



# Unpermitted Earthen Basins

## DESCRIPTION

Since the start of the Minnesota Pollution Control Agency (MPCA) Feedlot Program there have been numerous earthen basins constructed without a Certificate of Compliance or permit. Significant quantities of pollutants may be seeping from these basins to the groundwater.

The purpose of MPCA review of earthen basins is to:

- Look for flaws or errors in design which will cause problems or damage to the facility, and;
- Ensure that a design report is submitted after construction is completed, certifying that the facility was constructed according to approved plans and specifications.

When a Certificate of Compliance is written, the MPCA is certifying to the citizens of the state that the described facilities ARE NOT A WATER QUALITY HAZARD. This cannot be done without a substantial amount of information showing that the basin is, at a minimum, built as required by the standard of the day.

Therefore, when an applicant asks the MPCA to write an approval for projects after construction is complete, they are asking MPCA staff to sign a document CERTIFYING that their facilities are not a problem. The burden of proof must be on the producer who owns the basin, not the MPCA.

## DECISION FACTORS

When determining the type of action MPCA staff should take when an unpermitted earthen basin is

discovered, the following factors are considered:

### How MPCA found out about the basin, that is:

- Voluntary (Producer brings it to MPCA's attention such as through a permit application) or;
- Discovered (found by inspection, complaint, etc.);

**Any existing information such as soil borings and plans.**

## COURSE OF ACTION

The course of action that the MPCA will pursue is dependent upon the situation. The following scenarios outline the course of action that will be taken dependent upon the conditions outlined above.

- Voluntary disclosure of information

(An owner or operator voluntarily discloses that an unpermitted basin has been constructed at the facility since 1971.)

No enforcement action will be taken for the construction without a permit if:

- The basin has been or will be certified as properly constructed through submittal of plans and/or testing;
- There is a plan and schedule for

removal or reconstruction of the basin.

All existing unpermitted basins are to have the construction certified by a registered professional engineer, or be reconstructed according to current standards. If the basin is to be reconstructed, plans shall be prepared by a registered engineer and submitted to the MPCA prior to reconstruction. The owner/operator must receive written approval from the MPCA before reconstruction may begin.

**The construction certification or reconstruction shall be done according to the following schedule:**

Proposed expansion or modification of the feedlot site

- The basin shall be certified or renovated to conform with MPCA earthen manure storage basin requirements at the same time as the feedlot expansion or modification occurs.

No expansion and/or expansion planned

- The basin shall be certified or renovated within three years.

**Discovered by MPCA staff during inspection or complaint investigation**

A Notice of Violation (NOV) shall be issued to all sites found by the MPCA with an unpermitted earthen manure storage basin that has been constructed since 1971. The NOV will require the livestock owner to submit a completed feedlot permit application to the MPCA.

A Notice of Violation (NOV) is the MPCA's first level of a formal enforcement action. It is issued by MPCA staff under delegation of authority from the MPCA Citizen's Board. The NOV specifically describes the alleged violations, cites the statutes, rules or permit conditions that have been violated and outlines a schedule for corrective action. The feedlot owner is usually required to respond in writing within

20 days as to how the noncompliance will be addressed. All NOV's are sent by certified mail. NOV's are generally issued when informal enforcement actions fail to attain compliance within a reasonable time frame or when more serious environmental violations or potential pollution hazards have occurred or exist.

An Interim Permit will be issued requiring reconstruction of the basin, a construction certification or plans for abandoning the basin within 10 months. Reconstruction of the basin can not begin until plans prepared by a registered professional engineer have been submitted and approved by the MPCA. The construction certification is to be prepared by a registered professional engineer.

Enforcement penalties may be assessed for construction of the basin without a permit. Whether or not a penalty is required, and the amount of the penalty, will be dependent upon the individual site.

**EXCEPTION IF PLANS AND SPECIFICATIONS ARE AVAILABLE:**

If there are soil investigations, plans, and specifications for the projects not on file with the MPCA, these can be reviewed, and if appropriate and adequate according to the design standards in place at the time of construction, approved. This has happened for a number of NRCS projects where the plans were on file at the NRCS office, but no review and approval was done by MPCA. Any enforcement action decisions are independent of this post-construction approval, however.

**For further information**

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