades, with even the Municipal Separate Storm Sewer System (MS4) permit for stormwater, the newest requirement, having permit requirements in place since 2006. Minnesota cities have invested, and will continue to invest, billions of dollars of local ratepayer and taxpayer money to meet and exceed state requirements and goals to that end.

An important point, however, is that municipal wastewater and stormwater permits relate to the release of water impacted by the general public. Inputs to those systems are heavily contributed to by sources not under the control of the regulated entity. Cities must take whatever pollution is directed into their system and adequately manage it to meet wide-ranging state regulations. The source of the input is the general public and the beneficiary of successful environmental protection is also the general public. For that reason, the general fund is a far better and less regressive means

of funding state agency programmatic needs than fee increases. The League of Minnesota Cities would recommend that the administration propose and make the case for a general fund budget increase through the state budget process before resorting to administrative routes for raising revenue.

The MPCA pointed out in their July 24, 2017 presentation that municipal permit backlogs are increasing. They provide charts to show that MPCA water programs have become more numerous, and claim that pay levels are inadequate to recruit and retain quality staff and that the general fund is not as reliable a source of funding for them as forcing permit holders to pay directly. However, at earlier points in the middle of the time period being analyzed, 1990-2016, the MPCA had reduced municipal permit backlogs to negligible levels and included that information in reports to the legislature about their progress.

The agency needs to present a far more thorough assessment of exactly what work is being done with the funds they currently receive before proposing changes to permit fee rules. It should show why the backlog on permits has developed. If funds have been redirected away from permit staffing, that issue may need to be looked at as its own problem, independent of the funding source. Adding new fee revenue will not prevent backlogs if the funds are diverted from those programs or the staff complement is not meaningfully increased. Fee systems should not be proposed to be changed without first looking at the actual record of biennial budgets for this time period, all sources and levels of funding, what staff has been in place in each program, how agency benchmarks like permit backlog have changed, and specifically where money has been spent.

Specific fee comments

In reply to the list of questions posed in the Request for Comment, the League has a few somewhat general comments. More specificity in our reply would require more data from the agency and a better vision of what changes are being considered.

- Stormwater fees in the MS4 program were intentionally left as minimal due to the fact that it is a general permit, it requires extensive work by the permittee to annually adjust their permit, and those changes must be locally approved and adopted through a public process of hearings and reporting. Agency involvement is very limited. The agency has since received significant legislative funding for additional stormwater staffing from other sources. The League's position on this issue, based on current information, is that past appropriations to this program are at adequate levels and that the state need not look to make changes to stormwater permit fee rules at this time.
- Any municipal wastewater fee changes proposed should be linked directly to the staffing needed to improve permit review and assistance and to reduce permit backlogs at the agency. The general water program staff complement that exists at the agency is important, but is more appropriately financed from state and federal funding sources that are more reflective of a statewide funding source, since they work on issues vastly more broad than city permit issues.
- As the agency continues to adopt standards that cannot be reasonably implemented due to a lack of practicable technology, permittee financial capacity, or local economic hardship, the

variance process will become more essential and much more broadly applied. The state should reduce or eliminate costs, fees, and procedures related to variance applications. Creating straightforward criteria for a given variance would reduce review time and effort to allow that change.

Finally, the League would request that the state keep in mind that simply passing funding mandates down to lower levels of government is not in the best interest of improving Minnesota's state-local partnership. When the state takes money from a local utility through increased fees, it will impact the funds available to that utility to do its other work. That leaves cities forced to either delay needed upgrades and repairs, pay their own staff less competitive wages and benefits, or to increase rates on customers. Cities already struggle to recruit and retain qualified staff for their water and wastewater utilities and base rate increases on those utilities can have significant negative impacts on low income residents and local economic development opportunities. Arguing for general fund support for agency programs is difficult, but in some cases, is the appropriate answer.

Thank you again for the opportunity to comment. The League of Minnesota Cities looks forward to continuing our work with the MPCA as discussions continue on whether rules regulation water permit fees should be amended.

Sincerely,

A handwritten signature in black ink that reads "Craig A. Johnson". The signature is written in a cursive, flowing style.

Craig A. Johnson

Intergovernmental Relations Representative

August 11, 2017

Mary H Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155

RE: Comments on the Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules Chapters 7002 and 7083; Revisor's ID Number R-04476

Dear Ms. Lynn:

The Minnesota Chamber of Commerce (Chamber) is a statewide business organization representing approximately 2,300 businesses of all types and sizes across Minnesota. The proposed amendments to the rules governing water quality fees have the potential to impact all of our membership in various capacities.

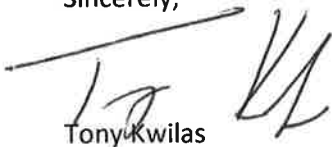
Minnesota is blessed with an abundance of natural resources, including more than 10,000 lakes, and it is crucial that we protect and preserve our natural resources for the citizens of the state, as well as for the business community. Tourism, forestry, mining and agriculture, for example, are just four of the essential industries of our economic engine that depend on clean water to prosper.

The Chamber has concerns with the possible amendments to the rules governing water quality fees. Governor Dayton has set forth an ambitious goal of achieving a 25% improvement in Minnesota's water quality by the year 2025. Prioritizing water quality is a goal that all stakeholders can agree with. Approaches and techniques on how to achieve the goal will vary, but the goal is one the state should strive for. The Minnesota Pollution Control Agency should follow the lead of the Governor and prioritize water quality programs within the state agency. As noted in the Governor's water quality proposal, a change in the overall approach is needed if we are to achieve the 25% improvement goal. The MPCA needs to perform a comprehensive and detailed review of its programs, including potential elimination of some programs, and designate funds from these lower priority programs for reallocation within the water division, prior to requesting any fee increases. The Chamber does not believe that a fee increase is warranted without a reprioritization by the PCA of existing programs.

Further, we believe that before the MPCA commences formal rulemaking, the MPCA must present the recommended analysis and conclusions to the Legislature for its review and approval.

Thank you for allowing us the ability to comment on the possible amendments to the rules governing water quality fees. We look forward to participating in the process as this proposal proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Kwilas', with a long horizontal line extending to the left above the first part of the signature.

Tony Kwilas

Director, Environmental Policy

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com

August 14, 2017



Mary H. Lynn
Agency Rules Unit
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Subject: WATER QUALITY FEE COMMENTS
OTTER TAIL POWER COMPANY

Dear Ms. Lynn,

Otter Tail Power Company (OTP) provides the following comments in response to the Minnesota Pollution Control Agency (MPCA) notice of possible amendments to rules governing water quality fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID number R-04476. OTP offers general comments since draft amendment language has not yet been proposed by the MPCA. OTP will appreciate the opportunity to offer more specific comments once the draft amendment language becomes available.

Construction Stormwater

OTP recommends significantly reducing or eliminating the NPDES construction stormwater general permit application fee. The current application fee for coverage under the general permit is \$400 per site. The fee should be reduced or eliminated for the following reasons:

- The \$400 per site fee for permit coverage is disproportionate when compared to fees charged by neighboring states. North Dakota and South Dakota require no fee for permit coverage. Iowa requires a fee based on duration of the construction project. A \$175 fee is assessed for a one-year permit. Wisconsin requires a fee based on the number of disturbed acres. A \$140 fee is assessed for projects disturbing between 1 and 5 acres.
- Requiring a fixed fee for permit coverage places a greater burden of cost on small projects. The fixed fee applies to any construction site disturbing one acre or more. Substation construction projects routinely disturb 1-2 acres. For these types of projects, a SWPPP is not submitted to the MPCA and site inspections rarely occur. A 100-acre project requiring MPCA SWPPP review is charged the same fee to obtain a permit. Smaller sites requiring less MPCA resources should be assessed a reduced fee.
- The construction stormwater program receives a disproportionately high level of funding from fees compared to other programs within the water regulatory program. According to data provided by the MPCA, the percentage of construction stormwater program funding derived from fees is 44%. The average level of funding derived from fees within the water regulatory program is 17%.

If the decision is made to maintain a permit application fee, a fee based on number of acres disturbed would be the preferred method and would more proportionately allocate costs.

Industrial Wastewater

OTP recommends maintaining the application fees and annual water quality fees for industrial wastewater permits at their current level. The industrial wastewater program receives 26% of its funding through fees which is near the water regulatory program average of 17%.


Industrial Stormwater

OTP recommends reducing the permit application fee of \$400 for industrial stormwater permit coverage, or maintaining the fee at the current amount. The level of funding for the industrial stormwater program is disproportionately obtained from fees compared to other programs within the water regulatory program. According to data provided by the MPCA, the percentage of industrial stormwater program funding derived from fees is 57%. The average level of funding derived from fees within the water regulatory program is 17%.

Finally, as a general comment, as an alternative to increasing fees or obtaining more funding from outside sources, we encourage the MPCA to consider areas within the water regulatory program where expenses could be reduced.

Please contact Paul Vukonich of my staff at (218) 739-8349 or pvukonich@otpc.com if you have any questions or would like further clarification regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Mark Thoma". The signature is written in a cursive, flowing style.

Mark Thoma
Manager, Environmental Services



Minnesota Turkey Growers Association | Chicken & Egg Association of Minnesota

108 Marty Drive, Buffalo, Minnesota 55313-9338
763.682.2171 | Fax 763.682.5546 | info@minnesotaturkey.com

August 14, 2017

The Minnesota Turkey Growers Association (MTGA) and the Chicken & Egg Association of Minnesota (CEAM) submits these comments on proposed water fee changes as provided in the June 26, 2017 edition of the State Register. The MTGA & CEAM opposes efforts to increase fees on livestock operations. Our central argument is that the livestock industry has never needed the NPDES or SDS permits, yet MPCA representatives have consistently opposed livestock industry efforts to eliminate this unnecessary permit requirement. It is disingenuous for the Agency to approach the livestock industry for fee increases when the industry has never needed water discharge permits from the Agency. In short, the Agency has consistently asked for work that it does not need to do.

Purpose of the NPDES Program

The purpose of the NPDES permit program is explained in 40 C.F.R. Part 122.1(b). That section states:

(b) Scope of the NPDES permit requirement. (1) The NPDES program requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States”. The terms “pollutant”, “point source” and “waters of the United States” are defined at section 122.2.

By definition, a person who does not discharge pollutants into waters of the United States does not need an NPDES permit.

Minnesota State Law Development

1998 – Minnesota statutes section 116.07 subdivision 7(c) was first added in 1998 with new language. The MPCA argued at the time that any farm containing 1,000 animal units or more needed to get an NPDES permit simply because it was defined as a “point source”. The MPCA did not focus on whether the farm actually discharged any pollutants, but rather they took the view that the definition of “point source” was enough to bring farms under the NPDES permit program. In addition, there was no reference in

the state law to the definition of a concentrated animal feeding operation (CAFO) as defined by the EPA. The new language, in part, read:

Subd. 7c. NPDES PERMITTING REQUIREMENTS. (a) The agency must issue National Pollution Discharge Elimination System permits for feedlots with 1,000 animal units or more based on the following schedule:

[Source: SF-3353, the environment finance bill, CH 401, section 43].

2000 – The reference to the federal definition of a CAFO was added, so that the criteria was not just whether the farm was 1,000 animal units or more. The section was amended to read:

Subd. 7c. NPDES PERMITTING REQUIREMENTS. (a) The agency must issue national Pollution Discharge Elimination System permits for feedlots with 1,000 animal units or more and that meet the definition of a “concentrated animal feeding operation” in Code of Federal Regulations, title 40, section 122.23, based on the following schedule:

[Source: HF-3692, CH 435 section 5].

Federal Rule Development

1972 – The Clean Water Act was passed. This Act expressly prohibits the discharge of a pollutant by any person from any point source to navigable waters except when authorized by a permit issued under the National Pollution Discharge Elimination System. Source: 33 U.S.C. sections 1311(a), 1342.

1974 – EPA issued general NPDES permitting guidelines.

1976- CAFO regulations were first issued.

2003 – In February, the EPA proposed a comprehensive rule covering many aspects of feedlots and, in particular, required all CAFOs to seek coverage under NPDES permits unless they determined there was no potential to discharge. This placed the burden of proving there was no discharge on the feedlot operator. Farm groups challenged portions of the proposed rule arguing they were too stringent, while environmental groups argued the rule did not go far enough. The cases were consolidated and on February 28, 2005, the Court of Appeals for the Second Circuit upheld most of the provisions of the proposed rule but vacated and remanded others. Source: Waterkeeper Alliance, Inc. v. U.S. E.P.A., 399 F.3d 486 (2nd Cir. 2005).

One portion of the proposed rule that was vacated by the court was the duty to apply for a permit. The farm organizations argued that the EPA exceeded its statutory authority by requiring all CAFOs to either apply for NPDES permits or demonstrate that they had no potential to discharge and be certified as such by the regional EPA director. The court

agreed with the farm organization petitioners on this issue and therefore vacated the duty to apply for a permit. Specifically, the court said:

The Clean Water Act authorizes the EPA to regulate, through the NPDES permitting system, only the discharge of pollutants. ... In other words, unless there is a discharge of any pollutant, there is no violation of the Act, and point sources are, accordingly, neither statutorily obligated to comply with EPA regulations for point source discharges, nor are they statutorily obligated to seek or obtain an NPDES permit. *Waterkeeper*, at 504.

2008 - Following the February 28, 2005 ruling, the EPA went back to the drawing board and published a new rule in accordance with the court's instructions. The final rule was published in the November 20, 2008 edition of the *Federal Register* (73 FR 70480) and became effective on December 22, 2008. The current duty to apply rule as it pertains to feedlots is found at 40 C.F.R. Part 122.23(d), which states, in relevant part:

(d) Who must seek coverage under an NPDES permit? (1) Permit requirement. The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

The 2008 rule only required CAFOs that discharge to seek coverage under an NPDES permit. Any CAFO that does discharge or propose to discharge not need the permit.

2011 – Livestock groups sued EPA over its CAFO rule, which was issued in 2008 after EPA's core provision in the initial 2003 regulation was struck down by the U.S. Court of Appeals for the 2nd Circuit. In that 2005 decision, the court ruled that the CWA requires permits only for producers who actually discharge. EPA had sought to require permits even for operations that had a "potential" to discharge. The 2008 regulation, which set a zero-discharge standard, included a duty to apply for a CWA permit for all CAFOs that discharge or "propose" to discharge. The rule essentially established a presumption that CAFOs "proposed" to discharge if any future discharge occurred.

In a unanimous decision issued on March 15, 2011, the U.S. Court of Appeals for the 5th Circuit in New Orleans said that EPA exceeded its statutory authority in requiring CAFOs that propose or that might discharge to apply for CWA permits. The U.S. EPA cannot require livestock operations to obtain CWA permits unless they are discharging manure into a waterway of the United States. It also argued that the "failure to apply" violation creates substantial economic pressure to apply for a CWA permit and that the regulation shifts the burden to a non-permitted CAFO that has a discharge to establish that it did not "propose" to discharge. The 5th Circuit Court ruled on the "duty to apply" provision that previous court cases "leave no doubt that there must be an actual discharge ... to trigger the CWA's requirements and EPA's authority." It also struck down the CAFO rule's "failure to apply" provision, stating that its imposition is "outside the bounds of the CWA's mandate."

Livestock groups approached the Minnesota legislature in 2011 to change state law to conform with the federal court ruling, but once again, MPCA representatives opposed those efforts. Eventually the 2011 legislature changed chapter 116.07, subdivision 7c to essentially state that the MPCA may require feedlots to obtain NPDES permits “only as required by federal law.” The MPCA still requires livestock farmers to get the state SDS permit, even though it is unnecessary and serves no purpose.

[Source: 2011 First Special Session, CH 2, art. 4, section 21].

Conclusion

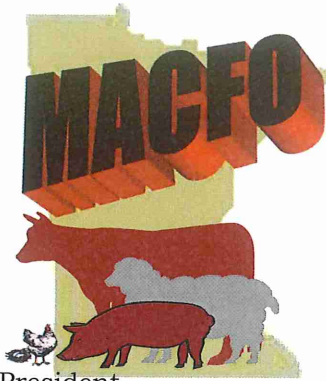
It is clear the Agency does not need to issue these permits to livestock farmers, and therefore, the MPCA should consider reducing its workload during this rulemaking, rather than extract more unnecessary fees from the livestock industry.

Very truly yours,



Steve Olson,
Executive Director

Minnesota Association of County Feedlot Officers



August 14, 2017

Mary H. Lynn
MPCA
520 Lafayette Road North
St. Paul, MN 55155-4194

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Ms. Lynn,

The Minnesota Association of County Feedlot Officers (MACFO) Board met to discuss the Minnesota Pollution Control Agency's (MPCA) request for comments on planned amendments to the water quality fee rules, *Minnesota Rules* Chapter 7002.

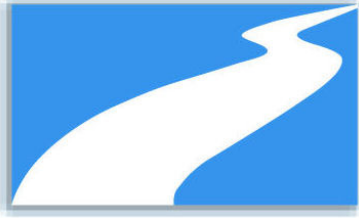
Under the authority of the MPCA, there are 50 counties that are delegated to administer certain parts of the feedlot program (County Feedlot Program). Delegated administration includes registration, permitting, and inspections. Currently, there are no fees charged by the MPCA to owners or applicants for these program responsibilities administered by delegated counties.

The MACFO Board is not in favor of the MPCA charging fees for responsibilities that are administered by delegated counties because many counties already charge fees for some or all of these program aspects in order to cover their costs of administering the feedlot program. Whether or not fees are charged by delegated counties should be left up to each county. If MPCA were to also charge fees for the delegated county program responsibilities, many County Boards would need to re-evaluate their fee structure. Alterations of a county fee structure often involve a great deal of time and expense for a fee study and, subsequently, a public hearing.

The MACFO Board believes the County Delegated Program adds value to the MPCA Feedlot Program and should not be part of the proposed additional fees, but the MACFO Board does support the MPCA generating or receiving additional revenue via the legislature or other fees not associated with the County Delegated Program.

Sincerely,

Virginia Westlie
MACFO President



Minnesota Cities Stormwater Coalition

Municipal stormwater professionals
working together for clean water

August 14, 2017

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

OAH Docket # 65-9003-34479

Re: Possible Amendments to Rules Governing Water Quality Fees,
Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-
04476.

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the Minnesota Cities Stormwater Coalition (MCSC). MCSC is comprised of about 130 of the cities in Minnesota that are regulated under the MS4 stormwater permitting program. Any changes to the MS4 permit fees will affect all our member cities.

We understand and appreciate the MPCA's needs to revisit permit fees. We ask that any increases to the MS4 permit fees be meaningfully constrained. Our reasons are as follows.

1. The MPCA has had multiple occasions to determine the appropriate fees for MS4 permits, both general permits and individual permits. For the MS4 General Permit, this was done when the permit was first promulgated in 2003. We assume the fee structure was revisited when the MPCA revisited the Air & Water Permit Fees Rule in 2009. The MS4 General Permit fees were deliberately and consciously set quite low and kept that way for many years. We believe the MPCA had multiple reasons for this decision. We urge the Agency to find those reasons and consider them during this rulemaking process. Despite the Agency's current stated "need" to use increased permit fees as a source for additional revenue, we believe that the MPCA's reasons to set and keep MS4 permit fees low are still valid and fair today.

Staff:

Randy Neprash, P.E.
Stantec
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St. Paul, MN 55113
(651) 604-4703
(651) 271-5535
randy.neprash@stantec.com

MCSC is an affiliate of the
League of Minnesota Cities



2. Cities have very limited funds to address water quality. There are multiple constraints on increasing local implementation funding. An increase in MS4 permit fees will simply result in less money spent on local implementation to comply with the permit requirements and improve & protect water quality. This is not a desirable goal for the MPCA or the permitted cities.
3. The MS4 permits differ from other types of water permits issued by the MPCA.
 - a. The concept of “polluter pays” is applicable to permits for specific sites for private companies. It is much less applicable to a permit that covers non-point pollution from sources everywhere in an urban landscape in the context of a permit held by a local governmental unit.
 - b. Local governments are permitted for their wastewater discharges. Along with septic systems, some regulatory expense for wastewater is expected and accepted by all individuals in the State. Such universal regulatory coverage and expense is not the case for urban stormwater permitting. Only some cities in Minnesota are required to have MS4 permits and that requirement is arbitrary. It is defined by inclusion in an Urbanized Area, the size of the population, and proximity to a special or impaired water.
4. Permit fees should only be used when a specific group benefits from the service more than the general public. The MS4 permitting program benefits the entire state by regulating the stormwater discharges from a limited number of cities. This can be seen in the analysis in several large-scale TMDL studies and reports in Minnesota. Therefore, the general populous of Minnesota benefits from this program and should support the cost of the program. This can best be accomplished through General Fund support for the MPCA’s MS4 permitting costs, instead of increased fees to MS4 permittees.
5. Increasing the MS4 permit fees will put many City Council members in difficult positions. The MPCA has consistently chosen to limit its funding and support for public education related to the MS4 program. Partly because of these decisions, the public is relatively unaware of the MS4 program. There is a low level of awareness and understanding of the need for the MS4 permitting program or the positive results of local implementation efforts. Because of this, there will be very little understanding or support from their constituents for the members of any City Council if they must vote on paying an increased MS4 permit fee.

For all these reasons, we urge the MPCA and the State to meaningfully limit any increases in MS4 permit fees.

Respectfully submitted,

Sharon Doucette
Chair, MCSC Steering Committee
Minnesota Cities Stormwater Coalition

Randy Neprash, PE
Staff
Minnesota Cities Stormwater Coalition

August 14, 2017

MPCA
Office of Administrative Hearings Rulemaking e-Comments

RE: Request for Comments on Amendments to Water Quality Fee Rules

To Whom It May Concern:

MCES appreciates the opportunity to provide MPCA with our questions at this stage of MPCA considering increases in water quality fees. As MPCA is aware, while some water quality fees have remained static, NPDES/SDS fees were increased within the last several years.

MCES seeks to understand the source of the budget shortfall. Is this due to growth or loss of funding? If this shortfall is due to a shift of funding, please provide an explanation of the shift. In any event, what are the additional benefits/value Minnesota will derive from this additional money added to fees?

MCES requests that PCA provide more information to evaluate potential trade-offs in the budget. MCES is aware that federal funding may be decreased in future budgets, and seeks to understand the impacts of future budget shortfalls because of that.

One final request is to understand the process MPCA intends to follow to account for future budget (federal or state) shortfalls. Will the process focus on the specific program(s) where the shortfall occurs, or be generalized?

MCES hopes these questions are useful to MPCA in deriving draft rules for public review. If MPCA would like to discuss these questions further, please let me (651-602-8101) or Mary Gail Scott, Environmental Compliance Manager (651-602-1073), know. Sincerely,



Leisa Thompson
General Manager
Environmental Services



Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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Carol Tomer

Executive Director

Kathryn Hoffman

August 14, 2017

The Honorable Ann O'Reilly
Office of Administrative Hearings
600 North Roberts Street
St. Paul, MN 55164

Re: Comments of the Minnesota Center for Environmental Advocacy on Possible Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID No. R-04476; OAH Docket No. 65-9003-34479

Dear Judge O'Reilly,

Thank you for the opportunity to submit these comments on behalf of the Minnesota Center for Environmental Advocacy ("MCEA") on possible amendments to MPCA's rule governing water quality fees. MCEA is a Minnesota non-profit environmental organization whose mission is to use law, science and research to preserve and protect Minnesota's wildlife, natural resources and the health of its people. MCEA has statewide membership. Since founded in 1974 MCEA has been concerned about water pollution, the programs MPCA administers to prevent pollution of Minnesota waters, and the funding sources to support these programs.

MCEA submits these comments explaining the need for MPCA to revise its rules governing water quality fees to: 1) cover the costs of operating the state's delegated NPDES program, including the costs of collecting sufficient ambient water quality data to meet the state's permitting obligations under the Clean Water Act; 2) cover the significant costs of implementing the state's feedlot program; and 3) prevent the substitution of Clean Water Fund dollars to fund water programs that are traditionally fee funded.

I. MPCA Must Recover the Full Costs of Operating its Water Permit Programs.

MPCA is statutorily obligated to collect water pollution permit fees that "neither significantly over recover[] nor under recover[] costs"¹ of providing services and that "reflect reasonable and routine direct and indirect costs associated with

¹ Minn. Stat. § 16A.1285, Subd. 2; *In the Matter of the Proposed Rules of the State Pollution Control Agency Relating to Air and Water Permit Fees, Minnesota Rules, Chapter 7002*, OAH 15-2200-20477-1, Report of the Administrative Law Judge, September 11, 2009, at 2.

permitting, implementation, and enforcement.”² MPCA is “mandated to charge fees to cover the costs of the water permit program,”³ and without doubt has the authority to charge fees to “cover the full costs of its operation of the [] water permit program[.]”⁴ MPCA must, as it proposes now, “update fees to reflect the actual costs of administering state and federal requirements associated with fee-based water quality programs that protect the state’s water resources.”⁵

II. MPCA Must Increase Fees to Recover the Full Costs of Operating the NPDES Permit Program, Including the Costs to Collect Ambient Water Quality Data

Fees charged to National Pollution Discharge Elimination System (“NPDES”) permitted facilities cover only a fraction of the funding needed to operate the agency’s delegated NPDES permitting program. MPCA must raise fees sufficient to operate its NPDES permitting program and recover the costs of collecting the ambient water quality data needed to impose effluent limits to prevent discharges from contributing to a violation water quality standards.

MPCA cannot administer a NPDES permit program consistent with the minimum requirements of the Clean Water Act without collecting adequate ambient water quality data.⁶ Delegated NPDES permitting authorities, such as MPCA, are prohibited from issuing NPDES permits without limits necessary to ensure compliance with applicable water quality standards.⁷ These limits, called water quality based effluent limits, (“WQBELS”) are needed to “meet the [Clean Water Act] objective of restoring and maintaining the chemical, physical, and biological integrity of the nation’s waters and the goal of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water (fishable/swimmable).”⁸ WQBELS must control all pollutants which “are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.”⁹ When assessing the need for WQBELS to control a polluted discharge, permit writers utilize ambient water quality data to “determine the critical background concentration of the pollutant of concern in the receiving water . . .”¹⁰ This information is critical to ensuring that dischargers protect the designated uses of the receiving water and meet water quality standards.¹¹

Pursuant to these Clean Water Act obligations, MPCA must, when issuing NPDES permits, prevent the discharge of all pollutants at levels that may have the reasonable potential to contribute to an exceedance of Minnesota’s water quality standards.¹² MPCA’s implementation of its river eutrophication standards illustrates that MPCA cannot meet its Clean Water Act obligations without raising fees needed to collect ambient water quality data.¹³ MPCA will not

² Minn. Stat. § 116.07, subd. 4d(a).

³ *Statement of Need and Reasonableness, Proposed Amendment to Rules Governing Air and Water Emission Permit Fees, Minnesota Rules, Chapter 7002*, MPCA Municipal Division, March 2, 2009, at 41.

⁴ Report of the Administrative Law Judge, *supra* footnote 1, at 8.

⁵ <https://www.pca.state.mn.us/water/amendments-water-quality-fee-rules> (last visited Aug. 11, 2017).

⁶ Minn. Stat. § 115.03, subd. 5; 40 C.F.R. § 123.25(a).

⁷ 33 U.S.C.A. § 1311(b)(1)(C); 40 C.F.R. § 122.4(d).

⁸ NPDES Permit Writers’ Manual, EPA, September 2010, at 6-1.

⁹ 40 C.F.R. § 122.44(d)(1)(i).

¹⁰ NPDES Permit Writers’ Manual, at 6-19.

¹¹ *Id.*

¹² 40 C.F.R. § 122.4(d).

¹³ 40 C.F.R. § 122.44(d).

set phosphorus WQBELs in NPDES permits unless it has first collected 12 ambient water quality samples over two summers showing that a river or stream is currently impaired for phosphorus and at least one response parameter.¹⁴ However, MPCA's current monitoring strategy is not designed to collect this amount of ambient water quality data. First, MPCA does not routinely collect data to determine background levels of chlorophyll-a, BOD5, DO Flux, pH, and periphyton, and without this data MPCA has decided that it will not assess the need for phosphorus limits to meet river eutrophication standards.¹⁵ Second, MPCA's monitoring strategy is not designed to collect data in many river and stream reaches immediately and directly impacted by NPDES discharges.¹⁶ Third, MPCA collects ambient water quality data in each of the state's 81 watersheds only once every 10 years; far too infrequently to assess the need for phosphorus WQBELs when it reissues NPDES permits that expire every 5 years.¹⁷

MPCA has collected phosphorus data in approximately 3200 river and stream segments in the state.¹⁸ But MPCA believes this data is insufficient to establish ambient background pollution levels in 85% of those river and stream segments.¹⁹ MPCA does not plan to collect or utilize any additional ambient data to assess the need for phosphorus limits prior to issuing NPDES permits for dischargers to these streams. Instead MPCA has decided it will wait to assess the need for more stringent phosphorus limits to protect these rivers and streams until future data shows the receiving water is impaired.²⁰ As a result, MPCA is issuing NPDES permits without knowing whether it is violating the prohibition on issuance of NPDES permits that "cannot ensure compliance with the applicable water quality requirements of all affected States."²¹ And, in some instances, this problem may be perpetuated for up to 16 years; the amount of time MPCA is

¹⁴ MPCA insists that it will not include effluent limits in NPDES permits unless it has met these self-imposed, and excessive, minimum data requirements. See *Procedures for implementing river eutrophication standards in NPDES wastewater permits in Minnesota*, November 2015, MPCA, at 10. However the Clean Water Act requires MPCA to set phosphorus limits if available data indicate the discharge may contribute to a violation of water quality standards, even if ambient water quality data is scarce, or consists of only one data point. *American Iron and Steel Institute v. U.S. E.P.A.*, 115 F.3d 979, 1000(D.C. Cir. 1997); *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program*, U.S. EPA, at 3, available at <https://www.epa.gov/npdes/central-tenets-npdes-permitting-program> (last visited Aug. 11, 2017). EPA has been clear that needed limits must be included in NPDES permit even where ambient water quality data is sparse and additional data collection at a later date does not substitute for enforceable limits at the time of permitting. *Central Tenets*, at 3. States also may not set minimum sample sizes that restrict the establishment of WQBELs. *Id.*

¹⁵ Minnesota Water Quality Monitoring Strategy 2011-2012, MPCA, September 2011, at 15; Approach to Condition Monitoring and Assessment, MPCA, August 2008, at 4; Minnesota River Nutrient Criteria Development, MPCA, January 2013, at 45,50.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Absent data showing a particular stream or river segment responds differently, MPCA's years of studies and analysis establish clear, significant, and predictable relationships showing that one or more of the river eutrophication response variables - chlorophyll-a, BOD5, DO Flux, pH, or periphyton - likely exceed acceptable levels when phosphorus standards are exceeded. *Minnesota River Nutrient Criteria Development, MPCA January 2013*; January 23, 2015 Letter from Tinka Hyde, EPA Water Division Director, to John Linc Stine, MPCA Commissioner, at 2. However MPCA insists that additional data (including 12 samples collected over 2 summer growing seasons) establishing a current exceedance of the phosphorus standard and one or more response variables be collected before it will impose phosphorus limits necessary to protect water quality. MPCA, *supra* footnote 13.

¹⁹ MPCA Power Point Presentation, *2016 Impaired Waters List Special meeting on river nutrient assessments*, St. Paul, July 26, 2016, MPCA document ID wq-iw1-55d, at slides 10-11.

²⁰ MPCA, *supra* footnote 13.

prohibited from requiring newly constructed municipal dischargers from complying with the more stringent limits it may deem necessary.²²

This mismatch of minimum data thresholds and data collection has crippled the state's ability to ensure that permits include phosphorus limits necessary to meet the state's river eutrophication standards. As the attached map illustrates, MPCA will not use its ambient water quality data to determine whether the vast majority of NPDES permitted discharges need phosphorus limits to meet Minnesota's river eutrophication standards.²³

MPCA must raise fees to recover the cost of collecting the ambient water quality data needed to determine whether WQBELS are needed to prevent a permitted facility from contributing to a violation of all state water quality standards.

III. MPCA Must Increase Fees Charged to Feedlots to Cover the Full and Accurately Estimated Costs of the Feedlot Program.

MPCA is also obligated by statute to fully cover costs of the feedlot program through fees charged to permittees.²⁴ MPCA suggests that fees charged by the agency for all water-related services currently cover just 17% of the cost of associated water quality programs. With respect to the feedlot program, the disparity is far worse. In drafting an amended rule that addresses the existing overall fee disparity, it is especially important that the MPCA accurately quantify feedlot program expenses, both current and estimated. If current feedlot program expenditures are determined to be insufficient to ensure effective oversight and enforcement in the future, feedlot program fees must be set not merely to cover past or current expenses, but rather to cover such estimated expenses as would allow for the feedlot program to guarantee the environmental protections mandated under Minnesota Environmental Protection statutes.

The current fee disparity is most glaring in the feedlot program.²⁵ In documents supporting its current public input request, MPCA includes a chart titled "2016 Water program revenues and expenditures," which presents data on funding sources, needs, and future cost estimates.²⁶ Feedlot fee revenue is there listed at \$0.25M, representing just 8% of the \$3.16M in total feedlot expenditures.²⁷ The vast majority of the remaining feedlot expenses are covered by the

²¹ 40 C.F.R. § 122.4(d).

²² Laws of Minnesota 2017, chapter 93, article. 2, section 160.

²³ See Attachment A. MPCA has met its data minimum requirements for determining whether a river or stream currently meets or exceeds river eutrophication standards for only those waters highlighted in blue.

²⁴ Minn. Stat. § 116.07, subd. 4d(a); See *In the Matter of the Proposed Rules of the State Pollution Control Agency Relation to Air and Water Permit Fees, Minnesota Rules, Chapter 7002*, OAH 15-2200-20477-1, Report of the Administrative Law Judge, September 11, 2009, at 2, 6, 8; *Statement of Need and Reasonableness, Proposed Amendment to Rules Governing Air and Water Emission Permit Fees, Minnesota Rules, Chapter 7002*, MPCA Municipal Division, March 2, 2009, at 41.

²⁵ Municipal-stormwater is the only other subprogram that collects a lesser percentage of its expenses through fees (~0%). However, fees cover 26% of overall stormwater program expenses. Currently, fees cover 22% of the cumulative wastewater program's expenses, including the costs to operate the septic tanks and municipal- and industrial-wastewater subprograms.

²⁶ MPCA, *Funding Minnesota's water protection work - wq-rule4-19b* (June 2017), available at <https://www.pca.state.mn.us/sites/default/files/WaterFeeRule.pdf>.

²⁷ *Id.*

environmental fund, with an additional ~\$0.25M covered by the Clean Water Fund.²⁸ This current graph, however, recently replaced a different original graph that included additional expenses.²⁹ That original graph portrayed nearly \$2M in additional expenses, covered entirely by the general fund, which raised total feedlot expenses to \$5.12M. If the actual feedlot program expenses are \$5.12M, the fee coverage rate drops to a mere 4.8%. Since full cost coverage is statutorily required to fund the feedlot program, current fee levels—whether covering 4.8% of 8% of costs—are clearly insufficient.

The current graph also provides estimated funding needs across all programs and subprograms, which were not provided in the original graph. For feedlots, the 2016 funding need is estimated at \$3.75M. This figure conflicts with the original graph, which included general funded expenses, that provided an actual \$5.12M in program costs. It is imperative that any rule amendment sufficiently estimates necessary future expenses, or establishes a process for amending fee levels on a routine basis to more accurately and appropriately cover actual program expenses. If fee levels are infrequently reconsidered and reset, it is all the more critical to set appropriate fee schedules that will provide adequate funding that consistently meets the needs of the various programs. It is also therefore critical that all of the data upon which fee schedules are based be accurate and clearly articulated and that estimations are transparent and appropriate. While drafting and requesting comment on any draft fee rule, MPCA should clearly present the data upon which their proposed fees are based, including clear and comprehensive breakdown of program costs and of the estimates for future needs.

Considering the quantity of Minnesota feedlots and their potential for significant environmental impact, the feedlot program is responsible for particularly critical permitting and enforcement determinations.³⁰ The research required for many feedlot permit determinations is particularly fact-intensive and driven by highly technical agronomic factors, which might result in increased administrative and enforcement costs. MPCA estimates that Minnesota livestock generate a quantity of manure equivalent to a human population of about 50 million.³¹ While Minnesota's human population waste is treated before discharge—under the oversight and authority of the wastewater programs—the vast majority of livestock manure is land applied, untreated, as crop fertilizer.³² This manure typically contains high levels of several potential pollutants or contaminants such as nitrogen, phosphorus, ammonia, nitrate, hydrogen sulfide, and methane, in addition to any pathogens, hormones, antibiotics, and chemicals used or produced at the feedlot, which pose a variety of distinct threats to water and air.³³

²⁸ Id.

²⁹ Both the original and replacement graphs appear in identically titled and dated documents. A copy of the document, with the original graph, is appended to these comments as Attachment B. Only the expenses provided for septic tanks and feedlots have been updated; also, estimated funding needs were added to the graph across all program areas.

³⁰ In 2015, Minnesota had 1,378 large concentrated animal feeding operations (“CAFOs”) with NPDES permits; only Iowa had more large CAFOs. U.S. Environmental Protection Agency, *NPDES CAFO Permitting Status Report -- National Summary, Endyear 2015* (December 2015), available at <https://www.epa.gov/npdes/npdes-cafo-regulations-implementation-status-reports>.

³¹ MPCA, *Livestock and the environment* (December 2014), available at www.pca.state.mn.us/sites/default/files/wq-f1-01.pdf.

³² Id.

³³ Nat. Ass'n of Local Bds. of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* (2010), available at www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf; see generally,

MPCA’s water monitoring suggests that about 40 percent of Minnesota’s lakes, rivers, and streams are impaired, failing to meet one or more water quality standards.³⁴ The majority of impaired waters are in the southern half of Minnesota, which has the highest number of stressors related to excess nutrients such as nitrogen and phosphorus, excess sediment, lack of habitat and connectivity, and impaired biological communities, all of which are known upshots of overapplication of livestock manure.³⁵ More than half of these southern waters fail to meet swimmable or fishable standards.³⁶ Several “fish-kills” have occurred in Southeastern Minnesota: In July 2015, 10,000 fish died after heavy rains, which saw nutrient levels exceed drinking water standards by 400 percent.³⁷ In 1998, a 100,000 gallon manure spill into a creek killed nearly 700,000 fish along 19 miles of stream.³⁸

Nitrogen and phosphorus in land applied manure, if over applied, can runoff into waters at varying rates, dependent on rain levels, soil permeability, and method of application.³⁹ This excess nutrient runoff directly contributes to algal blooms, decreased oxygen levels, and other surface water impairments.⁴⁰ Nitrogen also converts in the soil to nitrate, which is a potential drinking water contaminant that is of serious concern.⁴¹

Known environmental impacts from feedlots sources are well documented: as early as 1992, agricultural sources nationwide discharged 4.65 million tons of nitrogen and 1.16 million tons of phosphorus into surface waters each year.⁴² Since 1992, agricultural waste has dramatically increased, with operations consolidating and growing at a high rate in the interim.⁴³ In 1994, land use models indicated that agriculture was the leading source of nitrogen (76 percent) and phosphorus (56 percent) in the environment.⁴⁴ In 1998, most farms, regardless of size, failed to meet recommended nitrogen-based standards for application of manure.⁴⁵ Only 18 percent of large farms met recommended nitrogen application standards.⁴⁶ Slurry systems, common in Minnesota, preserve more of the nutrients in manure than do lagoon systems, which lose a

Marc Ribaldo et al., *USDA—Manure Management for Water Quality*, Agricultural Economic Report No. 824 (June 2003).

³⁴ MPCA, *Minnesota’s Impaired Waters List*, www.pca.state.mn.us/water/minnesotasimpaired-waters-list.

³⁵ MPCA, *Swimmable, Fishable, Fixable?* (April 28, 2015), available at www.pca.state.mn.us/news/swimmable-fishable-fixable.

³⁶ *Id.*

³⁷ Mark Zdechlik, *Trouble in the Water*, MPRNews, May 16, 2016 available at www.mprnews.org/story/2016/05/16/water-can-minnesota-stop-polluting-lakes-rivers. Another fish kill occurred after a 252,000 gallon manure spill in 2009. MPCA, *Pipestone County Dairy Receives \$10,000 Penalty for Manure Spill Resulting in Beach Closing, Fish Kill*, available at www.pca.state.mn.us/news/pipestone-county-dairy-receives-10000-penalty-manure-spill-resulting-beach-closing-fish-kill.

³⁸ Ted Williams, *Assembly Line Swine*, Audubon, Mar.-Apr. 1998, at 26, 31.

³⁹ University of Minnesota—Extension, *Manure management—WW-07401* (2013), available at www.extension.umn.edu/agriculture/tillage/soil-management/soilmanagement-series/manure-management/.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Charles M. Cooper & William M. Lipe, *Water Quality and Agriculture: Mississippi Experiences*, 47 *J. Soil & Water Conservation* 220, 200 (1992).

⁴³ Curt Zimmerman, *Minn. Dept. of Agriculture—2015 Livestock Industry Study* (February 1, 2016), at 3.

⁴⁴ James Stephen Carpenter, *Farm Chemicals, Soil Erosion, and Sustainable Agriculture*, *Stanford Env. L.J.* 190, 201 (1994).

⁴⁵ Ribaldo et al., *supra* at 17.

⁴⁶ *Id.* at 14.

significant amount of nitrogen to the atmosphere and phosphorus to the sludge at the lagoon bottom.⁴⁷

Aimed at mitigation of such environmental threats, Minnesota’s feedlot rules in part require manure management plans (“MMPs”) in order to “help ensure that application rates do not exceed crop nutrient needs, and that setback from waters and drain tile intakes are observed.”⁴⁸ Appropriate determinations of how livestock manure may be land applied are complex and highly fact dependent, as they are impacted in part by various agronomic factors such as weather, method of application, crop rotations, landscape sensitivity, and expected yield.⁴⁹

In light of this complexity, the feedlot rules do not provide a specific application rate for nitrogen or phosphorus, but instead require application rates in line with current recommendations from the University of Minnesota—Extension.⁵⁰ The current recommendations provide an absolute maximum recommendation of 180 pounds per acre, a quantity that is confirmed in MPCA guidance documents.⁵¹ Nevertheless, MPCA has recently permitted facilities with projected manure application rates more than double the maximum rate permitted by the feedlot rules.⁵² MCEA is concerned that MPCA lacks the resources necessary to conduct independent analyses necessary to appropriately determine whether proposed feedlot projects will comply with the requirements of Minnesota Environmental Protection statutes, the feedlot rules, and the Clean Water Act.

MPCA must estimate costs at such a level that will not only allow for timely decisionmaking, but also to a level that provides for adequate development of an independent permitting decision that is the result of investigation and analysis, conducted by the agency itself, as required under relevant and controlling statutes. Further, expenses and fees charged for the feedlot program must be sufficient to provide meaningful, robust enforcement.

Feedlots, largely due to the massive amounts of pollutants and contaminants contained in their collective waste, pose one of the largest water quality threats in Minnesota. MPCA has the opportunity and responsibility under law to adjust fees and set a fee schedule that appropriately places the burden of permitting and other water quality program costs on the producers, and not inappropriately with the general fund, environmental fund, or Clean Water Fund. In so doing,

⁴⁷ Id. at 18.

⁴⁸ MPCA, *Livestock and the environment*, *supra.*; Minn. R. 7020.2225.

⁴⁹ University of Minnesota—Extension, *Manure management—WW-07401*, *supra.*

⁵⁰ Minn. R. 7020.2225.

⁵¹ Jose A. Hernandez & Michael A. Schmitt, *Manure management in Minnesota—WW-03553* (revised 2012), available at <https://www.extension.umn.edu/agriculture/manuremanagement-and-air-quality/manure-application/manure-management-in-minnesota/docs/manure-management-in-minnesota.pdf>; MPCA, *Evaluation of maximum nitrogen rate for manure*, available at <https://www.pca.state.mn.us/sites/default/files/wq-f8-18.pdf>.

⁵² For example, PCA recently issued negative declarations on the need for environmental impact statements relating to two dairy CAFOs housing a combined 18,600 animal units, which will produce an estimated 168 million gallons of manure annually for land application. PCA determined that the CAFOs would only require 6,300 acres each for manure application. Based on manure Nitrogen content estimates provided by current Extension recommendations, PCA is approving that manure from these CAFOs be applied at rate of ~413 pounds of Nitrogen per acre. MPCA, *Louriston Dairy FOF* (January 2017), available at <https://www.pca.state.mn.us/sites/default/files/p-ear2-121b.pdf>; MPCA, *Campbell Dairy Findings of Fact, Conclusions of Law and Order* (August 2017), available at <https://www.pca.state.mn.us/sites/default/files/p-ear2-122b.pdf>. See also, Hernandez, *Manure management in Minnesota*, *supra.*

MPCA must not look only to past expenditures, but must instead estimate the level of program expenses that would provide meaningful feedlot permitting oversight and enforcement.

IV. MPCA May Not Utilize Clean Water Fund Dollars to Recover the Costs of Operating Fee Funded Water Programs.

MPCA has been using Clean Water Funds to cover funding shortfalls for some fee funded water programs, including its municipal wastewater septic tanks, and municipal stormwater programs.⁵³ MPCA must increase fees sufficiently to cover the costs of operating these programs to avoid the illegal substitution of Clean Water Funds to pay for traditionally fee funded programs.

“Funds from the clean water fund must supplement traditional sources of funding [] and may not be used as a substitute.”⁵⁴ Yet, rather than collecting fees sufficient to cover the costs of operating its municipal wastewater, septic tanks, and municipal stormwater program, MPCA has used Clean Water Fund dollars as a substitute source of funding.⁵⁵

Fee funding supported these programs prior to the establishment of the Clean Water Fund. Since well before the establishment of the Clean Water Fund, the legislature required fees 1) for the installation of subsurface sewage treatment system and 2) to cover the agency’s costs “to train individual sewage treatment system personnel.”⁵⁶ Fees were also the traditional source of funding for the municipal stormwater and wastewater programs for years before the Clean Water Fund was established.⁵⁷ MPCA must increase fees to avoid the substitution of Clean Water Funds for the traditionally fee funded municipal wastewater, septic tank, and municipal stormwater programs.

V. Conclusion

We appreciate an opportunity to submit comments on this critical issue. We encourage MPCA to increase the fees it charges to permitted facilities to: 1) collect sufficient ambient water quality data to comply with the state’s Clean Water Act NPDES Permit program obligations; 2) cover the costs of operating the state’s Feedlot and NPDES programs program; and 3) prevent unconstitutional substitution of Clean Water Funds for fee funded programs.

⁵³ MPCA, wq-rule4-19b, June 2017, at 2.

⁵⁴ Minn. Stat. § 114D.50, Subd. 3(b); Minnesota Constitution, article XI, section 15.

⁵⁵ MPCA, wq-rule4-19b, June 2017, at 2.

⁵⁶ Minn. Stats. §§ 115.03, subd. 1(n) (2002); Minn. Stat. § 115.551, <https://www.pca.state.mn.us/water/septic-system-tank-installation-fee> (last visited Aug. 11, 2017).

⁵⁷ See Minn. R. 7002.0210 (Water program fees apply to all persons required to get a permit to discharge a pollutant into waters of the United States, including stormwater permits). The 2009 amendments to Minn. R. 7002.0210 incorporated “the requirement in Minn. R. 7090.0030 to obtain a stormwater permit for certain activities” but prior to that time the “rule addressing water quality permit fees include[d] fees for stormwater permits.” *Statement of Need and Reasonableness, Proposed Amendment to Rules Governing Air and Water Emission Permit Fees, Minnesota Rules, Chapter 7002*, MPCA Municipal Division, March 2, 2009, at 42.

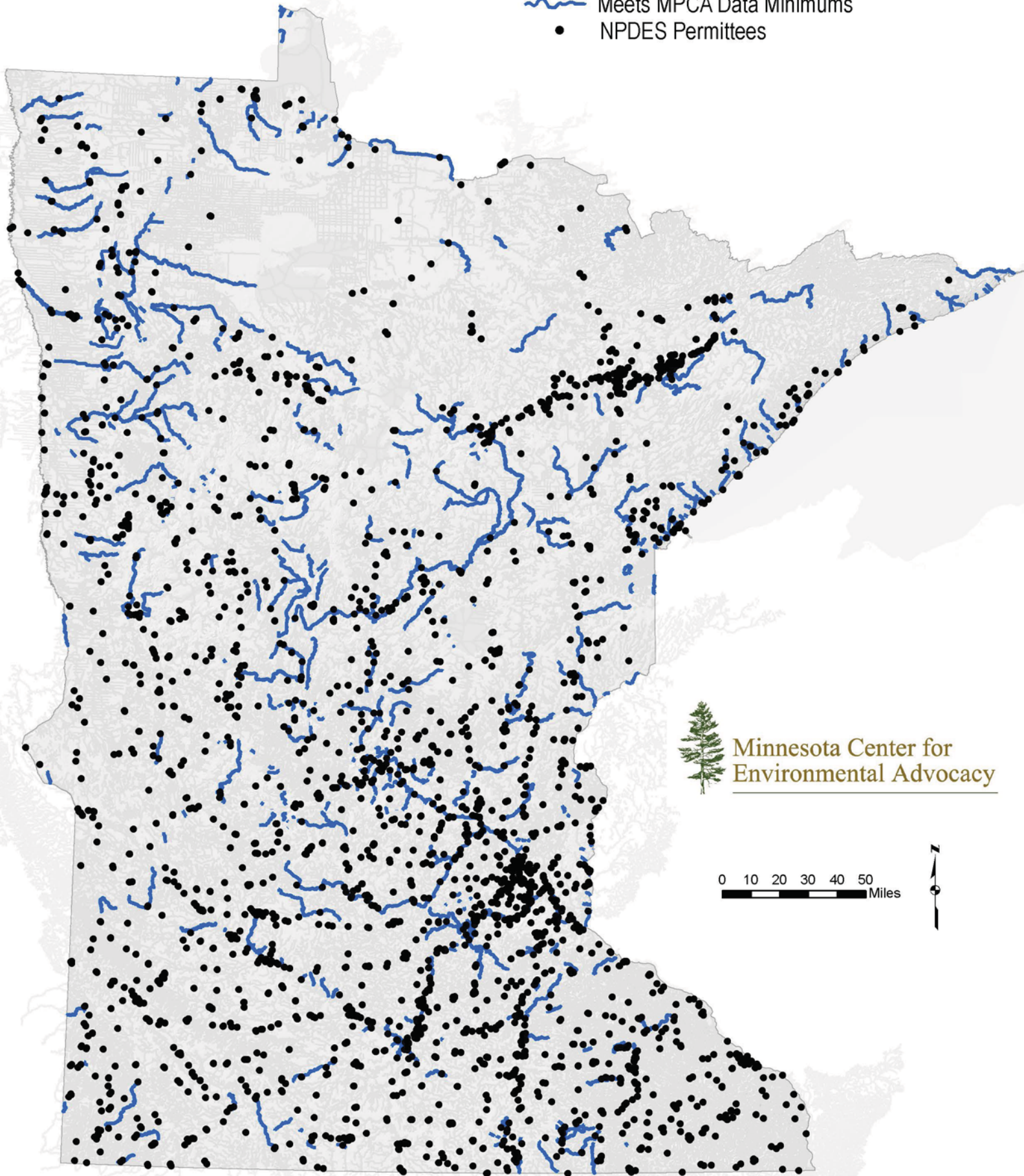
Sincerely,

Betsy Lawton
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MPCA River Eutrophication Data

-  Meets MPCA Data Minimums
-  NPDES Permittees



Minnesota Center for
Environmental Advocacy

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Funding Minnesota's water protection work

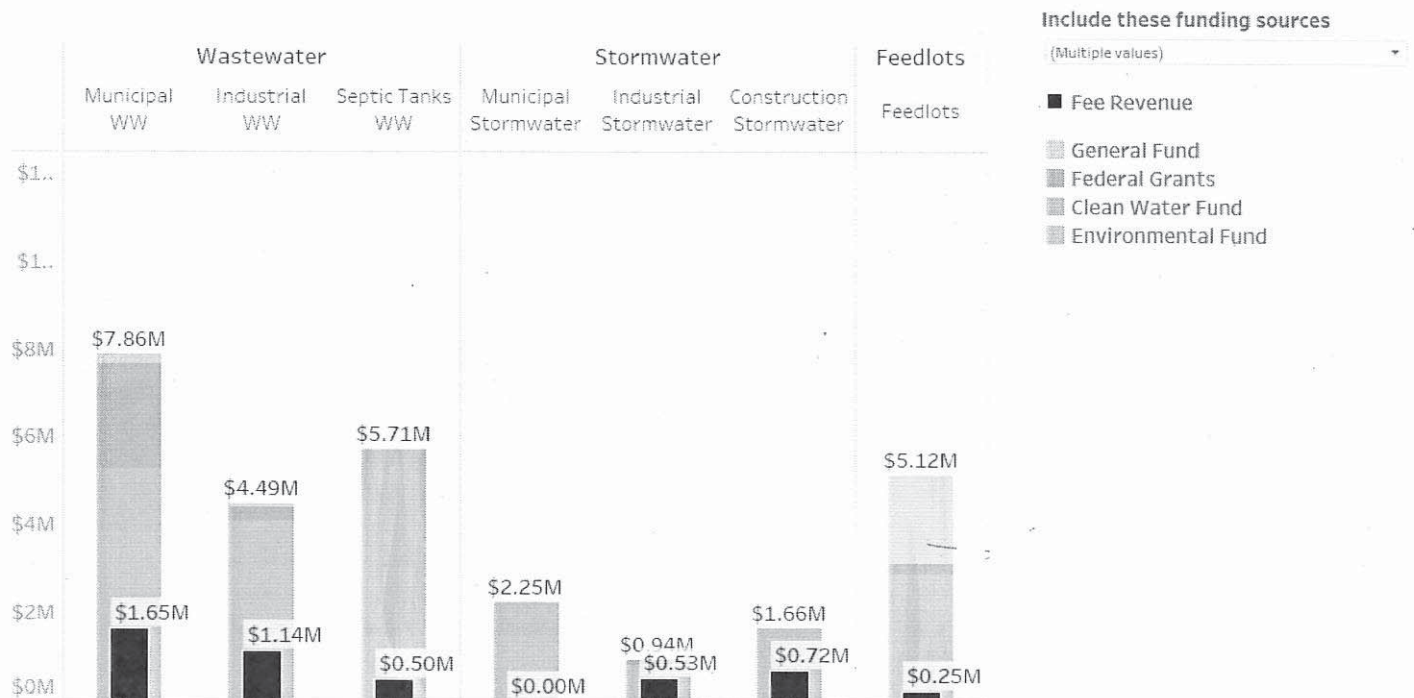
Adjusting fees for water-related services will help

The Minnesota Pollution Control Agency has a funding problem. The fees the agency charges for water-related services only cover 17% of the cost of delivering the water quality programs associated with those fees. The agency has not comprehensively increased its fees in almost 25 years. In addition, the fees charged across programs are inconsistent, and some regulated parties cover more of their program's costs than others.



The program costs pay for the staff and resources the MPCA needs to:

- Write permits
- Determine discharge limits or other relevant permit data
- Evaluate variance requests
- Inspect facilities for compliance; enforce against non-compliant entities



ATTACHMENT B

- Provide technical assistance to facilities
- Do some compliance-related monitoring
- Provide training and licensure to industry professionals; certify laboratories
- Follow up on complaints
- Maintain relationships (including joint committees, task forces, professional groups) with local governments and industry associations

The MPCA water permitting programs are instrumental in protecting water quality in the state. And under the law, the MPCA must deliver these programs to comply with state and federal requirements. If the fee schedule is not changed, the programs will continue with insufficient funding, and the likely result is certain groups will be unserved or underserved.

Where we're at

Up until now, the agency has managed to cover its costs by:

- Shifting funding from other areas, particularly to cover urgent projects
- Receiving grants from the U.S. Environmental Protection Agency and Minnesota's Public Facilities Authority
- Creating efficiencies in our processes to reduce our expenses

But the sources of funding we've relied on may not be available in the future, and expense reductions only get us so far. This patchwork approach has covered our costs, but our water permitting work is not fully funded. For example, we currently have a 57% backlog our municipal wastewater permitting program. Some programs are only able to do the bare minimum of the required permitting work.

We have a few options:

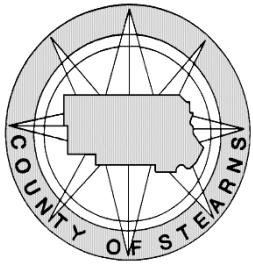
- Amend water fee rule and alter our fee structure
- Raise application fees (rulemaking is not required)
- Apply for more federal dollars

The plan

The MPCA is considering rule amendments that could alter fees, including those for:

- Municipal and industrial wastewater permits
- Noncontact cooling water permits
- Stormwater permits
- Feedlot permits
- Septic systems
- Variances
- Environmental review

The agency is looking for input on the best way to adjust fees and make them more equitable. (See second sheet with example questions.) Our goal is to substantially increase the percentage of program costs that fees cover. The Office of the Legislative Auditor has directed the MPCA to collect fees that cover the costs of our programs. We need your ideas and assistance in developing a sustainable and equitable fee structure.

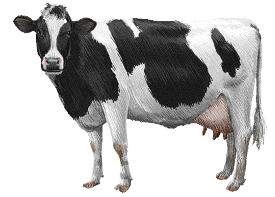


COUNTY OF STEARNS

DAIRY ADVISORY COMMITTEE

Stearns County Extension • 3333 W. Division St., Suite 10
St Cloud MN 56301

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Or mnext-stearns@umn.edu



"To promote the long term viability of the dairy industry through planning, political advocacy, education and partnerships with producers, business, governments and residents."

August 14, 2017

The Stearns County Dairy Advisory Committee, an advisory committee to the Stearns County Commissioners, opposes increases to water fees referenced by MPCA.

We represent the nearly 600 dairy farmers in Stearns County, which account for nearly 20% of Minnesota's dairy farms. Also on our Committee are many dairy business representatives, including lenders, on-farm service providers, and other interested parties – our regular internal communications involve about 80 people in total. It should be noted that opposition to increased fees was unanimous by the Committee.

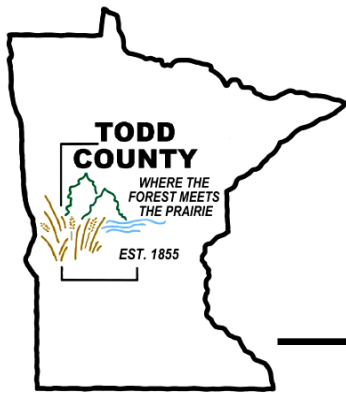
Our county received reduced services from MPCA in regards to feedlots in recent years, in fact even needing to switch regional offices twice due to the lack of staff availability. Our County Feedlot Officers work in close partnership with both MPCA and our dairy and other farmers in the county. We all care about improving the environment and stimulating economic activity in Minnesota. But we need to first ensure our fees are being used in a way that actually betters both the environment and our farming economy, and then realize the public good in having these fees before raising them to make the department self-sustainable.

Dairy farmers in Stearns County and across the State are challenged to remain profitable and competitive with farms in neighboring states. The Minnesota Department of Agriculture's Livestock Industry Study highlights that many of the permitting costs associated with livestock production are much higher in Minnesota than in surrounding states. That report doesn't even include the \$4,600 fee Minnesota farmers pay for the Environmental Assessment Worksheet (EAW), as no other state charges for it.

We ask you to consider not increasing fees related to feedlots and either finding ways to 1) eliminate unnecessary regulations and administration or 2) paying for the shortfall through other means as these benefits are for the public good.

Sincerely,

Joe Borgerding
Chair, Stearns County Dairy Advisory Committee
Dairy Farmer, Belgrade, MN



Planning & Zoning

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Long Prairie, MN 56347
Phone: 320-732-4420 Fax: 320-732-4803

Mary Lynn
Minnesota Pollution Control Agency
St. Paul, MN 55155

August 14, 2017

RE: Request for Public Comment specifically regarding a new charge/ increase on fees associated with Construction Short form Permits, Interim Permits, and Change of Ownership for Feedlots

Dear Ms. Lynn,

In reviewing the documents provided by the MPCA for a possible increase in permitting fees, the Feedlot Program here in Todd County would like to provide comment. While the fee increase may be appropriate for feedlot permitting sites under the direct oversight of the MPCA, specifically feedlots defined as CAFOs or gap sites and feedlots located within the boundaries of a non-delegated County, the charging of or increase in application fees for those feedlots under direct oversight of a delegated County is not appropriate.

Todd County is a delegated County with just under 700 registered feedlots. The Todd County Feedlot Program has been working diligently over the years to develop positive relationships with its livestock farmers as we join in the protection of water quality and prevention of issues that can arise in raising livestock on the landscape. With education and outreach, Todd County livestock producers have stepped up in maintaining registrations, asking for technical visits prior to making changes in their operation, and requesting permits at appropriate times. The first question upon inquiry for registration and permitting typically is, "How much will this cost me?" Todd County has opted not to charge its producers for registration, change of ownerships, and permitting to encourage the continued forethought, planning, and collaboration with the Feedlot Program on the part of its producers. This small gesture has made a difference in the gaining of trust and willingness of our farming constituents to follow processes outlined by the MN7020 rules.

The Todd County Feedlot Program is tasked with all aspects of the receipt, review, approval, and issuance of the permits required for non- CAFO feedlots by the MN 7020 rules. No further workload is put on the shoulders of the MPCA at the state level. Those counties who have opted to charge fees for feedlot permitting have done so to support their local programs and the work required by those tasks. Attaching additional fees on top of local fees not only will burden County staff with additional accounting process, but could create disillusionment on the part of livestock producers. The decision to charge producers for permitting should be made solely by the local delegation who has a finger on the pulse of economics, culture, attitudes, and success in programming within that region.

Last, with the relatively recent change from DELTA to TEMPO data base systems within the MPCA, there has been many examples of updated, current data failing to migrate to the new system. This has resulted in a "ton" of Change of Ownership forms being submitted to the State for corrections to ownership on feedlots. However, this is strictly a programming migration issue- not a producer issue. Charging producers for change of ownership documentation that for the most part has already been properly documented in the past is simply an unfair proposal.

We do hope the MPCA can find ways to alleviate their financial distress, but not through the creation of additional fees attached to local permitting processes.

Respectfully,

Deja C. Anton for the Todd County Feedlot Program