

# Environmental Permitting

## MPCA's Semiannual Permitting Efficiency Report



Minnesota Pollution Control Agency

August 1, 2011

## Legislative Charge

*Minn. Stat. § 115.07, subd. 2b.*

## Report to Legislature

*The commissioner shall prepare semiannual permitting efficiency reports that include statistics on meeting the goal in paragraph (a). The reports are due February 1 and August 1 each year. For permit applications that have not met the goal, the report must state the reasons for not meeting the goal, steps that will be taken to complete action on the application, and the expected timeline. In stating the reasons for not meeting the goal, the commissioner shall separately identify delays caused by the responsiveness of the proposer, lack of staff, scientific or technical disagreements, or the level of public engagement. The report must specify the number of days from initial submission of the application to the day of determination that the application is complete. The report for August 1 each year must aggregate the data for the year and assess whether program or system changes are necessary to achieve the goal. The report must be posted on the department's Web site and submitted to the governor and the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over natural resources policy and finance.*

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## Minnesota Pollution Control Agency

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## Executive Summary

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The mission of the Minnesota Pollution Control Agency is to work with Minnesotans to protect, conserve, and improve our environment and enhance our quality of life. One of our most important jobs is to issue timely air, water, and land permits to Minnesota businesses, governmental units, and individuals. The requirements of these environmental permits are mandated by federal and/or state regulations and are subject to a rigorous public participation process to ensure an opportunity for interested parties to provide input.

On January 24, 2011, the Governor signed Executive Order 11-04 which established a goal for the MPCA to issue or deny a permit within 150 days from the acceptance of a complete application. Subsequent legislation, Minnesota Session Laws 2011 Chapter 4 which was signed by the Governor on March 3, 2011, codified the 150-day goal and requires the MPCA to submit to the Governor and Legislature a permitting efficiency report on August 1 and February 1 of each year. This is the first of the required reports.

Because it has been less than 150 days since the law went into effect on March 4, 2011, no permits have exceeded the 150 permit decision time frame. This first report provides the framework for subsequent reporting. Future reports will track and report on any permit decision exceeding 150 days for applications received after March 3, 2011.

To support jobs and economic development in the state as well as to enhance overall environmental protection, the MPCA's policy is to work on applications for construction projects first. These "priority" projects typically require a new permit or the significant modification of an existing permit. As such, these are often the most technically complex and controversial projects. The "non-priority" projects are typically permit re-issuances that do not require substantive changes or involve construction.

The MPCA has been hard at work evaluating its existing permitting and data collection systems, implementing improvements to permitting processes, and updating external guidance documents. We believe the changes we've made over the last six months, as well as the many process improvements we've implemented over the last several years, will continue to provide a more efficient permitting process that will continue to protect human health and the environment.

The major findings of this report include:

- The MPCA received a total of 1,342 permit applications between March 4 and June 30, 2011, consisting of 88 air applications, 1,243 water applications, and 11 land applications.
- The MPCA determined that 63% (841) of these applications were "priority" (construction-focused) applications. Priority permits typically represent new or expanded projects.
- The MPCA issued permits for 73% (975) of the total number of applications received between March 4 and June 30, 2011.
- The MPCA issued permits for 90% (756) of the total number of priority applications received between March 4 and June 30, 2011.

## Background

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This report was the result of concerns expressed about the overall length and uncertainty associated with regulatory processes, including both environmental review and permitting. A range of businesses and elected officials have suggested that the current structure and process of permitting was negatively impacting business climate and growth in Minnesota. Permitting and environmental review process reform was identified by those raising concerns as an important step for Minnesota state government to facilitate job creation in the state.

In 2010, the Legislature directed the Office of the Legislative Auditor (OLA) to review environmental review and permitting programs of the Environmental Quality Board, the Minnesota Pollution Control Agency, the Department of Natural Resources and local units of government. The OLA report, including findings and recommendations can be found at <http://www.auditor.leg.state.mn.us/ped/2011/envir.htm>.

To address these concerns, Governor Dayton issued Executive Order 11-4 (EO11-04) on January 24, 2011. The order required DNR and MPCA to 1) establish a 150-day (from acceptance of complete applications) goal for permit decisions, 2) Determine and notify applicants if their applications were incomplete within 30 days, 3) Report on progress made and make administrative recommendations to further reduce decision times, and 4) Report on further recommendations to improve and enhance the environmental review and permitting processes.

On March 3, 2011 the Governor signed Minnesota Session Laws 2011 Chapter 4, which codified much of the content of the executive order and provided additional detail on a number of issues. This law became effective March 4, 2011. Minnesota Session Laws 2011 Chapter 4 requires MPCA to submit a permitting efficiency report on August 1 and February 1 of each year. The reports are to:

- Include statistics on meeting the 150-day permit decision goal.
- Address permits that have not met the goal, including:
  - Reasons for not meeting the goal.
  - Steps to be taken to complete action.
  - Expected timeline.
  - Days from initial submission to determination of application completeness.
- Aggregate data for the fiscal year (August 1).
- Assess whether program or system changes are needed to achieve the goal (August 1).

## MPCA's Environmental Permitting Programs

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The MPCA manages over 15,000 air, water, and land permits. These permits typically provide coverage for a period of five years and cover a wide range of facilities and activities. Permits are required for the construction and operation of facilities that discharge or emit (or have the potential to discharge or emit) specifically defined pollutants and for certain activities.

The MPCA almost exclusively implements the federal regulatory programs on behalf of the U.S. EPA as a delegated authority. Without this delegation, many of the current permittees would be required to work directly with the EPA out of the Chicago office. While many of the requirements of these environmental permits are mandated by federal regulations, state laws and the MPCA's permitting processes often allow for increased flexibility and customer assistance resulting in an increase in overall efficiency.

Regardless of whether the permit is authorized under federal or state laws, most permits must go through a rigorous public participation process to ensure that interested parties (from citizens to other governmental units) have an opportunity to provide input. This process requires a public notice of the draft permit – usually 30 days – and often includes public meetings or hearings. The MPCA must review, consider and respond to all received comments and revise draft permits where appropriate.

The MPCA uses a variety of permits to provide flexibility and timeliness as well as to meet the needs of the regulated community. The use of general and registration permits allows the agency to cover similar facilities under a standardized permit. For most general permits, there is only one state-wide public notice period and therefore, applicants that qualify do not need a public notice for their specific facility. Facilities that qualify for a general permit typically receive their permit much faster than those needing an individual (facility-specific) permit.

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Types of permits:

- **Air permits** – Individual, general, and registration permits for facilities that emit defined air pollutants such as particulate matter, sulfur and nitrogen compounds, and carbon monoxide. Permitted facilities include power plants, refineries, manufacturing plants and dry cleaners.
- **Water permits** – Individual and general permits for facilities that discharge pollutants such as treated sewage, sediment, residual chlorine, and phosphorus to surface and ground waters of the state. Permitted facilities include animal feedlots, municipal and industrial wastewater treatment facilities, stormwater conveyance systems from construction projects, industrial sites and municipalities, and extensions of sewer systems.
- **Land permits** – Individual and general permits for facility operation to prevent or minimize the release of pollutants such as landfill leachate, oil, gas, and other hazardous materials. Permitted facilities include municipal and industrial waste transfer stations and landfills, facilities that have below- and aboveground storage tanks, and hazardous waste storage and treatment facilities.

## Improvement Efforts

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Since 2003, the MPCA has been progressively focused on systematically reviewing, improving and designing more efficient and effective processes. The MPCA has integrated process improvement tools such as Six Sigma and Lean into our culture, resulting in agency-wide improvements. The MPCA's permitting programs, in particular, have gone through significant evaluation and improvement. Those efforts continue as part of our day-to-day operations.

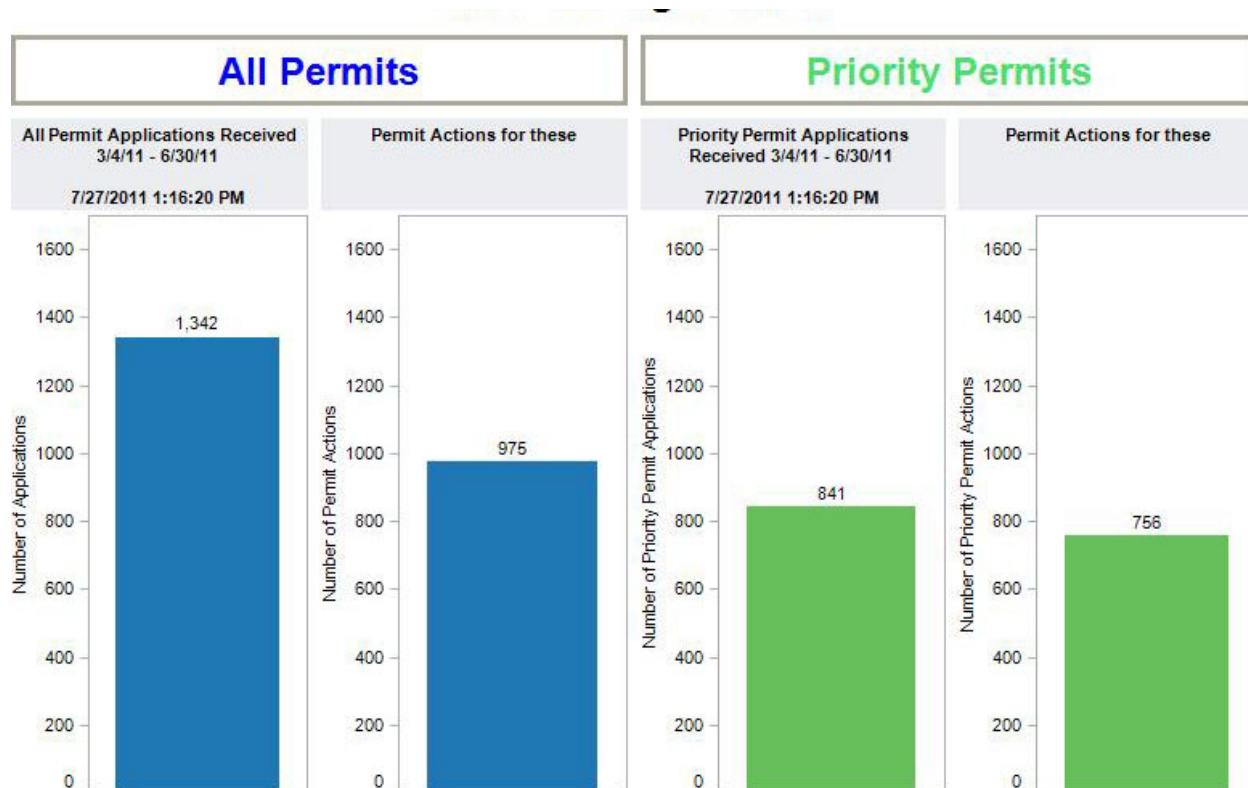
Since the issuance of the Governor's Executive Order and signing of the Minnesota Session Laws 2011 Chapter 4 earlier this year, the MPCA has initiated a number of additional improvement efforts, including:

- Evaluating the new statutory language in finer detail and appropriately adjusting existing systems and creating new processes and tools to comply with the new legal requirements.
- Creating a new Permit Managers Team comprised of leaders from all of the MPCA's permitting programs. This team is responsible for implementing process changes, quickly resolving issues, and ensuring consistency across all the programs.
- Working more closely with other agencies (DNR, DEED and Agriculture) to increase communication between the agencies and explore opportunities to improve responsiveness for proposed projects.

- Creating a cross-media permitting staff team to evaluate the current permit application review process and explore opportunities to improve communication, consistency, and efficiency.
- Based on this effort, implementing the recommended changes, including updating application forms, checklists, and our website to provide better application tools and guidance to permit applicants.
- Training MPCA staff on these changes and designing training opportunities for our external partners.
- Using the good cause exemption granted in Minnesota Session Laws 2011 Chapter 4 to amend specific regulations pertaining to the legislation on construction prior to receiving a NPDES permit. These proposed changes went on public notice in July 2011. Additional rule changes will follow.
- Designing various reports to communicate our improvements and overall efficiency to interested parties. These will be available in a wide range of formats and through a number of media sources.
- Meeting with key external partners (Minnesota Chamber of Commerce and various business groups) to share concepts and request feedback.

## Summary Data and Graphs for 150-Day Goal Attainment

**Figure 1: Permit applications received and permit actions completed at the MPCA from March 4 to June 30 2011**



**Figure 2: Permit applications received and permit actions completed at the MPCA from March 4 to June 30 2011, broken out by media**

