

November 2012

## **Minnesota Pollution Control Agency**

### **Watershed Division**

#### **Public Notice of Availability of the Draft Bluff Creek Watershed Turbidity and Fish Bioassessment Impairments Total Maximum Daily Load (TMDL) Report and Request for Comment.**

Public Comment Period Begins: November 5, 2012

Public Comment Period Ends: December 5, 2012

The Minnesota Pollution Control Agency (MPCA) is requesting comments on the draft Bluff Creek Watershed Turbidity and Fish Bioassessment Impairments Total Maximum Daily Load (TMDL) Report. The draft Report for Bluff Creek is available for review at:

<http://www.pca.state.mn.us/enzq99c>.

Following the comments, the MPCA will revise the draft Report and submit it to the U.S. Environmental Protection Agency (EPA) for approval. Comments must be sent to the MPCA contact person listed below by 4:30pm on December 5, 2012

Required by the federal Clean Water Act, a TMDL is a scientific study that calculates the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards for that pollutant. It is a process that identifies all the sources of the pollutant causing an impairment and allocates necessary reductions among them. This multi-year effort results in a pollution reduction plan and engages stakeholders and the general public. An approved TMDL is followed by implementation activities for achieving the necessary reductions.

Bluff Creek is located in the city of Chanhassen in South Central Minnesota. The Creek begins at the headwaters near Trunk Highway 41 and travels for about 7.5 miles before it flows into the Minnesota River floodplain. The watershed's upper reaches are a mix of forested upland and meadow. The middle reach is a mix of land uses and is rapidly urbanizing. The lower reach is surrounded by steep valley walls, is highly sinuous, and lined with trees. Bluff Creek was listed on the 303(d) list of impaired waters by the MPCA for elevated turbidity (sediment) levels in 2002 and for impaired fish populations in 2004. To meet the standard, excess sediment that is coming into Bluff Creek needs to be reduced. Primary sources of sediment are stream bank and bluff erosion, as well as poorly vegetated ravines and gullies. These sources are contributing excess sediment to Bluff Creek, mobilized by stormwater runoff from the watershed under high

flow conditions. Implementation actions have been identified to remedy these erosive ravines and stream banks, construct a ramp to allow fish passage in one part of the stream, and encourage the infiltration of stormwater to reduce the high flows that carry sediment to Bluff Creek.

**Agency Contact Person:** Written or oral comments, petitions, questions, or requests to receive a draft of the TMDL Report, and requests for more information should be directed to:

Barb Peichel  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
651-757-2646  
Minnesota Toll Free: 800-657-3864  
Fax: 651-297-8676  
E-mail: [Barbara.Peichel@state.mn.us](mailto:Barbara.Peichel@state.mn.us)  
TTY users may call the MPCA teletypewriter at 651-282-5332 or 800-657-3864.

**Preliminary Determination on the Draft TMDL Report:** The MPCA Commissioner has made a preliminary determination to submit this TMDL Report to the EPA for final approval. A draft TMDL Report is available for review at the MPCA office at the address listed above, and at the MPCA website: <http://www.pca.state.mn.us/0agxa04>

Suggested changes will be considered before the final TMDL Report is sent to the EPA for approval.

**Written Comments:** You may submit written comments on the conditions of the draft TMDL Report or on the Commissioner's preliminary determination. Written comments must include the following:

1. A statement of your interest in the draft TMDL Report;
2. A statement of the action you wish the MPCA to take, including specific references to sections of the draft TMDL that you believe should be changed; and
3. The reasons supporting your position, stated with sufficient specificity as to allow the Commissioner to investigate the merits of your position.

**Petition for Public Informational Meeting:** You also may request that the MPCA Commissioner hold a public informational meeting. A public informational meeting is an informal meeting that the MPCA may hold to solicit public comment and statements on matters before the MPCA, and to help clarify and resolve issues.

A petition requesting a public informational meeting must include the following information:

1. A statement identifying the matter of concern;
2. The information required under items 1 through 3 of "Written Comments," identified above;
3. A statement of the reasons the MPCA should hold a public informational meeting; and

4. The issues that you would like the MPCA to address at the public informational meeting.

**Petition for Contested Case Hearing:** You also may submit a petition for a contested case hearing. A contested case hearing is a formal evidentiary hearing before an administrative law judge. In accordance with Minn. R. 7000.1900, the MPCA will grant a petition to hold a contested case hearing if it finds that:

1. There is a material issue of fact in dispute concerning the application or draft TMDL Report;
2. The MPCA has the jurisdiction to make a determination on the disputed material issue of fact; and
3. There is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of the contested case hearing would allow the introduction of information that would aid the MPCA in resolving the disputed facts in making a final decision on the draft TMDL Report. A material issue of fact means a fact question, as distinguished from a policy question, whose resolution could have a direct bearing on a final MPCA decision.

A petition for a contested case hearing must include the following information:

1. A statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing according to the criteria in Minn. R. 7000.1900, as discussed above; and;
2. A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

In addition and to the extent known, a petition for a contested case hearing should also include the following information:

1. A proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing;
2. A proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing; and
3. An estimate of time required for you to present the matter at a contested case hearing.

**MPCA Decision:** You may submit a petition to the Commissioner requesting that the MPCA Citizens' Board (Board) consider the TMDL Report approval. To be considered timely, the petition must be received by the MPCA by 4:30 p.m. on the date the public comment period ends, identified on page 1 of this notice. Under the provisions of Minn. Stat. § 116.02, subd 6(4), the decision whether to submit the TMDL Report and, if so, under what terms will be presented to the Board for decision if:

1. The Commissioner grants the petition requesting the matter be presented to the Board;
2. One or more Board members request to hear the matter before the time the Commissioner makes a final decision on the TMDL Report; or
3. A timely request for a contested case hearing is pending. You may participate in the activities

of the MPCA Board as provided in Minn. R. 7000.0650.

The written comments, requests, and petitions submitted on or before the last day of the public comment period will be considered in the final decision on this TMDL Report. If the MPCA does not receive written comments, requests, or petitions during the public comment period, MPCA staff as authorized by the Board, will make the final decision on the draft TMDL Report.