

**Report to Legislature on
The Minnesota Pollution
Control Agency's
Ability to Meet 60-day Issuance
Deadline for Feedlot Permits.**



November 15, 2000

Executive Summary:

Session Laws 2000, Chapter 435, section 9, requires the Minnesota Pollution Control Agency (MPCA) to report to the Commissioner of Finance and the environment and agriculture policy and finance committees of the Senate and House of Representatives by October 15, 2000, about additional resources needed to accomplish timely response with regard to animal feedlot permit applications. The MPCA requested and received an extension to November 15, 2000.

The MPCA has examined its ability to meet Minnesota Statutes section 15.99 and the impact of section 15.99 on the feedlot regulatory program. The MPCA assumed in its analysis that the intent of the 2000 Legislation was that permits be issued within 60 days except when environmental review or public hearings are required or when more time is required by state or federal requirements. The analysis resulted in the following conclusions and recommendations:

- The feedlot permit process should be moved to Minnesota Statutes section 15.992 from section 15.99 to allow for environmental review and public comment.
- A method for extending the 60-day permit application determination deadline is needed in the statute to allow an applicant adequate time to respond when the agency or delegated county requests information that is vital to the permit development process. Section 15.992 allows the MPCA additional time provided reasons and a timeframe are provided the applicant in writing. The applicant should be provided the same opportunity to prevent unnecessary permit denials.
- Permit applications that are not denied or approved in 60 days will result in an automatic Legislative approval because the MPCA was unable to complete its statutory obligations regarding environmental protection under the constraints of section 15.99. For facilities needing a federal permit, facilities may be operating outside of the Clean Water Act, as they would have a national pollutant discharge elimination system (NPDES) permit that may not contain the provisions to ensure that the Clean Water Act is met.
- Federal NPDES permits issued under the automatic Legislative approval process may place Minnesota's NPDES program delegation in jeopardy. The rescinding of Minnesota's NPDES program delegation would impact more than just the feedlot program; removing state permit issuance and review would also negatively impact industries and municipalities. Federal NPDES permits should be made exempt from the Legislative approval process, by moving the feedlot program from section 15.99 to section 15.992.
- The MPCA needs 12 full time equivalents (FTE) to meet permit issuance requirements and have a functioning feedlot program that supports the permitting process, minimizes environmental impacts and provides service to feedlot owners.
- The county delegation program must be supported through increased resources, and a restructuring of the Natural Resources Block Grant is needed to provide base-level funding for each county and to ensure existing delegated counties are not penalized when additional counties accept delegation.

- If funding for state and county feedlot programs is not provided, the law should be amended to clearly exempt all feedlot permits from the 60-day processing requirement to ensure permitting continues in an environmentally responsible manner.
- A three-year review of the feedlot regulatory program should be conducted that would show MPCA's progress in meeting a 60-day timeframe under the implementation of the newly revised rules.

Like the legislature, the MPCA is committed to having a feedlot regulatory program that addresses environmental issues and has an understanding of the feedlot owners' concerns and problems. In Session Laws 2000, Chapter 435, the legislature focused on improving the feedlot permitting process to address potential impacts on feedlot operations. This law requires the MPCA to deny or approve most requests within 60 days from the application receipt date beginning October 1, 2001.

After examining the deadline requirements, the MPCA concludes that it cannot meet the deadlines under Minnesota Statutes section 15.99, for the majority of feedlot permit applications. Changing the requirement to section 15.992, an addition of 12 FTEs, and additional county resources are all necessary to fulfill the MPCA's public policy goal of timely and balanced review of feedlot permits. Without these changes, the MPCA concludes that the majority of application requests will be granted automatic Legislative approvals as allowed under section 15.99. These approvals will be considered Legislative approval under section 15.99 because the MPCA will not have completed the steps required for its environmental regulatory responsibilities for these applications as required under its other statutory mandates. Further, some of these approvals may illegally circumvent the federal NPDES permitting program.

Federal NPDES Permit Implications

The MPCA has the responsibility to administer the federal NPDES permit program as part of the delegation agreement between Minnesota and the U.S. Environmental Protection Agency (EPA). The majority of large feedlots (having 1,000 or more animal units) are required to have NPDES permits. The federal NPDES regulations do not contain a provision for automatic approvals. Comments received from EPA, Region V, raise concerns about the MPCA's ability to fulfill the delegation responsibilities with a permitting process that includes an automatic approval component. The NPDES permit delegation issue includes other MPCA program areas, such as municipal wastewater treatment facilities and industrial discharges. To prevent jeopardizing Minnesota's NPDES program for all of these areas, the Federal NPDES permits should be made exempt from the Legislative approval process by moving the MPCA's feedlot program from section 15.99 to section 15.992.

Modifications Needed to Allow for Other Mandatory Processes

Section 15.99 does not account for the important, and sometimes mandatory permit development steps, such as public notices, environmental review, and the need to answer questions that arise during site inspections and plan and specification reviews. The MPCA and delegated counties need a process that is achievable. From discussions held during Session 2000, MPCA staff concludes that it was not the intent of the legislature to create a permit process that does not allow adequate time for environmental review or public input. To solve this problem, the MPCA recommends moving the feedlot permit processes from

section 15.99 to section 15.992. Section 15.992 specifically exempts those cases that require environmental review or public notice from the 60-day timeframe.

In addition, the MPCA recommends a minor modification under section 15.992, subdivision 2, to create a method for extending the 60-day deadline when the MPCA or a delegated county requests information from the applicant that is vital to the permit development process. This modification is needed to accommodate applicants that need a significant amount of time to prepare a response because they are proposing a complex facility or are located in a sensitive area needing careful engineering design to protect the environment.

MPCA Staff Resources Needed to Comply with the 60 Day Issuance Deadline

The MPCA reviewed a sample of permit applications from January 1999 to September 22, 2000, to determine the length of time required for issuing a feedlot permit. In the sample, 28 percent of the applications resulted in the issuance of a permit within 60 days. An additional 21 percent of the applications were issued permits within 120 days. Finally, nearly 50 percent of the permits took longer than 120 days to issue.

An efficient permit issuance process and timely response must be balanced with the other feedlot program aspects. Thus, the level of staffing is a concern to address the permit delays, meet registration expectations, and fulfill the obligation to provide field presence as a means to shift from permitting all facilities to a self-regulating system based on information. In addition to placing feedlots under section 15.992, the MPCA recommends the addition of 12 FTEs to achieve a balanced, functioning feedlot regulatory program. Permitting is only one element of the feedlot program. Technical review, compliance evaluation and fieldwork, data management, training, program and technical development, county coordination and environmental review are all intertwined with permitting. In order to increase the efficiency of permitting, the MPCA must have adequate staff for all of these program components. The Legislative Auditor raises the need for additional resources for the MPCA and delegated counties under "Implementation Options" in Chapter 3 of the January 1999 Animal Feedlot Regulation A Program Evaluation Report, pages 75 to 87.

If the MPCA does not have a balanced program, the components must be re-prioritized and resources shifted. If the highest priority is placed on issuing permits, staff will be moved from other program component areas to process the permit paperwork, which is likely to be at the expense of fieldwork and assistance to feedlot owners and county staff. This will ultimately impact service to feedlot owners at the local level and significantly decrease the effectiveness of the feedlot program as designed during the 1999-2000 rulemaking process. If the feedlot program is not functional, the MPCA cannot complete the activities needed to support the permitting process, such as inspections, review public comments and outreach.

The twelve additional MPCA staff are needed to:

1. Strengthen field presence (the ability of MPCA or county regulators to inspect sites and work on location) with producers to build a common understanding of what is required to address the pollution hazards;
2. More effectively gather and analyze field data to develop a clearer understanding of what environmental impacts are occurring as the result of feedlot operations, to develop cost-effective methods for addressing these impacts, to determine the level of

- effort needed to meet environmental outcomes in concert with economic issues, and to create standardized rather than site-specific permitting for these issues;
3. Provide a staffing level to environmental review, engineering review, inspections and permit drafting that allows information from the field and data analysis to be incorporated into permits in a logical manner and to complete work in these areas in a timely manner; and
 4. Improve coordination with delegated counties and partnerships with non-delegated counties.

Delegated County Resources Needed to Meet 60 Day Issuance Deadline

The delegated counties are a key component for achieving a balanced program and are a crucial part of the feedlot program. However, funding is placing county delegation in jeopardy. Funding for each delegated county is potentially being decreased in two ways: 1) by the reduction of feedlots within a county jurisdiction, or 2) by increasing the number of delegated counties. Currently, the amount a delegated county receives to help with feedlot program administration costs is based on the number of feedlots located within its boundaries. Many counties have seen a decline in the number of feedlots in their area and therefore receive a corresponding decrease in grant funds. Other counties have found that the number of feedlots originally used to calculate grant funds was significantly under estimated and more funds are needed. In addition, the MPCA is encouraging more counties to become delegated. However, since the Natural Resource Block Grant has a limited pool of funds for delegated counties, additional counties may require existing delegated counties to receive less money so that it can be spread to the newly delegated counties. Additional funding is needed for the Natural Resources Block Grant to provide an adequate base level of funding to existing and new delegated counties. A reduction in funding to existing delegated counties will result in delegations being returned to the MPCA and increasing the level of work effort needed by the MPCA.

Other Options

The MPCA recommends that the feedlot program be placed under section 15.992. However, if no additional resources are provided to the MPCA and delegated counties, the MPCA then recommends that the requirement for the MPCA to meet the 60-day limit be removed. No matter which recommendation is accepted, the MPCA favors adding a review clause for evaluating the MPCA's progress in achieving more timely response. The MPCA believes that it would be appropriate to review its progress in meeting the requirement of section 15.992 in three years. This timeframe would permit the MPCA to implement the revised feedlot rules that became effective on October 23, 2000, and develop an efficient system with a fully operating program. Implementation requires staff effort to develop new educational materials, more training needs, new forms, and a consistent understanding of rule intent

The MPCA looks forward to working with the legislature to improve the efficiency and effectiveness of the feedlot regulatory program for the benefit of feedlot owners and the state's environment.

I. Introduction

In April 2000, the legislature established deadlines that must be met by the MPCA and delegated counties when acting on a feedlot permit application. Beginning October 1, 2001, the requirements under section 15.99 must be followed. This requirement may be found under Session Laws 2000, Chapter 435, section 4, paragraph (b).

Sec. 4. Minnesota Statutes 1999 Supplement, section

116.07, subdivision 7, is amended to read:

Subd. 7. [COUNTIES; PROCESSING OF APPLICATIONS FOR ANIMAL LOT PERMITS.] Any Minnesota county board may, by resolution, with approval of the pollution control agency, assume responsibility for processing applications for permits required by the pollution control agency under this section for livestock feedlots, poultry lots or other animal lots. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to any appropriate county officer or employee.

(b) For the purposes of this subdivision, the term "processing" may include, at the option of the county board, issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the pollution control agency. The pollution control agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14. For permit applications filed after October 1, 2001, section 15.99 applies to feedlot permits issued by the agency or a county pursuant to this subdivision.

The process under Minnesota Statutes section 15.99 requires a decision on a permit application within 60 days. Failure to act results in the automatic Legislative approval of the permit request. Sections 15.991 and 15.992 also establish a 60-day time limit and automatic granting of the permit request when no action is taken. However, section 15.992, subdivision 3 specifically excludes from the 60-day time limit those cases that require public notices and environmental review. Section 15.99 allows for extensions of time, but does not have an exclusion for the cases that require public notice or environmental assessment worksheet (EAW) and environmental impact statement (EIS) processes as stated definitively in section 15.992. Minnesota Statutes section 15.99 is included in this report as Attachment 1. Sections 15.991 and 15.992 are included as Attachment 2.

The MPCA has completed this report to address the agency's ability to meet the new timely response deadlines under section 15.99, as directed under Session Laws 2000, Chapter 435, section 9.

Sec. 9. [TIMELY RESPONSE TO PERMIT APPLICATIONS; REPORT ON NEEDS.]

If the agency determines that it is unable to accomplish timely response to animal feedlot permit applications under Minnesota Statutes, section 15.99, using existing resources, the commissioner shall, not later than October 15, 2000, report to the commissioner of finance and the environment and agriculture policy and finance committees of the senate and house of representatives on the additional resources needed to accomplish timely response.

This report analyzes the MPCA's ability to meet the timely response deadlines by discussing the feedlot permitting process and how it will change after the implementation of rule changes, identifying problems with the timely response process, discussing current program staffing and making recommendations for additional resources and process changes.

II. Concern and Responses

Based on prior concerns with the feedlot permit process, the MPCA has responded by enacting new feedlot rules to address the number of facilities required to obtain a permit, the types of permits required, and to allow for streamlined permit issuance for large feedlots using a general NPDES permit. The types of concerns raised prior to the 1999-2000 rulemaking process and the MPCA's response to the concerns are discussed below.

The Legislative Auditor evaluated the MPCA Animal Feedlot Regulation Program in 1998. In the report published in January 1999, the Legislative Auditor's raised concerns about the

- frequency of site visits and construction inspections,
- thoroughness of permit review,
- level of follow-up on permit requirements,
- backlog of permit applications,
- time required to complete environmental review,
- level of documentation for complaints,
- delays in enforcement actions,
- strategy for correcting water pollution hazards at small feedlots, and
- level of oversight for the county feedlot programs.

The rule amendments, which became effective on October 23, 2000, addressed many of these issues. However, the FTE level remains an outstanding concern. The Legislative Auditor's report concluded that *MPCA and counties would probably need additional resources to address certain problems in feedlot regulation*. The conclusions drawn in the report emphasize the need to achieve a balanced program before program goals could be achieved and are found on pages 75 to 84 of the January 1999 report.

Specific to the permit issuance process, the Minnesota Legislative Auditor found that MPCA had difficulty reviewing permit applications in a timely manner and that backlogs of one to two months between receipt of a completed application and the beginning of an engineering review were typical. Lengthy permit issuance, per the Legislative Auditor, was causing hardship for livestock producers. Delays in construction mean complications in construction plans and a potential decrease in income. In response to these concerns, the Minnesota

Legislature specifically included feedlot permits in Minnesota Statutes section 15.99 as an attempt to end delays by applicants for permits.

Recognizing these hardships, the MPCA feedlot program managers implemented some steps to respond and reduce the permit issuance time. Steps taken in 1999 to reduce permit issuance time included:

- Temporary re-assignment of staff from other MPCA programs to issue feedlot permits and reduce the number of permits in the backlog, and
- Relocating a large portion of the permitting process to non-metro offices to be closer to permit applicants and their facilities. The goal was to increase the ability to schedule site visits and work directly with the livestock producers in resolving questions related to the permit application.

The revised MPCA feedlot rules contain a restructuring of the permit requirements in addition to technical standards. The new permitting structure requires fewer permitting steps and requires fewer facilities to obtain permits. The rule amendments became effective on October 23, 2000, and are anticipated to have a significant impact on the permit issuance process, but do not offer a total solution to timely response for reasons discussed further below. Currently, the MPCA and delegated counties are working on the implementation needs for the revised feedlot rules. Efficiencies from the revised rules will not be realized until mid-2001 when implementation activities are well underway.

While the MPCA and delegated counties are aware of the timeliness problems and have been working to reduce the permit issuance time, time is required to accurately assess environmental impacts and to develop environmentally protective measures as it fits a specific operation and site conditions prior to issuing a permit. Since livestock and manure storage operations differ in design, technology, location and management, a one-size-fits-all permitting process is not appropriate. The permit process must remain flexible to allow the permit applicant to respond to concerns raised in the permitting process about a proposed site, design or operation. A system is needed that balances the permit applicant's need for timely issuance and the needs of the Minnesota public to have an evaluation that adequately assesses and addresses the potential for impacts on the environment or human health.

For many permit applications, this balance can be achieved in 60-days. However, this balance cannot be achieved for some permit applications involving new technology or unique solutions, for sites located in environmentally sensitive locations, with large numbers of animals that need specialized operations, or for applications missing significant amounts of information.

III. Impact of the Rule Amendments

The MPCA expects the revised feedlot rules to improve permit application submittals. The revised feedlot rules include the specific design, location and operating standards needed for feedlots and should result in fewer applications being returned and adequacy reviews completed sooner. Additionally, the rules provide for more inspections by MPCA staff and delegated counties and reduce the number of permits being issued. These changes allow the

MPCA to focus efforts on the more complex feedlot proposals and resolving problems with feedlots impacting the environment.

The Minnesota Rules Chapter 7020 regulates animal feedlots and manure storage areas. The MPCA underwent an extensive rulemaking process during 1999 and 2000 to revise these 20-year old rules. The 2000 amendments to the feedlot and manure storage regulatory rules will have a significant impact on the permit issuance process, but are not a total solution to responding to the needs of livestock producers. The challenge is to find solutions for common issues that will cover a large number of feedlots that fall under this regulatory program. The solutions would need to fit the variation in projects, site conditions and public concerns that are currently addressed through the permitting process rather than upfront designs or siting of facilities.

How many feedlots are there in the state?

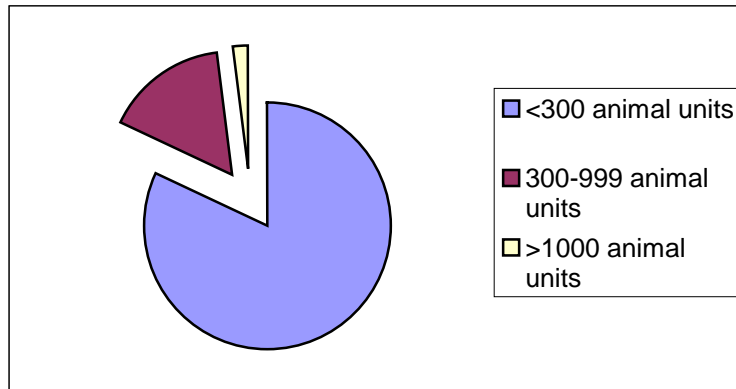
The challenge of achieving timely permit issuance and an efficient regulatory program is magnified by the number of feedlots in Minnesota. The MPCA estimates that nearly 40,000 feedlots and manure storage areas exist in Minnesota. This sector is larger than other sectors regulated by the MPCA.

For years, the MPCA has tried to accurately determine the number of feedlots and the amount of livestock and poultry manure produced annually in the state for purposes of assessing associated state environmental impacts. With the help of many county feedlot officers, the MPCA established an estimated 40,000 feedlots and manure storage areas in the state. This number was used in the MPCA's impact evaluation for the recent feedlot rulemaking process.

The Minnesota Department of Agriculture (MDA) is currently creating an estimate of the cost and cumulative financial need associated with fixing existing problems at feedlots that have an environmental impact. The MDA is estimating the number of Minnesota facilities from the most recent Agricultural Census. The estimates used by the two state agencies differ slightly. The discrepancy between agencies emphasizes the need for the new registration requirement, which is part of the MPCA rule amendments that became effective on October 23, 2000. The initial registration of feedlots is to be completed by January 1, 2002.

A more accurate number will result from the registration effort, which utilizes the information from county inventories where available and otherwise is a new data collection. County information is generated from local permit and inventory efforts. In some instances, the county shows nearly three times the number of feedlots as estimated through the Agricultural Census process. For purposes of this report, the MPCA continues to use the 40,000 number to be consistent with information used during the 1999/2000-rulemaking process and to continue representing the information received from counties. The breakdown of feedlots by size category is shown in the chart below:

Breakdown of feedlots by size category



How does the permitting process work?

Under the MPCA permitting requirements, livestock producers submit applications to the MPCA or delegated counties for a variety of reasons. The most common reason is for the construction/expansion of new or existing operations or correction of pollution problems. Many times the livestock producer is covering both activities with one application, which adds to the complexity of the permit review. Other reasons for submitting permit applications include change of ownership, change in land application sites or manure management systems, or seeking coverage at a facility that has never been permitted, etc.

The amount of time that it takes the MPCA to process applications is as variable as the farms to be permitted. The MPCA has a statutory requirement under Minnesota Statutes chapters 115 and 116 to prevent the discharge of pollutants to the waters of the state. A combination of water effluent standards, technical standards and permit application review is the method used by the MPCA to meet its statutory duty under state law.

The first step in processing the application is a completeness review. The completeness review determines if all the necessary information on the application is completed and all necessary attachments are included with the application. Typically, this review is a relatively short period. If the application is incomplete, a letter is sent to the operator within a few days notifying them of the missing information. This process is changing so that incomplete applications are returned with the letter to the applicant. Previously, only the letter was sent. The feedlot owner often believed that the permit review process was continuing while MPCA staff actually stopped all review until the revised application was received. The MPCA stopped the review of the incomplete permit so valuable staff time could be spent dealing with facilities ready for permitting. Under the new process, the feedlot owner will clearly understand that the proper information must be submitted before any review takes place.

At this same point, the need for environmental review is determined. Due to size or location of the facility, an EAW may be required under Minnesota Rules chapter 4410. If an EAW is required, the applicant is informed of this need and assisted in obtaining the proper forms for preparing an EAW.

The third step of the review determines the application's adequacy, whether the plans and specifications actually meet the requirements of the rule. The time it takes to complete this type of review is variable. If an engineering review is necessary the time to complete this task is longer. If there appears to be a potential for a pollution problem or correcting a known pollution problem is the reason for the permit, it will take longer because the solution often involves MPCA staff or the delegated county working with the feedlot owner. Resolving inadequacies in manure management plans, engineering plans for livestock facilities, controlling surface water flows, developing individual solutions for a particular facility, etc. requires a number of phone calls and/or letters. The time necessary to get through this process varies on the situation and the responsiveness of the applicant or the applicant's consultant. If the applicant is using the services of local government agencies, delays may occur due to the number of producers being assisted by the particular agency.

See Appendix B on pages 37-40. Figures 2, 3 and 4 graphically represent the permit process for interim, construction short form and NPDES permits.

How do the rule revisions effect the permitting process?

The rule amendments streamline permitting for all facility owners, eliminate permitting for the majority of facility owners, and places more emphasis on field presence by MPCA and county staff. (The term "field presence" is used to describe the ability of MPCA or county regulators to inspect sites and work on location with producers to build a common understanding of what is required to address the pollution hazards). Working with the facility owner at the site to develop solutions will reduce the likelihood of inadequate permit applications being submitted. If the preliminary inspection and dialogues do not happen prior to permit application, the permit review process often is delayed to reach a common understanding of the issues. Staff resources, county support and acknowledgment that some projects and situations cannot fit in the section 15.99 deadlines are the remaining elements needed to build a permitting system that provides the proper customer assistance and timely service along with sound technical review.

The rule revisions include four measures to significantly streamline the permitting process. These are:

- inclusion of clear technical standards in the rule;
- elimination of Certificates of Compliance;
- registration in lieu of permitting for facilities less than 300 animal units; and
- development of a simpler permit for facilities from 300 to 999 animal units.

In addition to these four measures now in rule, the MPCA is developing a general NPDES permit that will significantly streamline the process of permitting facilities with 1,000 animal units or more.

The first measure is the inclusion in the rule itself clear technical standards for construction, operation, location restrictions, manure handling and storage specifications; and other requirements in the rule. Previously, these standards were written in each individual permit and certificate of compliance, based on review of each facility. Including these technical standards in rule allows regulated parties to incorporate these standards in their project

proposals. This should significantly reduce the number of letters and telephone calls needed to finalize an application.

The second measure is the elimination of Certificates of Compliance. These certificates took the same amount of effort as writing an Interim permit. The MPCA staff reviewed issuance records for a sample of permit applications received from January 1, 1999, to September 22, 2000, to evaluate issuance times. The results of this review are found in Table 1 and discussed in more detail in section IV. of this report. The review sample included 574 permit applications that resulted in Certificates of Compliance in addition to the 264 applications that resulted in permits. A significant amount of staff time has been spent on issuing Certificates of Compliance. The staff time spent on Certificates of Compliance can now be used to issue the complex permits and to increase field presence under the rules.

The third streamlining measure is use of registration as a surrogate for permitting feedlots less than 300 animal units. All feedlot owners with facilities greater than 50 animal units (or 10 animal units in shoreland) are required to be registered and to follow the technical standards of the rule. Under the revised rules, feedlots with less than 300 animal units that are constructing in accordance with the rule requirements are typically not required to have a permit. This category of feedlots and manure storage areas is the largest group of facilities and contains an estimated 32,800 or 71 percent of the total facilities in the state. A portion of these facilities will need an interim permit to address pollution hazard concerns or construction or operation outside the technical standards. The benefit of this approach is an increase in MPCA and delegated county staff field presence to help owners identify pollution hazards, develop site specific solutions and become educated on the new rule amendments.

The final measure to reduce permit issuance time is development of a new “Construction Short Form” permit for construction at facilities between 300 and 999 animal units. This permit is more streamlined because the permit conditions are established in the rules. Thus, this permit will be a simple, standardized document, like a building permit. Combined with this standardized permit is the placement of more responsibility on the project consultant or engineer. Staff will concentrate their time on application review instead of on drafting permits. Facilities in this size range that are correcting pollution hazards will require interim permits that are very similar to the Interim permits used under the previous rules. .

The category of feedlots and manure storage areas between 300 and 999 animal units is the second largest group and contains an estimated 6,400 or 16 percent of the total facilities in the state. Most facilities in this category would be covered under a Construction Short Form permit. However, an Interim permit would be required if a pollution hazard exists, and a State Disposal System (SDS) permit would be required if a facility had a new technology or operational practice that is different than the technical standards in the rule. An SDS permit will also be used if necessary to allow the facility owner more time to correct a pollution hazard. Currently, the interim permits allow for 24 months.

In addition to these four measures, the MPCA is working on a streamlined permitting tool for facilities with 1,000 animal units or more. Feedlots with the capacity to hold 1,000 or more animal units will be issued either an NPDES or SDS permit. This category of facilities is the smallest group containing an estimated 800 or 2 percent of the total facilities in the state.

Generally, however, facilities in this category require the longest time for permit issuance. The NPDES and SDS permit processes and the issues at these facilities are more complex. In addition, new facilities with 1000 or more animal units or those expanding by 1000 or more animal units are required to complete the environmental review (Environmental Assessment Worksheet) process under the Minnesota Environmental Quality Board's rules. This process often requires about 120-days to complete.

The MPCA is working on a general NPDES permit for feedlots to cover the majority of facilities in this group to further shorten the paperwork portion of the permit process to allow time for technical review and inspections. The general permit will be put on public notice by the end of calendar year 2000, with anticipated issuance of the final general permit by mid-2001. With few exceptions, the general permit will be used for existing facilities that meet technical standards and new or expanding facilities that meet technical standards and have gone through the environmental review process. The environmental review process is not required for existing facilities that meet technical standards to obtain coverage under the general permit.

An existing facility seeking coverage under the general permit would make application to the MPCA. Existing permit files will be reviewed and an inspection conducted if necessary to determine that the site meets technical standards. Then the coverage would be granted. Public notice of the decision to grant coverage is not necessary, thus further streamlining this process.

New facilities, or those expanding by 1,000 or more animal units, will first complete the environmental review process before coverage under the general permit can be granted. Facility plans and specifications will be reviewed by MPCA permitting staff during the environmental review process to determine if the proposal meets the technical standards and falls within the facility types covered by the general permit. If so, the EAW that is put on public notice would include notice that it is the MPCA's intent to grant coverage for this facility under the general permit when environmental review is complete.

What are the burdens of implementation?

Over the long term, the MPCA believes that the feedlot rule amendments will result in a more timely permitting process than current data reflects. Initially, however, additional staff time is taken from permitting duties to address rule and program re-design implementation issues, which include revising permit templates, applications, fact sheets, and training manuals; developing an appropriate database including developing an option for electronic registration from multiple locations; conducting training sessions for county feedlot officers and livestock facility owners; and administering the initial registration program.

The MPCA will also be fully implementing the NPDES program for the first time, which will be an extra burden during the initial stages of implementation. The general NPDES/SDS permit will help to alleviate some workload concerns for the larger facilities in that individual conditions will not be drafted but rather a standard permit would be issued. However, the workload will still be such that the implementation of the federal program will require a

considerable amount of staff time for the next three years. Before a General NPDES/SDS permit can be issued an inspection must take place. This creates a prioritization of inspections for these facility types. However, the completing of the inspections and reviews to determine if the facility meets the criteria for a general NPDES permit reduce the staff available for other permit reviews.

Very few of the estimated 800 facilities with 1,000 or more animal units have been issued an NPDES or SDS permit to date. The rules require that the remaining facility owners must submit a permit application by June 1, 2001. Because of the complexity of larger sites and the public noticing requirements associated with an individual NPDES permit, these permit applications take significantly longer. Some proposed construction projects require a great deal of public input because of site location, land use conflicts, or concern with new technology. Extensive time can also be required to negotiate a resolution for siting, construction, or environmental concerns. This negotiation time often allows a contested case hearing or public hearing to be avoided. While the resolution of concerns adds some time to the permit process, it is simpler and quicker than the contested case hearing process and is more flexible.

The commitment of increased field presence was a foundation for the approach taken with the rule amendments. In order to balance all the goals and workload issues to maintain this commitment, the MPCA has determined additional FTEs are necessary to address the timely reply requirement and meet other program needs. Delegated counties do not support the NPDES duties of the MPCA.

IV. Resources Needed

In drafting the feedlot rule amendments, the MPCA evaluated its current program and how it was functioning in terms of meeting the environmental goals of the state and responding to the needs of feedlot owners. After reviewing existing conditions, the MPCA looked at what program changes were needed to accomplish these objectives. The program audit conducted by the Minnesota Legislative Auditor's Office was also used in evaluating the program and developing a revised program. Input from affected parties was also considered. Thus, in response to concerns, a draft program plan was developed to balance permitting activities, inspections, training/outreach efforts, air quality efforts, and compliance activities.

Currently, the MPCA feedlot program has the equivalent of 22 FTEs in the St. Paul and subdistrict offices. These staff are distributed as follows:

1. Ten FTEs performing permit writing and compliance/fieldwork duties;
2. Seven FTEs of engineers and hydrologists performing technical review duties;
3. 0.5 FTE performing data management duties;
4. No FTE is currently assigned to focus on training needs;
5. Two and one-half FTEs performing program and technical development duties;
6. One FTE performing outreach efforts to livestock producer groups, financial institutions, local government agencies, etc.; and
7. One FTE performing county coordination duties.

The feedlot program is currently understaffed. The current staffing level does not provide for a balanced program envisioned in the program plan for the revised feedlot rules nor does it address the concerns by the legislature, livestock producers or the concerned public. All parties agreed that the MPCA was not conducting enough inspections, training, and assistance in addition to the permit activities. In developing the program plan for the proposed rule amendments, the MPCA analysis showed the need for 32 full-time staff equivalents. Thus, a shortfall of 10 staff equivalents exists. This analysis accounted for staff time savings that would result from reducing the number of facilities required to obtain permits, the use of a general NPDES permit for facilities greater than 1,000 animal units, and additional counties entering the delegation program. Additionally, the analysis indicated the need for more inspections, more training, more assistance and the emerging issue of air emissions from large feedlots. The program plan analysis did not include a review of staffing needs to meet section 15.99 directly. The program plan as a goal intended that those permits not requiring public notice be issued within 60 days of having a complete permit application, including adequate plans and specifications, but did not set such a goal for permit applications needing environmental review and public noticing.

In developing staff needs, the MPCA utilized existing information on the length of time needed to issue NPDES permits, conduct compliance and construction permits, conduct training sessions, and to perform the various activities of the proposed rules. For example, since few NPDES permits have been issued for feedlots the program looked to the Blue Ribbon panel developed for the wastewater treatment program to gather estimated hours for completing this activity (see "Report of the Blue Ribbon Task Force on Funding Minnesota's Water Quality Programs, 1995). Not only did the MPCA look at time to accomplish a task, but also incorporated scheduling the activities over a period of time and incorporated the MPCA's movement of staff to subdistrict offices to reduce travel time. For instance, the MPCA did not assume all feedlots would be inspected every year, but established a goal for visiting roughly 15 - 20 percent each year. Staff in delegated counties and the MPCA would accomplish the inspections. The delegated counties and the MPCA will be coordinating efforts to ensure focus is on priority areas first.

The MPCA also recognized the need to provide one-on-one assistance to county staff to ensure they have the same expertise as MPCA staff for implementing the rule and problem solving complex permit issues as they arise. The MPCA staff also serves as technical advisors to counties to eliminate the need for counties to hire engineers and hydrologists. The MPCA envisions a reasonable balance between program elements.

The 60-day processing requirement is an added burden on an understaffed program. Legislation passed in 2000 requires MPCA to process feedlot permits within 60 days. Minnesota Statutes section 15.992 also requires feedlot permits to be completed within 60 days but excludes those cases where public notice and environmental review are required. Without these exclusions, the MPCA believes that nearly all permits needed for the large, complex facilities and those facilities needing environmental review will receive automatic Legislative approval before completion of the review process. If the MPCA is unable to complete appropriate reviews within 60 days due to lack of resources, the potential is greater that significant environmental impacts will occur. The permit and environmental review issues are discussed in more detail later in this report.

The MPCA has determined that two additional FTEs are needed so that permit documents and paperwork can be completed in a more timely manner, which should result in more permits being issued within 60-days. The alternative to providing these two FTEs is to keep field staff in the office more so they can assure that the 60-day turnaround can be met. The imbalance of field staff and permit reviews will impede effective implementation of the revised feedlot rules. The MPCA does not guarantee that the two additional FTEs will completely eliminate the automatic Legislative approval of permit applications, particularly if the MPCA is required to comply with section 15.99. While the two additional staff would be continually working on permit issuance, staff used to complete inspections, complete training, and provide technical reviews would in peak periods be required to focus all attention on permit issuance and not the remaining components of the feedlot program. As stated earlier, the analysis is based on a goal for meeting a 60-day turnaround for those permits not requiring public notices or environmental review and that time was allowed for complete application materials to be received. If the MPCA were required to meet a 60-day turnaround with no automatic Legislative approvals under section 15.99, significantly more staff would be required.

Providing two staff only addresses the administrative activities of the permit process. Permitting is just one part of the overall regulatory program and cannot be treated as an isolated activity. Technical review, compliance evaluation and fieldwork, data management, training, program and technical development, county coordination and environmental review are all intertwined with permitting. In order to increase the efficiency of permitting, the MPCA must have adequate staff for all of these program components. For instance, delegated county staff are a key component for the inspection program and permitting of feedlots. If they are not adequately trained, these activities cannot be effectively completed at the county level. If the MPCA does not have a balanced program, the components must be prioritized and resources shifted. If the highest priority is placed on issuing permits, staff will be moved from other program component areas to process the permit documents, which is likely to be at the expense of fieldwork and on-site assistance to the feedlot owner.

Twelve additional FTE are needed to have a balanced, effective, timely program. In evaluating the ability of its ability to meet 15.99, the MPCA concluded that a number of outcomes could be expected depending on the balance achieved between MPCA staffing, delegated county resources, and the ability to account for public notice and environmental review processes. The MPCA considered a number of scenarios utilizing the above components and the likely outcome of each scenario. The MPCA also consider the likelihood of no automatic approvals happening under each scenario. The MPCA's goal, as they believe the goal of legislature to be, is that no automatic Legislative approvals be granted. The scenarios and outcomes are briefly discussed below:

1. MPCA required to meet section 15.99, no additional MPCA FTEs, and no additional resources to delegated counties. This scenario is status quo with the addition of section 15.99 limits, as required by the legislature, on the feedlot program. This scenario does not allow the exclusions for the public notice and environmental review processes provided in section 15.992. While the new feedlot rules and permit procedures will improve the timeliness of permit issuance to some extent, the MPCA expects that the improvement will be small. The improvement can only occur if a balanced approach to review all permit requests is achieved. The revised feedlot rules were intended to

maximize efficiencies for the administrative activities for smaller facilities so focus could be placed at large and complex facilities. Many existing facilities with more than 1,000 animal units do not have NPDES permits as required under federal and state law. The public notice process cannot be completed in 60 days and thus, these permits would likely receive automatic legislative approval. If the MPCA puts its resources into these facilities, other permit applications for correcting pollution hazards and construction will likely be automatically approved in addition to the NPDES permits. The MPCA believes this scenario maximizes the risk to the environment from the automatic approval of feedlots located in poor locations or designed inappropriately for site conditions and facility needs. Additionally, the MPCA would not be able to meet its statutory duties under Minnesota Statutes chapters 115 and 116.

2. MPCA required to meet section 15.99, 12 additional MPCA FTEs, and no additional resources to delegated counties. Under this scenario, the MPCA would expect to see fewer automatic approvals than scenario 1 because staff could be focussed in various program activities based on peak needs. However, the level of improvement is highly dependent on counties remaining in the delegation program with limited resources to do increase feedlot program activities and the actual expansion of the number of counties participating in the delegation program. Some of the existing delegated counties have indicated that they cannot continue if no additional resources are provided.
3. MPCA required to meet section 15.99, 12 additional MPCA FTEs, and increased resources to delegated counties. The MPCA believes this scenario will decrease the number of automatic approvals resulting from the MPCA's and delegated counties inability to take action within the timeframes provided in section 15.99. This scenario provides for coordinated effort between delegated counties and the MPCA in completing inspections, providing assistance to feedlot owners, and completing permit reviews. Additionally, increased resources to delegated counties increases the likelihood of existing counties remaining in the delegation program and new counties entering the delegation program. The increase in delegated counties would further decrease the number of permits automatically approved. The difficulty remains with those permits needing public notice, environmental review, or additional information due to the complexity of the facility design or site location.
4. MPCA responsibility shifted from section 15.99 to 15.992, 12 additional MPCA FTEs, and increased resources to delegated counties. Under this scenario, the MPCA believes the number of automatic approvals for permits will be the smallest. The provisions of section 15.992 will clearly establish timeframes for the interim and construction permits while allowing adequate time to complete public notice and environmental review processes. The MPCA believes this scenario minimizes the risk to the environment and provides for the most balanced approach to the feedlot program.

The MPCA has determined that an additional 10 staff, for a total of 12 FTEs, are needed to achieve a balanced program that complements the permitting process with engineering and hydrology review, data gathering and evaluation, and problem solving. The MPCA anticipates that these additional FTEs will also ensure that the MPCA's commitment to increased field presence and effective administration of registration and utilization of registration information can be fulfilled. The increased field presence was a main area of concern for the Legislative Auditor.

The additional 12 FTEs would be used as follows:

1. **One** additional FTE for environmental review is needed to complete environmental review activities and coordinate with the permitting process to minimize any delays due to missing information or duplication of technical reviews.
2. **One** additional FTE for Data Management Specialist is needed to maintain permit tracking data, developing data compatibility and collection with counties, advancing the implementation of geographic information system (GIS) to further improve environmental review and inspection prioritization by determining where the greatest impacts exist.
3. **Two** additional FTEs (Pollution Control Specialists) are needed address the Legislative Auditor's finding that MPCA is not adequately monitoring implementation by delegated counties. These positions would focus on partnership building, training, auditing and grant management.
4. **Four** additional FTEs (Pollution Control Specialists) are needed to conduct compliance inspections, assist producers, address compliance problems, and emerging subjects like the air quality issues.
5. **One** additional FTE (hydrologist) is needed to evaluate research and develop an understanding of regional hydrology to promote the design of proper systems and develop appropriate permit requirements. Protecting the drinking water resources for human and livestock consumption requires more involvement by this science specialty.
6. **Three** additional FTEs (engineers) are needed to review and assess engineering plans and conduct compliance evaluation and construction inspections.

Work completed by all of these positions will have an impact on the effectiveness of permitting. These positions will:

1. Strengthen field presence (the ability of MPCA or county regulators to inspect sites and work on location) with producers to build a common understanding of what is required to address the pollution hazards;
2. More effectively gather and analyze field data to develop a clearer understanding of what environmental impacts are occurring from feedlot operations, to develop cost-effective methods for addressing these impacts, to determine the level of effort needed to meet environmental outcomes in concert with economic issues, and to create standardized rather than site-specific permitting for these issues;
3. Provide a staffing level to environmental review, engineering review, inspections and permit drafting that allows information from the field and data analysis to be incorporated into permits in a logical manner and to complete work in these areas in a timely manner, and
4. Improve coordination with delegated counties and partnerships with non-delegated counties.

A rigid permitting system for all facilities has been replaced with a self-registration requirement for most small farmers, and permitting requirements for mid-size farmers have been greatly reduced. Requirements for all facilities have been clarified, and increasing regulatory emphasis has been shifted to the higher-risk group. This shift requires increased field presence by MPCA staff and regulatory partners to make it work effectively. MPCA had determined a need for 12 additional FTEs for regulatory assistance at the MPCA and for

a meaningful increase in funding for county-level regulatory programs to improve the timeliness of permit issuance. In addition to more staff, the MPCA recognizes the need to issue the general NPDES permit, continue improving administrative functions for issuing permits, review technical data, problem-solving with livestock producers before permit application and other areas where time efficiencies can be gained without impacting environmental outcomes.

Delegated counties are fundamental to the success of the feedlot regulatory program.

The county feedlot officers are familiar with the environmental conditions that are unique to their area and are closer to the sites being regulated. Additionally, counties are able to coordinate land use questions relative to feedlots with environmental concerns. The MPCA spends considerable time answering questions on specific projects around land use concerns that are more properly directed to the county staff. The MPCA is working hard to increase the number of delegated counties. Currently, 53 counties are delegated. See Figure 1 on page 36, in Appendix A. The MPCA firmly believes that a coordinated partnership with counties will result in more timely service to feedlot owners while addressing environmental issues. Additionally, delegated counties will greatly improve the permitting process by conveying program goals and requirements directly to their livestock producers in small group or individual settings.

Delegated counties are provided state funds under the state's Natural Resources Block Grant administered by the Board of Water and Soil Resources. These grants provide counties with funds to process state feedlot permit applications and perform inspections. The counties are required to match the grants with local dollars. State funding must be increased to provide funds to new delegated counties while maintaining the level of funding for the existing delegated counties. The MPCA is receiving feedback from some counties that they are considering giving their delegation back to the state. Pennington County recently returned their delegation. This is due in part to the increased workload and in part to the uncertainty of future funding. The counties do not believe they are being properly compensated for the level of effort required by the delegation program. The staffing increase for the MPCA will not be sufficient, regardless of whether the MPCA is subject to section 15.99 or section 15.992, should the MPCA lose more counties participating in the delegation program.

Looking at the anticipated funding levels for 2001, one delegated county will be receiving less than \$1,300 to fulfill its duties regarding the state feedlot program. A total of five delegated counties will receive less than \$3,000 for their feedlot program efforts. The amount of funding awarded to a delegated county is currently based on the number of animal feedlots in the county based on the 1997 Census of Agriculture and the status of the county feedlot inventory. Many counties are experiencing a reduction in the number of feedlots within their jurisdiction, which results in a decrease in grant funds. Additionally, other counties are finding they have more feedlots than the Census and more grant funds are needed.

County delegation duties include processing permit application, issuing permits, conducting site inspections, providing technical assistance, logging complaints, assisting with registration, conducting inventories, and providing education on the state rules. Based on county feedback, one-third to one-half FTE is needed for the most base-line program. The

MPCA estimates that \$7,500 in grant funds are needed to support this base-line level. All are reminded that delegated counties match the grant funds. Without additional resources and a change in the grant allocation process, 15 of the 53 delegated counties are anticipated to receive funding in an amount that is less than this base-line level.

The MPCA is also seeking more counties to accept delegation as this will increase service to feedlot owners and allow the MPCA to focus its efforts on complex situations and feedlots in the remaining non-delegated counties. The MPCA is aware of at least three counties interested in becoming delegated by the end of 2000. While the MPCA is excited to continue to strengthen the program by expanding the network of county partners, there is concern that increasing the number of delegated counties will impact funding levels for the existing delegated counties. The Natural Resource Block Grant has a limited pool of funds for delegated counties. In 2000, the entire appropriation was awarded to the 54 participating counties; one county has returned its delegation since this time. These counties will be receiving fewer grant dollars in 2001 if additional counties are granted delegation. The MPCA has a goal to have at least 60 delegated counties by 2003.

Action is needed to ensure that each delegated county can afford at least the base-line level of effort for the feedlot program. Increased resources and a restructuring of the Natural Resource Block Grant is required. A reduction in funding to existing delegated counties will result in more delegations being returned to the MPCA, increasing the level of work effort needed by the MPCA, and a reduction in the overall effectiveness of the feedlot regulatory program.

V. The Minnesota Statute Section 15.99 Deadline

Session Laws 2000, Chapter 435 establishes the timely response deadlines for feedlot permits beginning October 1, 2001. The consequence of not denying or approving a permit within the statutory deadlines is automatic approval of the request. Prior to Session Laws 2000, Chapter 435, Minnesota Statutes section 15.99 only applied to permit actions regarding zoning, septic systems, or expansion of the metropolitan urban service area. By including feedlots in Minnesota Statutes section 15.99, the MPCA estimates that the majority of feedlot permits would be automatically granted without review because the statute does not account for the integral steps such as public notice and environmental review.

Permit applications that are not denied or approved in 60 days will result in an automatic Legislative approval because the MPCA was unable to complete its statutory obligations regarding environmental protection. The result of automatic approval of a permit without review of the request, however, may be that the producer's future actions violate the Clean Water Act. Just because producers have been automatically granted permits does not exempt them from complying with state and federal water quality laws. Therefore, automatic Legislative approval of a permit is a concern for the MPCA. An activity proposed in an application and covered under a permit obtained under the automatic approval process may not receive appropriate review and may result in a violation of water quality laws. This places the MPCA in a precarious liability situation and opens the permit recipient to citizen complaints or lawsuits. Additionally, the EPA has the right to veto any permit under 33 U.S.C. 1342(d) and likely would do so if the permit was granted solely because 60 days have

passed. Further, the automatic permit requirement puts the agency at risk for violating its Memorandum of Agreement (MOA) with the EPA, and possibly losing its state delegation to run the NPDES program. Losing NPDES delegation would impact not only feedlot owners but also other industries and municipalities that currently work with the MPCA and may be required to deal with the EPA. While it will be "legal" and actually mandatory to grant these permit requests under state statute, the result may be that the recipient of that permit breaks water quality laws.

What does Minnesota Statute Section 15.99 require?

Minnesota Statutes Section 15.99 requires the MPCA and delegated counties to

1. determine if a permit application is complete within 10 days, and
2. deny or issue a permit within 60 days from the day the application was received.

The MPCA and delegated counties issue many permits within 60 days of the application receipt. A sample of permit applications received by the MPCA offices from January 1, 1999, to September 22, 2000, were reviewed to determine how many days were required to issue the permits. The results of the review are summarized in Table 1. In this sample, 28 percent of the permits would have met the 60-day issuance deadline. However, 72 percent of the permits were issued after the 60-day deadline.

Extensions.

Minnesota Statutes Section 15.99, subdivision 3, allows extensions to the 60-day deadline. Of the five extension options provided in the statute, only two, paragraphs (d) and (f) seem to apply to the feedlot permit process.

Under paragraph (d), the 60-day issuance clock does not begin until after a process required by statute, federal law, or court order has ended if the process makes it impossible to act upon the request in 60 days. In some circumstances, state rules and federal regulations require the MPCA to issue NPDES and/or SDS permits, provide public notice and conduct environmental review. (See 40 CFR section 124.10 and Minnesota Rules 4410.1300).

EPA, Region 5, has provided comments to the MPCA during the recent rule amendment effort. In these comments, EPA representatives have raised concerns about the section 15.99 process because of the potential for automatic Legislative approval of permits and the limitations the deadline places on the ability of the MPCA to collect needed information and to perform an appropriate review. EPA is concerned that application of section 15.99 *would result in bad sites being permitted when turnarounds can't be met*. The EPA has indicated that placing the feedlot program under section 15.99 without the exemptions provided in section 15.992, may jeopardize Minnesota's delegation to operate the NPDES program in lieu of the federal government.

Additionally, Minnesota Statutes 116D.04, subdivision 2b prohibits the approval of any project before certain actions in mandatory environmental review processes occur. State rules specify the projects for which environmental review is required. (See Minnesota Rules 4410.4300-4400). Because the rules do not specify the length of time necessary to complete

such environmental review, the time extension waiver of section 15.99, subdivision 3(d) is not available. If, for example, the rules required environmental review to last 180 days, it would be legally impossible to comply with the 60-day requirement of section 15.99. The rules, however, are silent with regard to the timeframe for environmental review. Without a mandated timeframe greater than 60 days, it is not legally "impossible" to comply with the 60-day timeline, just *practically* impossible. The same argument applies to requirements for public notice.

The other extension option applicable to some feedlot permits is found under section 15.99, subdivision 3(f). This statute allows the deadline to be extended to 120-days after the permit application receipt date by providing written notice to the applicant before the end of the initial 60-day period. The notice must explain why an extension is needed and the length of the extension. The permit applicant must approve a longer extension.

Looking again at Table 1, the results of the permit application tracking show that an additional 21 percent of the permit applications were issued within 120 days after receipt of the permit application. This brings the total of applications that could have met the specified deadlines to 49 percent. The MPCA believes that the new rules and other streamlining efforts should increase this percentage, but, even though an accurate estimate can not be made, the MPCA does not believe section 15.99 can be regularly met without a significant staff increase.

Why has permitting taken longer than the Section 15.99 deadline?

Many situations require longer timeframes to make a decision to issue or deny a permit. Some of these situations, such as permit procedure inefficiencies, staffing limitations and limited county delegation, can be resolved. However, some of the situations cannot be made to fit in the deadline box. Some of these time-intensive but integral steps are discussed below.

The Environmental Review Process under Minnesota rules chapter 4410.

Feedlots may be required, by state rule or petition, to prepare an EAW. In October 1999, the Minnesota Environmental Quality Board's amendments to Minnesota Rules chapter 4410 modified the mandatory thresholds for new and expanded feedlots. Under these amendments more feedlots are subject to the EAW review process. This EAW process includes, at a minimum, a 30-day public notice of the draft EAW for public comments, and informational meetings to explain the EAW and the proposed project. The MPCA routinely works to resolve concerns by holding clarifying meetings, answering the questions, or mediating a technical solution with the project proposer.

A review of past environmental review records shows that the time required to complete the EAW process takes about three to four months. This time includes only the time involved in public noticing and developing the final record of decision. Extra time is often needed to schedule meetings with the project proposer to prepare the EAW and supporting documents for public notice and for meeting with the project proposer, regulating local governmental unit, or interested parties concerning the actual document placed on public notice.

Additionally, the MPCA Citizens' Board may be required to decide if an EIS is needed due to comments received during the public notice period. The MPCA Citizens' Board meets once per month and thus, additional time is needed if concerns cannot be addressed through meetings. The projects required to complete the EAW processes often have the highest potential to have significant environmental impact and should be provided with adequate time to resolve potential areas of concern before construction.

If an EIS is needed as the result of an EAW, the time necessary before a permit can be issued increases substantially. The EAW requirements and process are established under Minnesota Statutes section 116D. However, the requirement for feedlots to complete the EAW process is established under Minnesota Rules chapter 4410. Section 15.99 conflicts with Minnesota Statutes section 116D and Minnesota Rules chapter 4410, which prohibit government approvals and construction before the environmental review process is completed. This conflict is problematic in that it may result in violations of rules and statutes that were intended to allow the public an opportunity to provide input and to comment on projects that may have significant environmental impacts before the projects are constructed. The MPCA is concerned that the conflicts between section 15.99 and the statutes and rules governing environmental review may subject livestock producers to more legal actions by the public to provide for input and ultimately adding time to the permit approval process. The MPCA does not believe this was the intent of the 2000 Minnesota Legislature.

As stated above, the practical reality of conducting environmental review makes it impossible to fulfill a 60-day timeframe. However, on its face, the time-extension provision of section 15.99, subdivision 3(d) does not exclude environmental review cases because the language in the rules, regulations and statutes does not rise to the level of legal impossibility.

Public Notice.

Two types of permits issued by the MPCA require a 30-day public notice period. These permits are the SDS permits (Minnesota Rules part 7001.0100, subdivision 4, item G) and the NPDES permit (Code of Federal Regulations, Chapter 40, Section 124.10). Like the EAW and EIS process, the requirement the permit notice requirements do not qualify for an extension under Minnesota Statutes section 15.99 unless the process is required in federal law or state statutes. The SDS permit process is in state rule instead of law, although Minnesota Statutes section 116.07, subdivision 7(h) establishes the requirement for SDS permits to be issued for facilities greater than 1,000 animal units that are not required to get an NPDES permit. Therefore, some SDS permits may be excluded from the permit issuance extension option under section 15.99, subdivision 3(d). The 30-day comment period for the federal NPDES permits does qualify for the extension.

The MPCA is delegated to administer the NPDES permitting program according to the federal regulations. The federal regulations require a 30-day public comment period for individual NPDES permits (40 CFR section 124.10). This 30-day notice process requires more than 60 days to complete. On average, two weeks are needed to write a notice and complete the internal review before sending the notice out for publication. The federal regulations require the notice to be mailed to the applicant, the EPA, federal and state agencies with jurisdiction over fish and wildlife, state historic preservation officers, affected

states (Indian Tribes), and the MPCA permit interested parties mailing list. In addition, the notice must be provided in a manner that constitutes legal notice and any other method reasonably calculated to give actual notice of the action in question to persons potentially affected by it, including press releases.

Legal notice is given by publishing a notice in the local newspaper. Newspaper notices may have delays of one week depending on the publication schedule (weekly versus daily newspapers). After the 30-day comment period has closed, between two and four weeks are needed to review comments, conduct clarification discussions with commenters, determine how comments will impact permit requirements and make appropriate changes to the permit language. Thus, the notice process alone takes between 68 and 82 days to complete. This does not include the time to complete the permit application review and to create the draft permit, which must be completed before the notice can be written.

Like the environmental review process, the public notice process for permits does not contain specific timeframes to complete the process. Again, the practical impossibility of complying with the public notice requirements in 60 days does not rise to the level of legal impossibility. Therefore, this process does not fall within the extension allowed in section 15.99, subdivision 3(d).

Contested Case Hearing.

Under MPCA procedural rules, citizens can petition for a contested case hearing if they disapprove of a permitting decision. For SDS and NPDES permits, the petition must be submitted during the public comment period. For the Construction Short Form and Interim permits, which do not have public notices as part of the issuance processes, petitions must be submitted to the MPCA Citizens' Board so they are received in a timely manner for a regular or special meeting. The petition and contested case hearing process can add a significant amount of time onto the permit issuance process. The petition must be heard by the MPCA Citizens' Board, which meets on the fourth Tuesday of each month. If the Board grants the petition, the hearing must be scheduled with and conducted by an administrative law judge. The Contested Case Hearing process is also established in rule. The process to address requests for contested case hearings for Construction Short Form and Interim permits is not one of the provisions in section 15.99, subdivision 3 that would extend the timeline. Practically speaking, the MPCA could likely get close to the decision to hold or not to hold a contested case hearing in the 120 day provision of section 15.99, subdivision 3(f), but any actual hearing could not be accomplished in this timeframe. Thus, the application request would likely be granted approval status under section 15.99 before the contested case hearing process is complete. This establishes a clear conflict between the goals of section 15.99 and other state statutes like Minnesota Statutes section 116B, which establishes the environmental rights for Minnesota citizens.

Plan and Specification Review.

Plans and specifications must be submitted as part of the permit application for proposed construction projects. Once the permit application is received by the MPCA or delegated county, an initial review is conducted to determine if the application is complete. This

checklist review ensures that all the required attachments are present, the required questions are answered, and the application is signed. This is the level of review that can occur within the 10 days required under section 15.99, subdivision 3(a).

Unfortunately, to define this cursory level of review as “complete” is a misnomer because it does not evaluate the quality of the information provided on the application. After the initial checklist review, the plans and specifications are reviewed by the staff engineer in detail. A site visit or inspection often occurs to gain a complete understanding of site conditions and how the proposer addresses special needs in the plans and specifications and other supporting documents. Questions or problems that need to be addressed before the permit can be written often arise during this more intense review. Although this need for additional information would be grounds to call the permit application incomplete, the opportunity to make this determination may have passed and the permit issuance clock ticks on. Again, the MPCA would likely use section 15.99, subdivision 3(f) to extend the review period to 120 days but nothing compels the permit applicant to provide information to the MPCA in a timely fashion to ensure complete reviews are conducted. It is likely that situations will continue to result in non-responsiveness by the applicant and the MPCA would be forced to deny the permit rather than resolving the questions. This certainly is not the preferred action by the MPCA, but it must balance allowing approvals to occur because of time lapses and thus, potentially allow the construction of facility that would not meet environmental standards.

VI. MPCA Alternative Recommendations

An alternative to section 15.99 are sections 15.991 and 15.992, which clearly exclude from the 60-day timeframe those cases that require public notice and/or the EAW and EIS processes. For this reason, the MPCA is recommending that the feedlot permitting process continue to be controlled by Minnesota Statutes sections 15.991 and 15.992 and not by section 15.99. However, these alternative statutes also do not address all the other situations that cause delays in the permitting process. The MPCA is committed to minimizing any permit delays due to items within its control, however, it cannot control responsiveness from applicants or contested case hearing requests. Thus, the MPCA recommends additional language be added to Minnesota Statutes section 15.992, subdivision 2 that would extend the time period when more information is needed. Section 15.99 is included in this report as Attachment 1. Sections 15.991 and 15.992 are included in this report as Attachment 2.

VII. Impacts of Section 15.99 to Permitting Process

Should the MPCA and delegated counties remain under section 15.99 for the purposes of reviewing permit applications, the review process by the MPCA and delegated counties will need to be less flexible in terms of helping feedlot owners understand their responsibilities and duties to comply with the revised feedlot rules. The MPCA and delegated counties have two options under section 15.99: approve or deny a request for a permit. Since the consequence of failing to take one of these actions within 60-days or 120 days under section 15.99, subdivision 3(f), will mean the automatic Legislative approval of the request. The permit issuance process must change to minimize the potential of automatic Legislative approvals.

In many cases, permit applicants will experience a process that appears to be less friendly. In the past, the MPCA and delegated counties would hold applications that required clarification or more information in an attempt to work through the problems cooperatively with the applicant. This approach will no longer work under the section 15.99 process. Permit applications determined to be incomplete will have to be returned within 10-days of receipt along with the required written notification to clarify that the permit processing clock has stopped. The MPCA will no longer be able to hold or return applications based on the level of incompleteness. All incomplete applications will need to be returned.

Similarly, the MPCA and staff have tried to work through problems during the permit writing process even though the process was lengthy. Under the section 15.99 process, applications that have problems that require longer than 120 days to address will have to be denied. This will prevent the automatic issuance of permits to sites, facilities or construction projects that have not received adequate review, public input or information response to assess the potential environmental impacts and needed protection measures. The process for denying the issuance of a permit requires a 30-day notice and comment period. The denial decision will have to be made about 45-days before the section 15.99 deadline to allow enough time to write the notice and meet publishing deadlines. This severely limits the time permit applicants and the MPCA have to clarify areas of confusion and develop solutions. This is an extreme hardship to the feedlot owner as it will set up a process that forces them to put an administrative process at a higher priority than other activities they must do relative to their operations to avoid permit denials and re-applications.

Thus, by governing feedlot permits under section 15.99, the MPCA believes less assistance will be available to the individual feedlot owner during the permitting process. Ultimately, the feedlot owner may be required to utilize consultants or other agencies than the delegated county or MPCA to prepare and complete permit applications adequately. The MPCA believes this to be an unnecessary burden to the feedlot owner.

VIII. Conclusions and Recommendations

A careful analysis of the effects of placing feedlots in section 15.99 leads to the conclusion that the MPCA cannot comply with the requirements of section 15.99 with current resource levels. Either resource levels must be significantly increased to allow for all aspects of permit review to be completed in 60 days, or a smaller scale resource increase could be implemented if feedlots are placed in sections 15.991 and 15.992. In general, the cases that will require more time than the 60 days allocated in section 15.99 are those applications for projects that are controversial or have the highest potential for environmental impact. Time is required to balance the need for public input, evaluation, new technology research or solutions to unique problems, and project modifications by the proposer and the MPCA. Time outside the issuance deadline box is required for these cases to reach that balance between the needs of the permit applicant for timely issuance and the needs of the Minnesota people to have an evaluation that adequately assesses and addresses the potential for environmental or human health harm. These projects are at risk of being automatically approved under section 15.99. The MPCA agrees with the need to improve the permit review process; however, the MPCA does not believe the legislature intended to establish a

system that would result in nearly 50 percent of applications receiving approval without review.

Under section 15.99, applications that are not denied or approved within 60 days receive an automatic legislative approval. Permits issued under the automatic approval process will not receive the technical and environmental review that is part of the MPCA's statutory duties. Persons issued permits under the automatic legislative approval are still required to fulfill state or federal water quality laws. This process leaves both the permit recipient and the MPCA open to certain liabilities. The MPCA is required under a delegation agreement with EPA to administer the federal NPDES permit program. Permits issued under an automatic legislative approval process do not meet the requirements of the MPCA's delegation responsibilities. The MPCA recommends that NPDES permits be exempt from the automatic approval requirement to prevent jeopardizing the MPCA's delegation agreement with EPA.

Therefore, the MPCA recommends that the feedlot permit process be moved from section 15.99 to 15.991 and 15.992 to allow exclusion from the 60-day timeframe for those cases that require public noticing and environmental review. The MPCA believes that sections 15.991 and 15.992 more clearly reflect the legislature intent in requiring the MPCA to be more efficient in reviewing and issuing permits, while at the same time ensuring proper environmental review. In addition, the MPCA recommends modifying section 15.992, subdivision 2, to include a deadline extension for acquiring information or a response from the applicant. The MPCA would work with the legislature in developing this language. The MPCA also believes it is reasonable to evaluate its progress in three years in meeting the 60-day provisions of section 15.992 using the revised feedlot rules.

Delegated counties are fundamental to the success of the feedlot regulatory program. The county feedlot officers are familiar with the environmental conditions that are unique to their area and are closer to the sites being regulated. Additionally counties are able to coordinate land use questions with environmental concerns. The MPCA spends considerable time answering questions on specific projects around land use concerns that are more properly directed to the county staff. The MPCA is working hard to increase the number of delegated counties. The MPCA firmly believes that a coordinated partnership with counties will result in more timely service to livestock producers while addressing environmental issues and fewer permits being issued after the 60-day time limit.

Delegated counties will understand the 2000 state feedlot rule changes, the state program goals and will greatly improve the permitting process by conveying this information directly to their feedlot owners in small group or individual settings. The MPCA will focus its attention to provide the same understanding to feedlot owners in non-delegated counties. Thus, even permits reviewed by the MPCA in delegated counties (NPDES/SDS permits) should be more complete as the feedlot owner will account for the rule standards and site conditions in locating a facility and developing the facility design. The coordination between counties and the state will provide the most efficient program.

More resources are needed for delegated counties. Delegated counties receive dollar-match grants to help defray the feedlot program administration costs. Enough funds are needed for the Natural Resources Block Grant to ensure each delegated county can support a baseline program with one-third to one-half FTE and funding for existing delegated counties is not reduced as more counties become delegated.

The MPCA and the legislature are unified in the goal of achieving a regulatory program that is efficient, effective and mindful of the persons it regulates in addition to meeting the environmental objectives for the state. Permitting is just one component of the feedlot program and addressing it is only a partial solution to improving service to feedlot owners alone. In order to make progress toward our mutual goals, which includes timely issuance of permits, the MPCA recommends adding 12 FTEs to MPCA's feedlot program, continuation/expansion of the delegated county program, and modifying Minnesota Statutes section 15.99.

Twelve additional FTEs are needed by the MPCA to manage the normal activities of the feedlot program, not peak periods and to:

- Strengthen field presence (the ability of MPCA or county regulators to inspect sites and work on location) with producers to build a common understanding of what is required to address the pollution hazards;
- More effectively gather and analyze field data to develop a clearer understanding of what environmental impacts are occurring as the result of feedlot operations, to develop cost-effective methods for addressing these impacts, to determine the level of effort needed to meet environmental outcomes in concert with economic issues, and to create standardized rather than site-specific permitting for these issues;
- Provide a staffing level to environmental review, engineering review, inspections and permit drafting that incorporates information from the field and data analysis in a logical manner and to complete work in these areas in a timely manner; and
- Improve coordination with delegated counties and partnerships with non-delegated counties.

The MPCA's analysis concludes that effective permitting will occur only with a balance between the feedlot program elements, additional county resources and placing feedlots under section 15.992. Without this balance, the delays create in one area to respond to peak activities in another will create a trickle-down effect in automatic permit issuance. Therefore, if funding for state and county feedlot programs is not provided, the MPCA recommends that the law be amended to clearly exempt all feedlot permits from the 60-day processing requirement to ensure permitting continues in an environmentally responsible manner.

IX. Time and Cost for Creating Report

As required by Minnesota Statutes section 3.197, the cost to write, print and distribute this Legislative report is \$15,135.

TABLE 1

Review of sample of permit applications received from
January 1, 1999 to September 22, 2000.

Applications received January 1, 1999 to September 22, 2000				
Subdistrict Office	Number of permits issued in 60-days	Number of permits issued in 120- days	Number of Permits issued in more than 120-days	Total Number of permits issued
Brainerd	15	10	17	42
Detroit Lakes	1	2	17	20
Duluth	4	0	2	6
Willmar/Marshall	18	23	41	82
Metro	0	7	14	22
Rochester/Mankato	35	14	43	92
MPCA totals	73	56	134	264

Percent of permits issued within 60-days = 27.65 (28%)

Percent of permits issued within 120-days = 48.86 (49%)
[additional 21%]

Percent of permits not issued within 120-days = 50.76 (51%)

In addition to the permits issued, there were 574 Certificates of Compliance issued during this period of time.

ATTACHMENT 1

Minnesota Statutes section 15.99 time deadline for agency action.

Subdivision 1. Definition. For purposes of this section, "agency" means a department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town, or school district; any metropolitan agency or regional entity; and any other political subdivision of the state.

Subd. 2. Deadline for response. Except as otherwise provided in this section and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.

Subd. 3. Application; extensions. (a) The time limit in subdivision 2 begins upon the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency. If an agency receives a written request that does not contain all required information, the 60-day limit starts over only if the agency sends notice within ten business days of receipt of the request telling the requester what information is missing.

(b) If an action relating to zoning, septic systems, or expansion of the metropolitan urban service area requires the approval of more than one state agency in the executive branch, the 60-day period in subdivision 2 begins to run for all executive branch agencies on the day a request containing all required information is received by one state agency. The agency receiving the request must forward copies to other state agencies whose approval is required.

(c) An agency response meets the 60-day time limit if the agency can document that the response was sent within 60 days of receipt of the written request.

(d) The time limit in subdivision 2 is extended if a state statute, federal law, or court order requires a process to occur before the agency acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this paragraph.

(e) The time limit in subdivision 2 is extended if: (1) a request submitted to a state agency requires prior approval of a federal agency; or (2) an application submitted to a city, county, town, school district, metropolitan or regional entity, or other political subdivision requires prior approval of a state or federal agency. In cases described in this paragraph, the deadline for agency action is extended to 60 days after the required prior approval is granted.

(f) An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

HIST: 1995 c 248 art 18 s 1; 1996 c 283 s 1

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ATTACHMENT 2

Minnesota Statutes section 15.991 Customer service.

Subdivision 1. Definitions. For purposes of this section and section 15.992:

(1) "business license" or "license" has the meaning given it in section 116J.70, subdivision 2, and also includes licenses and other forms of approval listed in section 116J.70, subdivision 2a, clauses (7) and (8), but does not include those listed in subdivision 2a, clauses (1) to (6);

(2) "customer" means an individual; a small business as defined in section 645.445, but also including a nonprofit corporation that otherwise meets the criteria in that section; a family farm, family farm corporation, or family farm partnership as defined in section 500.24, subdivision 2; or a political subdivision as defined in section 103G.005, subdivision 14a;

(3) "initial agency" means the state agency to which a customer submits an application for a license or inquires about submitting an application; and

(4) "responsible agency" means the initial agency or another state agency that agrees to be designated the responsible agency.

Subd. 2. Responsibility for customer needs. (a) When a customer applies to a state agency for a license to engage in activity, the agency is responsible for providing the customer with information the customer needs from the state to complete the application, including information on any other agency or agencies that must take action before the license may be granted or that must issue a separate license before the customer may proceed with the activity. The employee of the initial agency or responsible agency who accepts the customer's application or inquiry regarding an application shall provide the customer with the employee's name, title, and work telephone number and shall inform the customer that the employee will be available to provide assistance and information as the customer proceeds with the application and awaits the agency's action on it.

(b) If the responsible agency determines that another state agency or agencies must act on an application, the responsible agency shall forward all necessary application forms and other required information to the other agency or agencies and shall coordinate with the other agency or agencies in an effort to assure that all action on the application is completed within the time specified in section 15.992.

(c) At the request of a customer, the responsible agency shall prepare a written work plan, which is not a binding contract, setting out the steps necessary for the customer to complete the application, the time when the

responsible agency may be expected to take action on the application, the steps the responsible agency will take to forward an application or required information to any other state agency or agencies that must take action, and the process by which the other agency or agencies may be expected to act. The work plan must include information on the deadline for agency action under section 15.992 and on the result of agency failure to meet the deadline. The work plan must be provided to a customer no later than 20 working days after the customer requested the plan.

HIST: 1995 c 248 art 19 s 1; 1996 c 305 art 1 s 8

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Minnesota Statutes section 15.992 Time limitation.

Subdivision 1. Deadline for action. Unless a shorter period is provided by law, all state agencies that must act on a customer's application for a license shall take final action on it within 60 days after the customer's submission of a completed application to the responsible agency or within 60 days after the customer has been provided with a work plan under section 15.991, subdivision 2, paragraph (c), whichever is later. If action on the application is not completed within 60 days, the license is deemed to be granted. The time period specified in this subdivision does not begin to run until the customer has completed any required application in complete, correct form and has provided any additional required information or documentation.

Subd. 2. Longer time limits. An agency may provide for a longer time for the conclusion of action on an application, by itself and by another agency or agencies, if:

(1) the agency states in writing to the customer that a longer time is needed to protect against serious and significant harm to the public health, safety, or welfare, states the reason why, and specifies the additional time needed;

(2) the agency states in writing to the customer that a longer time is needed to comply with state or federal requirements, states the requirements, and specifies the additional time needed; or

(3) an agency that must take action on an application is a multimember board that meets periodically, in which case the agency must complete its action within 60 days after its first meeting after receipt of the application, or within a longer period established under clause (1) or (2).

Subd. 3. Exclusions. This section does not apply to an application requiring one or more public hearings or an environmental impact statement or environmental assessment worksheet.

Subd. 4. Compliance. When a license is deemed granted under subdivision 1, this section does not limit the right of an agency to suspend, limit, revoke, or change a license for failure of the customer to comply with applicable laws or rules.

Subd. 5. Limit on review. A decision of an agency under subdivision 2 that a time longer than 60 days is needed to complete action on an application is not subject to judicial review.

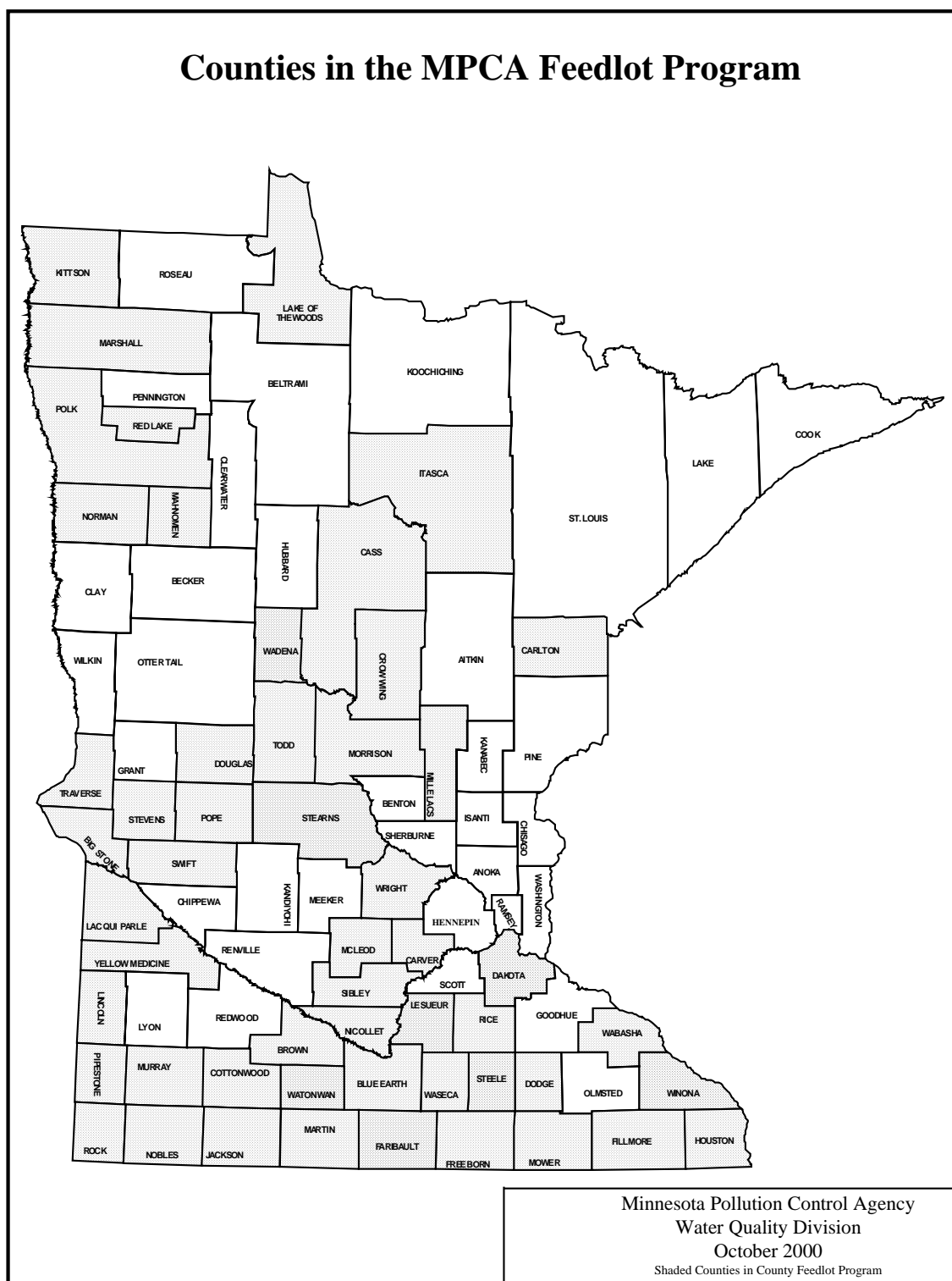
HIST: 1995 c 248 art 19 s 2

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APPENDIX A

DELEGATED COUNTY FEEDLOT MAP

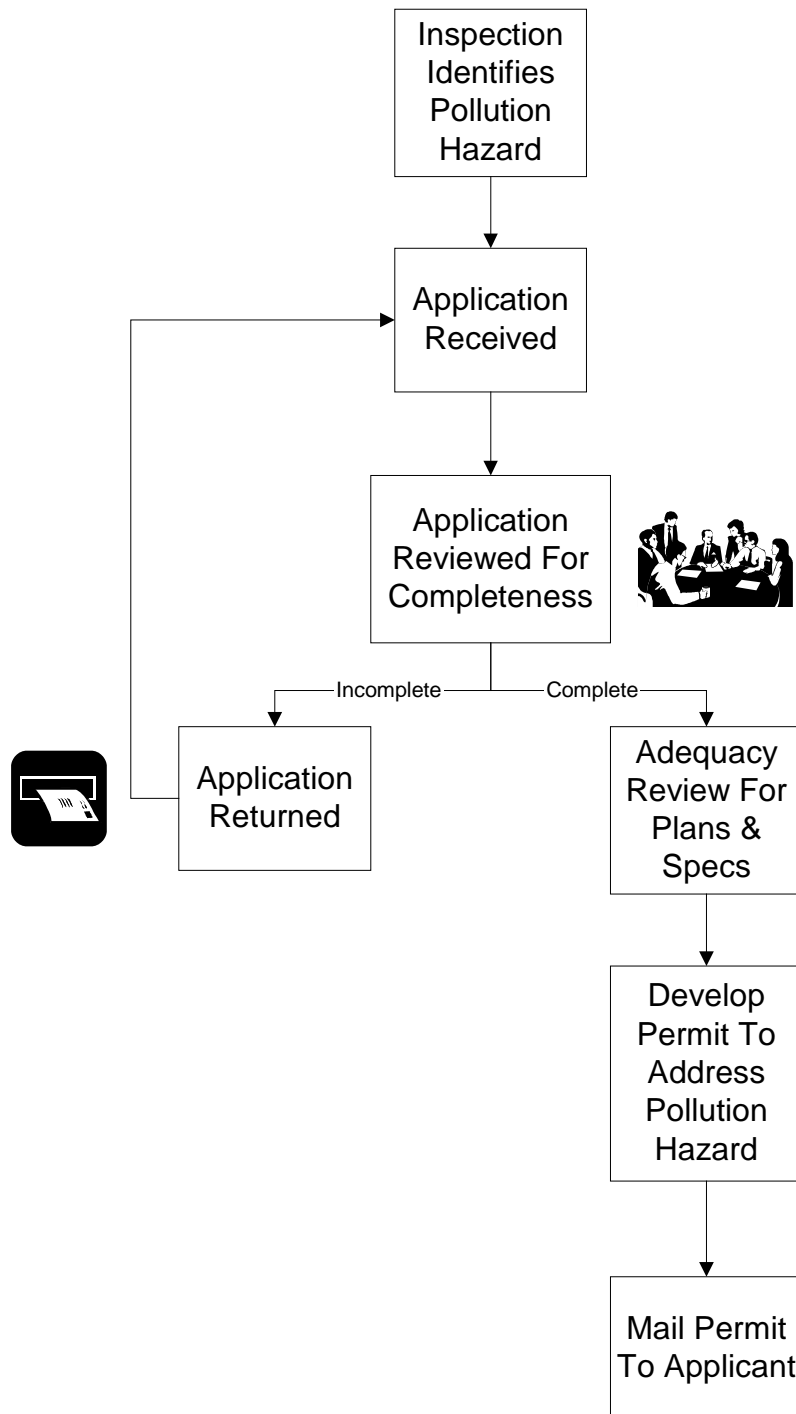
Figure 1. Delegated County Map



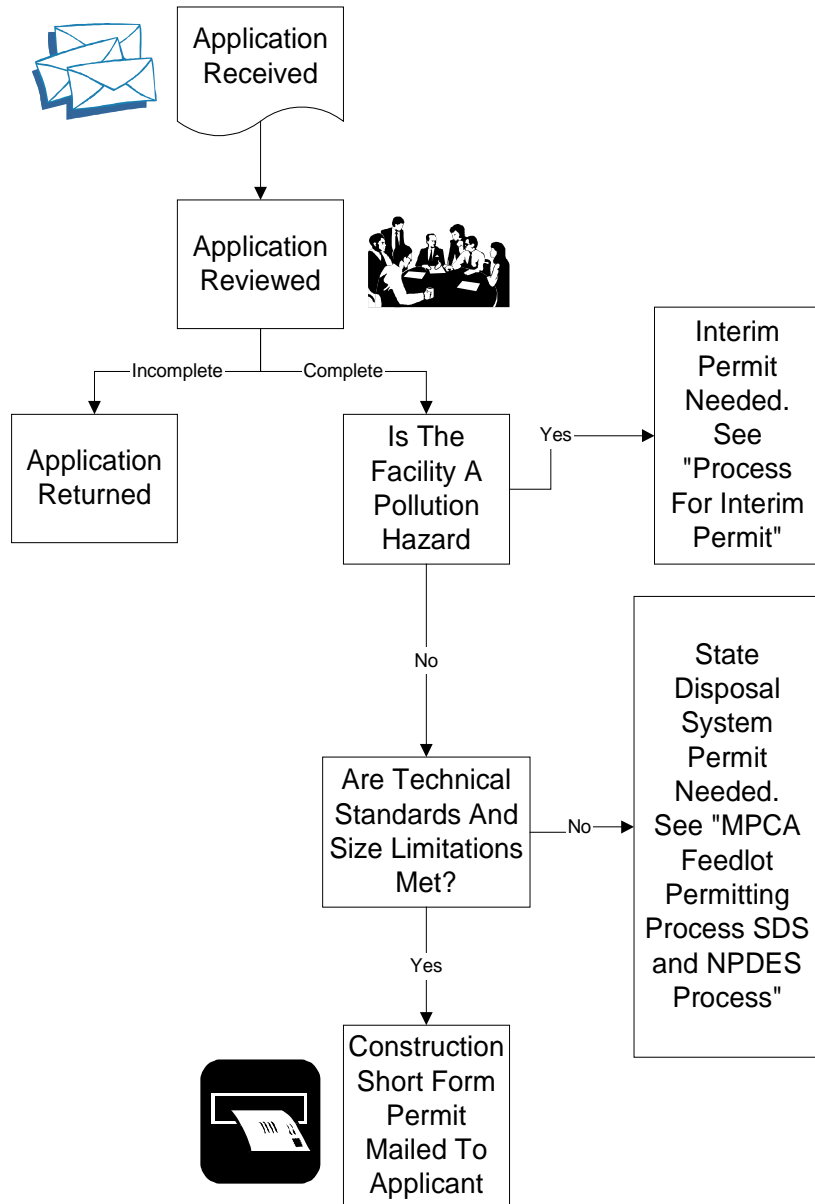
APPENDIX B

PERMIT PROCESS SCHEMATICS

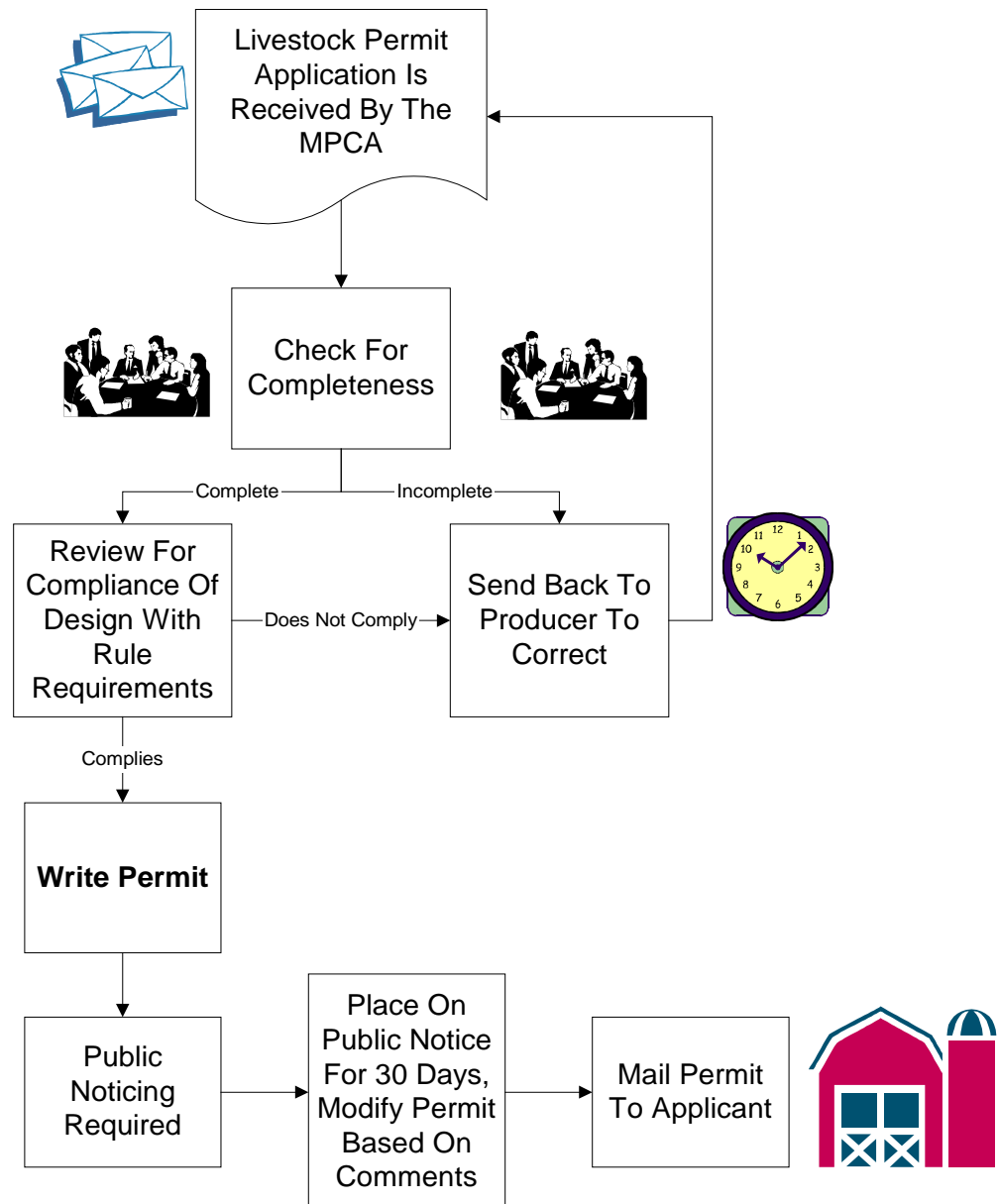
Process For Interim Permit



Process For Construction Short Form Permit



MPCA Feedlot Permitting SDS and NPDES Process**



**** This Chart Addresses Only Permitting And Not Environmental Review**
SDS = State Disposal System Permits